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**AMENDED AND RESTATED JOINT POWERS  
AIRPORT AUTHORITY AGREEMENT**

Janice K. Brewer  
Secretary of State

By: [Signature]

This Amended and Restated Joint Powers Airport Authority Agreement (the "Agreement") is made and entered into as of 22<sup>nd</sup> day of May 2006 pursuant to Arizona Revised Statutes Title 28, Chapter 25, Article 8, by and among the Town of Gilbert, a municipal corporation ("Gilbert"), the City of Mesa, a municipal corporation ("Mesa"), the Town of Queen Creek, a municipal corporation ("Queen Creek"), the Gila River Indian Community ("Community") and the City of Phoenix ("Phoenix").

The parties to this Agreement agree as follows:

**Section 1 Recitals.**

1.1. The United States closed Williams Air Force Base ("Williams") as an operating location of the United States Air Force ("USAF").

1.2. Williams had existing aviation facilities that are suited to be operated and developed as an airport facility pursuant to the Joint Powers Airport Authority found in Arizona Revised Statutes, Title 28, Chapter 25, Article 8 (previously known as Title 2, Chapter 3, Article 3).

1.3. The original Joint Powers Airport Authority Agreement was made and entered into as of 19th day of May, 1994 by and among the Gilbert, Mesa, and Queen Creek and recorded on May 19, 1994 as Instrument No. 94-0400695, official records of Maricopa County, Arizona.

1.4. By entering into the original Joint Powers Airport Authority Agreement, the parties to that Agreement desired to establish a Joint Powers Airport Authority to develop, reuse, operate, and maintain the existing Williams aviation facilities. Upon establishment of the Joint Powers Airport Authority, the new facilities have been known as the Williams Gateway Airport Authority ("Airport Authority").

1.5. Through the original Joint Powers Airport Authority Agreement, it was the desire of each party that the Joint Powers Airport Authority Agreement take the place of and cancel the Intergovernmental Agreement (Williams Air Force Base-Management and Operation) that was recorded on December 14, 1992 at Recorder's No. 92-0712408 in the records of Maricopa County, Arizona, the substance of which was incorporated in the original Joint Powers Airport Authority Agreement.

1.6. A First Amendment to the Joint Powers Airport Authority Agreement (the "First Amendment") was made and entered into on the 14th day of December 1995 by and among the Gilbert, Mesa, Queen Creek, and the Community to include the Community as a member of the Airport Authority.

1.7. Gilbert, Mesa, Queen Creek and the Community desire to amend the Joint Powers Airport Authority Agreement to include the City of Phoenix ("Phoenix") as a member of the Airport Authority.

1.8. Phoenix desires to become a member of the Airport Authority.

1.9. The parties agree that Phoenix shall be a member of the Airport Authority, effective as of July 1, 2006.

## **Section 2 Formation of Authority.**

2.1. Upon execution of this Agreement by all the parties, an amended and restated Joint Powers Airport Authority is formed pursuant to Arizona Revised Statutes Title 28, Chapter 25, Article 8, with all powers granted to it under Arizona law.

## **Section 3 Board of Directors and Officers.**

3.1. Upon execution of this amended and restated Joint Powers Airport Authority Agreement, each party shall appoint one representative to act with the authority of the appointing party for the purpose of implementing this Agreement. Each party shall also designate at least one alternate representative to act with the authority of the appointing party in the absence of the representative. The representative and all alternates shall be members of the governing body of the appointing party. Notice of such appointment and of any subsequent replacement appointment shall be delivered in writing to the other members of the Airport Authority.

3.2. The appointing authority as to each party hereto shall be each party's respective Council.

3.3. Each representative so appointed shall be a member of the Board of Directors of the Airport Authority. The Board of Directors shall consist of only the representatives appointed by the members of the Airport Authority. In the absence of the representative or alternate representatives, any member of the governing body attending Board meetings or otherwise implementing this Agreement is presumed to act *with* the authority of the governing body.

3.4. The Board of Directors may establish a fixed time, date and place for regularly scheduled meetings. Special meetings of the Board may be called by the Chairman on, no less than 24 hours' notice to each Director, either personally or by mail or by facsimile or by telephone. All meetings of the Board shall be conducted in accordance with the Open Meeting Law, Arizona Revised Statutes, Section 38-431 et seq. Public notice of all meetings of the Board shall be posted by the respective Clerk of each member of the Airport Authority at the official posting location of such jurisdiction in compliance with the Open Meeting Law. Nothing herein shall prohibit the holding of an emergency session on less than 24 hours' notice in accordance with the provisions of the Open Meeting Law. A Board member may attend a Board meeting via telephonic

conference. The Board may conduct a telephonic Board meeting so long as such telephonic meeting is conducted in accordance with the provisions of the Open Meeting Law.

3.5. A majority of the membership of the Board of Directors shall constitute a quorum. A quorum shall be necessary to conduct the business of the Board. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present at the meeting may recess the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.6. The Board of Directors shall annually choose from its members a Chairman, a Vice Chairman and a Secretary, each of whom shall serve at the pleasure of the Board of Directors. The Board of Directors at any time may appoint such other officers and agents as it shall deem necessary who shall hold their offices at the pleasure of the Board of Directors and who shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

3.7. The Chairman, or in the Chairman's absence, the Vice Chairman, shall preside at all meetings of the Board of Directors.

3.8. The Secretary shall see that the minutes of all meetings of the Board of Directors are kept.

#### **Section 4 Airport Authority Staff.**

4.1. The Board of Directors shall employ an Executive Director and such other managers and staff as the Board of Directors shall deem necessary to manage and conduct the operations, maintenance and development of the Airport Facilities in accordance with the provisions of this Agreement and policies and procedures approved by the Board of Directors. The Executive Director shall report directly to the Board of Directors and shall supervise the Airport Authority Staff.

#### **Section 5 Ownership of Airport Facilities.**

5.1. Upon conveyance by the USAF to the Airport Authority, title to all or a portion of the certain aviation facilities, both real and personal property, formerly owned and operated by the USAF at Williams situated in the County of Maricopa, State of Arizona ("Airport Facilities"), shall be held by the Airport Authority.

5.2. The Airport Authority may acquire or convey real and personal property from time to time.

5.3. Development, reuse, operation, and maintenance of the Airport Facilities shall be overseen by the Board of Directors and shall be conducted in accordance with the provisions of this Agreement and policies and procedures developed hereunder.

5.4. Each member agrees that should said member withdraw from the Airport Authority pursuant to Section 10, effective upon such withdrawal, any ownership rights of said member in the Airport Facilities shall also terminate. A member shall not be deemed to have withdrawn from the Airport Authority simply by virtue of the termination of this Agreement pursuant to Section 13. Each member hereto also agrees to execute upon withdrawal any and all documents necessary to evidence and effectuate such withdrawal.

**Section 6 Repayment of Funds Advanced by Members of the Airport Authority.**

6.1. The Airport Authority recognizes that payments previously made by members of the Airport Authority shall be considered loans and shall be reimbursed to such members by the Airport Authority at such time as the Airport Authority's Board of Directors deems appropriate. In addition, the Airport Authority recognizes that any future payments made to the Airport Authority by the Airport Authority members shall be considered loans and shall be reimbursed to the members by the Airport Authority at such time as the Airport Authority's Board of Directors deems appropriate.

**Section 7 Powers of The Joint Powers Airport Authority.**

The Joint Powers Airport Authority, acting through the Board of Directors, may:

7.1. Own, operate, and maintain property and facilities related to aviation, air navigation, and aerospace.

7.2. Own and lease property and facilities that are not related to aviation, air navigation, and aerospace.

7.3. Prescribe user fees and charges.

7.4. Operate facilities and construct improvements.

7.5. If authorized by the members of the Airport Authority, exercise the right of eminent domain in the names of the members.

7.6. Engage employees and consultants.

7.7. Enter into contracts, leases, and development agreements.

7.8. Enter into agreements with the State of Arizona, any political subdivision of the State, or the federal government.

7.9. Prepare and receive annual operating budgets.

7.10. Borrow and issue revenue and funding bonds.

7.11. Sue and be sued.

7.12. Exercise incidental powers as may be necessary to the exercise of the powers prescribed in this Section and to implement the responsibilities, goals, and purpose of the Airport Authority.

## **Section 8 Voting Rights.**

8.1. Each member of the Board of Directors is entitled to one vote, and a motion will carry if supported by a majority of the quorum unless a member requests that a weighted vote be taken. If a weighted vote is requested, then the following shall apply:

8.1.1 For Fiscal Years 2007 through 2011, each member of the Board of Directors is entitled to a weighted vote equal to the member's contribution to the local share of the annual operating budget expressed as a percentage of the total local share of the current annual budget. The initial weighted vote percentages shall become effective upon the adoption of the initial budget.

8.1.2 For Fiscal Years 2012 and beyond, each member of the Board of Directors is entitled to a weighted vote equal to that member's cumulative investment as a percentage of the total investment made by all current members beginning in 1993 when the initial Intergovernmental Agreement Group was formed.

8.1.3 A two-thirds majority is required for a motion to carry.

8.2. Weighted voting may not be invoked for votes being taken regarding modifications to the approved airport layout plan and airport master plan, or for adjustments to the percentage contributions of members.

## **Section 9 Operating Budget.**

9.1. The fiscal year of the Airport Authority shall run from July 1 to June 30.

9.2. The Board of Directors shall, by April 1 of each fiscal year, recommend to the members of the Airport Authority an annual operating budget for the Airport Authority for the next fiscal year and shall state the proportion of the Airport Authority's annual operating budget to be provided by each member. At least thirty (30) days before the budget is recommended to the members of the Airport Authority by the Board of Directors, the Board may consider adjustments to the percentage contributions of each member. Adjustments to the percentage contributions of any member must be approved by a unanimous vote.

9.3. By June 15 of each year, the Board of Directors shall, if necessary due to the addition or withdrawal of members, have decided by a unanimous vote on a reallocation of the percentage contributions among the members or have assigned each member its pro rata increase or decrease in contribution.

9.4. The governing bodies of the Airport Authority's members, including any new members admitted pursuant to Section 11 shall approve and adopt the operating budget recommended by the Board, as revised by Section 9.3, by June 30 of each year or withdraw from the Airport Authority pursuant to Section 10.

9.5. The Board of Directors may from time to time recommend to the members of the Airport Authority amendments to the approved and adopted operating budget. The governing bodies of the members shall approve amendments to the operating budget or withdraw from the Airport Authority pursuant to Section 10.

9.6. The Airport Authority shall adopt and periodically amend a reuse and development plan and a capital improvements plan. Expenditures for or by the Airport Authority shall be consistent with these plans. In addition, expenditures by the Airport Authority shall be limited to those items that directly relate to or benefit the operation and development of the Airport Facilities and the Airport Authority.

9.7. For purposes of forming the Airport Authority and approval of the initial budget, the parties waived all notice and procedural requirements provided herein.

#### **Section 10 Withdrawal From Airport Authority.**

10.1. No member shall have the right to withdraw from the Airport Authority during the term of this Agreement except as provided in this Section.

10.2. Thirty days prior to withdrawal, a member that intends to withdraw from the Airport Authority must provide a written notice of intent to withdraw to the members of the Airport Authority, but if a member provides a notice of intent to withdraw between thirty and forty-five days prior to the withdrawal deadline, then other members may submit notices of intent to withdraw up to 14 days prior to the withdrawal deadline. The withdrawal deadline shall be May 30 of each fiscal year.

10.3. The withdrawing member shall pay its pro rata budget allocation for the current fiscal year and its pro rata share of any outstanding obligations to which the withdrawing member has obligated itself. Any obligations of the withdrawing member shall remain outstanding until fully paid and satisfied.

#### **Section 11 Admission To Airport Authority.**

11.1. A city, town, or county may be admitted to the Airport Authority upon: (1) written request to the existing members of the Airport Authority prior to May 30 of each fiscal year; (2) the unanimous approval of the existing members of the

Airport Authority by May 30 of each fiscal year but after recommendation of the operating budget to the members of the Airport Authority; and (3) execution, acknowledgement, and deliverance to the Airport Authority of such instruments as the members may deem necessary or advisable to effect the admission of such city, town, or county as an additional member, including (without limitation) the written acceptance and adoption by such city, town, or county of the provisions of this Agreement.

11.2. The fiscal obligations of a new member are not effective until the beginning of the new fiscal year.

11.3. The parties acknowledge that Gilbert, Mesa, and Queen Creek waived all notice and procedural requirements for admission of the Community when it became a member of the Airport Authority, effective July 1, 1995.

## **Section 12 Effective Date.**

12.1. This Agreement shall become effective (the "Effective Date") on the later of its filing with the Arizona Secretary of State and the Maricopa County Recorder in accordance with Section 19 hereof.

## **Section 13 Termination of Airport Authority.**

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

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

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

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

13.3.2 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.

13.3.3 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 14 Annual Report to Legislature.**

The Chairperson of the Board of Directors of the Airport Authority shall annually present a report of the activities of the Airport Authority to the State House of Representatives, Ways and Means Committee, and the State Senate Finance Committee.

**Section 15 Governing Law.**

This Agreement and the obligations of the members hereunder shall be interpreted, construed and enforced 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 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 16 Amendments.**

This Agreement may be amended only by an instrument in writing signed by all of the members.

**Section 17 Legal Counsel Review.**

This Agreement shall be submitted to the legal counsel for each party hereto prior to its execution by said party, in order to determine whether this Agreement is in proper form and is within the powers and authority granted under the laws applicable to said party. Attached hereto and incorporated herein by reference is a copy of said written determination of each party's legal counsel.

**Section 18 Notices.**

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  
55 North Center Street  
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 Phoenix  
3400 E. Sky Harbor Blvd.  
Suite 3300  
Phoenix, Arizona 85034-4405  
Attention: Aviation Director

**Section 19 Filing.**

A completely executed copy of this Agreement shall be filed with the Arizona Secretary of State, the Maricopa County Recorder, and the City Clerk, or the Town Clerk, as appropriate, of each other party hereto.

**Section 20 Remedies.**

In the event of any violation or threatened violation by any party to this Agreement, of any of the terms, restrictions, acknowledgements, covenants or conditions of this Agreement, the other parties hereto shall be entitled to full and adequate relief by injunction and all other legal and equitable remedies.

**Section 21 Cancellation.**

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

**Section 22 Approving Action.**

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 23 Federal Aviation Administration.**

The parties recognize that contributions by Phoenix will be obtained from its Aviation Department. Those contributions are subject to review by the Federal Aviation Administration. Nothing herein requires Phoenix to contribute funding contrary to the Federal Aviation Administration's policies and procedures.

**Section 24 Bond Ordinances.**

Notwithstanding any of the provisions in this Agreement, Phoenix is not assuming any obligation in connection with this Agreement that will have priority over or parity with any bond issued by Phoenix.

**Section 25 Audit Records.**

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 Airport Authority's books and records directly pertinent to this Agreement. Nothing herein requires the Airport Authority to create or maintain any records that the Airport Authority does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as provided in Section 12.

Attest:

By *Catharine A. Tempert*  
City Clerk

TOWN OF GILBERT

By *[Signature]*  
Its Mayor

Attest:

By *Sonda Cochee*  
City Clerk *Deputy*

CITY OF MESA

By *Rene Hawker*  
Its City Manager *Mayor*

Attest:

By *Jennifer Robinson*  
Town Clerk

TOWN OF QUEEN CREEK

By *Wendy Feldman-Kerr*  
Its Mayor

Attest:

By *Janice J. Stewart*

GILA RIVER INDIAN COMMUNITY

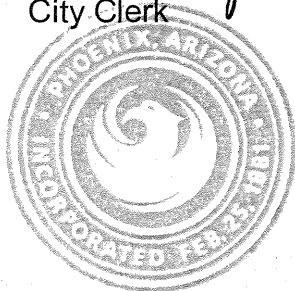
By *[Signature]*  
Its Governor

Attest:

By *Haris Parviz*  
City Clerk

CITY OF PHOENIX

By *[Signature]* Aviation Director  
for Its City Manager



DETERMINATION OF LEGAL COUNSEL

The amended and restated Joint Powers Airport Authority 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.

6/7/06  
Date

Jennifer E. Lopez  
Gila River Indian Community  
Attorney

6/8/06  
Date

Susan Gordon  
Gilbert Town Attorney

6/9/06  
Date

Dale Spurr  
Mesa City Attorney

6/14/06  
Date

ACTING

Nancy Kesteloot  
Phoenix City Attorney

6/8/06  
Date

Freddie B.  
Queen Creek Town Attorney