

THE CITY OF MESA AND THE PHOENIX-MESA GATEWAY AIRPORT AUTHORITY INTERGOVERNMENTAL AGREEMENT RELATING TO FIRE VEHICLES AND EQUIPMENT MAINTENANCE SERVICES

This Intergovernmental Agreement ("Agreement") is entered into this _____ day of _____, 2017 by and between the City of Mesa ("Mesa"), an Arizona municipal corporation and Phoenix-Mesa Gateway Airport Authority ("Airport"), an Arizona joint powers airport authority (individually, each is a "Party" and collectively, the "Parties").

RECITALS:

Arizona Revised Statutes ("A.R.S."), §§ 11-951 *et seq.*, authorizes Mesa and the Airport to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions.

The Parties have determined that it would be mutually beneficial for the Mesa Fire Department to provide fire vehicles and equipment maintenance services for aircraft rescue firefighting vehicles and equipment owned by and stationed at Phoenix-Mesa Gateway Airport.

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

SECTION 1 – EFFECTIVE DATE, TERM, TERMINATION

1.1 Term. The Term of this Agreement shall be for three (3) years. This Agreement shall commence on July 1, 2017 ("Effective Date") and shall continue until June 30, 2020, unless sooner terminated pursuant to the provisions of this Agreement Term.

1.2 Termination on Notice. Either Mesa or the Airport may terminate this Agreement for any or no reason by providing at least sixty (60) days prior written notice of the intention to terminate to the non-terminating Party. Such termination shall be effective sixty (60) days after the date the termination notice is mailed by return receipt.

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.

SECTION 2-- SCOPE OF WORK AND COMPENSATION

2.1 Mesa's responsibilities and obligations:

- a. For the term of this Agreement, Mesa shall provide or have provided full maintenance and repair services for Airport's firefighting vehicles and equipment 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. Firefighting vehicles and equipment shall include, but not be limited to: (1) a 1995 Ford Aircraft Rescue Fast Attack Vehicle; (2) a 2000 Oshkosh ARFF Foam Truck; and (3) a 2009 Oshkosh ARFF Foam Truck. Firefighting vehicles and equipment shall include any replacement or additional vehicles and equipment agreed upon by the Parties.
- c. Mesa Fire Department personnel at Station 215, located at 6353 S. Downwind Circle in Mesa, Arizona will perform standard daily firefighting vehicle and equipment checks on the Airport's fire vehicles and equipment and will report any needed repairs on a Mesa repair order form to the Mesa Fire Department Fire Maintenance Facility ("East Mesa Service Center") located at 6935 E. Decatur in Mesa, Arizona with a copy of said order form being provided to the Airport's Operations and Maintenance Director.
- d. At the sole discretion of Mesa personnel, selected routine, preventative and/or emergency maintenance services or major repairs on the firefighting vehicles and equipment may be performed or caused to be performed at Station 215 or at the East Mesa Service Center or at other locations as necessary. Mesa shall have the sole discretion on location of maintenance and repairs and on the need to obtain maintenance assistance from an outside source.
- e. Mesa shall keep accurate records of the maintenance and repairs performed on the Airport's firefighting vehicles and equipment on a computerized fleet management database, and shall provide summaries of the repairs and maintenance, including costs, to the Airport on a monthly basis.
- f. Mesa shall notify the Airport's Operations & Maintenance Director or his/her designee in writing prior to any major repair requirements, where such repairs or maintenance is estimated to cost in excess of \$2,500.
- g. The Airport's firefighting vehicles and equipment shall only be operated by Mesa personnel or agents of Mesa, for any and all preventative maintenance or repair purposes. If agents of Mesa will be operating any vehicles or equipment, Mesa must notify the Airport in writing of who will be operating and provide evidence of the insurance coverage protecting such persons and the vehicles and equipment being operated by them.
- h. Mesa shall immediately notify the Airport's Operations & Maintenance Director or his/her designee when aircraft rescue firefighting vehicles and equipment are taken out of service for preventive maintenance or repair and upon the unit's return to Station 215.

- i. Mesa shall submit an invoice to the Airport on a quarterly basis reflecting the compensation owed by Airport pursuant to this Agreement, which amount shall be calculated pursuant to the provisions set out in Section 2.2. Mesa, in its sole discretion, subject to the terms of this Agreement, shall determine whether repairs are categorized as major repairs, preventative maintenance, or emergency repairs.
- j. Mesa will provide annually, updated labor rates in writing to the Airport, on or before July 1 each year that will indicate the labor rates for the following year.

2.2 Phoenix-Mesa Gateway's responsibilities and obligations:

- a. Compensation to be paid by the Airport to Mesa shall be calculated and paid as follows:

- (i) The Airport agrees to pay a labor rate of \$78.66 per hour for maintenance and repair services performed between the hours of 6:00 a.m. and 2:30 p.m., Monday through Friday; and

- (ii) The Airport agrees to pay a labor rate of \$84.36 per hour for maintenance and repair services performed on weekends, holidays, and for services performed outside of the weekday hours stated in Section 2.2a(i); and

- (iii) In addition to the hourly labor rate stated in Sections 2.2a(i) and 2.2a(ii), the Airport agrees to pay for all reasonable and documented parts and materials utilized in the repair of the Airport firefighting vehicles and equipment. The cost for such parts and materials shall be Mesa's cost, plus a ten percent (10%) handling fee; and

- (iv) The Airport agrees to pay for reasonable and documented 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; and

- (v) The Airport agrees to reimburse Mesa for any reasonable and documented costs incurred by Mesa in the delivery or return of Airport's fire vehicles and equipment, except for those costs that may be incurred due to the fault of Mesa or its personnel or agents.

- (vi) The labor rates described in Section 2.2a(i) and 2.2a(ii) may be adjusted on July 1 of each year of the contract term. Rates may be adjusted based on overhead and annual salary increases after year one of the contract; subsequent years may be increased by an amount equal to that authorized by the City for annual salary increases for all MFMD mechanics,

but in no case may exceed 5% per year, unless otherwise amended in writing by the Parties hereto.

- b. Within forty-five (45) days of receiving an invoice(s), Airport shall pay Mesa any compensation owed as determined pursuant to Section 2.2.

SECTION 3 – INSURANCE AND LIMITATION OF LIABILITY

3.1 Insurance Requirements:

- a. Mesa, at its cost, shall maintain adequate liability insurance to cover Mesa's and its agents' operation, maintenance and repair services and related activities of the Airport's Fire Emergency vehicles and equipment described herein. Mesa also agrees to indemnify and hold harmless the Airport from any and all liability, which is attributed to Mesa as a result of Mesa's and its agents' operation, maintenance and repair of the vehicles and equipment described in this Agreement.
- b. The Airport shall provide physical damage coverage for the vehicles and equipment described in this Agreement.
- c. Special Items. Each insurance policy shall provide the following:
 - (i) the policies cannot be cancelled, or substantially modified until and unless thirty (30) days written notice is received by the other Party;
 - (ii) the insurance company shall have no recourse against the other Party for payment of any premium or for assessments under any form of policy; and
 - (iii) the policies are intended as primary coverage for each Party and that any insurance or self-insurance maintained shall apply in excess of and not in contribution with the insurance provided by these policies.
- d. Certificates on File.
 - (i) Certificates of the required insurance coverage shall be furnished to Mesa by the Airport upon execution of this Agreement and shall be kept current at all times.
- e. The City of Mesa and Phoenix-Mesa Gateway Airport Authority hereby hold each other harmless and waive any right to subrogate against each other regarding any property damage.

3.2 Mutual Release. Notwithstanding anything to the contrary contained in his Agreement, Mesa and its agents and affiliates shall not, under any circumstances, be liable to the Airport or its affiliates for any claim based upon any third-party claim, or for

any compensatory, consequential, incidental, direct, 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. The obligations of each Party hereto are subject to each Party budgeting for and appropriating funds necessary to meet their obligations hereunder. Should either Party fail to budget or appropriate the necessary funds, such Party shall notify the other, or this Agreement shall terminate as of the last date that funds will be available.

4.2 A.R.S. § 38-511. This Agreement may be cancelled by either Party in accordance with A.R.S. § 38-511.

4.3 Entire Agreement. This Agreement constitutes the entire agreement between the Airport and Mesa with respect to the subject matter hereof and supersedes the Intergovernmental Agreement entered into by the Parties on July 1, 2016. This Agreement further supersedes all other oral and written representations, understandings or agreements relating to the subject matter hereof.

4.5 Amendments. This Agreement may be modified only by a written and executed amendment approved by the respective Mesa city council and Airport authority pursuant to A.R.S. § 11-952.

4.6 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, shall be void.

4.7 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 succeeding breach or default.

4.8 Governing Law. This Agreement shall be governed by and construed under the laws of the state of Arizona.

4.9 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 remain in full force and effect and shall in no way be affected, impaired or invalidated.

4.10 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.

4.11 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, terrorism, acts of the United States government, fires, floods, epidemics, quarantine restrictions or embargoes.

4.12 Notices. 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, Arizona 85211-1466

AIRPORT:

Phoenix-Mesa Gateway Airport Authority
Airport Operations & Maintenance Director
5835 South Sossaman Road
Mesa, Arizona 85212

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 at the address set forth above, whichever occurs first.

4.14 E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, Mesa and its agent warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Mesa or its agent'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 Airport.

4.15 Airport Rules and Regulations, Minimum Standards, Etc. The Parties agree to abide by the Airport's Rules and Regulations, Minimum Standards and other Airport compliance documents, as may be amended from time to time.

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 GATEWAY AIRPORT
AUTHORITY, an Arizona joint powers
airport authority

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 Attorney

Phoenix-Mesa Airport Authority

Date

Date