

RESOLUTION NO. 9971

RESOLUTION APPROVING, FOR THE PURPOSE OF SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE PHOENIX-MESA GATEWAY AIRPORT AUTHORITY'S ISSUANCE, OF ITS SPECIAL FACILITY REVENUE BONDS (MESA PROJECT), SERIES 2012; AUTHORIZING THE EXECUTION AND DELIVERY OR APPROVAL, AS APPLICABLE, OF A TRUST AGREEMENT, A LEASE, A SUBLEASE, A CONTINUING DISCLOSURE AGREEMENT REGARDING THE SPECIAL FACILITY AND THE PROJECT SITE AND AN AGREEMENT REGARDING THE AMENDED AND RESTATED JOINT POWERS AIRPORT AUTHORITY AGREEMENT; MAKING A PLEDGE OF EXCISE TAXES FOR THE BASE RENT DUE UNDER THE LEASE; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY FOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DECLARING AN EMERGENCY.

WHEREAS, the Phoenix-Mesa Gateway Airport Authority (the "Authority") is a joint powers airport authority authorized and established pursuant to Arizona Revised Statutes, Title 28, Chapter 8, Article 8; and

WHEREAS, the Authority and the City of Mesa, Arizona (the "City") have determined that it will be beneficial to the Authority to finance, design, construct, lease and sublease an approximately One Hundred Eighty-One Thousand Two Hundred Sixty (181,260) square foot aircraft maintenance, repair and overhaul ("MRO") facility (the "Special Facility") located on that certain real property at the Airport located at 7706 E. Velocity Way, Mesa, Arizona (Lot 42 B/C) and described as lot 42, consisting of approximately thirteen (13) acres of land area (the "Project Site" and together with the Special Facility, the "Project"); and

WHEREAS, the City has determined that it will be beneficial to the City to lease the Project from the Authority and sublease the Project to a third party capable of operating the Special Facility as a MRO facility; and

WHEREAS, in order to finance the costs of financing, designing and constructing the Special Facility on the Project Site, the Authority deems it necessary and desirable for the Authority to issue its Special Facility Revenue Bonds (Mesa Project), Series 2012 (the "Series 2012 Bonds") in the aggregate principal amount of not to exceed \$22,000,000 and

WHEREAS, the Authority will enter into a Trust Agreement, dated as of February 1, 2012 or such later date as set forth in the Bond Purchase Agreement (as defined below), by and between the Authority and U.S. Bank National Association (the "Trustee") regarding the execution and delivery of the Series 2012 Bonds (the "Trust Agreement"); and

WHEREAS, the City will approve certain provisions of the Trust Agreement pertaining to the City's role and responsibilities thereunder; and

WHEREAS, the City will enter into a Property and Special Facility Lease Agreement, dated as of February 1, 2012 or such later date as set forth in the Bond Purchase Agreement, to lease the Project from the Authority through July 1, 2053 (the "Lease"); and

WHEREAS, the City has located a MRO facility operator and the City will enter into a Sublease Agreement to sublease the Project to Able Engineering and Component Services, Inc. ("Able") for a term all or a portion of the term of the Lease (the "Sublease"); and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires a public hearing in the area in which a bond financed facility is located, and for that purpose, the Authority, or its designee, held a public hearing on January 23, 2012 concerning the approval of the Project and the approval of the Series 2012 Bonds; and

WHEREAS, the form of Notice of Public Hearing which was published on January 7, 2012 in the *Arizona Republic* is attached hereto as Exhibit "A"; and

WHEREAS, a report on such hearing has been presented to the City Council of the City of Mesa, Arizona (the "Council"); and

WHEREAS, information regarding the Project has been presented to the Council;
and

WHEREAS, the Code requires the approval of the Council, as the highest elected official or body in which a bond financed facility is located, before the issuance of the Series 2012 Bonds; and

WHEREAS, the Authority adopted Resolution No. 12-01 on January 23, 2012 authorizing the issuance and sale of the Series 2012 Bonds; and

WHEREAS, the Series 2012 Bonds will be payable from and secured by a pledge of and lien on the Lease Revenues (as defined in the Trust Agreement) and the Series 2012 Bonds do not and shall not represent or constitute a debt or pledge of the full faith and credit of the City or the taxing power of the City (other than the excise taxing power of the City) or of the Authority, the State of Arizona or of any political subdivision or other local agency hereof; and

WHEREAS, the Authority will enter into a Bond Purchase Agreement with Piper Jaffray & Co. and Stifel Nicolaus & Company, Incorporated dba Stone & Youngberg, a division of Stifel Nicolaus (the "Underwriters") to sell its Series 2012 Bonds (the "Bond Purchase Agreement"); and

WHEREAS, the City will enter into a Letter of Representation of the City of Mesa, Arizona (the "Letter of Representation") addressed to the Authority and the Underwriters as part of the sale of the Series 2012 Bonds; and

WHEREAS, the City and the Authority each desire to enter into an Agreement Regarding the Amended and Restated Joint Powers Airport Authority Agreement (the

"Agreement") in order to establish how payments made by the City pursuant to the Lease shall be applied under the terms of the Amended and Restated Joint Powers Airport Authority Agreement entered into as of May 22, 2006 (the "Joint Powers Agreement") by and among the City, the Town of Gilbert, the Town of Queen Creek, the City of Phoenix, and the Gila River Indian Community, as the members of the Authority; and

WHEREAS, a proposed form of the following documents have been filed with the City Clerk for this meeting:

- (i) Trust Agreement;
- (ii) Lease;
- (iii) Sublease;
- (iv) Bond Purchase Agreement, which includes the Letter of Representation as an exhibit;
- (v) Agreement;
- (vi) Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"); and
- (vii) Preliminary Official Statement relating to the Series 2012 Bonds (the "Preliminary Official Statement").

WHEREAS, all terms not otherwise defined herein shall have the meanings set forth in the Trust Agreement or the Lease; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MESA, ARIZONA:

Section 1. Findings and Approval of the Transaction. The Mayor and Council hereby find and determine that it is critically important to the interests of the City for the Phoenix-Mesa Gateway Airport to expand its industrial aviation functions, including but not limited to, offering onsite general, business and commercial aviation maintenance, repair and overhaul services through a MRO facility. The Mayor and Council hereby approve the transaction described in the Recitals of this Resolution and in the documents approved by Section 2 of this Resolution which will cause the finance, design, construction, lease and sublease of the Special Facility on the Project Site.

Section 2. Authorization and Approval of Documents. The form, terms and provisions of the Trust Agreement, the Lease, the Sublease, the Letter of Representation, the Agreement and the Continuing Disclosure Certificate in substantially the form of such documents (including the Series 2012 Bonds and other exhibits to such documents) presented at this meeting are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor, any member of the Council or the City Manager, the execution of each such document being conclusive evidence of such approval. The Mayor, any member of

the Council or the City Manager and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Trust Agreement, the Lease, the Sublease, the Letter of Representation, the Agreement and the Continuing Disclosure Certificate and to take all action to carry out and comply with the terms of this Resolution and such documents.

Upon execution of the Trust Agreement, the Lease, the Sublease, and the Bond Purchase Agreement by the parties thereto, the Memorandum of Understanding dated March 21, 2011, by and among the Authority, the City and Able regarding the design, construction and lease of an aircraft maintenance facility is terminated and is of no further force and effect and all provisions thereof are superseded by the terms of the documents approved by this Resolution.

Section 3. Pledge. The City hereby pledges, on a subordinate basis as described below, its Excise Taxes (as defined hereafter) to the payment of the Base Rent due pursuant to the Lease. Pursuant to the Trust Agreement and the Lease, the term "*Excise Taxes*" shall mean all unrestricted excise, transaction, franchise, privilege and business taxes, state shared sales and income taxes, state shared vehicle license taxes, fees for licenses and permits, fines, forfeitures and state revenue sharing that are levied by and paid to the City or contributed, allocated or paid to the City and not earmarked by the contributor or the City for a contrary or inconsistent purpose. Excise Taxes shall not include excise taxes levied and paid to the City under (a) the 0.25% transaction privilege (sales) and use tax approved by the voters of the City on May 19, 1998 the use of which is restricted to health, safety and other quality of life uses (b) the 0.30% transaction privilege (sales) and use tax approved by the voters of the City on May 16, 2006 the use of which is restricted to street projects in the City, (c) any transient lodging tax (formerly known as transient occupancy tax) or (d) any other similar tax restricted as to its use. The City may impose taxes, license and permit fees for restricted purposes the revenues from which will not be Excise Taxes and will not be pledged to the payment of the amounts due pursuant to the Lease. The City's pledge hereunder and in the Lease is subordinate to the City's pledge of Excise Taxes for the City of Mesa, Arizona Highway Project Advancement Notes, Series 2009 executed and delivered in the aggregate principal amount of \$20,000,000, the City of Mesa, Arizona Highway Project Advancement Notes, Series 2010 executed and delivered in the aggregate principal amount of \$25,000,000, the City of Mesa, Arizona Highway Project Advancement Notes, Series 2011 executed and delivered in the aggregate principal amount of \$77,835,000 and any Parity Senior Lien Obligations now or hereafter outstanding.

The Lease and the Series 2012 Bonds do not and shall not represent or constitute a debt or pledge of the full faith and credit of the City or the taxing power of the City (other than the excise taxing power of the City to secure the Base Rent payable under the Lease on a subordinate basis) or the Authority or of the State of Arizona or of any political subdivision or other local agency thereof but in the case of the Lease and the Base Rent paid pursuant thereto, shall be payable from and secured solely by Excise Taxes, and in the case of the Series 2012 Bonds, shall be payable from and secured by a pledge of and lien on the Lease Revenues pursuant to the Trust Agreement entered into by and among the Authority, the City and the Trustee prior to or contemporaneously with the issuance of the Series 2012 Bonds.

Section 4. Rate Covenant. The City will maintain Excise Taxes so that the combined amount of Excise Taxes in any fiscal year of the City will be equal to at least two (2) times the total of all Senior Lien Debt Service Requirements of the outstanding Senior Lien

Obligations and the Subordinate Lien Debt Service Requirements on the Series 2012 Bonds and any Parity Subordinate Lien Obligations payable during such Fiscal Year. If receipts from Excise Taxes for the preceding Fiscal Year shall not equal at least two (2) times the Senior Lien Debt Service Requirements of the Senior Lien Obligations and the Subordinate Lien Debt Service Requirements on the Series 2012 Bonds and any Parity Subordinate Lien Obligations payable for the current fiscal year, the City will promptly impose new taxes of the type included within the definition of "Excise Taxes" or other City taxes or fees, or increase the rates for the Excise Taxes currently imposed in order that (i) the current receipts will be sufficient to meet the Base Rent payable under the Lease during the Fiscal Year, and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding fiscal year's Senior Lien Debt Service Requirements of the Senior Lien Obligations and the Subordinate Lien Debt Service Requirements on the Series 2012 Bonds and any Parity Subordinate Lien Obligations.

Section 5. Approval for Purposes of Section 147(f) of the Series 2012 Bonds. The Mayor and Council, pursuant to and solely for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, hereby approve the Authority's issuance of its Series 2012 Bonds, and approves the Authority's approval of the Project as described in the Notice relating to the public hearing for the Series 2012 Bonds.

Section 6. Official Statement. The Preliminary Official Statement is deemed "final" for all purposes of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, and is hereby authorized and approved in substantially the form presented at this meeting, and the distribution of the Preliminary Official Statement is hereby authorized and approved. The Authority will cause a final official statement (the "Official Statement") in substantially the form of the Preliminary Official Statement to be prepared and distributed with the Series 2012 Bonds upon initial issuance. The Mayor, any member of the Council, the City Manager or the Senior Executive Manager responsible for financial matters are each authorized to approve, execute and deliver the Official Statement on behalf of the City, if necessary, and the execution by such officer shall be deemed conclusive evidence of such approval.

Section 7. Project. The approval given herein shall not be construed as an (i) endorsement of the creditworthiness of the Authority, Able or the financial viability of the Project; (ii) a recommendation to any prospective purchaser to purchase the Series 2012 Bonds; (iii) an evaluation of the likelihood of the repayment of the debt service on the Series 2012 Bonds; or (iv) an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Special Facility on the Project Site, and the City shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the City or estopping the City from asserting any rights or responsibilities it may have in such regard. Further, the approval by the City of the Project or the issuance of the Series 2012 Bonds by the Authority shall not be construed to obligate the City to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Series 2012 Bonds or the financing of the Project other than the pledge of the City's Excise Taxes on a subordinate lien basis to the payment of the Base Rent payments due under the Lease, and the

Authority shall so provide in the financing document setting forth the details of the Series 2012 Bonds.

Section 8. Officers and Officials Authorized. The Mayor, any other member of the Council, the City Attorney, the City Manager, or the Senior Executive Manager responsible for financial matters, and any other person authorized by the Mayor, any other member of the Council, the City Attorney, or the City Manager, are each hereby authorized and directed, without further order of the Mayor and the Council, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by the Official Statement. In the event that the Mayor is unavailable, any other member of the Council may discharge the duties of Mayor hereunder.

The City hereby authorizes the Senior Executive Manager responsible for financial matters, or his or her designee, to represent and act for the City as the "obligated person" as may be necessary to comply, on a continuing basis, with the Internal Revenue Service, Securities Exchange Commission and other governmental entities' requests and reporting requirements related to the Series 2012 Bonds.

Section 9. Ratification of Actions. All actions of the officers and agents of the City which conform to the purposes and intent of this Resolution and which further the designing, financing, construction, leasing and subleasing of the Project, including but not limited to the issuance and sale of the Series 2012 Bonds as contemplated by this Resolution whether heretofore or hereafter taken shall be and are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Resolution.

Section 10. Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this Resolution is for any reason held to be illegal, invalid or unenforceable, such decision will not affect the validity of the remaining portions of this Resolution. The Mayor and the Council hereby declare that the City would have adopted this Resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Series 2012 Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Resolution may be held illegal, invalid or unenforceable.

Section 11. Emergency Clause. The exigencies of the municipal bond market, and the need for an immediate sale and early closing to secure the most favorable interest rates on the Series 2012 Bonds require that the Series 2012 Bonds be issued and delivered as soon as possible. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Mayor and the Council and it is hereby excepted from the referendum provisions of the Constitution.

PASSED AND ADOPTED this 23rd day of January, 2012.

CITY OF MESA, ARIZONA

ATTEST:

Linda Crocker
City Clerk



By [Signature]
Mayor

APPROVED AS TO FORM:

[Signature]
Bond Counsel

CERTIFICATE

I, Linda Crocker, the duly appointed City Clerk of the City of Mesa, Arizona, do hereby certify that the above and foregoing Resolution No. 9971 was duly passed by the Mayor and Council of the City of Mesa, Arizona as a meeting held on January 23, 2012, and the vote was 7 ayes and 0 nays and that the Mayor and Council Members were present thereat.

DATED: January 23, 2012.

Linda Crocker
City Clerk

EXHIBIT A

NOTICE OF PUBLIC HEARING

Notice is hereby given that on January 23, 2012, at 8:30 a.m., Mountain Standard Time, a public hearing will be conducted by the Phoenix-Mesa Gateway Airport Authority (the "Authority") in the Board Room, Airport Administration Offices, 5835 South Sossaman Road, Mesa, Arizona 85212, regarding the issuance by the Authority of its Special Facility Revenue Bonds (Mesa Project), Series 2012, in an aggregate principal amount not to exceed \$22,000,000 (the "Bonds").

The proceeds of the Bonds will be used to finance, design and construct an aircraft maintenance, repair and overhaul facility (the "Project"), located at 7706 E. Velocity Way, Mesa, Arizona (Lot 42 B/C). The Authority will own the Project.

At the public hearing, interested persons will be given the opportunity to express their views on the proposed Bonds issue, and the location and nature of the Project. Written comments may also be submitted to the Authority prior to the time and date of such hearing, at the Phoenix-Mesa Gateway Airport Authority, Attention: Executive Assistant/Clerk to the Board of Directors, 5835 South Sossaman Road, Mesa, Arizona 85212.

The public hearing on January 17, 2012 at 9:00 a.m., Mountain Standard Time, is cancelled.

PHOENIX-MESA GATEWAY AIRPORT
AUTHORITY