

SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

This Second Amended and Restated Intergovernmental Agreement ("Agreement") is made and entered into pursuant to Arizona Revised Statutes Section 11-951 et. seq. as of the 20th day of May, 2025 by and between the MESA GATEWAY AIRPORT AUTHORITY, a municipal corporation (the "Authority"), the TOWN OF GILBERT, a municipal corporation, as a member of the Authority ("Gilbert"), the CITY OF MESA, a municipal corporation, as a member of the Authority and individually with respect to Section 5 of this Agreement ("Mesa"), the TOWN OF QUEEN CREEK, a municipal corporation, as a member of the Authority ("Queen Creek"), the GILA RIVER INDIAN COMMUNITY as a member of the Authority, (the "Community"), and the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("Apache Junction"), recite, consent and agree as provided herein.

Recitals.

A. Pursuant to the Intergovernmental Agreement dated December 14, 1992, Gilbert, Mesa and Queen Creek established the Authority pursuant to the Joint Powers Airport Authority Agreement ("JPAA") dated May 19, 1994, recorded on May 19, 1994, as Instrument No. 94-0400695, official records of Maricopa County, Arizona. The First Amendment to the JPAA was signed on May 19, 1995 to include the Community as a member of the Authority. The Authority, Gilbert, Mesa, Queen Creek, the Community and the City of Phoenix, an Arizona municipal corporation ("Phoenix") entered into the Amended and Restated Intergovernmental Agreement, dated May 22, 2006, and filed with the Arizona Secretary of State on July 20, 2006 to add Phoenix as a Member of the Authority. The Members entered into the Amended and Restated JPAA dated July 19, 2013 to add Apache Junction as a Member of the Authority.

B. The Authority was established pursuant to Arizona Revised Statutes, Section 28-8521 (previously found in Arizona Revised Statutes, Section 2-351 et. seq.) for the purposes of acquiring, developing and operating an airport and related facilities located on a portion of the property formerly known as the Williams Air Force Base and subsequently re-named the Phoenix-Mesa Gateway Airport.

C. Phoenix withdrew from the Authority effective July 1, 2024.

D. The name of Phoenix-Mesa Gateway Airport was changed to Mesa Gateway Airport and the name of the Authority was changed from Phoenix-Mesa Gateway Airport Authority to Mesa Gateway Airport Authority effective December 17, 2024. The Authority owns and operates Mesa Gateway Airport.

E. Concurrently herewith, the Authority, Gilbert, Mesa, Queen Creek, Community and Apache Junction are entering into a second amended and restated JPAA ("2025 Second Amended and Restated JPAA") that reflects the changed membership and name.

F. The Authority, Gilbert, Mesa, Queen Creek, Community and Apache Junction are committed to meeting the long-term aviation capacity needs of the metropolitan area.

G. By entering into this Agreement, the parties to this Agreement desire to continue to jointly exercise common powers with regard to the ownership, development, reuse, operation and maintenance of the Mesa Gateway Airport pursuant to Arizona Revised Statutes, Chapter 25, Article 8.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged by all the parties hereto, the parties hereto agree as follows:

Agreement

Section 1. Purpose and Goals.

1.1 The Authority, Mesa, Gilbert, Queen Creek, the Community and Apache Junction agree to work together to establish an airport to serve the long-term aviation needs of the region.

1.2 It is not the intention of the parties to restrict the marketing or service of Mesa Gateway Airport. It is the intention of the Authority to market Mesa Gateway Airport as a domestic and international commercial passenger and cargo airport.

Section 2. Development of Authority's Budget.

2.1 Each Member shall contribute funds for the Authority annual (operating and capital) budget as approved by the Authority's Board of Directors pursuant to Sections 8 and 9 of the 2025 Second Amended and Restated JPAA.

Section 3. Archaeological Issues.

3.1 It is Authority's intent to negotiate in good faith a separate agreement with the Community regarding archaeological issues that complies with federal and state law, including, but not limited to, Section 10E of the National Historic Preservation Act and the Programmatic Agreement Among The United States Air Force, the Arizona State Historic Preservation Officer and the Advisory Council on Historic Preservation Concerning Disposal of Williams Air Force Base, Mesa, Arizona, February 1995.

To the extent allowed by federal and state law, the Authority acknowledges that the Community has rights to and ownership of all Native American data and artifacts recovered on property owned or controlled by the Authority. "A partial listing of Native American data and artifacts which might be recovered on property at Williams AFB includes, but is not limited to: whole or fragmentary tools, implements, containers, weapons, weapon projectiles, clothing, ornaments, containers, pottery, and other ceramics, basketry, cordage, weavings, coins, bullets, bottles, and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal wood hide, feathers, and pigments." Further, to the extent allowed by federal and state law and Authority procurement requirements, and to the extent it meets the requirements of the Programmatic Agreement, the Authority that the Community may provide all Data Recovery Plans, data recovery, and mitigation required in association with the development on the Airport Facility.

Section 4. Governing Law; Jurisdiction.

4.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. The court with the original jurisdiction for causes of action arising under this Agreement is the United States District Court for the State of Arizona. The Community agrees to, and does hereby, waive its sovereign immunity from the jurisdiction of the United States District Court for the State of Arizona in any action arising under this Agreement brought by or against the Community. The Community further agrees to accept and be bound by, thereby waiving its sovereign immunity from, a judgment or order which is final (because either the time for appeal thereof has expired or the judgment or order is issued by a court or other entity having final appellate jurisdiction over the matter is not subject to collateral attack) by any such court or any court or entity having appellate jurisdiction over any such court in any such action. The Community waives its sovereign immunity to the enforcement of any such final judgment against it without limitation. The Community hereby designates the Community's Governor as the appropriate party for the purposes of service of process. If the United States District Court for the State of Arizona finds that it does not have jurisdiction in any action arising under this Agreement brought by or against the Community, then the Parties agree that the action shall be adjudicated through arbitration in the State of Arizona as follows:

i.) the parties shall attempt to agree upon one (1) arbitrator with expertise on the subject matter of the dispute;

ii.) if the parties are unable to agree on an arbitrator, each party shall select an arbitrator within ten (10) days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If the two (2) arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator shall be appointed by the American Arbitration Association; and

iii.) the arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submissions only. The decision of the majority of the arbitrator(s) shall be final, binding, and unappealable. Such decision shall be enforceable in United States District Court for the State of Arizona. The cost of arbitration shall be borne equally by the parties. The parties shall bear their own costs and attorney's fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.

Section 5. Incorporation of Recitals.

5.1 All of the recitals set forth above are hereby incorporated into this Agreement by this reference and made a part hereof.

Section 6. Attorneys' Fees.

6.1 If any action is brought to enforce this Agreement or to recover damages or equitable relief for a breach of this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees incurred in such action.

Section 7. Entire Agreement.

7.1 There are no oral agreements between the Authority and the Community with respect to those matters and transactions that are the subject of this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understands, written or oral, if any, between the Authority and the Community with respect to those matters and transactions that are the subject of this Agreement.

Section 8. Severability.

8.1 If any provision of this Agreement shall be determined to be void by a court of competent jurisdiction, then such determine shall not affect any other provision of this Agreement and all such other provisions shall remain in force and effect.

Section 9. Termination of Airport Authority.

9.1 This Second Amended and Restated Intergovernmental Agreement shall remain in full force and effect unless modified or terminated by written agreement of a majority of the members of the Authority. This Agreement shall also be deemed terminated should all parties hereto have exercised their right to withdraw from the Authority in accordance with Section 10 of the Second Amended and Restated JPAA.

9.2 Notwithstanding the right to withdraw set forth in Section 10 of the Second Amended and Restated JPAA, each party hereto agrees to remain a member of the Authority and to be bound by this Intergovernmental Agreement for at least one year after the Effective Date.

9.3 Unless otherwise agreed to by a majority of the members of the Authority, upon termination of this Agreement:

9.3.1 If one (1) member agrees to assume ownership of the Airport Facilities and agrees to assume the financial obligations of all members, then the Authority shall transfer title of the Airport Facilities to such member.

9.3.2 If no member agrees to assume ownership of the Airport Facilities and the financial obligations of all members, and if the State of Arizona agrees to assume such ownership and financial obligations, then the Airport Facilities shall be transferred to the State of Arizona.

9.3.3 If the State of Arizona refuses to assume ownership of the Airport Facilities, then the Airport Facilities shall revert to the United States of America.

Section 10. Term.

10.1 This Second Amended and Restated Intergovernmental Agreement shall remain in full force and effect until a date that is ninety-nine (99) years after the Effective Date unless modified or terminated by written agreement of all parties hereto.

Section 11. Notices.

11.1 All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail as follows:

Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296
Attention: Town Manager

City of Mesa
20 E. Main Street
Mesa, Arizona 85201
Attention: City Manager

If by United States Postal Service:
City of Mesa
Post Office Box 1466
Mesa, Arizona 85211-1466
Attention: City Manager

Town of Queen Creek
22350 South Ellsworth Road
Queen Creek, Arizona 85242-0650
Attention: Town Administrator

Gila River Indian Community
Administrative Offices
P.O. Box 97
Sacaton, Arizona 85247
Attention: Lieutenant Governor

City of Apache Junction
300 East Superstition Boulevard
Apache Junction, Arizona 85119
Attention: City Manager

Section 12. Cancellation.

12.1 This Agreement may be canceled pursuant to Arizona Revised Statutes, Section 38-511.

Section 13. Approving Action.

13.1 Copies of appropriate action by ordinance, resolution or otherwise authorizing the respective parties to enter into this Agreement are attached hereto as Exhibit A.

Section 14. Audit Records.

14.1 The parties, the Federal Aviation Administration, the Comptroller of the United States, or any duly authorized representative reserves the right, at reasonable times, to audit and/or copy the Authority's books and records directly pertinent to this Agreement. Nothing herein requires the Authority to create or maintain any records that the Authority does not maintain in the ordinary course of business or pursuant to a provision of law.

Section 15. Counterparts.

15.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one in the same instrument, which instrument shall be deemed fully executed when one or more counterparts have been executed by each of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Attest:

CITY OF APACHE JUNCTION

By: _____
City Clerk

By: _____
Walter Wilson, Mayor

Attest:

GILA RIVER INDIAN COMMUNITY

By: _____

By: _____
Stephen Roe Lewis, Governor

Attest:

TOWN OF GILBERT

By: _____
Town Clerk

By: _____
Scott Anderson, Mayor

Attest:

CITY OF MESA

By: _____
City Clerk

By: _____
Mark Freeman, Mayor

Attest:

MESA GATEWAY AIRPORT AUTHORITY

By: _____

By: _____
Its Chair

Attest:

TOWN OF QUEEN CREEK

By: _____
Town Clerk

By: _____
Julia Wheatley, Mayor

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amended and Restated Intergovernmental 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 applicable laws of each party.

Date

Apache Junction City Attorney

Date

Gila River Indian Community Attorney

Date

Gilbert Town Attorney

Date

Mesa City Attorney

Date

Mesa Gateway Airport Authority Attorney

Date

Queen Creek Town Attorney

Exhibit A

[Ordinance, Resolution or Minutes Approving Second Amended and Restated IGA]

(Attached)



RESOLUTION NO. 25-21A

WHEREAS, the Mesa Gateway Airport Authority ("Authority"), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport ("Airport"); and

WHEREAS, the City of Phoenix withdrew from the Authority effective June 30, 2024;

WHEREAS, the Authority and its Members desire to memorialize the removal of the City of Phoenix as a Member of the Authority, effective July 1, 2024, reflect the Authority name change effective December 17, 2024, and update and continue the ongoing commitment of the Members related to the ownership, development, reuse, operation and maintenance of the Airport;

WHEREAS, the Authority deems it appropriate to call for its Members to amend and restate the Intergovernmental Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

The Board of Directors of the Authority hereby approves the Second Amended and Restated Intergovernmental Agreement attached hereto as Exhibit A and incorporated as if fully set forth herein, and the Board of Directors of the Authority hereby recommends to its Members that they execute the Second Amended and Restated Joint Powers Airport Authority Agreement. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.

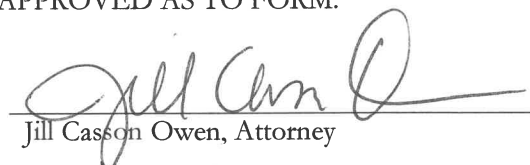
Passed and adopted by the Authority this 20th day of May, 2025.


Julia Wheatley, Chair

ATTEST:


Misty Johnson, Clerk of the Board

APPROVED AS TO FORM:


Jill Casson Owen, Attorney