

**THE CITY OF MESA AND THE TOWN OF SUPERIOR  
INTERGOVERNMENTAL AGREEMENT RELATING TO  
FIRE APPARATUS MAINTENANCE SERVICES**

This Intergovernmental Agreement ("Agreement") is entered into this first day of March, 2014 between the City of Mesa ("Mesa"), an Arizona municipal corporation, and the Town of Superior ("Superior").

**RECITALS:**

Arizona Revised Statutes, Sections 11-951 et seq., authorizes Mesa and Superior to enter into contract agreements for the provision of services, or for joint or cooperative actions.

Both parties are authorized by law to provide fire and emergency medical services.

The parties have determined that it would be mutually beneficial for Mesa, through its Mesa Fire and Medical Department ("MFMD") to provide fire apparatus maintenance services to Superior.

In consideration of the mutual promises, covenants and agreements contained in this Agreement, the parties agree as follows:

**SECTION 1 – TERM, TERMINATION**

- 1.1 Term. This Agreement shall commence on March 1, 2014 and shall continue until March 1, 2016 unless sooner terminated or renewed pursuant to the provisions of this agreement.
- 1.2 Termination on Notice. Either Mesa or Superior may terminate this Agreement for any or no reason by providing at least sixty (60) days' written notice to the non-terminating party of the intention to terminate. Such termination shall be effective sixty (60) days after the date the termination notice is issued.
- 1.3 Termination for Cause. In the event of a material breach of any of the provisions of this Agreement, the non-defaulting party may terminate this Agreement by delivering written notice to the defaulting party specifically stating the nature of the breach. Upon being served with such notice, the defaulting party shall have sixty (60) days from the date of the notice in which to cure said breach. If said breach has not been cured within this sixty (60) day time period, this Agreement shall be deemed terminated. Pending cure the non-defaulting party may suspend performance.

**SECTION 2 – SCOPE OF WORK AND COMPENSATION**

**2.1 Mesa's Responsibilities and Obligations:**

- a. For the term of this Agreement, Mesa shall provide full maintenance and repair services for Superior Fire Department fire apparatus as needed on a 24-hour basis, seven (7) days per week, consistent with manufacturer maintenance schedules and the applicable National Fire Protection Association fire apparatus guidelines.

- b. All maintenance and repair services shall be performed by Emergency Vehicle Technician (EVT) certified technicians.
- c. Routine preventative maintenance and major repairs for Superior fire apparatus will be performed by MFMD at the MFMD Fire Maintenance Facility ("East Mesa Service Center") located at 6935 E. Decatur in the City of Mesa.
- d. Mesa shall provide emergency maintenance services as necessary at a Superior Fire Department facility.
- e. In providing maintenance services for Superior fire apparatus, Mesa shall not obtain assistance from an outside source without the prior written consent of Superior Town Manager if the cost of such assistance exceeds \$ 500.00. Mesa shall provide reserve apparatus, if available, if requested by Superior.
- f. Mesa shall maintain records on all repairs made by Mesa to Superior fire apparatus on a computerized record keeping system, and shall provide Superior with summaries or recaps of the repairs on a monthly basis.
- g. Mesa represents to Superior that Mesa provides and will continue to provide workers compensation coverage, under Mesa's self-insured policy, for all Mesa employees performing services under this Agreement, as required under Arizona state law.
- h. Mesa shall submit an invoice to Superior on a quarterly basis reflecting the compensation owed by Superior, which amount shall be calculated pursuant to the provisions set out in Section 2.2.

## 2.2 Superior Responsibilities and Obligations:

- a. Superior shall both deliver to and pick up from the East Mesa Service Center, located at 6935 E. Decatur in the City of Mesa, all fire apparatus in need of or having received maintenance.
- b. Compensation to be paid by Superior to Mesa shall be calculated as follows:
  - (i) Superior agrees to pay a labor rate of \$68.71 per hour for maintenance services performed between the hours of 6 a.m. and 2:30 p.m., Monday through Friday; and
  - (ii) Superior agrees to pay a labor rate of \$73.69 per hour for maintenance services performed on weekends, holidays, and for services performed outside the weekday hours stated in Section 2.2b(i); and
  - (iii) In addition to the hourly labor rate stated in Sections 2.2b(i) and 2.2b(ii), Superior agrees to pay for all parts and materials utilized in the repair of Superior fire apparatus. The cost for such parts and materials shall be Mesa's cost, plus a ten percent (10%) handling fee; and

- (iv) Superior agrees to pay for costs incurred in the event that Mesa obtains maintenance assistance from an outside source as provided in Section 2.1d. The cost for such outside maintenance assistance shall be Mesa's cost plus a ten percent (10%) handling fee. The cost for outside maintenance assistance shall be capped at five hundred dollars (\$500.00), absent the prior written approval from the Superior Town Manager to exceed the cap; and
  - (v) Notwithstanding the provisions in Section 2.2a, Superior agrees to reimburse Mesa for any costs incurred by Mesa in the delivery of or return of Superior Fire Department fire apparatus; and
  - (vi) Superior shall pay Mesa \$200 per day for the rental of reserve apparatus from MFMD as requested by Superior Town Manager in Section 2.1.e. The rented reserve apparatus shall be returned to Mesa cleaned and fully fueled.
  - (vii) The labor rates described in Section 2.2b(i) and 2.2b(ii), shall be adjusted on July 1 of each year of the contract term, consistent with the Consumer Price Index.
- c. Within forty-five (45) days of receiving an invoice(s), Superior shall pay Mesa any compensation owed as determined pursuant Section 2.2b.
  - d. Superior shall pay Mesa within forty-five (45) days of receiving an invoice for the annual additional premium cost specified in Section 2.1h.
  - e. Superior shall cause their annual automobile insurance policy to be endorsed to include and be primary on any and all Mesa vehicles whenever those vehicles are loaned to Superior Fire Department as reserve apparatus and operated by Superior Fire Department personnel. Failure to produce sufficient evidence of the endorsement, on an annual basis, shall be considered a material breach of this agreement and must be cured before any further reserve apparatus will be loaned to Superior by Mesa. The intent of this provision is that any coverage that Mesa may carry on its vehicles shall be secondary to and non-contributory to Superior Fire Department coverage during the loan period when the reserve apparatus are under Superior Fire Department control.

### **SECTION 3 – INDEMNIFICATION AND LIMITATION OF LIABILITY**

- 3.1 Superior hereby agrees that it shall defend, indemnify, and hold harmless Mesa, its departments, agencies, officers, employees, elected officials or agents, from and against all actions, lawsuits, losses and expenses (including court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or Mesa's performance hereunder (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property). The obligations of the foregoing indemnification provision shall not apply in the event that any such Liability is found to have resulted from the negligence, or intentional misconduct of Mesa. Mesa shall defend, indemnify and hold harmless

Superior, its departments, agencies officers, employees, elected officials or agents from and against all liabilities resulting from the negligence or intentional misconduct of Mesa in connection with this agreement or its performance hereunder. Superior waives all transfer of rights of recovery or subrogation against Mesa for any claims or expense covered by any insurance policy or self-insurance program providing benefits to Superior, inclusive of, but not limited to property and worker's compensation.

- 3.2 Notwithstanding anything to the contrary contained in this Agreement, neither party nor its affiliates shall, under any circumstances, be liable to the other party or its affiliates for any claim based upon any third party claim, or for any consequential, incidental, indirect, punitive, exemplary or special damages of any nature.

#### **SECTION 4 - MISCELLANEOUS**

- 4.1 Funding. Each party to this agreement shall have the separate and independent responsibility of budgeting for and funding its own participation in this Agreement.
- 4.2 A.R.S. §38-511. This Agreement may be cancelled in accordance with Arizona Revised Statutes §38-511.
- 4.3 Amendments. This Agreement may be modified only by a written amendment signed by both parties. However, if mutually agreed, the parties may enter into specific supplemental written agreements, subject to appropriate approvals, to accomplish the goals of this Agreement and to carry out its terms and conditions.
- 4.4 Assignment. Neither party shall assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other party. Any such assignment or other transfer, either voluntary or by operation of law, shall be void.
- 4.5 Waiver. The parties agree that no waiver of any default or breach of any of the terms or conditions of this Agreement shall be construed to be a waiver of any succeeding breach or default.
- 4.6 Governing Law. This Agreement shall be governed by the laws of Arizona.
- 4.7 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 4.8 No Partnership. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between the parties. Except as specifically provided hereunder, each party shall at all times be an independent operator and shall not at any time purport to act as an agent of any other party, or any of its officers or agents.
- 4.9 Force Majeure. Either party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when and to the extent that such delay or failure is a result of causes beyond the control and without the fault or negligence of the party unable to perform.

Such causes include, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions or embargoes.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

CITY OF MESA  
A Municipal Corporation

TOWN OF SUPERIOR  
A Municipal Corporation

\_\_\_\_\_  
Chris Brady  
City Manager

\_\_\_\_\_  
Jayme Valenzuela  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Margaret Henton  
Town Clerk

In accordance with A.R.S. § \_\_\_\_\_, this Agreement has been reviewed by the undersigned attorneys who have determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the respective public entities they represent.

\_\_\_\_\_  
Mesa City Attorney

\_\_\_\_\_  
Stephen R. Cooper  
Superior Town Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
03/06/14  
Date