

#9
MAY 09 2013



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM Fire Department

DATE: MAY 9, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PAT MCDERMOTT, ASST. CITY MANAGER *[Signature]*

FROM: JEFF CLARK, FIRE CHIEF *[Signature]*

SUBJECT: INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE GILA RIVER
 INDIAN COMMUNITY FOR FIRE AND EMERGENCY MEDICAL
 TRAINING.

RECOMMENDATION: Staff recommends that Council adopts the IGA with the Gila River Indian Community that will allow the Chandler Fire Department to provide fire and emergency medical training to Gila River Fire Department Firefighters.

BACKGROUND/DISCUSSION: The Gila River Fire Department is a mutual aid partner with the City of Chandler. Under the mutual aid process Chandler Fire responds into the Gila River Indian Community and Gila River Fire responds into Chandler for emergency calls. Training together helps each department work safe and efficiently with each other. Members of the Gila River Fire Department travel to Chandler's Fire Training Facility to participate in fire and emergency medical drills and classroom training with the members of the Chandler Fire Department. The previous agreement required Gila River to reimburse Chandler for the training provided by purchasing consumables for use at the Training Facility. This new agreement provides direct payment for training provided. Chandler Fire also has training agreements with Sun Lakes Fire District and the Town of Maricopa.

FINANCIAL IMPLICATIONS: The Gila River Fire Department will pay the Chandler Fire Department \$20,700 annually. This amount is determined on a per firefighter fee basis. The funds will be used to offset fire and emergency medical training programs conducted at the Fire Training Facility.

PROPOSED MOTION: Move that Council approve the IGA with the Gila River Indian Community for Fire and Emergency Medical Training.

Attachments: Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("IGA") is made and entered into this _____ day of _____, 2013, by and between the City of Chandler, an Arizona municipal corporation ("Chandler") and the Gila River Indian Community (the "Community"), a Sovereign Tribal Government, collectively referred to in this IGA as the "Parties". This IGA is entered into and effective as of October 1, 2012 ("Effective Date").

RECITALS:

WHEREAS, Chandler and the Community both operate fire departments for their respective jurisdictions; and

WHEREAS, Chandler and the Community fire departments both have the obligation to train their personnel; and

WHEREAS, Chandler and the Community fire department personnel provide mutual assistance to one another with respect to emergencies; and

WHEREAS, such mutual assistance will be more effective and efficient if Chandler and the Community's fire department personnel are jointly trained; and

WHEREAS, Chandler's Fire Training Facility is large enough to accommodate the training of fire department personnel from both Chandler and the Community; and

WHEREAS, Chandler's and the Community's cost of training its fire department personnel will be reduced if joint training is provided at the Chandler fire training facility; and

WHEREAS, Arizona Revised Statutes, Section 11-951, *et. seq.*, provides that public agencies may enter into intergovernmental agreements for the provision of services, or for joint or cooperative action; and

WHEREAS, the Community, in exercising its inherent sovereignty, wishes to enter into this IGA to improve the capabilities of the Gila River Fire Department ("GRFD"), thereby directly advancing the Community's interest in protecting the health, safety and welfare of its members.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in this IGA and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1.0 Joint Training.

1.1 Agreement to Jointly Train. Chandler and the Community agree to jointly train their respective fire department personnel in accordance with the terms and conditions of this IGA.

1.2 Schedule. Chandler will use its best efforts to notify GRFD of the time and date set for its trainings, and the topic of each such training, no less than fourteen (14) calendar days before the scheduled training event.

1.3 Training Topics. Training topics could include bloodborne pathogens, electrical safety, confined space entry, flashover training, hazardous materials response, technical rescue, hose placement, ladder use and pharmacology. Other subjects will be included as necessary and GRFD will be given the opportunity to suggest additional topics.

1.4 Training Location. Unless otherwise agreed to by the Parties, all training pursuant to the IGA will be conducted at the Chandler Fire Training Facility located at 3550 South Dobson Road, Chandler, Arizona.

1.5 GRFD Personnel. GRFD will send only GRFD personnel to trainings scheduled pursuant to this IGA. Upon the request of GRFD, Chandler shall identify the number of spaces available to GRFD personnel based on its estimate of the number of Chandler fire department personnel to be in attendance, the availability of funds for consumable items and capacity limits associated with the subject matter or topic of the training.

1.6 GRFD Instructors. Nothing in this IGA shall be deemed to preclude Chandler and GRFD from agreeing to have a GRFD instructor cover some training topics. This provision, however, will not impact any aspect of Paragraph 2.0.

1.7 Use of Facility. The Community agrees to require GRFD to abide by all rules and regulations for use of the Chandler Fire Training Facility, either written or oral, as provided by the appropriate representatives of Chandler.

2.0 Financial Aspects of Joint Training.

2.1 The Community's Contribution. The Community's total contributions shall be equal to Three Hundred Dollars (\$300) per sworn firefighter employed by GRFD on October 1, 2012 and each anniversary of that date for the term of this IGA but not to exceed 90 firefighters annually. Within 30 calendar days of the Effective Date, and on or before October 1st of each year in the Term of this IGA, GRFD shall submit written verification of the number of sworn firefighters to be employed by GRFD on October 1st of the particular calendar year. Once this written verification is received by the Chandler Fire Department Training Division, the Community will be invoiced for the total contribution amount for the current fiscal year. Payment for this IGA will be due 30 calendar days after submission of invoice to the Community. The total amount of the contract shall not exceed \$27,000 per year (or 90 sworn GRFD firefighters).

3.0 General Provisions.

3.1 Term. Once both Parties have executed this IGA, the term of the IGA shall commence on October 1, 2012 and, unless renewed, amended, or terminated early, expire on September 30, 2014. If the Parties renew this IGA, in accordance with Subparagraph 3.1.1., the use of the word "Term" in this IGA shall include any renewal term periods as well as the original two year Term established in this Paragraph 3.1.

3.1.1 Automatic Renewal. This IGA shall automatically renew for an additional one (1) year

term unless one of the Parties notifies the other, at least 90 calendar days prior to end of the Term, of its intent to let the IGA expire.

3.1.2 Early Termination. Either Party may terminate this IGA by providing notice to the other at least ninety (90) calendar days prior to the date the terminating Party intends for the IGA is to be terminated. If Chandler terminates prior to the end of the Term, it will refund the Community's payment made in accordance with Paragraph 2 on a pro-rata basis based on the number of calendar months remaining in the anniversary year of the Term in which the termination is made. If the Community terminates prior to the end of the Term, no refund of the payment amount made in accordance with Paragraph 2 will be made. No refunds shall be made if GRFD reduces its number of personnel during any anniversary year of the Term after payment has been made.

3.2 Meetings. Representatives from Chandler and the Community will meet no less than once per year to discuss the mechanics of this IGA. The Parties shall operate in good faith and will be responsive to any reasonable request of the other to meet to discuss matters covered by this IGA in addition to the minimum once per year meeting required.

3.3 IGA Not Exclusive. Nothing in this IGA shall prevent either Chandler or the Community from entering other agreements regarding the training, or joint training, of their respective fire department personnel.

3.4 Notice and Opportunity to Cure. Unless a breach of, or default under, this IGA will result in an imminent threat to public health, safety and welfare, the non-defaulting Party shall provide the defaulting Party written notice of the alleged breach or default and a reasonable opportunity to cure such breach or default prior to such breach or default becoming actionable.

3.5 Dispute Resolution. Prior to conducting any litigation relating to this IGA, Chandler and the Community shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this IGA or the breach, termination, interpretation or validity hereof (a "Dispute").

3.6 Chandler Indemnification. The Community shall indemnify and hold harmless Chandler, its officers, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, including the employees, agents and invitees of the Community, or loss or damage to any property contributed to or caused by the active or passive negligence of the Community, its agents, servants, employees, contractors or subcontractors in the activities described in this IGA or in connection therewith. In case any suit or other proceeding shall be brought on account thereof, the Community, at the request of Chandler, will assume the defense at the Community's own expense and will pay all judgments rendered therein. The provisions of this Subparagraph 3.6 shall survive termination of this IGA.

3.6.1 Community Indemnification. Chandler shall indemnify and hold harmless the Community, its officers, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, including the employees, agents and invitees of Chandler,

or loss or damage to any property contributed to or caused by the active or passive negligence of Chandler, its agents, servants, employees, contractors or subcontractors in the activities described in this IGA or in connection therewith. In case any suit or other proceeding shall be brought on account thereof, the Community, at the request of Chandler, will assume the defense at the Community's own expense and will pay all judgments rendered therein. The provisions of this Subparagraph 3.6.1 shall survive termination of this IGA.

3.7 Notices. Unless otherwise provided in this IGA, all notices, demands, requests, consents, approvals and other communications (collectively, "Notices") required hereunder shall be given by certified U.S. mail, postage prepaid or personally delivered, against receipted copy, at the address set forth below or at such other address as either Party shall, from time to time, designate in writing to the other by notice given in the same manner specified in this paragraph. Notices shall be deemed received upon receipt, which shall be evidenced by a receipted copy (in the case of notices that are personally delivered), or as evidenced by the postal service receipt.

If to Chandler: Chandler Fire Department

Attn. Chief Jeff Clark
151 East Boston Street
Chandler, Arizona 85225

If to the Community or GRFD: Gila River Fire Department
Attn.: Chief Thomas C. Knapp
5002 N. Maricopa Road
P.O. Box 5083
Chandler, Arizona 85226

3.8 Entire Agreement. This IGA constitutes the entire understanding of the Parties as to the subject matter of the IGA and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

3.9 Amendments. Any amendment to or variation from the terms of this IGA shall be in writing and shall become effective only after approval of both Parties.

3.10 Counterparts. This IGA may be executed in two or more counterparts, each of which shall be deemed an original but which, when taken together, shall constitute one and the same instrument.

3.11 Cancellation. Each Party acknowledges that the other has the right as provided in A.R.S. Section 38-511 to cancel this IGA if, while this IGA or any extension is in effect, any person significantly involved in negotiating, drafting or securing this IGA on behalf of a Party is (i) an employee or agent of the other Party in any capacity, or (ii) a consultant to the other Party with respect to the subject matter of this IGA.

3.12 Governing Law. This IGA shall be governed by the laws of the State of Arizona and any disputes between the Parties as to enforcement or performance shall be adjudicated in the Arizona State court system..

3.13 Severability. If any provision of this IGA is declared invalid, illegal or unenforceable, that provision shall be severed from the IGA, and the remaining provisions shall otherwise remain in full force and effect.

3.14 Attorney's Fees. In the event that either Party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this IGA as a consequence of any breach by the other Party of its obligations under this IGA, the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing Party. All such fees shall be deemed to have accrued upon the commencement of such action.

3.15 Headings. The headings used in this IGA are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof

3.16 Good Standing Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the law of Arizona and that the individual(s) executing this IGA on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

3.17 Default and Remedies. In the event that a Party is in default hereunder, the other Party shall have all remedies available to them at law or in equity (including expedited equitable relief) whether under this IGA or otherwise. The duties and obligations imposed by this IGA and the rights and remedies available hereunder shall be in addition to and not a waiver or limitation of any duties, obligations, rights and remedies otherwise imposed or available at law or equity.

3.18 Waiver. No waiver by any Party of a breach of any of the terms or conditions of this IGA shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other terms or condition contained herein. No part of this agreement shall be interpreted as waiving the sovereign immunity of the Community.

3.19 Non-Agents. This IGA does not create a principal/agent relationship between the Parties and neither Party is hereby authorized to incur costs, expenses or other obligations on behalf of the other Party.

3.20 Time of Essence. Time is hereby declared to be of the essence for the performance of all terms, covenants, conditions and obligations under this IGA.

3.21 Successors and Assigns. This IGA shall be binding upon, inure to the benefit of and be enforceable by and against the Parties to this IGA and their respective heirs, executors, administrators, personal representatives, successors and assigns.

3.22 Interpretations and Definitions. The Parties agree that each Party and its counsel have reviewed and revised this IGA and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this IGA.

IN WITNESS WHEREOF, the Parties have executed this IGA by signing their names on the day and date first written above.

CHANDLER,
CITY OF CHANDLER, an Arizona
municipal corporation

GILA RIVER
GILA RIVER INDIAN COMMUNITY, a
Sovereign Tribal Government

By: _____
Jay Tibshraeny, Mayor

ATTEST:

By: _____
Gregory Mendoza, Governor

ATTEST:

CITY CLERK

ATTORNEY'S CERTIFICATION

The undersigned attorneys for the respective Parties hereto each certify that they have reviewed this Intergovernmental Agreement and find that it is in proper form and within the power and authority granted to their respective clients under the laws of the State of Arizona. The attorney for the Gila River Indian Community has determined that this Agreement is in proper form and is within the powers and authority granted under law of the Gila River Indian Community and under the law of the Gila River Indian Community.

CITY ATTORNEY (*kb*)

Linus Everling, General Counsel