

RESOLUTION NO. 6-2009

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BENSON ("CITY") AND THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF PUBLIC SAFETY ("DPS") TO ENHANCE LAW ENFORCEMENT SERVICES CONCERNING THE CRIMINAL ACTIVITIES OF STREET GANGS.

WHEREAS, the City believes that it would be in the public interest to enter into an Intergovernmental Agreement with DPS for the purpose of enhancing law enforcement services concerning the criminal activities of street gangs through the cooperative efforts of the City and DPS; and

WHEREAS, the staffs of the City and DPS have developed an Intergovernmental Agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference, to effectuate this purpose; and

WHEREAS, the City and DPS desire to avail themselves of all provisions of law applicable to the Agreement and desire to jointly exercise their powers as provided for in A.R.S. § 11-951, *et seq.* and A.R.S. § 41-1713(B)(3); and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Agreement and have determined that approval of the Intergovernmental Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, that the City hereby approves the Intergovernmental Agreement between the City of Benson and the State of Arizona through its Department of Public Safety, attached hereto as Exhibit "A", and the Mayor is hereby directed to execute said Agreement on behalf of the City and City staff is hereby authorized to take all steps necessary and property to carry out its purposes.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 26th day of January, 2009.



MARK M. FENN, Mayor

ATTEST:


VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:


THOMAS A. BENAVIDEZ, City Attorney

Exhibit "A"
Intergovernmental Agreement

Exhibit "A"
Intergovernmental Agreement



ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

JANICE K. BREWER ROGER VANDERPOOL
Governor Director

March 19, 2009

Glenn H. Nichols, Chief
Benson Police Department
P. O. Box 2287
Benson, Arizona 85602



Re: Intergovernmental Agreement - DPS Contract 2009-042
Arizona Department of Public Safety and Benson Police Department
Arizona State Gang Task Force – G.I.I.T.E.M.

Dear Chief Nichols:

Enclosed for your file please find a fully executed, original of the above referenced Intergovernmental Agreement which was filed with the Secretary of State on March 10, 2009.

We look forward to a successful partnership in the enforcement of gang activity in the State of Arizona.

Sincerely,

A handwritten signature in black ink that reads "TE Chung".

Timothy E. Chung, Commander
Gang Enforcement Bureau

TEC/jh

enclosure

**INTERGOVERNMENTAL AGREEMENT
REGARDING
GANG & IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION
(GIITEM)**

This Intergovernmental Agreement ('IGA') is entered into between the State of Arizona through its Department of Public Safety, hereinafter referred to as "DPS" and the Benson Police Department, hereinafter referred to as "Agency".

The purpose of this Agreement shall be to enhance law enforcement services concerning the criminal activities of street gangs, through the cooperative efforts of the parties to this IGA.

DPS is authorized and empowered to enter into this IGA pursuant to A.R.S. §41-1713 B.3. Both parties are authorized and empowered to enter into this IGA pursuant to A.R.S. §11-952. The Agency is authorized and empowered pursuant to _____.

Now, in consideration of the mutual promises set forth herein, the parties to this Agreement hereby agree to the following terms and conditions:

I. PARTICIPATION

The Agency agrees to assign one (1) AZ P.O.S.T. certified sworn law enforcement officer, herein referred to as "officer", to DPS and its Gang & Immigration Intelligence Team Enforcement Mission, hereinafter referred to as "GIITEM," on a full-time basis for such assignments within the purposes of this IGA, as directed by DPS. During this period of assignment, the Agency and DPS agree to allow said officer to maintain all benefits, rights, and privileges available to said officer as if they were assigned on a full-time basis to the Agency. The assigned officer must abide by all of the applicable rules and regulations of the Agency and are subject to its disciplinary process.

The Agency agrees to enter into a Memorandum of Understanding (MOU) with the DPS relative to the connection and operation of the Arizona GangNet system.

II. REIMBURSEMENT

DPS agrees to reimburse the Agency on a monthly basis (based upon DPS weekly time sheets completed by the officer) for eighty-five (85%) percent of payroll expenses of the officer related to this assignment, including salary, shift pay, benefits (which accrue during the term of the IGA) and employee-related expenses to include employer's workman's compensation and social security at established rates, vacation and sick leave taken while working GIITEM. DPS will reimburse all overtime compensation (based upon DPS rules, not to exceed eight (8) hours per month). There must be a minimum of 40 hours GIITEM related work in order for DPS to reimburse for overtime in any given week. Overtime compensation will be for GIITEM related activities only. The limitation of overtime to eight (8) hours per month may be exceeded without contacting the Agency if DPS determines that additional funding is available.

Monthly vacation or sick leave which accrues, but not used by the officer, will not be reimbursed. The Agency will pay fifteen (15%) percent of payroll related expenses. All

personnel costs, including shift pay, will be based on a standard forty (40) hour work week, with the understanding the forty (40) hour work week may be altered to address the needs of DPS as it relates to an on-going investigation or special assignment request dictated by the needs of a requesting city, county, or entity.

Prior to the officer reporting to GIITEM, the Agency agrees to furnish DPS with the following information: officer's annual, bi-weekly and hourly rates of base pay and fringe benefits, as well as, the overtime rate based upon the assumption outlined above. DPS is not obligated to reimburse the Agency for salary raises or modifications to base salaries, unless the Agency submits such modification to DPS at least 60 days from the effective date of such modification.

All approved travel expenses will be reimbursed directly to the officer by DPS under employee travel reimbursement guidelines established by the Arizona Department of Administration. The amount reimbursed for the aforementioned expenditures shall be for actual costs incurred during the effective dates of this IGA.

DPS will assign a DPS vehicle to the Agency's officer. The officer is responsible to maintain the assigned vehicle in accordance with DPS policy.

III. IMMIGRATION

Pursuant to the Governor's Executive Order 2005-30, the parties agree to comply with all applicable federal immigration laws and regulations.

IV. NONDISCRIMINATION

All parties agree to comply with the non-discrimination provisions of the Governor's Executive Order 99-4.

V. INDEMNIFICATION

Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, agents, employees, or volunteers.

VI. DRUG FREE WORKPLACE

Any officer assigned to GIITEM will be subject to random and/or for cause, drug and alcohol testing in accordance with his/her Agency's guidelines. If the Agency does not have a drug free program, the officer will be required to submit to testing pursuant to the DPS Drug Free Workplace Program. Each assigned officer shall be subject to the responsibilities of and shall retain all rights as provided for in the DPS Drug Free Workplace Program Manual, DPS Form Number DPS 932-02056. DPS shall not charge any fee or cost to the Agency for any assigned officer who undergoes testing. Officers may be removed from GIITEM for failure to comply with the program or for failure to pass DPS drug screening requirements.

VII. RECORDKEEPING

All records regarding the IGA, including officer's time accounting logs, must be retained for five (5) years in compliance with A.R.S. §35-214, entitled Inspection and Audit of Contract Provisions.

VIII. FEES

In no event shall either party charge the other for any administrative fees for any work performed pursuant to the IGA.

IX. JURISDICTION

The Agency agrees to permit their officer to work outside of their regular jurisdictional boundaries.

X. ARBITRATION

In the event of a dispute under this IGA, the parties agree to use arbitration to the extent required under A.R.S. §§ 12-1518 and 12-133.

XI. WORKER'S COMPENSATION BENEFITS

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

XII. LIMITATIONS

This agreement in no way restricts either party from participating in similar activities with other public or private agencies, organizations, and individuals. Nothing in this agreement shall be construed as limiting or expanding the statutory responsibilities of the parties.

XIII. EFFECTIVE DATE/DURATION

This IGA shall become effective upon the execution of (3) originals by the parties hereto, and upon one (1) original being filed with the Arizona Secretary of State; and will remain in effect through June 30th of the current fiscal year. The IGA may be renewed if DPS sends out a written notice of funding availability to the Agency within thirty (30) days prior to the end of each fiscal year. All prior agreements between DPS and the Agency regarding GIITEM gang enforcement participation are cancelled as of the effective date of the IGA.

XIV. AVAILABILITY OF FUNDS

Every payment obligation of DPS under this agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the agreement, the agreement may be terminated by DPS at the end of the period for which funds are available. No liability shall accrue to DPS in the event this provision is exercised, and DPS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

XV. CANCELLATION

All parties are hereby put on notice that this IGA is subject to cancellation by the Governor for conflicts of interest pursuant to A.R.S. §38-511.

XVI. TERMINATION

Either party may terminate the IGA for convenience or cause upon thirty (30) days written notice to the other party. Upon termination, DPS shall pay all outstanding amounts up through the time upon which the termination becomes effective. All property shall be returned to the owning party upon termination. Any notice required to be given under the IGA will be provided by mail to:

GIITEM Commander
Arizona Department of Public Safety
P. O. Box 6638, Mail Drop 3700
Phoenix, Arizona 85005-6638

Glenn H. Nichols, Chief
Benson Police Department
P. O. Box 2287
Benson, Arizona 85602

XVII. VALIDITY

This document contains the entire agreement between the parties and may not be modified, amended, altered or extended except through a written amendment signed by both parties. If any portion of this agreement is held to be invalid, the remaining provisions shall not be affected.

The parties hereto have caused this IGA to be executed by the proper officers and officials.

ARIZONA DEPARTMENT OF PUBLIC SAFETY

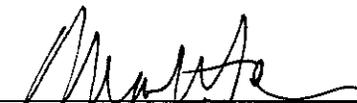
BY: 
for Roger Vanderpool
Director

DATE: 2/25/09

APPROVED AS TO FORM:

BY:  2/23/09
Assistant Attorney General

BENSON POLICE DEPARTMENT

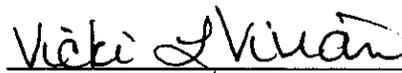
BY: 
Mark M. Fenn, Mayor


Glenn H. Nichols, Chief of Police

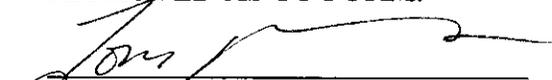
DATE: 3-4-09

DATE: 3-4-09

ATTEST:


Vicki L. Vivian, City Clerk

APPROVED AS TO FORM:


Thomas A. Benavidez, City Attorney



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Brian D. Schneider
Assistant Attorney General

Direct: 602-542-8863
Fax: 602-542-3646

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P001-2009-000840 (DPS 2009-042), an Agreement between public agencies, i.e., Arizona Department of Public Safety and GIITEM – Benson Police Department, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

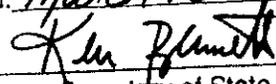
No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATES 2/23, 2009.

TERRY GODDARD
Attorney General


BRIAN D. SCHNEIDER
Assistant Attorney General

BDS:ln
Attachment

No. 30659
Filed with the Secretary of State
Date Filed: March 10 2009

Secretary of State
By: Marie Pessillo