

After recording, return to:
City Clerk
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

INTERGOVERNMENTAL AGREEMENT
between
City of Flagstaff
and
Westwood Estates Fire District

This intergovernmental agreement (“Agreement”) is entered into this ____ day of _____, 2020, between the City of Flagstaff (“CITY”), an Arizona municipal corporation, with offices at 211 West Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Fire Department (“DEPARTMENT”), and the Westwood Estates Fire District (the “DISTRICT”), a political subdivision of the State of Arizona, created pursuant to A.R.S. §48-261, with offices at _____, Flagstaff, Coconino County, Arizona. DISTRICT and the CITY may be referred to as a Party or, collectively, as the Parties in this Agreement.

RECITALS

- A. The DISTRICT, a political subdivision formed pursuant to A.R.S. § 48-261, seeks to obtain fire and emergency medical services for the residents of its district and is authorized to do so by A.R.S. § 48-805(7).
- B. The CITY, through its DEPARTMENT, operates, manages and maintains fire and emergency medical services.
- C. The DISTRICT desires that the CITY, through the DEPARTMENT, provide fire and emergency medical services for incidents occurring within the boundary response area of the DISTRICT.
- D. The CITY is authorized to enter into agreements to provide fire protection and emergency medical services by Flagstaff City Code Section 5-01-001-0003 and is willing to provide such services to the DISTRICT in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for services among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. Duration and Termination of Agreement.

This Agreement shall become effective upon execution by the parties. The DEPARTMENT will begin service to the DISTRICT at 12:01 AM on July 1, 2020 and, subject to early termination or

renewal as provided below, will continue to provide services as described in this Agreement to the DISTRICT with the Agreement terminating at 11:59 PM on June 30,2025. If the parties reach agreement under Section 4.1.3, they shall amend this Agreement to extend the duration for five (5) years, with the Agreement terminating on June 30, 2030. The CITY shall also have the right to terminate this Agreement upon written notice thereof to DISTRICT in the event the DISTRICT fails to make any payment due the CITY under this Agreement within thirty (30) calendar days after receiving written notice from the City that such payment is past due.

2. Level of CITY Services

The CITY, through the DEPARTMENT, agrees to provide fire and emergency medical services to the DISTRICT, twenty-four (24) hours a day, seven (7) days a week as follows:

2.1. Personnel. All DEPARTMENT response personnel will be certified as firefighters under state of Arizona guidelines and certified to the minimum level of Emergency Medical Technician. All response personnel will have been trained to the operations level for Hazardous Materials. 2.2 Staffing Levels. Each fire apparatus responding to an incident within the DISTRICT will be staffed with a minimum of three fire/emergency medical services personnel (collectively, "One Unit"). On confirmed structural fires or larger wild land fires, additional units will be dispatched, as well as a Chief Officer who will assume command operations. A two (2) person rescue vehicle may respond to calls for emergency medical services if it is the closest fire unit available. A two (2) person rescue vehicle may also respond as part of a full force contingent for fire related events.

2.3 Station Locations and Response Assignments. The DEPARTMENT will provide services to the DISTRICT in a manner consistent with that provided within the City of Flagstaff. The DEPARTMENT will not have equipment or personnel stationed at existing or proposed Westwood Estates facilities. The initial response to a structure fire will be a complement of fire companies and a Chief Officer that will provide a minimum of fourteen (14) personnel. An automatic fire alarm sounding will receive a One Unit response and an emergency medical services request will receive the closest available unit which could be an engine or a two (2) person rescue vehicle response. The CITY and the DISTRICT both acknowledge, response times to the DISTRICT will vary, depending upon the circumstances of each call and availability of emergency response units. The CITY may alter staffing assignments, the type of equipment responding, and service levels provided to the DISTRICT if such changes are consistent with changes in CITY practices and procedures.

2.4 Emergency Communications Center (911). The DISTRICT will make every effort to ensure that its residents direct all requests for assistance to the combined City/County Emergency 911 Dispatch Center. This facility is staffed and operated by trained emergency dispatchers 24 hours a day, seven days per week. All communications are time-stamped and radio transmissions are voice recorded. Dispatchers maintain constant contact with responding and on-scene personnel to provide support and to dispatch additional resources.

2.5 Fuel Management. The DEPARTMENT will assist groups or businesses within the

DISTRICT, such as homeowners' associations, developers and others, with the development and implementation of fuel management maintenance plans and will provide periodic assessments of the plans. The DEPARTMENT will report to the DISTRICT any maintenance or storage concerns that it may observe.

2.6 Hydrant Testing. The DEPARTMENT will conduct annual hydrant maintenance testing on all fire hydrants within the DISTRICT with permission of the appropriate water company. The DEPARTMENT will notify the DISTRICT and the appropriate water company in writing with regard to any problems or repair work that is necessary. The DISTRICT will cooperate with the DEPARTMENT and with the appropriate water company to seek to insure that all hydrants are functional and can provide the necessary fire flow to meet the design of the protection system in the DISTRICT. In no event will the DEPARTMENT be liable for any injury, damages or other loss resulting from a failure of the fire hydrants within the DISTRICT to provide the necessary fire flow to meet the design of the protection system in the DISTRICT.

2.7 Road Access. The DISTRICT will cooperate with the DEPARTMENT to ensure that all roadways have clear access for emergency response vehicles. In no event will DEPARTMENT be liable for any injury, damages or other loss resulting from a failure of the DISTRICT to provide clear access for the DEPARTMENT'S emergency response vehicles.

2.8 Personnel and Equipment Shortages. DISTRICT acknowledges and agrees that the occurrence of a major fire, several concurrent fires, other emergency, reduction in force, road closure, or other situation resulting in a shortage of available personnel or equipment may cause DEPARTMENT to respond with fewer units or personnel than specified above.

2.9 Response Time. DISTRICT acknowledges and agrees that DEPARTMENT response times are subject to variations due to existing weather conditions, travel distance for fire units already engaged elsewhere, traffic conditions, property identification and the provision of standard access and routing information to property or individuals, and that under these circumstances DEPARTMENT may be unable to respond, or be delayed in responding, to an emergency call in the DISTRICT.

3. Disposition of Property

During the term of this Agreement any property purchased by the CITY with its own funds will remain the property of the CITY, and any property purchased by the DISTRICT with its own funds will remain the property of the DISTRICT.

4. Fee for Service.

4.1 The DEPARTMENT will provide the services described in this Agreement for the fees described below:

Pursuant to Flagstaff City Code, Section 5-01-001-003, the fee shall be determined as follows:

Westwood Estates Fire District's Assessed Valuation for 2021 / 100 x City's combined primary and secondary tax rates x 18% = Base Rate.

Westwood Estates Fire District's Base Rate shall be as follows:

$$\$3,962,571 \text{ (AV)} / 100 = \$39,625.71$$

$$\$39,625.71 \times 1.551 = \$61,459.48$$

$$\underline{\$61,459.48 \times 18\%} = \underline{\$11,062.71}$$

$$\text{BASE CONTRACT RATE} = \$72,522.19$$

This amount would be the contract rate for the first year (2020-2021). Each additional year after, for the next four years, would see an increase of 2%.

2021-22	73,972.63
2022-23	75,452.08
2023-24	76,961.12
2024-25	78,500.35

4.2. The base contract rate shall be increased on an annual basis by two percent (2%).

4.3 Method of Payment. The DISTRICT shall make 2 payments with fifty percent (50%) of the total annual amount due no later than November 15 and the remaining fifty percent (50%) due by May 15 each year.

4.3.1 Late Payment. All amounts due from the DISTRICT to the CITY that are not paid by DISTRICT when due shall be subject to a penalty of ten percent (10%) of the amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. Interest shall not accrue prior to execution of this agreement.

4.4 Equipment Purchases. The CITY will be solely responsible for the purchase of its equipment, if any, and will make such purchases within its discretion.

5. Liability and Indemnification

5.1 Force Majeure. The CITY, the DEPARTMENT and their agents, officials and employees, shall not be liable to the DISTRICT for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the CITY.

5.2 The City desires to serve the District in a manner consistent with service extended to any part of the City's Fire Protection System that provides coverage to residents of the City of Flagstaff, its Mutual Aid Partners, and contract/IGA holders. However, the CITY shall not be liable to the DISTRICT or DISTRICT's residents for failure to comply with any of the terms and conditions of this Agreement where any failure to comply arises from CITY requirements to provide services to any or all parts of the entire service system, including its own residents,

Mutual Aid Partners, or contract/IGA holders within its jurisdictional limits.

5.3 Indemnification. Each party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6. Dispute Resolution

6.1 Litigation and Attorneys Fees. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys’ fees and court costs from the non-prevailing party.

7. Notices

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given:

If to CITY:

Mark Gaillard, Fire Chief
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

If to DISTRICT:

Chris Boalich, Chairperson
Westwood Estates Fire District Board
8905 Kochfield Road
Flagstaff, Arizona 86001

Copy to:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

8. General Provisions

8.1 Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the CITY and the DISTRICT agree that they shall retain sole responsibility and authority over their respective employees.

8.2 Authorization to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

8.3 Integration; Modification. Each party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified, but no earlier than the date of the recording by the County Recorder.

8.4 Cancellation for Conflict of Interest. Pursuant to A.R.S. §38-511, either the CITY or DISTRICT may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.

8.5 Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.6 Termination for Lack of Funds. The DISTRICT agrees to levy in good faith an amount sufficient to pay for the services to be provided by the CITY under this Agreement. If the DISTRICT determines, based upon the County Treasurer's tax collection data, and the City concurs that there will not be sufficient tax revenues available to the DISTRICT to pay the fee for services described in this Agreement, the DISTRICT may terminate this Agreement by giving the CITY ninety (90) days' notice of the lack of available funds. Termination of this Agreement will not relieve the DISTRICT of the obligation to pay the CITY the pro rata portion of the annual amount due before the termination date of the Agreement. In the event of termination, CITY agrees to refund to DISTRICT on a pro rata basis fees paid by DISTRICT in advance for any period following the date of termination.

8.7 Non-Discrimination. Each PARTY warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, pregnancy, religion, sex, sexual orientation, gender identify, genetic information, age, national origin, disability, veterans status, care-giving responsibilities, or familial status shall have equal access to employment opportunities. Each PARTY shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Americans with Disabilities Act of 2008 as amended, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community

Development Act of 1974, the Age Discrimination Act of 1975, Age Discrimination and Employment Act of 1967 as amended, Genetic Information Nondiscrimination Act of 2008.

~~The Parties shall comply with the provisions of Arizona Executive Order 2009-09 which is incorporated by reference as if fully set forth in this Agreement.~~

1. 8.8 Legal Arizona Workers Act Compliance

PARTIES are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the “state and federal immigration laws”). Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws.

A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the Party who breaches may be subject to penalties up to and including termination of the Agreement.

Each Party retains the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other Party is complying with the warranties regarding compliance with the state and federal immigration laws.

~~Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. Sec. 41-4401, each Party warrants to the other Party that the warranting Party and its subcontractors, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. Sec. 23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subcontractors is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Party or any subcontractor who works on this Agreement to ensure compliance with this warranty.~~

8.9 Compliance with All Laws. Both Parties will comply with all applicable Federal, State, County and City laws, regulations and policies.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written above.

City of Flagstaff

Westwood Estates Fire District



Paul Deasy, Mayor

Chairperson

Attest:

City Clerk

Attorney's Approval:

Approved, pursuant to A.R.S. § 11-952(D), as being in proper form and within the powers and authority granted under the laws of this State.

City Attorney

Attest:

*Mike Hanks via Zoom due
to COVID restrictions
Tammy Scheffer*

Attorney's Approval:

Approved, pursuant to A.R.S. § 11-952(D), as being in proper form and within the powers and authority granted under the laws of this State.

Attorney for the DISTRICT