

THE CITY OF MESA AND THE PHOENIX-MESA GATEWAY AIRPORT AUTHORITY  
INTERGOVERNMENTAL AGREEMENT  
FOR  
AIRCRAFT RESCUE AND FIREFIGHTING (ARFF) SERVICES

This Intergovernmental Agreement (“Agreement”) is entered into this 1<sup>st</sup> day of July 2015 between the City of Mesa, an Arizona municipal corporation (the “City”), and Phoenix-Mesa Gateway Airport Authority, an Arizona joint powers airport authority (“PMGAA”) (individually, a “Party” and, jointly, the “Parties”).

**RECITALS**

WHEREAS, Arizona Revised Statutes, Sections 11-951 et seq., authorizes PMGAA and the City to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions; and

WHEREAS, the Parties have determined that it would be mutually beneficial for City to provide Aircraft Rescue and Firefighting services for the PMGAA,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

**SECTION 1 – TERM AND TERMINATION**

1.1 Term. The term of this Agreement shall be three (3) years commencing on July 1, 2015 and continuing until June 30, 2018, unless sooner terminated pursuant to the provisions hereof. For the duration of its term, this Agreement shall renew annually on July 1 without any action required by either party until its termination date or unless terminated as provided herein.

1.2 Termination.

- a. Without Cause. Either the City or PMGAA may terminate this Agreement without cause by providing at least 180 days written notice to the non-terminating Party.
- b. For Cause. In the event of a material breach of any of the provisions of this Agreement, the non-breaching Party may terminate this Agreement by delivering written notice to the Party in breach specifically stating the nature of the breach. Upon receipt of such notice, the Party in breach shall have 60 days in which to cure said breach. If said breach has not been cured within this 60-day time period, this Agreement shall be terminated on such date without further action.
- c. Cease or Reduction of Air Carrier Operations. In the event that air carrier scheduled operations, as defined in Federal Aviation Regulation Part 139, cease, PMGAA may terminate this agreement with 30 days written notice. In the event that air carrier scheduled operations are reduced thereby affecting the Index level, the terms of this Agreement may be renegotiated to implement any appropriate reduction in required fire fighting services under this Agreement at PMGAA’s request with 30 days written notice.

## SECTION 2 – DEFINITIONS

2.1 Agreement. As used herein, the term Agreement includes the exhibits attached hereto and incorporated herein by this reference.

2.2 Airport. Phoenix-Mesa Gateway Airport in Mesa, Arizona.

2.3 Airport Property – Airport Property is that property owned and operated by PMGAA and further depicted and described on the map attached as Exhibit E hereto. The term “Airport Property” is interchangeable with the terms “on the Airport” or “at the Airport”.

2.4 ARFF certified – A firefighter who has undergone training by a qualified trainer to comply with, at a minimum, the ARFF qualifications and training requirements of the Federal Aviation Administration (“FAA”), Federal Aviation Regulations (“FAR”) set forth in Part 139 of the Code of Federal Regulations, National Fire Prevention Association standards and the City’s standards for ARFF firefighters. Airfield Driver and Security Identification Display Area training specific to Phoenix-Mesa Gateway Airport is also required.

2.5 Center of the Airport – The Center of the Airport is noted in Exhibit E as the “TWA VORTAC” and shall be used to determine a five-mile radius of the Airport.

2.6 Dedicated ARFF personnel – One (1) ARFF certified City Captain and two (2) certified Engineers who are assigned to ARFF duties at Phoenix-Mesa Gateway Airport. A minimum of three (3) ARFF certified firefighters shall be present on the Airport Property at all times unless responding to an Alert III (aircraft crash) within a five-mile radius of the Center of the Airport.

2.7 Dedicated ARFF equipment - ARFF equipment that is acquired by PMGAA. At a minimum, this equipment shall remain on the Airport Property at all times unless (i) it is being used to respond to an Alert III (aircraft crash) within a five-mile radius of the Center of the Airport, (ii) it is being sent in for maintenance as described in the most current Intergovernmental Agreement for Fire Vehicles and Equipment Maintenance Services.

2.8 PMGAA Manager – Operations and Maintenance– The Manager – Operations and Maintenance of PMGAA or his/her designee.

## SECTION 3 – RESPONSIBILITIES AND OBLIGATIONS

3.1 Responsibilities and Obligations of PMGAA:

- a. PMGAA shall acquire and maintain sufficient ARFF firefighting vehicles at the Airport to meet the requirements for the Airport under the current ARFF Index under FAR Part 139.
- b. PMGAA shall pay an amount equivalent to the salaries, benefits and training of a minimum of one (1) ARFF certified Captain and two (2) ARFF certified firefighters, one of which is current in basic emergency medical services, in order to provide 24-hour coverage at the Airport. Those amounts are established and set forth in Exhibit A and are payable as follows:

- (i) During the period from July 1, 2015 to June 30, 2016, PMGAA shall pay the City the total sum of -one million one hundred fifteen thousand four hundred fifteen dollars in four equal installments of two hundred seventy eight thousand eight hundred fifty three dollards and seventy five cents (\$278,853.75).
  - (ii) For fiscal periods subsequent to June 30, 2016, the amounts set forth in Exhibit A may be increased by an amount equal to that authorized by the City for annual salary increases for all firefighters, but in no case may exceed 5% per year, unless otherwise amended in writing by the parties hereto. In the event that commercial airline passenger service or FAA regulations change to affect the required ARFF Index, the Parties agree to amend this Agreement to reflect such changed requirements.
- c. PMGAA shall communicate any changes in FAR Part 139 ARFF requirements to the City Fire Department promptly upon receipt of notice of any such change.
- d. PMGAA shall provide adequate ARFF protective clothing for dedicated ARFF personnel, which shall include but not be limited to nine (9) sets of firefighting Personal Protective Equipment ("PPE") as set forth on Exhibit B at the approximate cost set forth therein. Such PPE, or equivalents, shall be replaced each four years following the original date of purchase.
- e. PMGAA shall reimburse the City for annual live burn training, as required under FAR Part 139, for dedicated ARFF personnel. The anticipated cost of the training is set forth on Exhibit C.
- f. PMGAA shall acquire and maintain one (1) aviation radio for each ARFF firefighting vehicle based at the Airport and replace such radios as necessary to maintain them in working order.
- g. PMGAA shall provide and pay for fuel and fire extinguishing agents for Airport owned ARFF firefighting vehicles. PMGAA will maintain sufficient quantities of fire fighting agent as set forth in Exhibit D.

### 3.2 Responsibilities and obligations of the City:

- a. The City shall provide or obtain~~the~~ necessary ARFF training and certification for its personnel, as provided in Section 2.4 hereof, prior to assigning a firefighter to ARFF duties at the Airport.
- b. Dedicated ARFF personnel and equipment shall respond to:
  - i. Dispatched real and/or potential aircraft alerts, crashes, fires or medical assistance on the Airport Property;
  - ii. Aircraft crashes within a five-mile radius of the Center of the Airport;
  - iii. Spills of fuel or hazardous materials on the Airport Property; and
  - iv. Any other emergency on the Airport Property, when requested to do so by the PMGAA Manager – Operations and Maintenance, their designee, or the air traffic control tower staff or as required by the City's Fire Department Alarm Room.

- c. The City shall maintain accurate and complete records of all training given to each ARFF certified firefighter, as required by FAR Part 139. Additionally, the City shall maintain records of, including but not limited to, all accidents, incidents, safety inspections and safety violations related to ARFF at the Airport. Such records shall be made available to PMGAA staff and the FAA upon request.
- d. The City shall immediately notify the PMGAA Manager – Operations and Maintenance at any time it is anticipated or determined that the requirements of this Agreement may not be, or are not being, complied with.
- e. In the event the Airport cannot maintain its ARFF Index temporarily and an operation requiring said Index is scheduled, the City shall make reasonable efforts to obtain mutual aid ARFF assistance for the duration of that operation as required pursuant to FAR Part 139.
- f. The City shall immediately notify the PMGAA Manager - Operations and Maintenance when dedicated ARFF personnel and/or equipment have been dispatched off-airport as contemplated by Section 3.2b(ii) hereof.
- g. The City is responsible for acquiring and maintaining one City 800 Mhz radio in each ARFF vehicle based at the Airport.

## **SECTION 4 – INSURANCE AND INDEMNIFICATION**

4.1. Insurance. The City shall, at its sole cost and expense, purchase and maintain the following types and limits of insurance, in the form specified below:

- a. Coverage Requirements:
  - i. Comprehensive Automobile Liability insurance in an amount not less than \$5,000,000 combined single limit, covering all owned, non-owned and hired vehicles operated on the Airport that are assigned to or used in the performance of its activities or are operated within the air operations area (AOA) of the Airport.
  - ii. Workers' Compensation insurance as required by-law, and Employer's Liability insurance in an amount not less than \$1,000,000 covering work-related injuries to City employees assigned to or working at or on the Airport.
  - iii. General Commercial Liability insurance in an amount not less than \$5,000,000 per occurrence, to cover any claim arising from negligence or misconduct of its employees in providing the services and related activities described herein.
- b. Form. Each insurance policy obtained pursuant to this Section 4.1, except for Workers' Compensation and Employer's Liability policies, shall: (i) name PMGAA as an additional named insured; (ii) contain a provision that written notice of cancellation or modification thereof shall be given to PMGAA not less than THIRTY (30) days before such cancellation or modification takes effect (TEN (10) days in case of nonpayment of premium); and (iii) contain a waiver of subrogation in favor of PMGAA. City shall not permit any insurance policy to be canceled or modified without PMGAA's written consent unless equivalent

replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies licensed to do business in the State of Arizona and possessing a rating of at least A – VII or higher from the A.M. Best Company, or an equivalent rating and approved by PMGAA.

- c. Certificates in Insurance. City shall deliver a certificate of insurance for each policy to PMGAA, in standard Acord format, prior to the Effective Date and continue to provide such certificate throughout the term of this Agreement
- d. Blanket and Self-Insurance. City's insurance obligations under this Agreement may be satisfied by means of "blanket" or excess policies, or through self-insurance. If any or all limits of coverage, as specified in Section 4.1.1 herein, are provided via self-insurance, the City shall provide PMGAA a written acknowledgement of such self-insurance, and its responsibility to hold PMGAA harmless from acts and/or omissions of City's personnel up to and including the limits of such declared self-insurance coverage.

#### 4.2. Indemnification.

- a. To the fullest extent permitted by law, the City hereby agrees to defend, indemnify and hold harmless PMGAA and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as "PMGAA" for purposes of this Section 4.2) for, from and against any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any negligent act or omission of the City or its agents, employees, contractors, or subcontractors (hereinafter referred to collectively as the "City" for purposes of this Section 4.2) in connection with the City's operations hereunder and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or (ii) the failure of the City to comply with any provisions of this Agreement. This indemnification shall exclude responsibility for any consequential damages of PMGAA and for claims arising by reason of the negligent or wrongful act of PMGAA or its employees, contractors or agents.
- b. PMGAA shall defend, indemnify, and hold harmless the City, its officers, agents, employees, elected officials, and volunteers, for, from, and against any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any negligent act or omission or wilful misconduct of PMGAA while performing this Agreement, or (ii) the failure of PMGAA to comply with any provisions in this Agreement. PMGAA shall continue in effect during the term of this Agreement, an Airport Liability insurance policy in an amount approved by the PMGAA Board of Directors, including premises liability, bodily injury, and property damage, and shall name the City of Mesa as Named Insured under this policy.

## SECTION 5 - MISCELLANEOUS

5.1 Funding. Each Party shall have the separate and independent responsibility for budgeting for and funding its own participation in this Agreement, and this Agreement is subject to the availability of funds either appropriated, budgeted, or made available to the Parties hereto. In the event of a lack of funds being available, either Party may terminate this Agreement as is set forth in Section 1.

5.2 A.R.S. §38-511. As provided in Section 38-511 of the Arizona Revised Statutes, the City or PMGAA may cancel any contract to which it is a party within three (3) years after the execution thereof without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Party so canceling is, at any time while the contract or any extension thereof is in effect, an employee or agent of the other Party to the contract in any capacity or a consultant to the other Party to the contract with respect to the subject matter of the contract.

5.3 Filing. An executed copy of this Agreement shall be filed with the Maricopa County Recorder.

5.4 Entire Agreement. This Agreement constitutes the entire agreement between PMGAA and the City with respect to the subject matter hereof and supersedes the Intergovernmental Agreement entered into by the parties on November 1, 2010. This Agreement further supersedes any other oral or written representations, understandings or agreements relating to the subject matter hereof.

5.5 Amendments. This Agreement may be modified only by a written amendment approved by the City Council and Board of Directors of PMGAA pursuant to A.R.S. 11-952.

5.6 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, without such consent is void.

5.7 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 other or succeeding breach or default.

5.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the Federal or state courts in the State of Arizona.

5.9 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, to the extent possible, remain in full force and effect and shall in no way be affected, impaired or invalidated.

5.10 Non-Discrimination. The City and PMGAA agree to comply with all provisions of applicable Federal, state, and local laws related to nondiscrimination and equal employment opportunity, including the Americans with Disabilities Act.

5.11 E-verify Requirements. To the extent applicable under Ariz. Rev. Stat. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. § 23-214(A). Either Party's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the other Party.

5.12 [Reserved]

5.13 No Partnership. Nothing contained in this Agreement shall create any partnership, joint venture or common enterprise between the Parties. Except as specifically provided herein, each Party shall at all times be an independent operator and shall not at any time purport to act as the agent of the other Party, or any of its officers or agents.

5.14 Force Majeure. Either Party shall be excused for delay or failure to perform its obligations pursuant to this Agreement, in whole or in part, if and to the extent such delay or failure is a result of causes beyond the reasonable 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, terrorism, acts of the United States government, floods, epidemics, quarantine restrictions or embargoes, and shortages of labor or materials.

5.15 Surviving Provisions. The obligations contained in Section 4 (Insurance) shall survive the expiration or other termination of this Agreement.

5.16 All notices to be given pursuant to this Agreement shall be in writing and shall be delivered in person or sent by regular mail as follows:

MESA: City Manager's Office  
City of Mesa  
20 East Main Street, Suite 750  
P.O. Box 1466  
Mesa, AZ 85211-1466

PHOENIX-MESA  
GATEWAY: Executive Director  
Phoenix-Mesa Gateway Airport Authority  
5835 S. Sossaman Road  
Mesa, AZ 85212-0919

All notices shall be deemed to be received upon actual receipt or five (5) working days after the notice has been deposited with a U.S. post office for delivery to the address set forth above, whichever occurs first.

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

CITY OF MESA,  
A Municipal Corporation

Phoenix-Mesa Airport Authority,  
An Arizona joint powers airport authority

\_\_\_\_\_  
Christopher J. Brady  
City Manager

\_\_\_\_\_  
Jane Morris  
Executive Director

ATTEST:

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

In accordance with A.R.S. § 11-952, 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

\_\_\_\_\_  
Phoenix-Mesa Gateway  
Airport Authority

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned Notary, Christopher J. Brady, the City Manager of the City of Mesa, being duly authorized to do so, executed the foregoing agreement for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned Notary, Jane Morris, the Executive Director of Phoenix-Mesa Gateway Airport Authority, being authorized to do so, executed the foregoing agreement for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## Exhibit A

### Personnel Cost

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Total FY 2016 Personnel Cost:       \$       1,115,415

Annual Pay Increase:                   For fiscal periods subsequent to June 30, 2016, the amounts may be increased by an amount equal to that authorized by the City for annual salary increases for all firefighters, but in no case may exceed 5% per year

Budgetary estimate of 3% inncrease after FY16

FY16   \$1,115,415

FY17   \$1,148,877

FY18   \$1,183,344

## Exhibit B

### Description and Cost of ARFF Protective Clothing

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Structural	
Coat	\$ 1,191.61
Pant	\$ 763.96
Brushpant	\$ 197.01
Helmet	\$ 235.50
	\$ 58.46 (shield)
Helmet Ensemble/Cover	\$ 14.00 (sleeve)
Fire Gloves	\$ 51.20
	\$ 200.00 (rubber)
Boots	\$ 300.00 (leather)
Boot Covers	\$ None
Suspenders	\$ 39.50
Nomex Hood	\$ 36.45
Totals	\$ 3,087.69
Replacement of 2 sets in each of the first 2 years and 3 sets in the third year	
FY16	\$6,175 (2 sets)
FY17	\$6175 (2 sets)
FY18	\$9263 (3 sets)

## Exhibit C

### Annual Live Burn Training Cost Estimate (as required by FAR 139)

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List of training expenses (approximate)

Travel (airfare)

Per Diem

Airport parking

Lodging (if needed)

Training expenses (registration)

Backfill

2016: \$12,751

2017: \$13,134

2018: \$13,528

## **Exhibit D**

Estimate of Aqueous Film Forming Foam (AFFF) Assumes a  
AFFF reserve of 1000 Gallons

### **Foam Tank Quantities by Vehicle**

Foam 29: 195 Gallons

Foam 215: 195 Gallons

Foam 225: 400 Gallons

Total Gallons: 790 Gallons

AFFF Reserve: 1000 Gallons

AFFF price per gallon: \$ 24.00

FY16 \$ 25,672

FY17 \$ 26,442

FY18 \$ 27,236

## Exhibit E

Center of Airport



VORTAC  
Center of the Airport

## Exhibit F

### Total ARFF Cost

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	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personnel Cost	\$1,115,415	1,148,877	1,183,344
Protective Clothing	\$6,175	\$6,175	\$9,263
ARFF Training	\$12,751	\$13,134	\$13,528
AFFF Reserve	\$25,672	\$26,442	\$27,236
<b>Total</b>	<b>\$ 1,160,013</b>	<b>\$ 1,194,629</b>	<b>\$ 1,233,370</b>