

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 2019 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, 2019 and continuing until June 30, 2022, unless sooner terminated pursuant to the provisions hereof.

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 expiration of the 60-day time period 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 Requirements, the terms of this Agreement may be renegotiated to implement any appropriate reduction in required firefighting 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 C hereto. The term “Airport Property” is interchangeable with the terms “on the Airport” or “at the Airport”.
- 2.4 ARFF certified – Personnel who have received 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. Airfield Driver and Security Identification Display Area training specific to Phoenix-Mesa Gateway Airport is also required.
- 2.5 ARFF Certified Firefighter/ARFF Certified Captain – a City Firefighter or City Captain who has undergone ARFF Certification as well as training requirements of the National Fire Prevention Association standards and the City’s standards for fire fighters.
- 2.6 Center of the Airport – The Center of the Airport is noted in Exhibit C as the “TWA VORTAC” and shall be used to determine a five-mile radius 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 Dedicated ARFF personnel – One (1) ARFF certified Captain and one (1) certified Firefighter who are assigned to ARFF duties at Phoenix-Mesa Gateway Airport. A minimum of two (2) 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.
- 2.9 Fiscal Period – A time period beginning on July 1 and ending June 30, during each 12 month period.
- 2.10 Index Requirements - The requirements for the Airport under the current ARFF Index under FAR Part 139.
- 2.11 PMGAA Director – Operations and Maintenance – The Director – 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 Index Requirements.
- b. PMGAA shall pay a rate that is equivalent to the salaries, benefits, training, and overhead for a minimum of three full-time equivalent (3 FTE) ARFF certified Captains and four point five full-time equivalent (4.5 FTE) ARFF certified firefighters, all of which are current in basic emergency medical services to provide 24-hour coverage at the Airport. Rates are established and set forth in Exhibit A and are payable as follows:
  - (i) During the period from July 1, 2019 to June 30, 2020, PMGAA shall pay the City the total sum of \$1,405,467.00 (personnel costs plus training costs) in twelve equal installments of one hundred seventeen thousand one hundred twenty-two dollars and twenty-five cents (\$117,122.25) for ARFF services.
  - (ii) For fiscal periods subsequent to June 30, 2020, the amounts set forth in Exhibit A may be increased by an amount equal to that authorized by the City for annual salary increases, but in no case may exceed 5% per year, unless otherwise amended in writing by the parties hereto. All such requested increases shall be documented in writing by City prior to the commencement of the new fiscal period.
  - (iii) In the event that commercial airline passenger service or FAA regulations change to affect the Index Requirements, the Parties agree to amend this Agreement to reflect such changed requirements.
- c. PMGAA shall communicate any changes in the Index Requirements to the City Fire Department promptly upon receipt of notice of any such change.
- d. PMGAA shall pay the City for all ARFF training, as required under FAR Part 139, for dedicated ARFF personnel. The flat fee of the training is set forth in Exhibit B.
- e. 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.

3.2 Responsibilities and obligations of the City:

- a. The City shall provide Dedicated ARFF personnel, as provided in Section 2.8, based at PMGA, covering 24 hours per day.
- b. 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.
- c. Dedicated ARFF personnel and equipment shall respond to:
  - i. Dispatched actual 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. Triennial Full Scale Exercises and periodic response drills, including planning, coordinating, and participating;
  - iv. Spills of fuel or hazardous materials on the Airport Property; and
  - v. Any other emergency on the Airport Property, when requested to do so by the PMGAA Director– Operations and Maintenance, their designee, or the air traffic control tower staff or as required by the City’s Fire Department Alarm Room.
- d. 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, including investigative analysis, shall be made available to PMGAA staff and the FAA upon request.
- d. The City shall immediately notify the PMGAA Director – Operations and Maintenance or their designee 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 that an emergency incident at the airport causes PMGAA to temporarily fall below the Index Requirements and an operation requiring said Index is scheduled, the City shall make reasonable efforts to provide additional equipment for the duration of that operation as required pursuant to FAR Part 139. Requests for additional ARFF equipment above the Airport the Index Requirements shall be fulfilled if equipment is available and reimbursed according to the published rates outlined in the most current Intergovernmental Agreement for Fire Vehicles and Equipment Maintenance Services.
- f. In the event the Airport utilizes City equipment to maintain published ARFF Indexing or to provide enhanced ARFF Indexing in support of aircraft operations, PMGAA shall reimburse the City as described in the most current Intergovernmental Agreement for Fire Vehicles and Equipment Maintenance Services.
- g. The City shall immediately notify the PMGAA Director - Operations and Maintenance, or their designee, when dedicated ARFF personnel and/or equipment have been dispatched off-airport as contemplated by Section 3.2b(ii) hereof.
- h. The City is responsible for acquiring and maintaining one City dual band 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 willful 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 July 1, 2015. 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:

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

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

\_\_\_\_\_  
J. Brian O'Neill  
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



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

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

On this, the \_\_\_\_ day of \_\_\_\_\_ 2019, 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 \_\_\_\_\_, 2019, before me, the undersigned Notary, J. Brian O'Neill,  
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 2020 (July 1, 2019 – June 30, 2020)    Personnel Cost: \$     1,380,267

Personnel Cost consists of Salary and Benefits plus the estimated hourly cost to backfill ARFF staffing absences during training and personnel time off (aka: minimum staffing backfill).

Annual Pay Increase:

All such requested increases shall be documented in writing by City prior to the commencement of the new fiscal period.

For fiscal periods subsequent to June 30, 2020, salary amounts increase by an amount equal to that authorized by the City for annual salary increases, but in no case may exceed 5% per year, unless otherwise amended in writing by the parties hereto.

Salary and Benefits – (budgetary estimate of 3% increase after FY2020)

FY20   \$ 1,247,652

FY21   \$ 1,285,082

FY22   \$ 1,323,634

Minimum Staffing Backfill – (budgetary estimate of 3% increase after FY2020)

FY20   \$   132,615

FY21   \$   136,594

FY22   \$   140,692

## **Exhibit B**

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

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Total FY 2020 (July 1, 2019 – June 30, 2020)    Training cost \$            25,200.00

Training costs to include the initial and annual live burn trainings. Constant staffing for this training is covered in exhibit A. Required training consists of local live burn and out-of-state training at a certified live burn facility in alternating years for Dedicated ARFF Personnel and up to 2 alternates for constant staffing purposes.

For fiscal periods subsequent to June 30, 2020, the amounts set forth in this exhibit may be increased by the 12-month percentage change of the Consumer Price Index for all items as of June 1 in each fiscal period, not to exceed 3 percent. All such requested increases shall be documented in writing by City prior to the commencement of the new fiscal period.

## Exhibit C

Center of Airport

