Staff Summary Report REVISED

Tempe

Council Meeting Date: 08/14/2008 **Agenda Item Number:** 71

SUBJECT: Request approval of a resolution to enter into a revised Intergovernmental Agreement (IGA) between the Cities of Mesa, Chandler, Gilbert, Tempe, Scottsdale and the Salt River Pima Maricopa Indian Community Police Department and the US Bureau of Alcohol, Tobacco, and Firearms to develop an East Valley Gang and Criminal Information Fusion Center.

DOCUMENT NAME: 20080814pdsam02 **POLICE DEPARTMENT ADMINISTRATION (0606-02)** Resolution No. 2008.77

SUPPORTING DOCS: Yes.

COMMENTS: The purpose of the revised IGA is for the listed cities and their Police Departments to work together in the collection, evaluation, analysis, dissemination of intelligence and intelligence products regarding criminal street gangs and criminal related incidents through the cooperative efforts of the Parties to this agreement. The plan is to create the East Valley Gang and Criminal Information Fusion Center.

The City of Tempe Police Department agrees, per the IGA, to assign one law enforcement officer to the Fusion center on a full-time basis for assignments outlined within the IGA.

This IGA is almost identical to the one already approved last fiscal year. This revised IGA addresses some of the legal issues that came up, such as public entity issues and future membership application.

PREPARED BY: Shelly A. Macdonald, Management Assistant II, 480.350.8820

REVIEWED BY: Tom Ryff, Chief of Police, 480.350.8214

LEGAL REVIEW BY: Bill Amato, Police Legal Advisor, 480.350.8610

FISCAL NOTE: None

RECOMMENDATION: Approve and sign the IGA

ADDITIONAL INFO: **N/A**

RESOLUTION NO. 2008.77

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT THE CITIES OF MESA, CHANDLER, GILBERT, TEMPE, SCOTTSDALE AND THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY POLICE DEPARTMENT AND THE US BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS TO DEVELOP AN EAST VALLEY GANG AND CRIMINAL INFORMATION FUSION CENTER, AND AUTHORIZING THE CHIEF OF POLICE OR HIS DESIGNEE TO ACT AS AGENT OF THE CITY OF TEMPE FOR ALL NEGOTIATIONS AND NECESSARY INSTRUMENTS.

WHEREAS, the City of Tempe, at the recommendation of the Police Department, will approve the intergovernmental agreement; and

WHEREAS, this project is for the benefit of all citizens of Tempe; and

WHEREAS, the project is compatible with the laws of the United States of America, Arizona and the City of Tempe.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, HEREBY:

1. Approval of the intergovernmental agreement and

2. Gives authority to the Tempe Chief of Police or his designee, to act as agent of the City of Tempe to conduct all negotiations, execute and submit all documents including but not limited to applications, agreements, amendments, billing statements, and any other necessary or desirable instruments in connection with such funding.

PASSED, ADOPTED, AND APPROVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, THIS_____DAY OF AUGUST, 2008

_____
MAYOR

ATTEST:

_____
Janet R. Hort, City Clerk

APPROVED AS TO FORM:

_____
Andrew B. Ching, City Attorney

INTERGOVERNMENTAL AGREEMENT REGARDING PARTICIPATION IN THE EAST VALLEY GANG & CRIMINAL INFORMATION FUSION CENTER

This Agreement is entered into among the City of Mesa, on behalf of the Mesa Police Department (MPD), and any public agencies, as that term is defined in Arizona Revised Statutes § 11-951, that, after invitation by the MPD, comply with the provisions of A.R.S. §11-952, and file a document with the Secretary of State that references this Agreement and meets the requirements of the statute. A public agency shall become a Party to this Agreement as of the date of that agency's filing with the Secretary of State. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every party nor a signature line shall be required in each counterpart except that on a counterpart being brought forward by an agency to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that jurisdiction's practice only by the particular agency seeking approval. This Agreement supercedes any previous Agreement concerning the Fusion Center whether filed or not filed with the Secretary of State.

I. Purpose

The purpose of this Agreement is to enhance Maricopa County East Valley law enforcement services concerning the collection, evaluation, analysis, dissemination of intelligence and intelligence products regarding criminal street gangs and criminal related incidents through the cooperative efforts of the Parties.. This purpose is to be accomplished by the creation of the East Valley Gang & Criminal Information Fusion Center, which will be located at the Mesa Police Department.

II. Authority

The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§11-951, 952, A.R.S. §13-3872 and the respective provisions of their City Charters, Tribal Constitutions or other governing authority.

III. Participation

The Parties agree to assign a law enforcement officer or non-sworn employee to the East Valley Gang and Criminal Information Fusion Center (Fusion Center) on a full-time basis for such assignments within the purposes of this contract. The officer(s) or non-sworn personnel shall remain on assignment to the Fusion Center for a minimum period of one (1) year unless otherwise agreed to by the Parties.

During the period of assignment to the Fusion Center, the assigned officer(s) and additional non-sworn personnel shall maintain all benefits, rights, and privileges available to said officer(s) or non-sworn personnel as if they were assigned on a full-time basis to their parent agency. The assigned officer(s) or non-sworn personnel will abide by all Fusion Center policies and applicable rules and regulations regarding the center. All Parties agree that all assigned personnel shall comply with Title 28 of the Code of Federal Regulations, Part 23.

ATF will participate by providing resources as ATF deems necessary and appropriate.

IV. Reimbursement

The Parties will be responsible for all payroll expenses of their respective officer(s) and non-sworn personnel related to this assignment. The expenses include employee salary, shift differential pay, overtime compensation, benefits which accrue during the term of this Agreement, employee-related expenses to include employer's workman's compensation, social security at established rates, vacation and sick leave taken while working at the Fusion Center. All approved travel expenses and per diem will be the responsibility of the parent agency. All out of state travel must be pre-approved by the parent agency. If the MPD receives grant funds designated for the Fusion Center, some or all of these expenses may be reimbursed to the Parties.

V. Duties of MPD

MPD agrees to provide officer(s) and non-sworn personnel with workspace and connectivity to the Fusion Center network and databases at no cost to the Parties. MPD will also provide technical assistance to officer(s) and non-sworn personnel in establishing connectivity to the Parties respective systems. MPD will provide workstation and office furniture for the use of officer(s) and non-sworn personnel. MPD will provide stand-alone computers to facilitate state, and local access. MPD will maintain responsibility for maintenance of the facility and is responsible for the lease on the facility, which includes utility costs.

VI. Duties of the Parties

The Parties' sworn officer(s) and non-sworn personnel will occupy space within the Fusion Center facility. The Parties will provide their officer(s) and non-sworn personnel with network connectivity from the Fusion Center to their respective parent agency. The Parties will be responsible for maintenance of those personal computers and the network connectivity. The Parties will be responsible for providing their respective officer(s) with a duty vehicle, if necessary, during the period of this Agreement. The Parties agree to permit the other Parties' officer(s) to work in their jurisdictional boundaries pursuant to their AZPOST certification and A.R.S. §§13-3871, 3872, 3874 and 3875, except that, to the extent the law limits jurisdiction on Indian reservations, this Agreement shall only expand that jurisdiction for Fusion Center activities or other law enforcement activities discussed with the chief law enforcement officer for the Indian Community.

VII. Management of the East Valley Gang Information & Criminal Information Fusion Center

The management of the day-to-day operation of the Fusion Center shall be the responsibility of MPD. The promulgation of policy and oversight of the operation of the Fusion Center shall be the responsibility of the Fusion Center Executive Team, the members of which shall be the chief law enforcement officer for each original participating agency, or his/ her designee. Additional agencies may be invited to join the Fusion Center. The Executive Team may invite the chief law enforcement agency of a new participating agency to be a member of the Executive Team.

VIII. Nondiscrimination

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to, State Executive Order No. 99-A, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with Disabilities Act; provided however, an Indian Community is subject to 25 U.S.C. § 450e(c). No Party shall engage in any form of illegal discrimination with respect to applications for employment or student status or employees or students.

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IX. Liability

To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party, its officers, employees, contractees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which, are the result of any act or omission of the Party, its officers, employees, contractees, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. The employees of the Parties shall remain employees of the Parties and shall not be considered MPD employees. The employees of MPD shall remain employees of MPD and shall not be considered employees of any of the other Parties. Failure of a Party to comply with the terms of this Agreement shall not provide the basis of any third party action against any of the Parties.

X. Fees

In no event shall any Party charge other Parties for any administrative fees for any work performed pursuant to this Agreement.

XI. Jurisdiction

The laws of the State of Arizona shall govern this Agreement. Venue will be in the Maricopa County Superior Court unless the subject matter of the dispute involves an Indian Community,

then venue shall be in Federal District Court for the State of Arizona. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing Party in such litigation or arbitration shall be entitled to recover its reasonable attorneys fees, expert witness fees and other costs of litigation.

XII. Worker's Compensation

Pursuant to A.R.S. §23-1022 D., for the purposes of worker's compensation coverage, all employees covered by this Agreement shall be deemed to be an employee of both agencies. The parent agency shall be solely liable for payment of worker's compensation benefits.

XIII. Duration of this Agreement

This Agreement shall become effective upon the execution by the Parties hereto and filing with the Secretary of State and shall remain in effect until July 1, 2027, unless otherwise terminated by the terms of this Agreement or operation of law. . Any Party may withdraw from this Agreement by giving 30 days written notice to the MPD. All property provided by MPD to a withdrawing Party's officer(s) or non-sworn personnel shall be returned to MPD upon termination. The Parties reserve all rights that each may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511 as amended.

XIV. Other Provisions

In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereof.

This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by an instrument in writing and signed by all the participating Parties. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any other subsequent breach. Headings are for convenience and shall not affect interpretation. This Agreement may be executed in counterparts, and which together constitute a single instrument.

This Agreement shall be recorded with the Secretary of State pursuant to A.R.S. § 11-952(g) upon its execution and an original bearing the stamp of the Secretary shall be forwarded to the Chief of Police of the Mesa Police Department.

XV. Notification

Any notice required to be given under this Agreement will be provided to the Chief of Police of the Mesa Police Department with a copy to all Parties to this Agreement.

Signatures

By: _____
MAYOR, CITY OF TEMPE
CITY CLERK, CITY OF TEMPE

Attest: _____

By: _____
TOM RYFF, CHIEF OF POLICE
TEMPE POLICE DEPARTMENT

Legal Approval:

_____
Tempe City Attorney
* Approved as to Form