

CITY COUNCIL REPORT



Meeting Date: October 10, 2017
 General Plan Element: *Public Services & Facilities*
 General Plan Goal: *Partner with other jurisdictions and agencies*

ACTION

Intergovernmental Agreement with the Arizona State University. Adopt Resolution No. 10913 authorizing Intergovernmental Agreement No. 2017-148-COS between the City of Scottsdale and the Arizona State University (ASU) for the provision of police officers to provide law enforcement security services for special events held on ASU campuses.

BACKGROUND

ASU does not have the capacity by itself to provide adequate law enforcement security services for special events held on ASU campuses and has asked the assistance of other valley law enforcement agencies such as the Scottsdale Police Department (SPD) to assist them. Participation in mutual aid agreements such as this one, allows SPD to develop good will with other agencies and call on other agencies for assistance as needed.

ASU shall bear the cost of those Scottsdale police officers who are utilized at the stadium.

ANALYSIS & ASSESSMENT

Recent Staff Action

Police Department staff reviewed the agreement and believe this agreement will be beneficial to the department by developing increased good will with ASU PD and increasing interoperability between the two agencies and other supporting agencies especially since ASU does have some facilities within the City of Scottsdale. This agreement is similar to an agreement in place with DPS for the University of Phoenix stadium.

ASU shall bear the cost of the Scottsdale officers including primary responsibility for worker compensation issues. The number of officers assigned and allowed to work campus events is at the sole discretion of SPD. ASU has also agreed to indemnify the City of Scottsdale pursuant to the agreement.

RESOURCE IMPACTS

Available funding

The cost of the officers shall be borne by ASU.

Staffing, Workload Impact

No additional staff will be required to participate in the program. Police officers will work in this assignment in an off duty capacity as temporary employees of ASU.

Future Budget Implications

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Approve Resolution No. 10913 authorizing Intergovernmental Agreement No. 2017-148-COS.

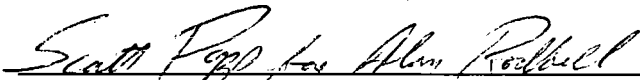
RESPONSIBLE DEPARTMENT(S)

Police

STAFF CONTACTS (S)

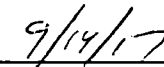
Jeff Walther Assistant Chief, jwalther@scottsdaleaz.gov

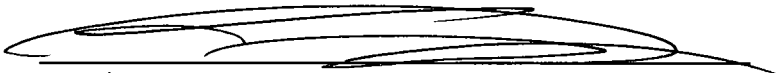
APPROVED BY



Alan Rodbell, Chief of Police

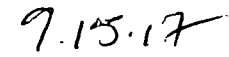
(480)312-1900, arodbell@scottsdaleaz.gov


Date



Jim Thompson, City Manager

(480)312-2811, jthompson@scottsdaleaz.gov


Date

ATTACHMENTS

1. Resolution No. 10913
2. Intergovernmental Agreement No. 2017-148-COS

RESOLUTION NO. 10913

RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO INTERGOVERNMENTAL AGREEMENT NO. 2017-148-COS WITH ARIZONA STATE UNIVERSITY, FOR THE PROVISION OF POLICE OFFICERS AS LAW ENFORCEMENT SECURITY AT ASU SPECIAL EVENTS

WHEREAS, Arizona Revised Statutes Sections 11-951, et. seq. provide that public agencies may enter into intergovernmental agreements for the provision of services, or joint or cooperative action and Article 1, Section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies, including state universities; and

WHEREAS, the City of Scottsdale ("City") and Arizona State University ("ASU") desire to enter into an Intergovernmental Agreement for the provision of police officers to provide law enforcement security services for special events held on ASU campuses; and

WHEREAS, ASU does not have sufficient law enforcement resources to provide adequate security at campus special events and will pay for the cost of those officers and the City has a long successful history of providing mutual aid to other valley agencies;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby authorizes and directs the mayor to execute, on behalf of the City, intergovernmental agreement no. 2017-148-COS, between the City and ASU, allowing the Scottsdale Police Department to provide officers to provide law enforcement security services for special events held on ASU campuses.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 10th day of October, 2017.

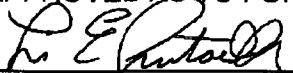
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: Luis E. Santaella
Senior Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE ARIZONA BOARD OF REGENTS
FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY
AND THE CITY OF SCOTTSDALE**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into pursuant to Arizona Revised Statutes ("A.R.S.") § 11-952 by the Arizona Board of Regents for and on behalf of Arizona State University ("ASU") and the City of Scottsdale ("Scottsdale"), an Arizona municipal corporation, collectively known herein as the "Parties".

RECITALS

- A. Arizona State University is located in the Cities of Phoenix, Tempe, Mesa and Scottsdale. ASU has jurisdictional authority over and public safety interests in the operation of all of its campuses.
- B. ASU has the need for qualified personnel to provide law enforcement security services for special events held on its campuses.
- C. The Parties desire to participate in providing law enforcement security services to ASU by making available Scottsdale Police Department ("SPD") officers in accordance with the terms set forth herein.
- D. The Parties desire to enter into this Agreement to cooperatively provide the necessary law enforcement and security services while acknowledging ASU's primary responsibility for law enforcement at special events held on campus.

AGREEMENT

Therefore, in consideration of the foregoing recitals, the covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

- 1. **Purpose and Intent.** The purpose of this Agreement is to provide the means through which the Parties intend to provide professional law enforcement and security services to ASU by maximizing cooperation, by integrating SPD and ASU PD assets, and by addressing issues including command, control, personnel, planning, and training.
- 2. **Supervision and Staffing.**
 - 2.1 SPD acknowledges that command and control for all events worked for ASU pursuant to this Agreement (individually "Event" and collectively "Events") shall be the duty and responsibility of ASU PD.
 - 2.2 In carrying out this responsibility, ASU PD will, in good faith, assign officers to work Events in accordance with the procedures adopted herein.
 - 2.3 SPD agrees and understands that entities other than ASU and the ASU PD have input into the decisions regarding whether, and to what extent, law enforcement will provide service for Events; however, ASU will provide information regarding staffing decisions to SPD as soon as it becomes available.
- 3. **Assigned Personnel**

- 3.1 SPD shall have the discretion to determine which and how many of its officers will be allowed to apply for assignments at Events and how many officers will be assigned to the Events (hereinafter, referred to as "Assigned Officers").
- a. All Assigned Officers will be required to enter into temporary employment contracts with ASU.
 - b. The temporary employment contract will outline the mutual responsibilities of the Assigned Officers, and ASU will specify that the Assigned Officers are "at will" temporary employees of ASU and that either party can terminate the temporary employment contract, with or without cause, at any time, and without notice.
 - c. If possible, ASU will consult with SPD prior to terminating any Assigned Officer.
- 3.2 While working an Event, the Assigned Officers must wear uniforms approved by SPD, and the Assigned Officers may carry other equipment authorized by SPD.
- 3.3 When working an Event, ASU PD will make available to Assigned Officers any forms and other supplies that are necessary to work the Event.
- 3.4 Upon termination of this Agreement and conclusion of any assignments, all personal property, assets, equipment, and supplies used by the Parties and Assigned Officers in performance of their responsibilities shall remain with or be returned to the owner of such property.
- 3.5 Any inconsistency between ASU PD and SPD rules or regulations and all operational disputes will immediately be brought to the attention of the ASU Police Chief and will be fully and finally addressed and resolved by the ASU Police Chief in accordance with his determination of the best practices under the circumstances. The ASU Police Chief may delegate this responsibility to a specific command officer and SPD shall be provided notice of this delegation.

4. Compensation, Insurance and Reporting

- 4.1 The Parties agree that during Events the Assigned Officers shall be temporary employees of ASU for compensation purposes and not independent contractors; provided however, that each such Assigned Officer will at all times also be deemed an employee of SPD and nothing in this Agreement is intended to contradict or otherwise modify the provisions of A.R.S. § 23-1022(D).
- 4.2 ASU and ASU PD will provide compensation and insurance coverage for assigned offers as set forth below:
- a. Each assigned officer who works an event will be paid the negotiated special event hourly rate.
 - b. Assigned Officers' compensation shall be subject to all applicable federal and state taxes, which shall be deducted prior to payment, and which shall be evidenced by a W-2 statement issued by ASU to each Assigned Officer.
 - c. Each Assigned Officer's home agency (primary employer) shall provide the workers' compensation coverage in such amounts and under the same terms and

conditions as its other sworn, full-time employees.

- d. ASU and ASU PD will provide liability coverage.
 - e. Except for liability coverage, Assigned Officers are not entitled to any other employee benefits or compensation from ASU.
- 4.3 ASU shall make available to SPD information about the hours worked by Assigned Officers not later than seven (7) days following each Event to enable SPD to properly monitor and regulate the hours worked by all of its Assigned Officers.
- 4.4 Each Party affirms that it has complied with the provisions of A.R.S. § 23-1022(E) with respect to activities addressed by the Agreement.

5. Indemnification

- 5.1 To the extent permitted by law, ASU shall indemnify, defend, save and hold harmless the City of Scottsdale, its departments, agencies, boards, commissions, elected and appointed officers, officials, agents, and employees (hereinafter, referred to as “Indemnitee”) for, from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter, referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent acts or willful misconduct of the Assigned SPD Officers.
- 5.2 ASU’s indemnity includes any Claim or amount due arising out of the failure of such Indemnitee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.
- 5.3 It is agreed that ASU will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.
- 5.4 ASU is a public institution and, as such, any indemnification, liability limitation or hold harmless provision will be limited as required by Arizona law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621. Therefore, notwithstanding any other provision of this Agreement, ASU’s liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU or its personnel including Assigned SPD Officers.

6. Media Releases and Relations

- 6.1 Any release of information to the media, other than a public records release, regarding an Event or any activities under this Agreement will be coordinated by ASU in cooperation with SPD, however and except as provided below, no unilateral media releases will be distributed by SPD without the prior approval of ASU.
- 6.2 A copy of all public record and media releases regarding an Event, or any activities under this Agreement shall be forwarded to ASU prior to release; provided however, if an incident is primarily focused upon or concerned with the actions of SPD’s Assigned Officer, SPD will be responsible for the release of information to the media relative to the incident.
- 6.3 The Parties will not reveal any investigative information or operational procedures except as

required by law.

7. Arizona POST certification

- 7.1 Relative to its Assigned Officers, SPD agrees that it will be responsible to the Arizona Peace Officer's Standards and Training Board ("POST") for complying with all requirements mandated by Arizona Administrative Code Regulation R13-4-101 *et seq.*; including but not limited to, SPD's responsibilities to POST for the hiring, fitness for duty, record-keeping, training, and testing requirements imposed upon law enforcement agencies employing police officers in Arizona.
- 7.2 ASU and SPD agree to cooperate to ensure any issues that arise relative to POST certification are resolved in a reasonable and efficient manner.

8. Execution, Duration and Renewal

- 8.1 This Agreement will be effective immediately upon the approval and execution (as described herein) by the Parties and shall remain in full force and effect until June 30, 2020.
- 8.2 This Agreement may be executed in counterparts and is effective as of the date of the last signature.
- 8.3 This Agreement may be renewed for successive additional three (3) year periods upon mutual consent of the Parties. The Scottsdale Chief of Police with the concurrence of the Scottsdale City Attorney is granted the authority to approve such renewals.

9. General Provisions

- 9.1 Entire Agreement. This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter of this Agreement.
- 9.2 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.
- 9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 9.4 Conflict of Interest. This Agreement may be canceled by any of the Parties pursuant to the provisions of A.R.S. § 38-511.
- 9.5 Termination. The City of Scottsdale may, at any time, terminate this Agreement by giving ASU not less than sixty (60) days prior written notice. ASU may at any time terminate this Agreement by giving the City not less than sixty (60) days prior written notice ("Notice"). As applicable, Notice shall be provided to the respective Police Chief for SPD or ASU and the Notice shall reference this Agreement. Notwithstanding the foregoing, either Party may terminate this Agreement at any time in the event of non-appropriation of funds.
- 9.6 Dispute Resolution. In the event of any dispute regarding the terms or the interpretation of this Agreement the Parties Command Staff will consult with each other, in good faith, in an

effort to settle the dispute. If the Parties are unable to settle the dispute, either Party may terminate this Agreement. As required by A.R.S. § 12-1518, the Parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

- 9.7 Waiver. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other subsequent breach, or any of the rights under this Agreement.
- 9.8 Headings. Headings of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 9.9 Further Acts. Each Party shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

10. E-Verify

- 10.1 The Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as both Parties employ one or more employees in this state.
- 10.2 The Parties warrant that they have registered with and participate with E-Verify.
- 10.3 If either Party later determines that the other Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination. **The Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.** Either Party may conduct a random verification of the employment records of the other Party to ensure compliance with this warranty.
- 10.4 Failure to comply shall be deemed a material breach of the Agreement that is subject to any applicable penalties up to and including termination of the Agreement.

11. Non- Discrimination

The Parties must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status, or any disability. The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

[Signatures appear on the following pages]

**THE ARIZONA BOARD OF REGENTS FOR
AND ON BEHALF OF ARIZONA STATE
UNIVERSITY AND THE ARIZONA STATE
UNIVERSITY POLICE DEPARTMENT**

By: _____

Name: _____

Title: Chief of Police _____

Date: _____

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement between the Arizona Board of Regents for and on behalf of Arizona State University and the City of Scottsdale is in proper form and is within the powers and authority of the Arizona Board of Regents granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Benjamin W. Larson, Associate General Counsel

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

W.J. "Jim" Lane, Mayor

DATE: _____

ATTEST:

Carolyn Jagger
Scottsdale City Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement between the Arizona Board of Regents for and on behalf of Arizona State University and the City of Scottsdale is in proper form and is within the powers and authority of the City of Scottsdale granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

 9/15/17

Bruce Washburn, City Attorney DATE
By: Luis E. Santaella, Senior Assistant City Attorney