

CITY COUNCIL REPORT



Meeting Date: June 25, 2024
 General Plan Element: **Public Services & Facilities**
 General Plan Goal: **Coordinate with other municipalities**

ACTION

Authorize an Intergovernmental Agreement for participation in the East Valley Critical Incident Response Team. Adopt Resolution No. 13146 which authorizes Intergovernmental Agreement No. 2024-088-COS between the City of Scottsdale and various municipalities for participation in the East Valley Critical Incident Response Team.

BACKGROUND

The proposed Intergovernmental Agreement authorizes the City of Scottsdale to participate in the East Valley Critical Incident Response Team (“EVCIRT”) involving the municipalities of Apache Junction, Chandler, Gilbert, Mesa, Paradise Valley, Tempe, and Queen Creek.

Pursuant to A.R.S. § 41-1762, the City of Scottsdale Police Department has been collaborating with the police departments from the above listed municipalities to form a task force to investigate officer involved critical incidents. A.R.S. § 41-1762 requires police “critical force incidents” be criminally investigated by the Arizona Department of Public Safety, a regional task force, or another law enforcement agency starting on June 30, 2025.

The EVCIRT will be a regional task force and investigate the following officer involved critical force incidents within the participating jurisdictions:

- Any discharge of a firearm by a police officer, due to a use of force encounter, regardless of whether it results in the injury or death of an individual.
- An incident involving a police officer’s intended use of deadly force or use of force by any other means that results in death or serious bodily injury of another person, either during an on-duty incident or off-duty incident while acting under the color of authority.
- At the direction or request of a Chief of Police of a participating jurisdiction, any high-profile incident involving misconduct allegations (regarding use of force) or incidents resulting in the death of an officer.

The participating municipalities have developed an investigative staffing model and protocol such that officers involved in critical force incidents within their jurisdictions will be investigated by the EVCIRT. Due to their size and resources, the police departments of Chandler, Gilbert, Tempe, Mesa, and Scottsdale will be considered lead investigative agencies. Apache Junction, Paradise Valley and

Action Taken: Approved on Consent

Queen Creek’s police departments will provide staffing support to the EVCIRT. To prepare for compliance with A.R.S. § 41-1762, the City and participating municipalities plan to launch the EVCIRT in July, 2024.

IMPACT ANALYSIS

Police Department staff have reviewed the Agreement, and the Agreement supports the Police Department’s strong commitment to independent, consistent, and thorough criminal investigations involving critical force incidents. It also allows the City and Police Department to comply with A.R.S. § 41-1762.

Resource Impacts

None.

Staffing, Workload Impact

No additional staff will be required to participate in this Agreement.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Staff recommends that the City Council Adopt Resolution No. 13146 and approve Intergovernmental Agreement No. 2024-088-COS.

RESPONSIBLE DEPARTMENT(S)

Police Department

STAFF CONTACT(S)

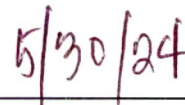
Jeff Walther, Chief of Police, jwalther@scottsdaleaz.gov

APPROVED BY



Jeff Walther, Chief of Police

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

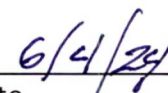


Date



Jim Thompson, City Manager

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



Date

ATTACHMENTS

1. Resolution No. 13146
2. Intergovernmental Agreement No. 2024-088-COS

RESOLUTION NO.13146

RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH VARIOUS MUNICIPALITIES FOR PARTICIPATION IN THE EAST VALLEY CRITICAL INCIDENT RESPONSE TEAM

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 other municipalities; and

WHEREAS, A.R.S. § 41-1762 allows the creation and operation of a regional law enforcement task force comprised of personnel from multiple police agencies in the East Valley ("East Valley Critical Incident Response Team" or "EVCIRT") to perform criminal investigation of critical force incidents such as officer involved shootings, which occur within the participating parties' jurisdictions; and

WHEREAS, the City and the other parties desire to work in cooperation with one another by participating in the EVCIRT to further the public interests served by independent, consistent, and thorough criminal investigations involving critical force incidents, pursuant to applicable laws, policies, and the terms of this Agreement;

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

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City, Intergovernmental Agreement No. 2024-088-COS, between the City and various municipalities for participation in the East Valley Critical Incident Response Team.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this ____ day of June, 2024.


CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney

By: Luis E. Santaella, Deputy City Attorney

**INTERGOVERNMENTAL AGREEMENT
FOR THE EAST VALLEY CRITICAL INCIDENT RESPONSE TEAM**

This Intergovernmental Agreement (“**Agreement**”) is entered into this _____ day of _____, 2024, by and between the City of Apache Junction (“**Apache Junction**”), City of Chandler (“**Chandler**”), Town of Gilbert (“**Gilbert**”), City of Mesa (“**Mesa**”), Town of Paradise Valley (“**Paradise Valley**”), Town of Queen Creek (“**Queen Creek**”), City of Scottsdale (“**Scottsdale**”), and the City of Tempe (“**Tempe**”), all to be referred to herein individually as “**Party**” and collectively as “**Parties**”.

RECITALS:

- A) The Parties are authorized to enter into this Agreement pursuant to Arizona Revised Statutes (“**A.R.S.**”) §§ 11-951, *et seq.* and 13-3872.
- B) The Parties are located in geographical proximity to one another (“**East Valley**”) and share similar public safety responsibilities with respect to criminally investigating Critical Incidents.
- C) A.R.S. § 41-1762 allows the creation and operation of a regional law enforcement task force comprised of personnel from multiple police agencies in the East Valley (“**East Valley Critical Incident Response Team**” or “**EVCIRT**”) to provide mutual aid to perform the criminal investigation of critical force incidents, as defined therein, which occur in the agencies’ jurisdictions (“**Critical Force Incident**”).
- D) The Parties desire to create a regional task force as prescribed in A.R.S. § 41-1762 to perform independent, consistent and thorough criminal investigations of Critical Force Incidents and, at the written request of a Party’s Chief of Police, investigate a criminal allegation against a peace officer employed by such Party.
- E) The Parties desire to work in cooperation with one another by providing mutual aid to further the public interests served by independent, consistent, and thorough criminal investigations, pursuant to applicable laws, policies, and the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the Parties agree as follows:

1. PURPOSE

The purpose of this Agreement is to create the EVCIRT for the criminal investigation of Critical Force Incidents within the Parties’ jurisdictions pursuant to A.R.S. § 41-1762, and to create a framework for the operation of the EVCIRT.

2. **LEADERSHIP GROUP**

The Parties shall establish a working group consisting of one commander or assistant chief designated by each Party ("Leadership Group") to oversee the operations of the EVCIRT. The Leadership Group, by majority vote, shall select a Chairperson of the Leadership Group. The Chairperson shall designate a scribe, who may or may not be a member of the Leadership Group, to take notes of all meetings. The Leadership Group shall create policies and procedures for the EVCIRT. The Leadership Group may create additional working groups to help support the Leadership Group's oversight of the EVCIRT. Any additional group created by the Leadership Group shall be administered in accordance with the EVCIRT's policies and procedures.

3. **AUTHORITY**

The Parties shall be authorized to perform criminal investigations of Critical Force Incidents within each Party's jurisdiction in accordance with the EVCIRT's policies and procedures. Pursuant to A.R.S. § 13-3872, a peace officer acting within the jurisdiction of another Party pursuant to this Agreement shall have full authority to act as a peace officer to the same extent as if they were a duly appointed, qualified and acting peace officer of such Party.

If any Native American tribe becomes a party to this Agreement requests EVCIRT assistance, all assisting EVCIRT peace officers shall be granted tribal peace officer authority as necessary within the applicable tribal jurisdiction.

4. **TERM**

This Agreement will become effective upon execution by the Parties hereto and shall remain in effect until July 1, 2034, unless otherwise terminated or renewed as provided herein. Failure by one (1) or more Parties to execute the Agreement shall not invalidate the Agreement as to those Parties who did so execute. The term of this Agreement will automatically renew for all Parties to the Agreement (unless a Party has withdrawn from participation in the Agreement prior to the effective date of the renewal, pursuant to Section 6) under the same terms and conditions and automatically renew for a two (2) periods of five (5) years, including any amendments in effect at the time of renewal.

5. **WITHDRAWAL**

Any Party may withdraw from this Agreement, with or without cause, by giving thirty (30) calendar days written notice to the other Parties. Withdrawal from this Agreement by a Party shall not affect the terms of this Agreement as it pertains to the other Parties. The effect of a withdrawal on the EVCIRT, including any then-active Critical Force Incident investigations involving the withdrawing Party, shall be set forth in the EVCIRT's policies and procedures.

6. **ADDITIONAL PARTIES**

Upon invitation by the Leadership Group, a county, political subdivision of the State of Arizona, or federally recognized Indian tribe may become a Party to this Agreement through the approval of this Agreement by its governing body, in accordance with A.R.S. § 11-951 *et seq.*, and in accordance with EVCIRT's policies and procedures. The addition of any Party after this Agreement becomes effective shall not affect the terms of this Agreement as it pertains to the other Parties.

7. **COSTS AND REIMBURSEMENT**

Each Party will be responsible for any and all associated costs incurred by their respective agency in implementing this Agreement and the conduct of Critical Force Incident investigations, including: employee salaries; shift differential pay; overtime compensation; benefits; vehicles; and equipment. In no event will any Party charge or demand payment from any other Party for work performed pursuant to this Agreement. Notwithstanding any Party's law, policies, or procedures, the Leadership Group, through the EVCIRT's policies and procedures, may grant Parties the permission to apply for grant funds designated for or on behalf of the EVCIRT. The distribution of any grant funds received for the EVCIRT shall be controlled by the terms of the grant, if any, and handled in accordance with the EVCIRT's policies and procedures, which may include the reimbursement of costs related to the EVCIRT for a Party or the Parties.

8. **DISPUTE RESOLUTION**

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties will use reasonable efforts to settle the dispute, claim, question, or disagreement. To this end, the Parties will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all Parties. The Parties acknowledge that disputes arising from this Agreement may be subject to non-binding arbitration in accordance with applicable state law and court rules.

9. **INDEMNIFICATION**

To the extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Parties (as "Indemnitee"), its departments, agencies, elected officials, officers, officials, agents, employees, or volunteers from and against any and all third party claims, losses, liabilities, costs, or expenses (including reasonable attorneys' fees, experts' fees, and court costs associated) (hereinafter collectively referred to as a "Claim(s)") arising out of actions taken in the performance of this Agreement, to the extent that such Claims are directly caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its departments, agencies, elected officials, officers, officials, agents, employees, or volunteers. If a third-party Claim becomes subject to the duty to indemnify, defend, and hold harmless set forth in this Section, then the Indemnitee agrees to cooperate with the Indemnitor in the defense of the Claim, at the Indemnitor's sole cost and expense, but only to the extent that such Claim is not related to an independent Claim.

of the third-party against the Indemnitee that is not subject to this Section. The terms and conditions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. GOVERNING LAW AND VENUE

This Agreement is governed by the laws of the State of Arizona without regard to any conflict of laws principles. Any proceeding arising out of or relating to this Agreement or any actions to interpret, enforce, or construe any provision of this Agreement will be conducted in the Superior Court of the State of Arizona, in and for the County of Maricopa. Each Party consents to such jurisdiction and waives any objection it may have to venue or convenience of forum.

11. WAIVERS

The failure of any Party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement, or to exercise any right or privilege contained herein, shall not be considered as thereafter waiving such terms, conditions, rights, or privileges, which shall remain in full force and effect.

12. NON-ASSIGNMENT

No Party shall assign its interest, rights, or obligations in this Agreement, in whole or in part, without the prior written consent of the other Parties. No Party shall assign any monies due or to become due to it, hereunder, without the prior written consent of the other Parties.

13. ENTIRE AGREEMENT; AMENDMENTS; COUNTERPARTS

This Agreement, including the Recitals (which are incorporated into this Agreement by this reference), represents the entire understanding between the Parties and supersedes all prior negotiations, representations, or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no modification or amendment of the terms and conditions of this Agreement will be valid or binding upon the Parties, unless made in writing and signed by the Parties. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Electronically transmitted and imaged copy signatures will be fully binding and effective for all purposes.

14. RELATIONSHIP OF THE PARTIES

Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venture, associate, or any other representative capacity of the other Party. Each Party shall be solely and entirely responsible for its acts or the acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, of any other Party not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility, unless the intention to do so is clearly and unambiguously set forth herein.

No Party shall be liable for any debts, accounts, obligations, or other liabilities, whatsoever, of any other Party, including the other Party's obligation to withhold social security and income taxes for itself or any of its employees.

15. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties who are not a party to this Agreement, or affect the legal liability of any Party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

16. SEVERABILITY

If any part, term, or provision of this Agreement is held unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

17. CONFLICTS OF INTEREST

The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

18. WORKERS' COMPENSATION

Pursuant to A.R.S. § 23-1022(D), only for the purposes of workers' compensation coverage, employees of each Party covered by this Agreement shall be deemed to be an employee of all Parties. The primary employer shall be solely liable for payment of workers' compensation benefits. To the extent applicable by law, each Party shall comply with the notice of A.R.S. § 23-1022(E).

19. NON-DISCRIMINATION

To the extent applicable by law, the Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Order 2009-09 and any other federal, state, or local laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act. In the performance of this contract, no Party shall discriminate against any employee, client, or any other individual on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender identity, veteran's status, marital status, familial status, or genetic information.

20. NOTICES

All official notices required or permitted under this Agreement to be given to a Party will be in writing and will be given by personal delivery against receipt (including private courier such as FedEx), or certified U.S. Mail, return receipt requested. All notices will be sent to the addresses below or such other addresses as the Parties may specify in the same manner. Notices will be deemed to have been given and received on the date of actual receipt or on the date receipt was refused. Addresses are as follows:

For Mesa: Chief of Police
P.O. Box 1466
Mesa, Arizona 85211

With a copy to: Mesa City Attorney
20 E Main St
Mesa, Arizona 85201

For Gilbert: Chief of Police
75 E Civic Center Dr
Gilbert, Arizona 85296

With a copy to: Gilbert Public Safety Legal Advisor
75 E Civic Center Drive
Gilbert, Arizona 85296

For Chandler: Chief of Police
250 E Chicago St
Chandler, Arizona 85225

With a copy to: Chandler City Attorney
250 E Chicago St
Chandler, Arizona 85225

For Tempe: Chief of Police
120 E 5th St
Tempe, Arizona 85281

With a copy to: Tempe City Attorney
21 E 6th St
Tempe, Arizona 85281

For Scottsdale: Chief of Police
3700 N 75th St
Scottsdale, Arizona 85251

With a copy to: Scottsdale City Attorney
3939 N Drinkwater Blvd
Scottsdale, Arizona 85251

For Queen Creek: Chief of Police
20727 Civic Pkwy
Queen Creek, Arizona 85142

With a copy to: Queen Creek Town Attorney
22358 S Ellsworth Rd
Queen Creek, Arizona 85142

For Paradise Valley: Chief of Police
6433 E Lincoln Dr
Paradise Valley, Arizona 85253

With a copy to: Paradise Valley Town Attorney
6401 E Lincoln Dr
Paradise Valley, Arizona 85253

For Apache Junction: Chief of Police
1001 N Idaho Rd
Apache Junction, Arizona 85119

With a copy to: Apache Junction City Attorney
1001 N Idaho Rd
Apache Junction, Arizona 85219

21. **APPLICABLE LAWS**

Any provision required by law to be in this Agreement is part of this Agreement as if fully stated.

22. **NO LIMITATION**

Nothing within this Agreement shall be construed to limit the ability of the Parties to provide, or as otherwise allowed for by law, assistance in any enforcement action as may be lawfully requested by a law enforcement officer having jurisdiction over an incident, crime, or matter under consideration.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below.

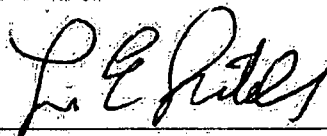
CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
David D. Ortega
Mayor

ATTEST:

Ben Lane
City Clerk

In accordance with A.R.S. § 11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to the aforementioned municipality, without any representation as to the power or authority of any other Party.



Sherry R. Scott
City Attorney
By: Luis E. Santaella
Deputy City Attorney