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Intergovernmental Agreement On Noise Mitigation Flight Procedures

between City of Tempe

and City of Phoenix

INTERGOVERNMENTAL AGREEMENT ON NOISE
MITIGATION FLIGHT PROCEDURES

69311

THIS INTERGOVERNMENTAL AGREEMENT, is made and entered into this 2ND day of SEPTEMBER, 1994, by and between the CITY OF TEMPE, ARIZONA, a municipal corporation of the state of Arizona ("Tempe"), and the CITY OF PHOENIX, ARIZONA, also a municipal corporation of the state of Arizona ("Phoenix") (sometimes jointly referred to as the "Parties").

W I T N E S S E T H

WHEREAS, Phoenix, the current owner and operator of Phoenix Sky Harbor International Airport (the "Airport" or "Sky Harbor"), currently proposes to expand the Airport by adding, among other things, additional terminal facilities and a 7,800-foot third parallel runway (the "Third Runway"); and

WHEREAS, Tempe has experienced for many years, and continues to experience, noise impacts resulting from the operation of aircraft using the Airport; and

WHEREAS, to lessen the noise impacts resulting from jet and large turboprop aircraft arriving from, and departing to, the east over Tempe, aircraft currently follow certain FAA-approved noise mitigation flight procedures, designed, in part, to restrict flights to the airspace over the Salt River riverbed; and

WHEREAS, Phoenix and Tempe agree that it is in the best interests of the citizenry and communities in the Phoenix metropolitan area to resolve differences with regard to the current use and proposed expansion of the Airport; and

WHEREAS, the Parties acknowledge and agree that maintaining and implementing noise mitigation flight procedures and measures at the Airport will facilitate compatible land use planning in communities near the Airport; and

WHEREAS, Phoenix and Tempe recognize the FAA's jurisdiction under Title III of the Federal Aviation Act of 1958, as amended, over navigable airspace, including aircraft flight paths and air traffic rules, regulations and procedures, and, accordingly, have sought from the FAA the strongest possible assurances of permanence of the noise mitigation procedures; and

WHEREAS, Tempe, the FAA and Phoenix have agreed to file a Stipulation and Dismissal to dismiss with prejudice the actions titled City of Tempe v. FAA (9th Circuit, Docket No. 94-70030, 1994) and City of Tempe v. Environmental Protection Agency (D.C. Circuit, Docket No. 94-1063, 1994) on the conditions (a) that the FAA will issue an amended Record of Decision ("ROD") reaffirming its commitment to the use of the noise mitigation procedures and

acknowledging that it will be reasonable for Tempe to rely upon the FAA's ordinary policy of not abandoning or changing flight procedures or the use of noise abatement procedures absent a formal request by the airport proprietor, and (b) that Tempe will not oppose the construction of the Third Runway or an application for a Passenger Facility Charge ("PFC") for such runway and other projects described in the Final Environmental Impact Statement issued by the FAA on November 5, 1993 ("FEIS"); and

WHEREAS, Tempe makes the commitments in this Agreement based upon Phoenix's commitments made herein, and upon the FAA's declaration and assurance that Tempe may reasonably rely upon the FAA's ordinary policy of not abandoning or changing flight procedures or the use of noise abatement procedures absent a formal request by the airport proprietor or operator;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Phoenix and Tempe hereby agree as follows:

ARTICLE I.
LEGISLATIVE ENABLEMENT

Tempe enters into this Agreement pursuant to its powers under Title 9, Arizona Revised Statutes and Article I of the Tempe City Charter, and Phoenix enters into this Agreement pursuant to its powers under Title 9, Arizona Revised Statutes, Chapter 2 of the Phoenix City Charter and Chapter 4 of the Phoenix City Code.

ARTICLE II.
DEFINITIONS

"Agreement" means this Intergovernmental Agreement by and between Tempe and Phoenix.

"Aircraft operation" means either a landing or a take off by a jet or large turboprop aircraft at the Airport.

"Aircraft Owner/Operator" means the commercial air carrier or other entity or person, including foreign entity or person, responsible for retaining the aircraft pilot and/or operating the aircraft which use the Airport.

"Airport" or "Sky Harbor" means Phoenix Sky Harbor International Airport.

"ATCT" means Phoenix Air Traffic Control Tower.

"Distance Measuring Equipment" or "DME" means navigational equipment used to measure in nautical miles the

slant range distance of an aircraft from ground-based equipment at a fixed location.

"Effective Date" means the first day upon which this Agreement is approved by the respective City Councils of Tempe and Phoenix, executed by the appropriate officials from Phoenix and Tempe and filed with the Recorder of Maricopa County.

"Federal Aviation Administration" or "FAA" means the United States Federal Aviation Administration or other authority, corporation or entity succeeding to the FAA's regulatory or operational powers and functions applicable to this Agreement.

"Large turboprop aircraft" means all turboprop aircraft required to be certified and operated pursuant to F.A.R. § 121 or § 135 or any general aviation turboprop aircraft with a gross weight exceeding 12,500 pounds.

"Modification" or "modify," as applied generally to flight procedures in use at the Airport and to the noise mitigation procedures referenced in Section 1.1 of this Agreement in particular, means to abandon, alter, vary, change, add provisions to or delete provisions from such flight procedures or the noise mitigation procedures in any way, except for temporary deviations made by the aircraft pilot, ordered by the ATCT or required by the FAA, because of an emergency, adverse weather conditions or temporary safety considerations.

"Noise and Flight Track Monitoring System" or "NFTMS" means the system to monitor noise from, and flight tracks of, aircraft using Sky Harbor which Phoenix has agreed by this Agreement to develop and implement at the Airport.

"Operations Commencement Date" means the date upon which aircraft operations are first commenced on the Third Runway.

"Phoenix" means the municipal corporation of Phoenix, Arizona, and its officials, representatives, agents, or attorneys.

"Tempe" means the municipal corporation of Tempe, Arizona, and its officials, representatives, agents, or attorneys.

ARTICLE III
COVENANTS AND AGREEMENTS

1. Noise Mitigation Procedures

1.1 Procedures. The noise mitigation procedures pertinent to this Intergovernmental Agreement are as described on page 15 of the FAA's Record of Decision, dated January 18, 1994 (as amended by that agency's Amended Record of Decision which is described in Exhibit A attached hereto), consisting of the "4 DME," the "side-step" and the "equalization" of departing jet and large turboprop aircraft.

1.2 Modifications. Phoenix shall not request the FAA to abandon or modify these noise mitigation procedures and will affirmatively oppose any abandonment or modification by filing with the FAA Administrator an official written statement of opposition to any abandonment, modification or change of these noise mitigation procedures proposed for reasons other than safety.

1.3 No Restriction on Additional Noise Abatement or Mitigation Measures. Nothing in this Agreement shall be construed to in any way limit or restrict the Parties or the FAA from implementing additional noise abatement or mitigation measures.

2. Additional Studies

No later than the Operations Commencement Date, Phoenix shall submit to the FAA an update of the F.A.R. Part 150 Noise Compatibility Plan and Program for the Airport.

3. Land Use

Tempe and Phoenix agree to take all actions necessary, consistent with applicable laws and regulations, to implement the land use management strategies recommended in the F.A.R. Part 150 Noise Compatibility Plan and Program. Tempe, consistent with applicable laws and regulations, will take such measures as are necessary to ensure that new development undertaken in connection with the Rio Salado project or in noise sensitive environs within its jurisdiction will be compatible with the noise levels predicted in the F.A.R. Part 150 Noise Compatibility Plan and Program.

4. Noise and Flight Track Monitoring

4.1 Noise and Flight Track Monitoring System (NFTMS). Phoenix shall develop and install, and maintain and operate, on a permanent and continuing basis, noise and flight track equipment capable of monitoring compliance with the noise mitigation procedures by (a) specifically identifying by type and flight those aircraft which fail to comply with the noise mitigation procedures relating to the 4 DME and side step procedure, (b) specifically identifying the flight tracks of all non-military jet and large turboprop aircraft departing to and/or arriving from the east, and (c) measuring and reporting, using L_{max}, the single-event noise levels resulting from each noncomplying aircraft at predetermined monitoring locations within Tempe. The NFTMS shall measure noise, and monitor flight tracks, continuously and shall be capable of storing, for an eighteen (18) month period, all such data for immediate or future use.

4.2 Implementation Schedule. The Parties expressly acknowledge that there are substantial lead times for the procurement, development, installation, testing and complete implementation of a noise and flight track monitoring system at Sky Harbor. Accordingly, Phoenix shall use its best efforts to implement the procurement, development, installation, testing and operation of the Noise and Flight Track Monitoring System in accordance with the schedule set forth below.

Implementation Date	Element
Nine months (9) after the Effective Date	Issue bid invitations for procurement, development and installation of the NFTMS
Eighteen (18) months after the Effective Date	Implement operational test system capable of identifying specific aircraft violating the noise mitigation procedures
Twenty-four (24) months after the Effective Date	Implement a complete and fully operational NFTMS with data access availability

4.3 Consultation with Tempe. Phoenix shall consult with Tempe regularly throughout the procurement, development, installation, testing and operation of the Noise and Flight Track Monitoring System, and specifically with regard to: the selection of contractors and/or vendors; development and design of the NFTMS; installation and operation of the NFTMS; specifications for the components and capabilities of the NFTMS, including monitoring and external data acquisition components, the number and site selection of noise monitors located within Tempe, the noise monitoring technology and capability, the flight track monitoring and event correlation technology and capability, data access, acquisition and transfer technology and capability, and computer technology and capability. Phoenix shall be entitled to make all final decisions on all aspects of the NFTMS.

4.4 Data and Software Access. Phoenix shall install a NFTMS with a direct computer link to Tempe in order to provide Tempe with the data generated on a real time basis. Phoenix shall take all reasonable steps necessary (including, if needed, obtaining a license) to ensure Tempe's use of the computer technology and software needed to obtain and utilize data supplied through the computer link, and shall provide Tempe with reasonable training on all hardware and software required to access that computer link.

4.5 Temporary Non-Operation. Nothing contained herein shall restrict Phoenix, as operator of the NFTMS, from shutting the system down in whole or in part from time to time on a temporary basis, as may be required for maintenance, calibration, repairs or similar circumstances.

4.6 Equalization Data. Phoenix shall provide Tempe with data and related information needed to assess compliance with equalization (described in Section 1.1 of this Agreement) both on a twenty-four (24) hour basis and separately for nighttime hours. Phoenix shall monitor departures and use its best efforts to persuade the FAA to compensate for quarterly patterns which, if annualized, would not comply with equalization.

4.7 Notification of Non-Compliance. Within twenty-four (24) regular business hours of any aircraft's failure to comply with the noise mitigation procedures relating to the 4 DME and side-step procedures, Phoenix shall

provide written notice of such non-compliance to the Aircraft Owner/Operator with copies to the FAA Flight Standards District Office and Tempe.

4.8 Publication of Data. Nothing in this Agreement shall restrict or prohibit Tempe from publishing or otherwise making available to the public the NFTMS data or related reports, in a form and manner Tempe chooses.

5. Opposition

Tempe agrees not to oppose, or assist others in opposing the construction of the Third Runway or other projects described in the FEIS, or the imposition of a Passenger Facility Charge for any such other project or projects described in the FEIS.

6. General Provisions and Construction of the Agreement

6.1 Remedies. The Parties may enforce this Agreement or compel performance of this Agreement and compliance with its conditions and terms by filing an action for specific performance of the terms of this Agreement, an action to enjoin a party from violating the terms of this Agreement, or mandamus or other appropriate actions to enforce the terms of the Agreement.

6.2 Attorney's Fees. The prevailing party in any lawsuit to enforce this Agreement, or any subsection of this Agreement, shall be entitled to recover reasonable attorney's fees and costs from the opposing party.

6.3 Liability of Officials, Agents. No elected or appointed officers, nor employees, agents or attorneys of Tempe or Phoenix shall be liable with respect to any action taken (or not taken) in good faith in connection with this Agreement.

6.4 Merger. The January 1994 Letter of Intent by and between Tempe and Phoenix shall merge into this final Intergovernmental Agreement.

6.5 Time is of the Essence. The Parties agree that in the performance of the covenants, agreements, terms and conditions under this Agreement, time is of the essence.

6.6 Amendments, Modifications and Waivers. Any and all amendments, waivers and modifications of this Agreement must be made in writing and signed by the party to be bound.

6.7 Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

6.8 Validity and Enforceability. Phoenix and Tempe agree not to challenge the validity or enforceability of all or any part of this Agreement and will oppose any effort to challenge the validity or enforceability of all or any part of this Agreement.

6.9 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

6.10 Actions Prohibited. Whenever this Agreement prohibits a particular action by any party hereto, the party also is prohibited from causing such action to be taken by a third party.

6.11 Binding on Successors and Conditions on Transfer of the Airport. This Agreement shall be binding upon and shall inure to the benefit of the successors of Phoenix, to the successors and assigns of the Airport and to the successors of Tempe. Phoenix shall expressly condition any transfer of the Airport to a new owner or operator upon such owner or operator accepting the Procedures and the obligations set forth in this Agreement.

6.12 Term of Agreement. The term of this Agreement shall be fifty (50) years.

6.13 Filing with County Recorder. Upon execution, Tempe shall file this Agreement with the Recorder of Maricopa County.

6.14 Interpretation of Agreement. This Agreement shall be interpreted and construed as though drafted by both Phoenix and Tempe. No question or issue of construction or interpretation of any provision of this Agreement shall be resolved by assertion of application of any rule or presumption that the language shall be construed against the drafting party.

6.15 Government Laws. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement.

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

City of Phoenix,
a municipal corporation

FRANK A. FAIRBANKS, City Manager

By: Frank Fairbanks

ATTEST:

Vicky Miel
City Clerk

APPROVED AS TO FORM:

Michael D. Hoare
ACTING City Attorney

City of Tempe,
a municipal corporation

NEIL GIULIANO, Mayor

By: Neil Giuliano

ATTEST:

Helen R. Fowler
City Clerk

APPROVED AS TO FORM:

David R. Merkel
City Attorney

REVIEWED AND APPROVED:

Thelda Williams
THELDA WILLIAMS
Mayor, City of Phoenix

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CITY CLERK DEPT.