

# CITY CLERK ORIGINAL

C-8152  
09/11/2012

## INTERGOVERNMENTAL AGREEMENT REGARDING THE CREATION AND PARTICIPATION IN THE WEST VALLEY DOMESTIC VIOLENCE FATALITY REVIEW TEAM

This Agreement is entered into pursuant to A.R.S. §§11-951 *et seq.*, A.R.S. §41-198, and for those charter cities, pursuant to their respective city charters, among the cities of Avondale, Buckeye, El Mirage, Glendale, Goodyear, Peoria, Surprise, Tolleson and Wickenburg. The aforementioned agencies shall herein after be known collectively as the West Valley Agencies (WVA) and any other public agencies, as that term is defined in A.R.S. § 11-951, which after invitation by the Review Team Co-Chairpersons (Co-Chairs) in concurrence with the WVA chiefs, comply with the provisions of A.R.S. §§11-951 *et seq.* and files an authorizing document with the Maricopa County Recorder that references this Agreement and meets the requirements of the statutes. A public agency shall become a Party to this Agreement as of the date that agency files with the County Recorder. All members to this Agreement shall be collectively known as the Parties. The Review Team will not review a fatal or near fatal incident of domestic violence until a criminal investigation or proceeding connected with the fatality or near fatality is completed.

### I. PURPOSE

The purpose of this Agreement is to create and operate a West Valley Domestic Violence Fatality Review Team (Review Team) pursuant to A.R.S. §41-198. The Review Team shall from time to time as needed examine incidents of domestic violence related fatalities, and near fatalities to better understand the dynamics of these fatalities, and near fatalities, within the jurisdictions of the member agencies. The Review Team shall report to the Office of the Attorney General and the Chiefs of Police of the member agencies its findings of any case reviewed and recommendations as to how incidents of domestic violence related fatalities may be prevented and how systems may be improved.

### II. AUTHORITY

The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§11-951 *et seq.*, A.R.S. §41-198, the respective provisions of their City Charters or other governing statute or authority.

### III. CHAIRPERSONS, CONDUCT OF MEETINGS AND ASSIGNMENT OF TEAM MEMBERS

A. Two Co-Chairpersons will be selected by the chief law enforcement officers (Chiefs) of the WVA on a rotating basis for a term of one year, which shall correspond with the effective date of the Agreement. At their sole discretion, the WVA Chiefs may select a chief or designee of a new participating Party to be a Co-Chair. The Co-Chairs of the Review team must be Chiefs for Parties to this Agreement, or their designees. Selected designees must be members of a WVA law enforcement agency. In the event that a Co-Chair is unable to complete his or her term due

to resignation from his or her agency or for any other reason, the WVA Chiefs shall appoint a replacement.

B. The Co-Chairs will be responsible for duties as provided in the Bylaws and the promulgation of policy and oversight for the conduct of the Review Team. The Co-Chairs shall call meetings as necessary and be responsible for submitting any report prescribed by A.R.S. §41-198. The Co-Chairs shall be responsible for the conduct and agenda of any Review Team meetings. The Co-Chairs may decide between themselves whether both or only one of them need be present at any particular meeting.

C. The Co-Chairs may appoint any number of members to the Review Team as needed. These members may include but are not limited to types of representatives listed in A.R.S. §41-198(G). Nothing in this Agreement shall be construed to require the Co-Chairs to select members pursuant to A.R.S. §41-198(G). All Review Team members shall serve at the pleasure of the Co-Chairs and may be asked to serve either for a single case review or additional case reviews as determined by the Co-Chairs.

#### **IV. COMPLIANCE WITH A.R.S. §41-198, CONFIDENTIALITY REQUIREMENTS AND RETURN OF RECORDS**

All Review Team members and all Parties to this Agreement shall comply with the requirements of A.R.S. §41-198. Each person serving on the Review Team shall sign an affidavit indicating that they have read and understand the requirements of the statute. These requirements may include but are not limited to the following:

- A. All information and records acquired by a Review Team are confidential and are not subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding or disciplinary action. Information that is otherwise available from other sources is not immune from subpoena, discovery or introduction into evidence through those sources solely because they were presented to or reviewed by a Review Team. A person who violates the confidentiality requirements of this section is guilty of a class 2 misdemeanor.
- B. A member of a Review Team or any person who presents information to a Review Team shall not be questioned in any civil or criminal proceeding or disciplinary action regarding the information presented. This subsection does not prevent a person from testifying regarding information obtained independently of the review team or as to public information.
- C. When a Review Team concludes a fatality review, or near fatality, it shall return all information and records concerning the victim and the family to the Party that provided the information or, if directed by that Party, it shall destroy that information.

## **V. SPECIAL REQUIREMENTS FOR MEETINGS**

Pursuant to A.R.S. §41-198(F), Review Team meetings are closed to the public and are not subject to Title 38, Chapter 3, Article 3.1 if the Review Team is reviewing a domestic violence fatality or near fatality case. All other Review Team meetings are open to the public.

## **VI. COSTS AND ANY REIMBURSEMENT**

Each Party will be solely responsible for the payment of any associated costs incurred by their respective agencies. If any Party receives grant funds designated for the Review Team, some or all of these expenses may be reimbursed to the Parties. In no event shall any Party charge other Parties for any administrative fees for any work performed pursuant to this Agreement. Each Party shall establish and maintain a budget for the expenditure of its funds under this IGA.

This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by each party shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each party shall be the sole judge and authority in determining its own availability of funds under this Agreement and each party shall keep the other parties fully informed as to the availability of its funds for the Agreement. The obligation of each party to make any payment pursuant to this Agreement is a current expense of each party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of each party. If the governing body of any party fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate for such party at the end of then-current fiscal year and that party shall be relieved of any subsequent obligation under this Agreement.

## **VII. 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 Executive Order 75-5, as modified by Executive Order 99-4, 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).

## **VIII. INDEMNIFICATION**

To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party, their elected officials, appointees, 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. 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.

- A. In the event of any third party claim or legal action against the Parties, the parties to this Agreement agree to discuss and analyze the benefits of a common but mutual defense against such claim or legal action.

## **IX. GOVERNING LAW**

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 the 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 attorney fees, expert witness fees and other costs of litigation.

## **X. DURATION AND CANCELLATION OF AGREEMENT**

A. This Agreement shall become effective upon execution by the Parties hereto and filing with the Maricopa County Recorder and shall remain in effect until July 1, 2020, unless otherwise terminated by the terms of this Agreement or operation of law. Failure by one or more Parties to execute the Agreement shall not invalidate the Agreement as to those Parties who did so. Any Party may withdraw from this Agreement with or without cause by giving thirty calendar days written notice to a Co-Chair and other Parties to the Agreement.

B. This Agreement may be renewed for additional periods of five years either with the respective City or Town Council approval or the respective City or Town Manager approval, in writing, on or before the Termination date by notifying a Co-Chair. Any Party that fails to do so by the termination date identified above shall no longer be a Party to the Agreement.

C. Other than returning all information and records concerning the victim and the family to the Party that provided the information or, if directed by that Party, destroying that information pursuant to Section IV above, the Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that a disposition of property is necessary upon termination, property shall be returned to its original owner.

## **XI. CANCELLATION PROVISIONS PURSUANT TO A.R.S §38-511**

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.

## **XII. MULTIPLE COUNTERPARTS**

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 a Party to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that Party's practice. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

## **XIII. OTHER PROVISIONS**

A. 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.

B. 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.

C. This Agreement shall be recorded with the County Recorder as described above upon its execution and an original bearing the stamp of the County Recorder shall be forwarded to the current Chairpersons of the Review Team with a copy to each Party.

D. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

E. Worker's Compensation. All parties to the IGA agree that they are not joint employers for the purpose of workers compensation coverage and that any employee working on this IGA shall remain an employee of his or her respective Party. To the extent that employees of one Party perform duties on behalf of another Party, such employees shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of Ariz. Rev. Stat. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall

post a notice pursuant to the provisions of Ariz. Rev. Stat. § 23-1022 in substantially the following form:

“All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker’s compensation.”

#### **XIV COMPLIANCE WITH E-VERIFY PROGRAM**

A. To the extent provisions of A.R.S. §41-4401 are applicable, all Parties warrant to each Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

B. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

C. All of 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.

D. Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.

E. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

F. The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

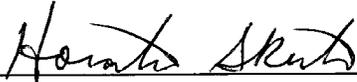
#### **XV. NOTICES**

Any notice required to be given under this Agreement will be provided to the current Co-Chairs with a copy to all Parties to this Agreement. The Co-Chairs or designees shall compile a list of each Party’s address, phone number and contact person and distribute said list to each member to this Agreement.

SIGNATURES CONTAINED ON THE NEXT PAGE

IN WITNESS WHEREOF, the Party named below has executed this Agreement on  
September 11, 2012

**CITY OF GLENDALE**, an Arizona municipal  
corporation

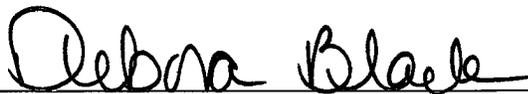
By:   
City Manager

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

Reviewed By:   
Police Chief

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

City of Glendale

By:   
City Attorney

Date: 9/13/12

Recorded by  
City Clerk's Office  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
ELECTRONIC RECORDING  
20120837580,09/17/2012 11:13,  
C8152-9-1-1--,N

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**CITY OF GLENDALE, ARIZONA**

**AGREEMENT C- 8152**

(IGA Regarding Creation and Participation in The West Valley Domestic Violence  
Fatality Review Team)

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**(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)**