

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MESA
AND FORT MCDOWELL YAVAPAI NATION
RELATING TO
FIRE APPARATUS MAINTENANCE AND REPAIR SERVICES**

This intergovernmental agreement ("Agreement") is entered into this 1st day of December 2022, between the City of Mesa, an Arizona municipal corporation ("Mesa"), and the Fort McDowell Yavapai Nation (collectively "Parties").

RECITALS:

WHEREAS, Arizona Revised Statutes, sections 11-951 *et seq.*, authorizes the Parties to enter into an intergovernmental agreement for services; and

WHEREAS, the Parties are authorized by law to provide fire and emergency medical services; and

WHEREAS, the Mesa Fire and Medical Department has a Fleet Maintenance Division that provides preventive maintenance and repair services on all Fire Department vehicles and apparatus; and

WHEREAS, Ft McDowell Yavapai Nation desires to have Mesa provide preventive maintenance and repair services on its fire apparatus; and

WHEREAS, the Parties have determined that it is mutually beneficial for the Mesa Fire and Medical Department to provide fire apparatus maintenance and repair services on Ft McDowell Yavapai Nation fire vehicles/apparatus.

NOW THEREFORE, 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 December 1, 2022 and shall continue until November 30, 2025, unless sooner terminated or renewed pursuant to the provisions of this agreement.

Renewal. This Agreement may be renewed two times following re-negotiation of the terms and conditions of the Agreement. If either Party desires to renew this Agreement, it must give the other Party ninety (90) days notice before the expiration of the then-current term of the Agreement. A renewal term shall not exceed one (1) year.

1.2 Termination on Notice. Either Party 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. Termination shall be effective sixty (60) days after the effective date of service of the notice.

- 1.3 Termination 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 breaching party specifically stating the nature of the breach. Upon being served with such notice, the breaching 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. During the cure period, the non-breaching party may suspend performance under this Agreement without penalty.
- 1.4 Termination for Non-appropriation. Mesa is a governmental agency that relies upon the appropriation of funds by its governing body to satisfy its obligations. If Mesa reasonably determines that it does not have funds to meet its obligations under the Agreement, Mesa will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City will provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination.

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 that meet manufacturer maintenance schedules and the applicable National Fire Protection Association fire apparatus guidelines for Ft McDowell Yavapai Nation's fire apparatus as needed on a 24-hour basis, seven (7) days per week.
- b. All maintenance and repair services shall be performed by Emergency Vehicle Technician (EVT) certified technicians.
- c. Routine preventative maintenance and major repairs for Ft McDowell Yavapai Nation's fire apparatus will be performed by Mesa at the Mesa Fire Department Fire Maintenance Facility located at 708 W. Baseline in the City of Mesa.
- d. Mesa shall provide emergency maintenance services at a Ft McDowell Yavapai Nation facility in the event a Ft McDowell Yavapai Nation fire apparatus is not drivable and thus cannot be delivered to the Mesa Fire Maintenance shop.
- e. In providing maintenance services for Ft McDowell Yavapai Nation's fire apparatus, Mesa shall not obtain assistance from an outside source without the prior written consent of Ft McDowell Yavapai Nation if the cost of such assistance exceeds one thousand dollars (\$1,000.00).

- f. Mesa will loan fire apparatus to Ft McDowell Yavapai Nation upon request at the compensation rate set forth in Section 2.2b(vi) if Mesa has such apparatus available.
- g. Mesa shall maintain records on all repairs made by Mesa to Ft McDowell Yavapai Nation fire apparatus on a computerized record keeping system, and shall provide Ft McDowell Yavapai Nation with monthly summaries of the repairs on a monthly basis.
- h. Mesa shall provide workers compensation coverage, under Mesa's self-insured policy, for all Mesa employees performing services under this Agreement.
- i. Mesa shall submit an invoice to Ft McDowell Yavapai Nation on a quarterly basis reflecting the compensation owed by Ft McDowell Yavapai Nation, which amount shall be calculated pursuant to the provisions set out in Section 2.2.

2.2 Ft McDowell Yavapai Nation's Responsibilities and Obligations:

- a. Ft McDowell Yavapai Nation shall both deliver to and pick up from the Fire Maintenance shop, located at 708 W. Baseline in the City of Mesa, all fire apparatus needing or having received maintenance or repairs.
- b. Compensation to be paid by Ft McDowell Yavapai Nation to Mesa under this Agreement shall be calculated as follows:
 - (i) Ft McDowell Yavapai Nation shall pay a labor rate of \$103.04 per hour for maintenance services performed between the hours of 6 a.m. and 2:30 p.m., Monday through Friday; and
 - (ii) Ft McDowell Yavapai Nation shall pay a labor rate of \$118.21 per hour for maintenance services performed on weekends, holidays, and for services performed outside of the weekday hours stated in Section 2.2b(i); and
 - (iii) In addition to the hourly labor rates stated in Sections 2.2b(i) and 2.2b(ii), Ft McDowell Yavapai Nation agrees to pay for all parts and materials utilized in the maintenance and repair of Ft McDowell Yavapai Nation fire apparatus. The cost to Ft McDowell Yavapai Nation for such parts and materials shall be the same as Mesa's cost, plus a ten percent (10%) handling fee; and
 - (iv) Ft McDowell Yavapai Nation agrees to pay for costs incurred in the event that Mesa obtains maintenance assistance from

an outside source as provided in Section 2.1e. The cost for such outside maintenance assistance shall be Mesa's cost plus a ten percent (10%) handling fee with a cap of one thousand dollars (\$1,000.00), absent prior approval from Ft McDowell Yavapai Nation for any amount exceeding the cap; and

- (v) If Ft McDowell Yavapai Nation does not deliver and/or pick up fire apparatus needing or receiving maintenance or repairs as required under Section 2.2a, then Ft McDowell Yavapai Nation shall reimburse Mesa for any costs incurred by Mesa in delivering or returning Ft McDowell Yavapai Nation fire apparatus; and
 - (vi) Ft McDowell Yavapai Nation shall pay Mesa two hundred dollars (\$200.00) per day for the rental of apparatus as specified in Section 2.1f. The rented apparatus shall be returned to Mesa cleaned and fully fueled.
 - (vii) The compensation described in Section 2.2b(i) and 2.2b(ii), may be adjusted up to 8% on July 1 of each year of the contract term.
- c. Within forty-five (45) days after receiving an invoice(s), Ft McDowell Yavapai Nation shall pay Mesa all compensation due and owing as determined pursuant Section 2.2b.

SECTION 3 – INDEMNIFICATION AND LIMITATION OF LIABILITY; INSURANCE

- 3.1 Ft McDowell Yavapai Nation shall defend, indemnify, and hold harmless Mesa, its officers, agents, employees, elected and appointed officials, and volunteers, 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.
- 3.2 Ft McDowell Yavapai Nation shall obtain and maintain at its expense throughout the Term of this Agreement, at a minimum, commercial general liability insurance in amounts not less than \$3 million per occurrence and \$5 million in the aggregate for bodily injury, personal injury, and products and completed operations with broad form contractual and property damage coverage. Ft McDowell Yavapai Nation shall also obtain and maintain at its expense through

the Term of this Agreement automobile liability insurance for bodily injury and property damage with a limit of \$1 million per occurrence, including owned, hired and non-owned autos. Ft McDowell Yavapai Nation shall also cause their annual automobile insurance policy to be endorsed to be the primary coverage on any and all Mesa vehicles/apparatus whenever those vehicles/apparatus are loaned to Ft McDowell Yavapai Nation as set forth in Section 2.1f. Failure to produce sufficient evidence of the endorsement on an annual basis shall be considered a breach of this Agreement and must be remedied before any further vehicles loans can continue. The intent of this provision is that any coverage that Mesa may carry on its vehicles shall be secondary to and non-contributory to Ft McDowell Yavapai Nation's coverage during the loan period when the substitute vehicles are under Ft McDowell Yavapai Nation's control.

Nothing in this Section 3.2 shall limit Ft McDowell Yavapai Nation's responsibility to Mesa. The insurance requirements herein are minimum requirements for the Agreement and in no way limit the indemnity promise contained in Section 3.1 of this Agreement.

Mesa does not warrant that the minimum limits contained herein are sufficient to protect Ft McDowell Yavapai Nation from liabilities that might arise out this Agreement Ft McDowell Yavapai Nation is encouraged to purchase additional insurance as it deems necessary.

Each insurance policy required under this Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement.

Prior to the execution of the Agreement, Ft McDowell Yavapai Nation will provide Mesa with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the insurer with applicable endorsements. Mesa reserves the right to request additional copies of any or all of the policies, endorsements or notices relating thereto under the Agreement.

When Mesa requires a Certificate of Insurance to be furnished, Ft McDowell Yavapai Nation's insurance is primary of all other sources available. When Mesa is a certificate holder or additional insured Ft McDowell Yavapai Nation agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

The policies required by this Agreement must contain a waiver of transfer of rights of recovery (waiver of subrogation) against Mesa, its agents, representatives, officials, volunteers, officers, elected and appointed officials, and employees for any claims arising out of the performance of services under this Agreement.

All insurance certificates and applicable endorsements are subject to review and approval by Mesa's Risk Management Division.

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 Entire Agreement. This Agreement constitutes the entire agreement between Ft McDowell Yavapai Nation and Mesa with respect to the subject matter hereof. This Agreement further supersedes all other oral and written representations, understandings, or agreements relating to the subject matter hereof.
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 Governing Law. This Agreement shall be governed by the laws of Arizona.
- 4.8 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.
- 4.9 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.
- 4.10 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

FT MCDOWELL YAVAPAI NATION

Chris Brady
City Manager

Bernadine Burnette
Tribal President

ATTEST:

ATTEST:

City Clerk

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

Ft McDowell Yavapai Nation Attorney

Date

Date