

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA FIRE & MEDICAL AUTHORITY AND THE EL MIRAGE FIRE DEPARTMENT FOR THE USE OF PERSONNEL

This agreement (the "Agreement") is made and entered into by and between the Arizona Fire & Medical Authority ("AFMA") and the El Mirage Fire Department ("EMFD").

WHEREAS, AFMA and EMFD desire to have an arrangement whereby each Entity may assign personnel to work at the other organization; and,

WHEREAS, AFMA and EMFD are permitted by ARS §48-805(B)(16)(a) to enter into intergovernmental agreements with one another; and,

NOW THEREFORE, and in consideration of the terms and conditions contained in this Agreement AFMA and EMFD agree as follows:

1. Personnel Services

- A. Each Entity will maintain a list of personnel who have agreed to be assigned to the other organization when such a need arises.
- B. When either EMFD or AFMA have a need to utilize personnel from the other organization, a designated representative will make contact to determine if personnel are available.
- C. The Entity seeking personnel has the absolute discretion to determine who will receive an offer to be assigned to a designated shift.
- D. The assignment of personnel to work selected shifts at the other Entity (the "assigned Entity") does not in any way alter the employment of any assigned employees. Assigned employees will, at all times, remain an employee of the Entity in which they are employed (the "employer Entity"). Notwithstanding this paragraph, and for purposes of workers' compensation only, assigned personnel may also be considered an employee of the assigned Entity.
- E. Employees working shifts for the other Entity remain at all times subject to the policies and procedures of their employer Entity. However, personnel working shifts for the other Entity are expected to observe the rules and regulations of their worksite and to provide full cooperation to the command personnel of the employing Entity. Employees of AFMA will only be subject to discipline and termination by their employer Arizona Fire & Medical Authority. Likewise, employees of EMFD will only be subject to discipline and termination by their employer El Mirage Fire Department.
- F. The employer Entity is exclusively responsible for payment of wages earned by its employees while its employees are on assignment to the other Entity.

2. Qualifications and Standards

Each Entity represents to the other that all personnel listed as being available for work pursuant to this Agreement are fully qualified to perform the responsibilities associated with their listed qualifications as if they were responding to an incident under an automatic aid agreement.

3. Insurance and Indemnification

- A. Personnel working for the other Entity remain insured by their employing organization and shall not make any claims upon the insurance of the other Entity for claims arising during employment by employing organization.
- B. Each Entity will maintain commercially reasonable workers' compensation insurance to cover all risks reasonable and customary to the fire service. Each Entity will name the other organization as an additional insured on their workers' compensation policy and will provide proof of additional insured status at the request of the other Entity. In the event a workers' compensation claim arises while an individual is working for the other Entity pursuant to this Agreement, each Entity agrees that the workers' compensation coverage of the assigned Entity for whom the individual was performing services at the time the claim arose shall be the primary insurance the employee looks to for coverage and the employee's employer Entity workers' compensation coverage shall be secondarily liable for the claim. Each Entity agrees that its own workers' compensation coverage for its own employees shall be deemed excess and not contributory insurance when its employees are performing engagements for the other Entity.
- C. Each Entity shall indemnify, hold harmless and agrees to defend the other, including its agents and employees from all suits and actions, including reasonable attorneys' fees and other costs of litigation and judgement of every name and description against the other arising out of a loss, damage or injury to persons or property by reason of any action or omission by the Entity employing personnel pursuant to this Agreement, including their agents and employees or arising out of any defects in the methods, equipment or tools used or in the manner of carrying out services under this Agreement, including workers' compensation claims, unemployment compensation or unemployment disability claims.

4. Reimbursement of Costs

- A. Personnel engaged pursuant to this Agreement shall be paid by their employer as if they performed services for their employer pursuant to the employing Entity's policies and procedures.
- B. Each Entity that has paid its own personnel for performing services for the other Entity shall bill the other Entity for the Reimbursable Costs it has paid out. "Reimbursable costs" means all wages, insurance, pension and other benefit costs, as well as all state and federal taxes paid. In the event personnel are entitled to overtime compensation as a result of performing services under this Agreement, the amount of overtime compensation paid shall be included in the Reimbursable Costs claim.

C. Bills for reimbursable costs shall be sent to the other Entity within 30 days after the end of a pay-period. Payment shall be made to the other Entity within 30 days of receipt. Each Entity agrees to pay the full amount due under each invoice and that "netting" of one invoice against the other shall not occur. Each Entity represents to the other that it has adequate funds and appropriate budgetary authority to pay any and all claims arising under this Agreement.

5. Term and Termination

- A. This Agreement shall be effective upon the date of the last signature of the Parties.
- B. This Agreement will continue indefinitely unless one of the parties elects to terminate the agreement.
- C. The Agreement may be terminated by either party by giving thirty (30) days written notice to the other.

6. Additional Provisions

- A. This Agreement may only be amended or modified by a written instrument executed by individuals authorized by each Entity.
- B. Each Entity agrees and represents to the other that, at all times during the term of this Agreement, it complies with all laws, rules and regulations of the United States and the State of Arizona.
- C. This Agreement is governed by the laws of the State of Arizona and venue for any dispute resolution shall occur in Maricopa County, Arizona.
- D. It is the intent of all parties to this Agreement to resolve disputes amicably and without litigation. In the event of a dispute the parties agree to meet and confer first. In the event a dispute still remains the parties agree to appoint an appropriately qualified mediator to seek a resolution of the dispute.
- E. No portion of the responsibilities under this Agreement are assignable. All employees engaged under this Agreement shall be full-time employees of their Entity.
- F. No delay in exercising any right or remedy shall constitute a waiver of the right or remedy.
- G. This Agreement represents the entire agreement between the parties and any other agreements, written or oral, are null and void.
- H. Each party represents to the other that the individuals executing the Agreement below have the full legal authority to do so.
- I. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting the Agreement. The parties acknowledge they have consulted with such legal counsel as they deem necessary and appropriate.

IN WITNESS THEREOF, the following have duly executed this Agreement:

CITY OF EL MIRAGE

**ARIZONA FIRE AND MEDICAL
AUTHORITY**

By: J. Crystal Dyches
Its: City Manager

By: Rob Biscoe
Its: Fire Chief

ATTEST:

ATTEST:

City Clerk

Board Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

District Attorney