

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF MESA AND CITY OF TEMPE
RELATING TO EMPLOYEE SHARING FOR AVIATION ADMINISTRATION**

This Intergovernmental Agreement ("Agreement") is made to be effective as of _____, 2019 (the "Effective Date") and between the City of Mesa ("Mesa"), and the City of Tempe ("Tempe"), both Arizona municipal corporations, for employee sharing relating to aviation administration and related services. The parties individually herein are referred to as a "Party" and collectively as the "Parties."

RECITALS

As background to this Agreement, the Parties recite, state and acknowledge the following, each of which is a material term and provision in this Agreement:

1. Mesa seeks a qualified sworn peace officer to perform the duties of an Aviation Administrator. The position and qualifications are described in the attached Exhibit A (hereinafter referred to as the "Work").
2. Tempe employs an Arizona POST certified peace officer ("Employee") that possesses the necessary qualifications to perform the Aviation Administrator duties, and it is willing to provide and loan the services of its Employee to Mesa.
3. Tempe desires aviation support for patrol related functions and surveillance activities.
4. Mesa has a Police Aviation Unit with the ability to provide such support services to Tempe from time to time, subject to availability.
5. The Parties are each authorized to enter this Agreement pursuant to A.R.S. § 11-951, *et seq.*

Now, therefore, in consideration of the mutual promises, covenants and agreements set forth herein, the Parties agree as follows:

TERMS & CONDITIONS

1. RESPONSIBILITIES OF TEMPE

1.1 Tempe agrees to provide and loan the services of Employee that meets the qualifications set forth in the Work, subject to Mesa's approval, to perform the Work full-time. Tempe shall remain the primary employer of Employee at all times while this Agreement is effect; however, Employee shall work under the direction of Mesa when performing the Work under this Agreement. Mesa will determine the specific tasks, services and assignments Employee will perform under this Agreement.

1.2 Employee will remain a full-time regular employee of Tempe and will remain on Tempe's payroll, be subject to Tempe's personnel administration, and continue to receive all compensation and benefits solely from Tempe. Employee will remain subject to Tempe's personnel policies, rules and regulations. Tempe shall perform and be responsible for all personnel management tasks involving Employee, including, but not limited to, timekeeping, performance

reviews, disciplinary actions, payroll processing and benefits. Tempe will provide all professional training for Employee at its own expense. Tempe shall be solely responsible for the payment of Employee's salary and related benefits, pension/retirement contributions, insurance, taxes and withholdings required under federal and state law and Tempe's personnel rules, policies and/or contracts. Tempe shall keep and maintain Employee's personnel file and payroll and other employment records of Employee.

1.3 Tempe shall submit to Mesa an annual invoice for the contribution set forth in Section 2.1 of this Agreement. The annual contribution shall be the sole and exclusive consideration paid to Tempe for Employee's services. Said consideration shall be tendered pursuant to Section 2.2 of this Agreement.

1.4 Tempe, at its sole cost and expense, shall procure and maintain for the duration of this Agreement workers' compensation insurance or self-insurance covering Employee in accordance with the requirements of Arizona law. Pursuant to A.R.S. § 23-1022(D), Tempe shall be solely liable for the payment of workers' compensation benefits on behalf of Employee. Mesa shall not be subject to any liability for failure to provide workers' compensation coverage to Employee in the event of an injury or illness to Employee suffered in the course of performing Work under this Agreement. Tempe acknowledges that its workers' compensation insurer or self-insure will be liable for the entire cost of workers' compensation benefits payable on account of an illness or injury occurring in the course of and arising out of the Work under this Agreement.

1.5 Tempe will defend, indemnify, and hold harmless Mesa from and against all losses, demands, expenses (including reasonable attorney fees and costs of litigation), damages, claims, suits, fines, judgments, or other liabilities of any kind resulting from or arising out of this Agreement or Employee's performance of the Work under this Agreement but only to the extent that such claims which result in vicarious/derivative liability to Mesa, are caused by the act, omission, negligence, misconduct, or other fault of Tempe, its officers, agents, employees, or volunteers. Tempe's indemnification covers liability on account of injury, sickness, disease or death of any person, and the damage, destruction, or loss of any property, but only to the extent that such claims which result in vicarious/derivative liability to Mesa, are caused by the act, omission, negligence, misconduct, or other fault of Tempe, its officers, agents, employees, or volunteers.

It is expressly understood that Employee is an employee of Tempe and not Mesa. Accordingly, Employee is not entitled to any benefits provided to Mesa employees, including but not limited to, health benefits, enrollment in a retirement system, contributions to a retirement system, paid time off or other rights afforded City employees. Employee will not be regarded as an employee of Mesa for any purpose, including the payment of unemployment or workers' compensation. If Employee asserts a claim for wages or any other employment benefits against Mesa, Tempe will indemnify, defend, and hold harmless Mesa from all such claims.

2. RESPONSIBILITIES OF MESA

2.1 Mesa shall pay Tempe a contribution in the amount of \$61,489.50 for each year of this Agreement.

2.2 Mesa shall pay the contribution amount to Tempe no later than thirty (30) days after receipt of Tempe's invoice, or no later than the beginning of the fiscal year the work is to be performed, whichever comes later.

2.3 As additional consideration for the loaning of Employee, Tempe may call upon Mesa to provide Tempe with aviation support, which may include patrol related functions, such as routine flyovers, and surveillance activities, such as tracking a fleeing suspect. The aviation support activities provided by Mesa will be at Mesa's discretion and subject to Mesa's operational needs and availability. Mesa will not provide Tempe with dedicated air support for special events or investigative transportation under this Agreement.

2.4 The aviation support provided by Mesa will be comprised of a pilot and a tactical flight officer specially trained to provide public safety aviation services. Mesa certifies that all Mesa aircrews providing helicopter services to Tempe under this agreement currently possess and will maintain all permits, licenses, certifications, and training required from any federal, state or local governmental entity to provide public safety aviation services.

2.5 In no event shall Mesa or the Mesa aircrew be responsible for the direction and control of ground based public safety personnel and equipment of Tempe during the course and scope of the public safety aviation services performed pursuant to this Agreement.

2.6 Mesa will verify the qualifications of Employee prior to Employee performing any Work under the Agreement. Mesa will notify Tempe in writing if Employee does not meet the qualifications for the Work or is otherwise unacceptable, or if Employee's performance of the Work is unsatisfactory.

2.7 Mesa will provide Employee with office space, support services, computer and application access, building access, materials, supplies, tools and equipment necessary to perform the Work. All correspondence, documents, email and other communications made by Employee in connection with the Work shall be the property of Mesa and subject to its document retention, management and other applicable policies and regulations.

2.8 If Employee undertakes any business-related travel or incurs other business-related expenses in connection with the Work for Mesa, the Mesa shall be responsible for payment or reimbursement of such expenses in accordance with Mesa's expense reimbursement policies and procedures.

2.9 Mesa will indemnify, defend, and hold harmless Tempe from and against all losses, demands, expenses (including reasonable attorney fees and costs of litigation), damages, claims, suits, fines, judgments, or other liabilities of any kind resulting from or arising out of any negligent act or willful misconduct of Mesa and/or any Mesa employee in the course of the performance or non-performance of the Work under this Agreement that results directly or indirectly in the injury to, or death of any person or persons, and/or damage to property.

3. TERM AND TERMINATION

3.1 This Agreement begins on the Effective Date and will terminate on April 29, 2020, unless earlier terminated by a Party in accordance with Sections 3.2 of this Agreement. The

Agreement may be renewed for up to three additional one-year terms on the same terms and conditions of this Agreement, except that the contribution amount paid by Mesa may be renegotiated by the Parties. If either Party desires to renew this Agreement, it must give the other party ninety (90) days' notice prior to the expiration of the then-current term of the Agreement.

3.2 Either Party may terminate this Agreement prior to its expiration for any or no reason upon ninety (90) days' written notice to the other Party. If Tempe terminates the Agreement prior to its expiration, it shall reimburse Mesa a prorated portion of the contribution amount equal to the total contribution amount divided by 12 and multiplied by the number of months remaining in the year notice of termination was made.

4. OTHER INSURANCE

4.1 Each Party shall, at its sole cost and expense, procure and maintain for the duration of this Agreement the following types and limits of insurance:

Commercial General Liability insurance in amounts not less than \$3 million per occurrence/\$5 million aggregate for bodily injury, personal injury, advertising injury, and products and completed operations with broad form contractual and property damage coverage.

Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence, including owned, hired and non-owned autos.

4.2 Upon request, a Party shall provide the requesting Party a certificate or certificates of insurance or a declaration of self-insurance evidencing the insurance required under Section 4.1 of this Agreement.

5. RECORDKEEPING

All records relating to the Agreement must be retained for six (6) years after expiration or termination of the Agreement.

6. LIMITATIONS

This agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals. Nothing in this agreement shall be construed as limiting or expanding the statutory responsibilities of the Parties.

7. AMENDMENTS

This Agreement can only be modified in writing, as executed by both Parties.

8. INTEGRATION CLAUSE

This Agreement, including all attachments and exhibits hereto, supersedes all prior oral or written agreements, if any, between the Parties with respect to the subject matter herein and constitutes the entire Agreement between the Parties with respect to the Work to be performed. If

any provision of the Agreement is declared void or unenforceable, the provision(s) shall be severed from the Agreement, which will otherwise remain in full force and effect.

9. NOTICES

All notices to be given under this Agreement must be delivered to the Parties via regular U.S. mail at their respective addresses set forth below:

Ramon Batista, Chief
Mesa Police Department
PO Box 1466
Mesa, Arizona 85211

Sylvia Moir, Chief
Tempe Police Department
120 E. 5th Street, P. O. Box 5002
Tempe, Arizona 85280


The Parties have caused this Agreement to be executed by the proper officers and officials.

CITY OF MESA

BY: _____
Christopher Brady
City Manager

DATE: _____

APPROVED AS TO FORM:



Geoffrey Balon
Police Legal Advisor
Mesa Police Department

DATE: 6/12/19

CITY OF TEMPE

BY: _____
Andrew Ching
City Manager

DATE: _____

ATTEST:

Tempe City Clerk

APPROVED AS TO FORM:

Vanessa Cuevas
Assistant City Attorney
Police Legal Advisor
City of Tempe Attorney's Office

EXHIBIT A

WORK:

Employee shall be responsible for managing the activities of personnel assigned to the Aviation Section of the Mesa Police Department. Primary duties include: evaluation of pilots, tactical flight officers, and mechanics in the performance of their duties; review of mission logs, operation reports, and departmental incident and supplemental reports; preparation of deployment schedules for crew members and aircraft; ensure Aviation Section members comply with Federal Aviation Administration (FAA), Department, and Aviation Section regulations and procedures relating to Aviation Section and Department functions; and planning and implementation of strategies to mitigate risk and ensure resources are available for uninterrupted Aviation Section operations.

Additional duties include: preparation and evaluation of the Aviation Section budget; procurement and onboarding of Aviation Section personnel; review and execution of various contracts; writing and execution of grants; implementation of Department strategic initiatives; preparation of recommendations for aircraft replacement; oversight and coordination of standardized training for pilots and tactical flight officers, to include initial, recurrent and advanced training; creation and maintenance of training syllabi and documentation including qualification requirements; maintenance of flight manuals; compliance with FAA and Department regulations and procedures concerning the qualification of pilots and tactical flight officers; maintenance of current FAA certificates, ratings, and medical certificates held by each pilot; maintenance of current documentation of audiograms for Aviation Section personnel related to approved hearing tests under the requirements of the Hearing Conservation Plan (AVI 42); delegation of responsibility for any of the above to other Aviation Section pilots with the approval of the Section Commander or higher ranking official; submittal of reports on the performance of each pilot and tactical flight officer; and review of proficiency on a quarterly basis for helicopter certificated pilots and on an annual basis for fixed wing certificated pilots.

QUALIFICATIONS:

The Employee must have any combination of training, education, and experience equivalent to graduation from an accredited college or university with a Bachelor's Degree in Public Administration, Business Administration, Aviation, Criminal Justice, or related field; possession of a current Commercial Rotorcraft Certificate with a helicopter instrument rating; have a current flight review in accordance with 14 Code of Federal Regulations (CFR) Part 61.56 which will be verified by Mesa in accordance with Section 2.4; have a minimum of 1000 hours total flight time to include 500 hours turbine helicopter flight time and 250 hours as a pilot-in-command (PIC); and extensive (5+ years) supervisory experience.