

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

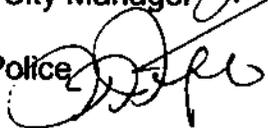
CC: 7C
Amend No. _____

Date prepared: October 28, 2008

Council Meeting Date: November 18, 2008

TO: Carl Swenson, City Manager

THROUGH: Susan K. Thorpe, Deputy City Manager 

FROM: Larry J. Ratcliff, Chief of Police 

SUBJECT: Intergovernmental Agreement between the State of Arizona, Department of Revenue, Tobacco Enforcement Unit, an Arizona State Government Agency and the City of Peoria for the use of Peoria's Shooting Range.

RECOMMENDATION:

Mayor and City Council authorize the City Manager to execute an Intergovernmental Agreement (IGA) between the State of Arizona, Department of Revenue, Tobacco Enforcement Unit, an Arizona State Government Agency (AZDOR-TEU) and the City of Peoria for the use of Peoria's Shooting Range.

SUMMARY:

The purpose of this Agreement is to join cooperative efforts by AZDOR-TEU and Peoria for the use of Peoria's Indoor Shooting Range at no cost. AZDOR-TEU will have access to the Shooting Range twenty-four (24) hours a day, seven (7) days a week with proper reservations. Peoria and AZDOR-TEU will both provide a rangemaster. The initial term of this Agreement is from the effective date until June 30, 2009, with automatic renewals for five (5) one-year terms. AZDOR-TEU will comply with the following:

- provide all necessary equipment and supplies
- follow the Peoria Police Department's Policies and Procedures
- clean and return range to state of readiness
- use only authorized weapons and ammunition that may be used at Peoria's Indoor Shooting Range
- adhere to minimal insurance responsibilities

It is recommended the Mayor and City Council authorize the City Manager to execute an Intergovernmental Agreement (IGA) between the State of Arizona, Department of Revenue, Tobacco Enforcement Unit, an Arizona State Government Agency (AZDOR-TEU) and the City of Peoria for the use of Peoria's Shooting Range.

Attachment: Intergovernmental Agreement

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 196.08 LIC. # _____
Action Date: _____

When recorded return to:
City of Peoria, City Clerk
8401 W. Monroe St.
Peoria, AZ 85345

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
STATE OF ARIZONA AND THE CITY OF PEORIA
FOR USE OF PEORIA'S SHOOTING RANGE**

This Intergovernmental Agreement ("Agreement") is entered into this _____ day of _____, 20__ by and between the State of Arizona, Department of Revenue, Tobacco Enforcement Unit, an Arizona State Government Agency ("AZDOR-TEU") and the City of Peoria, an Arizona municipal corporation ("Peoria"). AZDOR-TEU and Peoria are collectively referred to as "Parties" and independently as AZDOR-TEU, Peoria and "Party."

RECITALS

A. **WHEREAS**, Peoria is authorized to enter into this Agreement pursuant to A.R.S. § 11-952 *et seq.* and the Peoria City Charter Article 1, § 3 (15); and

B. **WHEREAS**, AZDOR-TEU is authorized to enter into this Agreement pursuant to A.R.S. § 11-952 *et seq.*; and

C. **WHEREAS**, Peoria has an indoor shooting range which consists of five shooting lanes located at 8351 West Cinnabar Avenue, Peoria, Arizona ("Indoor Shooting Range"); and

D. **WHEREAS**, AZDOR-TEU desires to maintain and/or improve their shooting skills, as well as an opportunity to qualify on-duty and off-duty approved weapons according to Arizona Peace Officer Standards and Training ("AZPOST") and utilize Peoria's Indoor Shooting Range to do so.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, it is agreed between the Parties as follows:

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is for joint cooperative efforts by AZDOR-TEU and Peoria for the use of Peoria's Indoor Shooting Range in accordance with the terms and conditions outlined in this Agreement.

TERMS OF THE AGREEMENT

1. In accordance with the provisions of this Agreement, Peoria will allow AZDOR-TEU the following related to the use of Peoria's Indoor Shooting Range:

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- a. Access to Peoria's Indoor Shooting Range on a twenty-four (24) hour, seven (7) days a week basis, provided reservations are scheduled and made _____ hours in advance through Peoria's Range Master.
- b. Properly maintain the Indoor Shooting Range to remain in compliance with all OSHA mandates.
- c. Provide one (1) Range Master or Assistant Range Master during AZDOR-TEU's use of the Indoor Shooting Range.
- d. Notify AZDOR-TEU's Range Master whenever the Peoria Police Department's Policy and Procedures related to the Indoor Shooting Range and its operation changes.
- e. Peoria's Police Department Range Master will meet with AZDOR-TEU's Range Master prior to use of the Indoor Shooting Range by AZDOR-TEU to review and agree to adhere to the Peoria Police Department's Policy and Procedures related to the Indoor Shooting Range and its operation.

2. In accordance with the provisions of this Agreement, AZDOR-TEU will provide and adhere to the following requirements and services related to the use of Peoria's Indoor Shooting Range.

- a. Provide all necessary equipment and supplies, including (among other things) targets, ammunition, weapons and cleaning supplies for AZDOR-TEU officers to use.
- b. At least one AZPOST certified Firearms Instructor listed in the files of the Peoria Police Department's Range Master for each scheduled reservation.
- c. Collect all expended brass casings and dispose of them in accordance with all relevant legal authority.
- d. Properly dispose of all used targets.
- e. Return the Indoor Shooting Range to its state of readiness (as determined by the Range Master on duty) upon each completed reserved use of the Indoor Shooting Range.
- f. Immediately report any and all deficiencies related to the Indoor Shooting Range to the Range Master.
- g. AZDOR-TEU's Range Master shall meet with Peoria's Range Master prior to AZDOR-TEU's use of the Indoor Shooting Range to review and agree to adhere to the Peoria Police Department's Policy and Procedures related to the Indoor Shooting Range and its operation.

3. Peoria is allowing AZDOR-TEU the use of their Indoor Shooting Range at no cost with the exception of any cost AZDOR-TEU may incur for their equipment, weapons, ammunition, insurance and such.

4. There are certain Authorized Weapons and Ammunition that may be used at Peoria's Indoor Shooting Range. The following weapons and ammunition are the only types that shall be used/fired within the confines of Peoria's Indoor Shooting Range:

a. Ammunition

1. FMJ, TMJ, FMC, full metal jacket bullets;
2. JSP, jacketed soft point;
3. JHP, jacketed hollow point;
4. All rim fire ammunition must be copper clad or jacketed; and
5. Shotgun rounds will be plated shot or non-lead based shot.

b. Weapons

1. Pistol calibers will not exceed .45 (.45 ACP or 45 LC); and
2. Rifle calibers will be limited to .224 caliber at 3400 F. P. S. (.223 Remington or 5.56 NATO).

5. Peoria requires insurance of AZDOR-TEU for use of the Indoor Shooting Range. Without limiting any liabilities or any other obligations of AZDOR-TEU, AZDOR-TEU, at AZDOR-TEU's sole cost and expense, shall obtain and maintain, with forms and insurers acceptable to Peoria, the following minimum insurance coverage's:

a. General Liability Insurance with policy limits of not less than three million dollars (\$3,000,000) as to each occurrence for bodily injury, personal injury and property damage and a general aggregate of five million dollars (\$5,000,000). Such policy or policies shall list Peoria, its directors, officers, employees, and agents as additional insureds.

5.1 The policy/policies required by Subsection 5 (a) hereof shall stipulate that the insurance afforded for Peoria, its directors, officers, employees, and agents shall be primary insurance and that any insurance carried by Peoria, its directors, officers, employees, or agents shall be excess and not contributory insurance.

5.2 AZDOR-TEU and its insurers providing the required coverage's shall waive all rights of subrogation against Peoria and its directors, officers, employees, and agents.

5.3 Upon the execution of this Agreement by Peoria and AZDOR-TEU and prior to the use of the Indoor Shooting Range, AZDOR-TEU shall furnish Peoria with Certificates of Insurance as evidence that policies providing the required coverage's, conditions, and limits are

in full force and effect. Such certificates shall provide that not less than thirty (30) days' advance notice of cancellation, revocation, termination, or alteration shall be sent directly to Peoria.

Upon Peoria's receipt of satisfactory evidence of AZDOR-TEU's financial ability to self-insure, AZDOR-TEU shall have the option to self-insure the minimum limits set forth above in lieu of providing the insurance provided for under Section 5 herein.

6. To the fullest extent permitted by law, AZDOR-TEU shall defend, indemnify and hold harmless Peoria, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees and court costs), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, misconduct or negligent use by AZDOR-TEU, its officers, agents, or employees of Peoria's Indoor Shooting Range. AZDOR-TEU's duty to defend, hold harmless and indemnify Peoria, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss, act, misconduct or expense that is attributable to bodily injury, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, misconduct, or negligence of use of Peoria's Indoor Shooting Range as noted in this Agreement including any employees, officers, volunteers of AZDOR-TEU or any other person for whose acts, errors, mistakes, omissions, AZDOR-TEU may be legally liable.

7. This Agreement shall be effective as of the date it is filed with the Maricopa County Recorder pursuant to Arizona Revised Statutes § 11-952 and remain in full force and effect until the duration date or its termination except that it may be amended upon written agreement by both Parties. Either Party may terminate this Agreement upon furnishing the other Party with a written notice at least ninety (90) days prior to the effective termination date.

8. The initial term of this Agreement is from the effective date until June 30, 2009. Thereafter, the Agreement shall automatically renew for five (5) one (1) year terms unless terminated by either Party as set forth hereafter.

9. The Parties shall at all times maintain a usage log of the Indoor Shooting Range, to be kept within the Range, which designates such information as date, time, involved personnel, type of firearm(s), purpose (qualification, practice, etc.) and condition of range. To the extent required by A.R.S. § 35-214, the Parties agree to retain all books, accounts, reports, files and other records relating to this Agreement and to make such records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona, or their agents, during the term of and for a period of five (5) years after termination of this Agreement.

10. The personnel of one Party to this Agreement will not for any purpose be considered employees or agents of the other Party; and each Party assumes full responsibility for the actions of its personnel while performing or utilizing Peoria's Indoor Shooting Range under this Agreement. Each Party shall be solely responsible for the supervision, direction and control, of its personnel.

11. The recitals set forth above, and all referenced exhibits, are expressly incorporated in this Agreement by this reference.

12. AZDOR-TEU shall not assign, encumber, mortgage or transfer any rights under this Agreement, or the rights and privileges herein, in whole or in part, without Peoria's prior written consent, which consent may be withheld for any reason.

13. All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) or delivered personally or by overnight courier to the respective address below or to such other address as may be furnished in writing by either Party to the other pursuant to this Section 13 or (ii) transmitted by telefacsimile to the respective telefacsimile number below or to such other telefacsimile number as may be furnished in writing by either Party to the other pursuant to this Section 13, and the appropriate confirmation is received.

Notices to AZDOR-TEU:

State of Arizona
Department of Revenue
Tobacco Enforcement Unit

Phoenix, AZ _____
Facsimile No. () - _____
Telephone No. () - _____

Notices to Peoria:

City of Peoria
Police Department
Attn: _____
8351 W. Cinnabar Avenue
Peoria, AZ 85345
Facsimile No. (623) 773- _____
Telephone No. (623) 773- _____

All notices and demands shall be deemed effective upon delivery, if delivered personally or by overnight courier, or if transmitted by telefacsimile; or twenty-four (24) hours after deposit in the U. S. Mail, if by certified mail.

14. No waiver by either Party of any breach of any of the covenants or conditions of this Agreement which are to be performed by the other Party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

15. This Agreement shall be subject to the provisions of A.R.S. § 38-511.

16. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.

17. This Agreement shall be strictly constructed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.

18. This Agreement shall not be modified or extended except by written instrument adopted in accordance with the requirements for adopting a new agreement.

19. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

STATE OF ARIZONA, Department of Revenue, Tobacco Enforcement Unit, an Arizona State Government Agency of **CITY OF PEORIA**, an Arizona municipal corporation

Recommended by:

Recommended by:

AZDOR -TEU Administrator Date

Larry Ratcliff Chief of Police Date

Approved and Accepted:

Approved and Accepted:

By: _____
_____ Date

By: _____
Carl Swenson City Manager Date

Attest:

Attest:

By: _____
_____ Date

By: _____
Mary Jo Kief, City Clerk Date

APPROVAL OF STATE COUNSEL AND CITY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement between the State of Arizona (Department of Revenue, Tobacco Enforcement Unit) and the City of Peoria, and declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

State Counsel Date

Stephen M. Kemp, City Attorney Date