

RESOLUTION 24-2023

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN COCHISE COUNTY, ARIZONA AND BENSON, ARIZONA FOR THE PURPOSE OF PROVIDING REGIONAL SPECIAL WEAPONS AND TACTICS SUPPORT TO COCHISE COUNTY AND ALL MUNICIPALITIES IN COCHISE COUNTY

WHEREAS, Cochise County and Benson desire to provide mutual aid and assistance and to cooperate in ways that will be beneficial to both parties and allow the parties to respond to situations where a (Special Weapons and Tactics (S.W.A.T.) Team may be appropriate; and

WHEREAS, the parties desire to enter into an agreement for Benson, through its department, to provide personnel to support Cochise County through its Sheriff's Office; and

WHEREAS, the parties desire to enter into an agreement for Cochise County, through its Sheriff's Office to provide S.W.A.T. Team support to Benson through its department; and

WHEREAS, the parties share a common goal of working cooperatively with one another to maximize the overall public benefit that can be achieved with limited public resources that are available to each other; and

WHEREAS, the Mayor and Council are authorized to adopt Intergovernmental Agreements such as the proposed IGA, including by ARS §11-952.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Benson, Arizona, authorizes the Intergovernmental Agreement by and between Cochise County, Arizona and the City of Benson, Arizona for the purpose of providing regional special weapons and tactics support to Cochise County and all the municipalities in Cochise County and authorizes the Mayor to sign this agreement.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 17th day of July 2023.




JOE A. KONRAD, Mayor

ATTEST:



VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:



DeCONCINI McDONALD YETWIN & LACY, PC
By Paul A. Loucks
City's Attorney

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN COCHISE COUNTY, ARIZONA AND BENSON, ARIZONA
FOR THE PURPOSE OF PROVIDING REGIONAL SPECIAL WEAPONS
AND TACTICS SUPPORT TO COCHISE COUNTY AND ALL MUNICIPALITIES IN COCHISE
COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made and entered into on this _____ day of _____, 2023 by and between the County of Cochise, a political subdivision of the state of Arizona (hereinafter “Cochise County”) and City of Benson, AZ, a political subdivision of the state of Arizona (hereinafter “Benson”), collectively referred to as the “parties.”

RECITALS

WHEREAS, Cochise County and Benson are authorized to enter into this IGA pursuant to Arizona Revised Statutes (A.R.S.) §§ 11-952, *et seq.*; and

WHEREAS, the parties, through their respective Offices, provide certain emergency and law enforcement services in response to many of the same types of emergency circumstances; and

WHEREAS, Cochise County established and operates a local Special Weapons and Tactics Team (S.W.A.T. Team); and

WHEREAS, Cochise County and Benson desire to provide mutual aid and assistance and to cooperate in ways that will be beneficial to both parties and allow the parties to respond to situations where a S.W.A.T. Team may be appropriate; and

WHEREAS, the parties desire to enter into an agreement for Benson, through its department, to provide personnel to support Cochise County, through its Sheriff’s Office; and

WHEREAS, the parties desire to enter into an agreement for Cochise County, through its Sheriff’s Office to provide S.W.A.T. Team support to Benson, through its department; and

WHEREAS, the parties share a common goal of working cooperatively with one another to maximize the overall public benefit that can be achieved with limited public resources that are available to each other.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and conditions stated below, hereby agree as follows:

- 1. Purpose.** The purpose of this IGA is to allow for law enforcement, fire departments, and emergency medical service organizations in Cochise County the opportunity to cooperate with the Cochise County Sheriff's Office S.W.A.T. Team in an effort to establish a regional S.W.A.T. Team. This IGA will allow S.W.A.T.-trained personnel to work together in good faith to respond, when requested by other parties, to potentially life-threatening situations and/or incidents requiring specialized skills, tactics and/or equipment, and to secure, isolate, and resolve situations in a manner consistent with escalation of force theories and preservation of life.
- 2. Term.** This IGA shall be for an initial term of five (5) years, effective on the date it is recorded with the Cochise County Recorder, following execution by all parties. The parties shall have the option to extend the term of the IGA for four (4) additional one (1) year periods.
- 3. Termination.** This IGA shall be deemed renewed annually, without further action by either party, unless terminated by ninety (90) day written notice to either party. This IGA shall be subject to termination pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- 4. Modifications.** Any modification or time extension of this IGA shall be by formal written amendment executed by the parties hereto.

S.W.A.T. Participation and Mutual Aid.

- 1) Participating law enforcement agencies can allow their Arizona Peace Officers Standards and Training Board ("AZPOST") certified officers to test for an operator or negotiator position on the Cochise County Sheriff's Office S.W.A.T. Team.
- 2) Participating fire departments or emergency medical service organizations can allow their certified paramedics to test for a S.W.A.T. medic position.

- 3) Each candidate must successfully pass the Cochise County Sheriff's Office (CCSO) operator, negotiator, or medic test before they are considered for the team.
- 4) Participating agencies are responsible for funding all their employees' expenses to include but not limited to wages, equipment, training, travel, and overtime.
- 5) Participating agencies will allow their officers to attend trainings every three (3) weeks. Participants are expected to attend at least two (2) trainings each quarter. Exceptions are allowed on a case-by-case basis with the S.W.A.T. Commander or Team Leader's approval. Yearly, a S.W.A.T. training session will be held in a participating jurisdiction dealing with a local scenario that concerns that community.
- 6) All S.W.A.T. operators must pass the (CCSO) obstacle course and AZPOST handgun qualification (92.5% accuracy rate) on a yearly basis.
- 7) All S.W.A.T. operators must successfully pass a recognized basic operator school within one (1) year. This can be extended to two (2) years if no school is available. This is typically Pima County or Tucson Police Department S.W.A.T. school.
- 8) All S.W.A.T. medics must maintain their certifications for paramedic.
- 9) If a S.W.A.T. medic chooses to be armed, they must pass the AZPOST basic handgun qualification with the state mandated minimum score.
- 10) Negotiators are not subject to the obstacle course. They need to maintain their AZPOST certification and all negotiators must pass a basic negotiators course. Typically, Public Agency Training Council ("PATC") negotiations phase 1, 2 and 3, National Tactical Officers Association ("NTOA"), or the Federal Bureau of Investigations ("FBI") negotiators class.
- 11) Each party may request the S.W.A.T. Team and mutual aid assistance from the other in connection with any type of potentially life-threatening situations and/or incidents requiring specialized skills, tactics and/or equipment, and to secure isolate and resolve situations in a manner consistent with escalation of force theories and preservation of life, to include but not limited to the following:

- a) High risk search and arrest warrants
 - b) Barricaded high risk criminal suspects
 - c) Vehicle take down of high-risk criminal suspects
 - d) Officer rescue for undercover operations
 - e) Hostage situations
 - f) Personnel protection details; and
 - g) Specialized disciplines as needed. For example, if an agency only needs a negotiator for a situation.
- 12) Any agency can request the S.W.A.T. Team for assistance. The decision to deploy the S.W.A.T. Team or specialized disciplines rests with the S.W.A.T. Commander or the designee in absence of the S.W.A.T. Commander.
- 13) This IGA shall not alter the primacy of parties over their respective areas of jurisdiction or law enforcement functions.
- 14) As soon as practicable, after the request for assistance is made, the responding party shall notify the requesting party whether the assistance will be provided and the nature and degree of assistance that will be available.
- 15) Neither party shall seek from a participating agency or entity reimbursement nor any further compensation for any costs associated with providing the S.W.A.T. Team and mutual assistance that is the subject of this IGA.

Terms and Conditions

- 5. Financing.** Each party has sufficient funds in its current budget to carry out the terms of this IGA. If a party terminates this IGA as a result of a failure of its governing body to budget and appropriate sufficient funds to support participation in this IGA, the non-appropriating party shall give the other party written notice of the non-appropriation within ten (10) days after the final budget is adopted by its governing body.
- 6. Insurance.** Each party shall obtain and maintain at its own expense, during the entire term of this IGA, the following type(s) and amounts of insurance:

- a. Commercial General Liability in the amount of \$2,000,000.00 combined single limit for Bodily Injury and Property Damage.
- b. Commercial or Business automobile liability coverage for owned, non-owned, and hired vehicles used in the performance of this IGA, with limits in the amounts of:
 - i. \$1,000,000.00 combined single limit, or \$1,000,000.00 Bodily Injury; and
 - ii. \$1,000,000.00 Property damage.
- c. Workers' compensation coverage, including employer's liability coverage, as required by law.

7. Workers' Compensation.

- a. Each party shall comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility for the payment of Workers' Compensation benefits or other fringe benefits of said employees.
- b. Each party has posted a notice to its employees pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

"All employees are hereby 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."

- 8. Indemnification.** To the extent permitted by law, 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 court-awarded attorneys' 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 based on vicarious/derivative liability of the indemnitee and arise from or relate to the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 9. Compliance with Laws.** The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and Executive Orders, without limitation to those designated within this IGA. As to parties that are Indian tribes, an Executive Order shall only be deemed to be applicable if it specifically names "Indian tribes" as being within the scope of the order, and the person issuing the Order has lawful authority to issue an Executive Order that would be lawfully binding upon Indian tribes. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this IGA, and any disputes hereunder. Any action relating to this IGA shall be brought in any Arizona court of competent jurisdiction.
 - 10. Non-Discrimination.** In performance of this Agreement, the parties shall not discriminate against any County employee or Benson employee, or any other individual, in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties pursuant to this Agreement. The parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.
 - 11. ADA.** The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
 - 12. Severability.** If any provision of this IGA, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.
 - 13. Legal Authority.** No party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no

recovery may be had by either party against the other for lack of performance or otherwise.

- 14. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered, or extended except through a written amendment signed by the parties and recorded with the Cochise County Recorder.
- 15. No Third-Party Beneficiaries.** Excepted as specified herein, nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- 16. No Partnership.** Nothing in the provisions of this IGA is intended to create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the City of Benson, the County, or their respective employees. Neither party shall be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security, income taxes, pension, or for any other payroll withholdings for itself or any of its employees.
- 17. Counterparts.** This IGA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

IN WITNESS WHEREOF, the parties hereto execute this agreement as of the date written above.

COCHISE COUNTY:

City of Benson:

By: Peggy Judd, Chair
Cochise County Board of Supervisors

By: Joe A. Konrad, Mayor
City of Benson

ATTEST:

ATTEST:

Tim Mattix, Clerk
Cochise County Board of Supervisors

Vicki Vivian
Vicki Vivian, City Clerk
City of Benson

Mark J. Dannels,
Sheriff of Cochise County

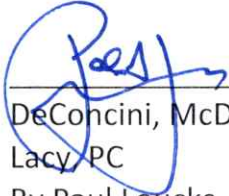
Greg Volker, Chief
Benson Police Department

ATTORNEY CERTIFICATION

In accordance with A.R.S. § 11-952, this agreement has been reviewed by the undersigned who has determined that this agreement is in appropriate form and within the powers and authority granted to the public body or bodies identified in this agreement.

Approved as to form this ____ day of _____, 2023.

Christine J. Roberts
Chief Civil Deputy
Cochise County



DeConcini, McDonald, Yetwin and
Lacy PC
By Paul Loucks
Attorney City of Benson