

**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 _____, 2024 between the City of Mesa ("City"), an Arizona municipal corporation and Phoenix-Mesa Gateway Airport Authority ("PMGAA"), 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 City and PMGAA 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 City to provide 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 commencing on July 1, 2024 (the "Effective Date") and continuing until June 30, 2027, unless sooner terminated pursuant to the provisions of this Agreement. The Term may be extended for two (2) additional one-year periods by PMGAA providing written notice of its desire to extend the Agreement at least ninety (90) days prior to expiration of the Term and the Parties' written and signed agreement to such extension.

1.2 Termination on Notice. Either City or PMGAA may terminate this Agreement for any or no reason by providing at least ninety (90) days prior written notice to the non-terminating Party of the intention to terminate. Such termination shall be effective (90) 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-breaching Party may terminate this Agreement by delivering written notice to the Party in breach specifically stating the nature of the breach. Upon being served with such notice, the Party in breach 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 City responsibilities and obligations:

a. For the term of this Agreement, City shall provide or cause to be provided full maintenance and repair services for PMGAA's fire-fighting 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 ("NFPA") fire apparatus guidelines. Such services shall include foam and extinguishing agent replenishment.

b. Fire-fighting vehicles and equipment to be maintained pursuant to this agreement shall include, but not be limited to: (1) a 2009 Oshkosh ARFF Foam Truck, and (2) a 2018 Oshkosh ARFF Foam Truck. Fire-fighting vehicles and equipment shall include any replacement or additional vehicles and equipment agreed upon by the Parties.

c. Mesa Fire and Medical Department ("MFMD") personnel at Station 215, located at 6353 S. Downwind Circle in Mesa, will perform standard daily fire-fighting vehicle and equipment checks on PMGAA's fire-fighting vehicles and equipment and will report any needed repairs on a City repair order form to the MFMD Fire Maintenance Facility ("East Mesa Service Center") located at 708 W. Baseline Rd. in Mesa, with a copy of said order form being provided to PMGAA's Operations and Maintenance Director. Such reports will include any needed repairs or replenishment of foam and extinguishing agents.

d. At the sole discretion of City personnel, selected routine, preventative, and/or emergency maintenance services or major repairs on the fire-fighting vehicles and equipment may be performed or caused to be performed at Station 215 or at the East Mesa Service Center at 708 W. Baseline Rd., or at other locations as necessary. City shall have the sole discretion on the location of maintenance and repairs and on the need to obtain maintenance assistance from an outside source.

e. City shall keep accurate records of the maintenance and repairs performed on PMGAA's fire-fighting vehicles and equipment on a computerized fleet management database, and shall provide summaries of the repairs and maintenance, including costs, to PMGAA on a monthly basis.

f. City shall notify PMGAA's Operations & Maintenance Director or its designee in writing prior to any major repair requirements, which are repairs or maintenance estimated to cost in excess of \$4,000.

g. PMGAA's fire-fighting vehicles and equipment shall only be operated by City personnel or City agents, for any and all preventative maintenance or repair purposes. If agents of City will be operating any vehicles or equipment, City must notify PMGAA 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. City shall immediately notify PMGAA's Operations & Maintenance Director or its designee when aircraft rescue fire-fighting vehicles and equipment are taken out of service for preventive maintenance or repair and upon the unit's return to Station 215.

i. City will loan ARFF apparatus to PMGAA upon request at the compensation rate set forth in Section 2.2 (a)(iv) if City has such apparatus available. ARFF Apparatus shall satisfy, at a minimum the most recent version of FAA requirements for Index B in Title 49CFR 139.317 b. 1. City will loan ARFF apparatus to PMGAA upon request at the compensation rate set forth in Section 2.2 (a)(iv) if City has such apparatus available. ARFF Apparatus shall satisfy, at a minimum the most recent version of FAA requirements for Index B in Title 49CFR 139.317(b)(1).

j. City shall submit an invoice to PMGAA on a monthly basis reflecting the compensation owed by PMGAA pursuant to this Agreement, which amount shall be calculated pursuant to the provisions set out in Section 2.2. City, 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.

k. City shall provide annually, updated labor rates in writing to PMGAA, on or before July 1 each year that will indicate the labor rates for the following year.

l. City shall maintain 3 certified technicians, of which PMGAA will reimburse the City for training expenses of 2 technicians. General training schedules are contained in Exhibit A. City shall notify the Director-Operations and Maintenance of training needs that occur outside of the Exhibit A schedule.

2.2 PMGAA responsibilities and obligations:

a. Compensation to be paid by PMGAA to City shall be calculated and paid as follows:

(i) PMGAA agrees to pay the then-applicable hourly labor rate for maintenance and repair services performed between the hours of 6 a.m. and 2:30 p.m., Monday through Friday (“Weekday Services”). For fiscal year 2024-2025, the labor rate is \$105.26 per hour for Weekday Services; and

(ii) PMGAA agrees to pay the then-applicable hourly labor rate for maintenance and repair services performed on weekends, holidays, and for services performed outside of the weekday hours stated in Section 2.2a(i) (collectively, “Non-Weekday Services”). For fiscal year 2024-2025, the hourly labor rate is \$126.31 for Non-Weekday Services; and

(iii) In addition to the hourly labor rate stated in Sections 2.2(a)(i) and 2.2(a)(ii), PMGAA agrees to pay for all reasonable and documented parts and materials utilized in the repair of PMGAA fire-fighting vehicles and equipment and the replenishment of foam or firefighting agents in sufficient quantities to meet FAA Regulations. The cost for such parts and materials shall be City's cost, plus a ten percent (10%) handling fee; and

(iv) PMGAA shall pay City one thousand five hundred dollars (\$1,500) per day for the rental of apparatus as specified in section 2.1(i). The rented apparatus shall be returned to City cleaned and fully fueled; and

(v) PMGAA agrees to pay for reasonable and documented costs incurred in the event that City obtains maintenance assistance from an outside source as provided in

Section 2.1(d). The cost for such outside maintenance assistance shall be City's cost, plus a ten percent (10%) handling fee; and

(vi) PMGAA agrees to reimburse City for any reasonable and documented costs incurred by City in the delivery or return of PMGAA's fire-fighting vehicles and equipment, except for those costs that may be incurred due to the fault of City or its personnel or agents; and

(vii) PMGAA shall pay the full tuition, travel, hotel, and meal per diem expenses for certification training of two technicians as delineated in Exhibit A.

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

SECTION 3 • INSURANCE AND LIMITATION OF LIABILITY

3.1 Insurance Requirements:

a. City, at its cost, shall maintain adequate liability insurance to cover City's and its agents' operation, maintenance and repair services and related activities of PMGAA's fire-fighting vehicles and equipment described herein. City also agrees to indemnify and hold harmless PMGAA from any and all liability, which is attributed to City as a result of City's and its agents' operation, maintenance and repair of the vehicles and equipment described in this Agreement.

b. PMGAA 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 City by PMGAA upon execution of this Agreement and shall be kept current at all times.

(ii) Certificates of the required insurance coverage shall be furnished to PMGAA by City upon execution of this Agreement and shall be kept current at all times.

e. City and PMGAA 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 this Agreement, City and its agents and affiliates shall not, under any circumstances, be liable to PMGAA 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. Notwithstanding anything to the contrary contained in this Agreement, PMGAA and its agents and affiliates shall not, under any circumstances, be liable to City 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 fail to budget or appropriate the necessary funds, which 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 Filing. An executed copy of this Agreement shall be filed with the Maricopa County Recorder.

4.4 Entire Agreement. This Agreement constitutes the entire agreement between PMGAA and City with respect to the subject matter hereof and supersedes the Intergovernmental Agreement entered into by the Parties effective July 21, 2020 and its Agreement Amendment Number 1 effective June 5, 2023. 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 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:

CITY: 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 S. Sossaman Rd
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.

4.13 E-Verify Requirements. To the extent applicable under A.R.S. § 41-4401, City 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). City 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 PMGAA.

[Signatures on following page]

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

Chris 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 Airport Authority Attorney

Date

Date

Exhibit A

PMGAA shall reimburse City for certification training of 2 technicians as per the schedule below. The initial training shall occur in the first 2 years, and 1 recertification training every 2 years thereafter. Off-schedule training needs shall be approved by PMGAA Director – Operations and Maintenance or designee.

PMGAA Certification Training Reimbursement

	2025	2026	2027
Initial Training – 5 day	\$3000	\$3000	0
Recertification – 3 day	0	0	\$2000