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MEMORANDUM **Police Department - Staff Memo No. 2008-089**

DATE: JULY 17, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
SHERRY KIYLER, POLICE CHIEF
DAVID NEUMAN, ASSISTANT POLICE CHIEF

FROM: RANDALL GREELEY, POLICE PLANNING & RESEARCH MANAGER

SUBJECT: RESOLUTION 4216, AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CHANDLER AND TOWN OF GILBERT FOR PROVIDING A CRIME SCENE TECHNICIAN FOR EVIDENCE COLLECTION AT MAJOR CRIME SCENES AND A CRIMINALIST TO PERFORM BLOOD ALCOHOL AND CONTROLLED SUBSTANCE TESTING

SUMMARY: The Town of Gilbert wishes to enter into an IGA with the City of Chandler to provide evidence collection at major crime scenes and blood alcohol and controlled substance testing for Gilbert. Chandler has been providing this service to Gilbert for several years through an IGA that recently expired. This is an excellent opportunity for the City to continue its collaborative partnership with a neighboring community for the provision of services through our crime laboratory.

DISCUSSION: The Town of Gilbert will pay Chandler 100% of the mid-range salary and benefits for one Crime Scene Technician II and one Criminalist II and $15,000 for testing supplies utilized by the Criminalists. In exchange, the Chandler Police Department will process major crime scenes and will perform blood alcohol and controlled substance testing for the Town of Gilbert. Chandler has been providing this service for several years.

FINANCIAL IMPLICATIONS: Both positions and ongoing costs related to the positions are included in the budget. The Police Department will pay the amount, if any, above 100% of mid-range salary and benefits for each position and for other incidental costs related to these positions. In the event the IGA is cancelled or not renewed, the positions would be eliminated.

RECOMMENDATION: That the Mayor and City Council approve the attached Resolution.

PROPOSED MOTION: Move to approve City of Chandler Resolution 4216, authorizing and approving an Intergovernmental Agreement (IGA) between the City of Chandler and the Town of Gilbert for providing a Crime Scene Technician for evidence collection at major crimes scenes and a Criminalist to perform blood alcohol and controlled substance testing.

Attachments: Resolution No. 4216
Copy of IGA

RESOLUTION NO. 4216

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA), BETWEEN THE CITY OF CHANDLER AND THE TOWN OF GILBERT FOR PROVIDING A CRIME SCENE TECHNICIAN FOR EVIDENCE COLLECTION AT MAJOR CRIME SCENES AND A CRIMINALIST TO PERFORM BLOOD ALCOHOL AND CONTROLLED SUBSTANCE TESTING.

WHEREAS, the Town of Gilbert wishes to enter into an IGA with the City of Chandler for evidence collection at major crimes scenes and blood alcohol and controlled substance testing, and

WHEREAS, the Town of Gilbert will pay the City of Chandler to hire a Crime Scene Technician to support the Town of Gilbert evidence collection workload and a Criminalist to support the Town of Gilbert blood alcohol and controlled substance testing, and

WHEREAS, the City of Chandler, through its Police Department, wishes to support the Town of Gilbert by providing crime scene evidence collection and blood alcohol and controlled substance testing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

Section I. THAT approval is granted for the Chandler Police Department to enter into an IGA with the Town of Gilbert to provide a Crime Scene Technician for evidence collection at major crime scenes and to provide a Criminalist to perform blood alcohol and controlled substance testing.

Section II. THAT the Chandler Police Chief is appointed agent for the City of Chandler, to administer, execute and submit all documents and any other necessary instruments in connection with said program. The Police Chief/designee is authorized to approve and execute, on behalf of the City of Chandler, any such future extensions to this Contract, on the same terms and conditions, with any one-year contract increase amount not to exceed ten percent per year.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2008.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4216 was duly passed and adopted by the City Council of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2008, and that a quorum was present thereat.

_____

CITY CLERK

APPROVED AS TO FORM:

MM, ACA

CITY ATTORNEY

INTERGOVERNMENTAL AGREEMENT PROVIDING A CRIME SCENE TECHNICIAN FOR EVIDENCE COLLECTION AT MAJOR CRIME SCENES AND A CRIMINALIST TO PERFORM BLOOD ALCOHOL AND CONTROLLED SUBSTANCE TESTING
2009-1101-0046

THIS AGREEMENT, is made and entered into this 8th day of July, 2008, pursuant to Article 1 Sec. 1.03 of the Chandler City Charter and Arizona Revised Statutes 11-951 through 11-954 and ARS 13-3872 as amended, between the City of Chandler Police Department (Chandler) on behalf of its Forensic Services Section, hereinafter referred to as ("FSS") and the Town of Gilbert on behalf of its Police Department (Gilbert).

WITNESSETH:

WHEREAS, agreements between municipalities for mutual assistance and intergovernmental cooperation in public safety areas, including the operation and management of municipal fire and police departments, currently exist and generally benefit the entities involved; and

WHEREAS, it is the desire of Chandler and Gilbert to continue to work together for the mutual benefit of their communities, the public and their personnel; and

WHEREAS, it is the desire of Chandler and Gilbert to enter into an Intergovernmental agreement where Gilbert will fund a full-time FSS Crime Scene Technician II and a full-time Criminalist II for Chandler and in return, Chandler will provide a Crime Scene Technician II from FSS to respond to designated major crime scenes in Gilbert to collect, process, and package evidence for Gilbert and a Criminalist II from FSS to provide BAC and limited controlled substance testing.

NOW, THEREFORE, IT IS AGREED:

1. Gilbert will fund one hundred percent (100%) of mid range salary and benefits for one Chandler FSS Crime Scene Technician II position for one year at the rate of $74,862.00. These costs represent the entire financial obligation of Gilbert pursuant to this position. Chandler shall pay any additional costs, fees, or charges for whatever reason.

2. In return, Chandler's FSS will provide Crime Scene Technicians, who are employees of Chandler, to the crime scenes listed below, with appropriate staffing to effectively and efficiently collect, process, and package evidence from those scenes.

   a. Homicide
   b. Aggravated assault involving life threatening injury
   c. Robbery
   d. Fatal traffic accidents
   e. Traffic accidents involving injury that may be fatal
   f. Burglary and theft with a loss exceeding $10,000.00
   g. Sexual Assault

h. Other serious crimes at the request of Gilbert Command staff

3. Gilbert will fund one hundred percent (100%) of mid range salary and benefits for a FSS Criminalist II position for one year at a rate of $93,341. Additionally, Gilbert will pay $15,000 that will go toward testing supplies utilized by the Criminalists. These costs represent the entire financial obligation of Gilbert pursuant to this position. Chandler shall pay any additional costs, fees, or charges for whatever reason.

4. In return, the Chandler Police Department FSS will perform scientific analysis of blood samples to measure the alcohol content of the sample for DUI cases and will perform scientific analysis of controlled substances. Gilbert PD shall bring their evidence to Chandler's FSS on a regular weekly schedule to be agreed on by the parties. The evidence and the completed analysis results shall be available for pickup by Gilbert PD within twenty-one business days.

5. Should the criminalist be scheduled for simultaneous court appearances on City of Chandler and Town of Gilbert cases, the older case will take precedence. In any event, the subpoenaed criminalist will notify the court with the newer case of the conflict.

6. It will be the responsibility of Gilbert to respond to Chandler to retrieve and store any evidence obtained by Chandler FSS.

7. Gilbert will transport any evidence requiring additional laboratory examinations to those locations.

8. The term of the Contract is one (1) year, commencing on July 1, 2008 and terminating on June 30, 2009, unless sooner terminated in accordance with the provisions herein. Chandler reserves the right, at its sole discretion, to extend the Contract for up for three (3) additional terms of one year each.

   The Police Chief/designee is authorized to approve and execute, on behalf of Chandler, any such future extensions to this Contract, on the same terms and conditions, with any one-year contract amount not to exceed ten percent per year. An increase of more than 10% per annum will require approval of the Chandler City Council.

9. Nothing in this Agreement shall limit Chandler from agreeing to participate in more specific contracts for services with Gilbert or any other agency, nor shall this agreement prohibit either party from entering in to any other agreement for Forensic Science services with another jurisdiction, agency or entity, which is not a party to this Agreement.

10. It is not intended by this Agreement to create, and nothing contained in this Agreement shall create, any partnership, joint venture or similar arrangement among the parties hereto.

11. No term or provision of this Agreement is intended to, or shall, create any rights in any person, firm, corporation or other entity not a party hereto, and no such person or entity shall have any cause of action hereunder.

12. 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 are caused by the negligence, misconduct, or other fault of the indemnitor, its agents, employees, or contractors.

13. This Agreement does not create an employee/employer relationship between the Chandler FSS personnel, including Crime Scene Technicians and/or Criminalists, and Gilbert. It is the parties' intention that FSS personnel are employees of Chandler and not Gilbert for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Arizona revenue and taxation laws, Arizona workers compensation law, and Arizona unemployment insurance law. Chandler will retain sole and absolute discretion and judgment in the manner and means of carrying out the Crime Scene Technician's and the Criminalist's activities and responsibilities hereunder. This Agreement shall not be construed as creating any joint employment relationship between Chandler and Gilbert.

14. Either party may terminate this Agreement by written notice to the other party with 30 days notice of intention to terminate.

15. The parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

16. Any notice required or permitted under the terms of this Agreement shall be in writing and may be delivered personally or served by certified mail, return receipt requested, postage prepaid, addressed as follows:

<u>To Chandler:</u>
Chandler Police Department
250 East Chicago Street
Chandler, Arizona 85225
ATTN: Police Chief

<u>To Gilbert:</u>
Gilbert Police Department
75 E. Civic Center Drive
Gilbert, Arizona 85296
ATTN: Police Chief

17. This agreement shall be governed by the laws of the State of Arizona. In event of any litigation or arbitration arising out of this Agreement, the substantially prevailing party in such litigation of arbitration shall be entitled to recover its attorney's fees, expert witness fees and other costs of litigation.

18. 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.

19. This Agreement contains the entire understanding between the parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. Any changes, modifications or extensions of this agreement must be in the form of a written amendment to this agreement and signed by both 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.

20. 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. Neither party shall engage in any form of illegal discrimination with respect to applications for employment or student status or employees or students.

IN WITNESS WHEREOF, this Agreement is dated the year and date first above written.

CITY OF CHANDLER

ATTEST:

_____ BY:_____

City Clerk MAYOR

TOWN OF GILBERT

ATTEST:

Catherine Lenzi BY:_____

Town Clerk MAYOR

ATTORNEY APPROVAL

I hereby state that I have reviewed the above Intergovernmental Agreement between the City of Chandler and the Town of Gilbert and declare the agreement to be in proper form and within the power and authority granted to the respective governing bodies under the laws of the State of Arizona.

MM, ACA 7/18/08

City Attorney/City of Chandler Date

Susan D. Goodwin 7-8-08

Town Attorney/Town of Gilbert Date