



Roll Call Number

Agenda Item Number

61

Date September 16, 2024

APPROVAL OF AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES AIRPORT AUTHORITY FOR THE PROVISION OF CITY SERVICES

WHEREAS, City staff has negotiated the terms of an agreement with the Des Moines Airport Authority for the City to provide services and compensation; and,

WHEREAS, the proposed agreement is attached to this resolution.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the Agreement Between the City Of Des Moines and the Des Moines Airport Authority for the Provision of City Services (the "Agreement") is hereby approved and the Mayor is authorized and directed to execute the Agreement on behalf of the City and the City Clerk is authorized and directed to attest to the Mayor's signature.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby directed to administer all terms of the Agreement.

MOVED by _____ to adopt. Second by _____.

FORM APPROVED:

Handwritten signature of Thomas G. Fisher Jr.

Thomas G. Fisher Jr
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include BOESEN, SIMONSON, VOSS, COLEMAN, WESTERGAARD, MANDELBAUM, GATTO, and TOTAL.

CERTIFICATE

I, LAURA BAUMGARTNER, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED
Mayor

City Clerk

AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES
AIRPORT AUTHORITY FOR THE PROVISION OF CITY SERVICES

PARTIES

This agreement (the "Agreement") is made between the City of Des Moines (the "City") and the Des Moines Airport Authority (the "Authority") and is effective as of July 1, 2024.

The City is an Iowa municipality and has leased the Des Moines International Airport (the "Airport") located in Polk County, Iowa, to the Authority. The Authority is an aviation authority created by the City and has all the powers granted by Iowa Code chapter 330A.

RECITALS

On February 14, 2011, by Roll Call 11-0244, the Des Moines City Council approved Ordinance 14,989, creating the Authority. The ordinance is now codified at sections 22-50 et. seq. in the Municipal Code of the City of Des Moines.

It is the intent of the parties through this Agreement to set out the terms by which the City will make available to the Authority the services the City will provide to the Authority and to specify the compensation the Authority will pay for those services.

Therefore, the parties agree as follows:

ARTICLE 1 TERM

This Agreement begins on the effective date written above and will end on June 30, 2026. Either party may terminate this Agreement by giving one-year written notice to the other party. Termination shall not be effective until one year from the date of the delivery of the written notice.

ARTICLE 2 SERVICES AND PAYMENT FOR SERVICES

2.1 INSURANCE AND BENEFITS.

The City will make available to the Authority participation in specific City group benefit plans on an annual basis from July 1st to June 30th of each year of this Agreement. The Authority will complete billing and payment for insurance directly with the insurance carrier. Specific group benefit plans include:

- (a) Group Life Insurance
- (b) Supplemental Life for employee, spouse, and children
- (c) Group Long Term Disability

2.2 LAW ENFORCEMENT

- (a) The City will provide law enforcement services, including but not limited to those specific law enforcement services set forth on Appendix A attached hereto, to the Authority under the command and control of the City Chief of Police. The Department shall station a minimum of three officers at the Airport (the "Officers"). Subject to the Officers' reasonable discretion in interpreting the Airport Rules and Regulations, such Officers and the Police Department shall enforce all Airport Rules and Regulations. If the Federal Aviation Authority or any other Federal or State Agency requires more than three officers be stationed at the Airport, the parties will renegotiate this Agreement to provide for additional officers and increased payment.
- (b) City shall require that each Officer stationed at the Airport:
- (1) obtain and maintain security clearance for unescorted access to sterile areas of the Airport;
 - (2) successfully complete training, and, at least annually, retraining, to operate a vehicle in restricted vehicle non-movement areas of the airfield. Training for unescorted access to the movement area of the airfield requires additional training and approval by the Authority;
 - (3) maintain other such training or certification as may be required by the federal government;
 - (4) comply with requirements of the TSA approved Des Moines International Airport Security Program; and
 - (5) comply with and enforce the Airport Rules and Regulations relating to police business, subject to such Officer's reasonable discretion in interpreting the Airport Rules and Regulations.
- (c) The Authority will pay Two Million, Eight Hundred Ninety Two Thousand, Six Hundred and Fifty and 23/100 Dollars (\$2,892,650.23) annually in bi-weekly payments of One Hundred and Eleven Thousand, Two Hundred and Fifty Five and 78/100 Dollars (\$111,255.78), and continuing every other Friday thereafter. If the Officers stationed at the Airport receive pay increases due to a renegotiation of any collective bargaining agreement with the City, this charge will increase by the amount of additional costs for the Officers' pay and benefits, including but not limited to, deferred compensation, health insurance costs, and police pension increases. During

the term of this Agreement only, the City waives its right to payment pursuant to the "Use" share of Police Protection Charges in Exhibit D of the Real Estate Lease and Asset Transfer Agreement dated November 1, 2011, between the City and the Authority (the "Lease") relating to the Methodology for Calculation of Police Protection Charges to Des Moines International Airport. The Authority will continue to pay the "Purpose" share as stated in Exhibit D of the Lease.

- (d) The Des Moines Police Department will remain the lead investigative agency for crimes committed on Airport property and crimes will be reported using the Des Moines Police Department's Case Investigation Report form. The Des Moines Police Department will remain responsible for all follow up investigations necessary for crimes including simple misdemeanors occurring on Airport property.
- (e) The Authority shall provide office space, office furniture, equipment, and general operating supplies reasonably necessary for the Officers stationed at the Airport to perform the services set forth herein, which shall be mutually determined by the Authority and the Department. The Authority must provide two fully equipped police cars at all times. If one or both of the cars is not available for any period of time, the Authority will work with the City to make mutually agreeable accommodations.

2.3 ADDITIONAL SERVICES

- (a) From time to time, the Authority may request the City provide additional services to the Authority, including but not limited to radio repair and other services, engineering, real estate, finance, and community development.
 - (1) The City, in its sole discretion, may choose not to provide such other services.
 - (2) The Authority agrees that in the event that the City provides services to the Authority, Authority shall pay for such services in accordance with this Agreement.
- (b) The Authority shall pay all costs for the additional services. Services will be billed using a billable rate on an hourly basis, unless otherwise mutually agreed by the parties. The Authority shall pay the City for such services within 30 days of the date of the invoice, or if applicable, upon the Authority's later receipt of reports satisfactory to the Authority confirming the amounts payable hereunder.

2.4 UTILITIES

When purchasing City provided utilities, storm water, and solid waste services, the

Authority shall pay regular rates according to its class of service.

2.5 PAYMENTS

- (a) The Authority agrees to pay the City for the services set forth in Article 2 in accordance with the requirements set forth therein.
- (b) Other than as specifically stated in this Agreement, nothing herein alters, amends or affects the requirement or obligation of the Authority in Article 6 of the Lease for the Authority to pay for the indirect costs of general fire and police protection services in accordance with Exhibit D of the Lease, a letter dated January 11, 2002, from Anderson, Des Moines City Manager, to Bennett and Heibeck at the Federal Aviation Administration.

ARTICLE 3 OTHER OBLIGATIONS

3.1 COOPERATION

Each party shall cooperate in good faith with the other to implement the terms and intent of this Agreement.

3.2 DELEGATION OF AUTHORITY TO CITY MANAGER

The City Council hereby authorizes the City Manager to execute on behalf of the City any and all documents necessary or appropriate:

- (a) to clarify, supplement and implement the provisions of this Agreement so as to effectuate the purposes stated in the Recitals;
- (b) with the agreement of the Authority, to adjust the scope of, and the method of providing, the services offered to the Authority and the payments for those services.

3.3 DELEGATION OF AUTHORITY TO EXECUTIVE DIRECTOR

The Authority hereby authorizes the Executive Director to execute on behalf of the Authority any and all documents necessary or appropriate:

- (a) to clarify, supplement and implement the provisions of this Agreement so as to effectuate the purposes stated in the Recitals;
- (b) with the agreement of the City, to adjust the scope of, and the method of providing, the services offered to the Authority and the payments for those services.

ARTICLE 4 GENERAL PROVISIONS

4.1 COMPLIANCE WITH LAW; INCORPORATION OF FAA AUTHORITIES

Neither the City nor the Authority shall violate applicable ordinances and laws of city, county, state and federal government in any way that would have a material adverse impact on the Airport or the ability of the Authority to operate the Airport or either party to perform this Agreement.

4.2 SEVERABILITY

Whenever possible each provision of this Agreement is to be interpreted in such manner as to be effective and valid under applicable law and FAA rules and regulations, including federal grant assurances; however, if any provision of this Agreement, or its application, is held to be unenforceable, or against applicable FAA rules and regulations including the federal grant assurances, by any governmental entity or agency, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In such event, and subject to the foregoing, other provisions of this Agreement may be modified through commercially reasonable negotiation or interpreted so that the parties receive the benefit of the bargain contemplated herein (including, without limitation, the financial benefit) to the maximum extent permissible.

4.3 SUCCESSORS AND ASSIGNS BOUND BY AGREEMENT

This Agreement will be binding upon and will inure to the benefit of the successors, assigns, and legal representatives of the parties.

4.4 GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement and all disputes arising out of or relating to this Agreement, or its subject matter are governed by the laws of the State of Iowa, except its conflict of law provisions, and any action must be brought in Polk County district court.
- (b) Prior to a party exercising its rights to bring an action in court, it shall present in writing to the other party a statement of the nature of the disputed matter. The parties shall then meet, confer in good faith, and attempt promptly to resolve the dispute. Only after the failure of good faith negotiations may a party file an action in court. In court proceedings, a party's suggested resolution will be deemed compromise negotiations.
- (c) If during good faith negotiations the parties reach an impasse on resolving the merits of the dispute, either party may declare an impasse and bring an action in court.

(d) The parties shall bear their own costs and fees in dispute resolution, except that court costs will be shared equally.

4.4 NONWAIVER OF RIGHTS

No failure by either party to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial compensation (if applicable) or other performance by either party during the continuance of any breach will constitute a waiver of a breach of any provision.

4.5 SEVERABILITY

If any provision of this Agreement, or its application, is held to be unenforceable, the remainder of this Agreement and the application of its remaining provisions will not be affected, unless this Agreement without the unenforceable provisions fails in its essential purpose. If any provision is held to be unenforceable the parties will work together to amend this Agreement to reflect the parties' original intention.

4.6 PARAGRAPH HEADINGS

Paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

4.7 FORCE MAJEURE

Neither the Authority nor City will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the reasonable control of the Authority or City.

4.8 ENTIRE AGREEMENT

This Agreement, together with all exhibits and attachments, the Real Estate Lease and Asset Transfer Agreement, and the Assignment and Assumption Agreement between these parties executed on or about November 1, 2011, all as amended, constitute the entire agreement between the parties, and all prior representations or statements, verbal or written, are merged herein. This Agreement specifically supersedes and replaces that certain Agreement between the City of Des Moines, and the Des Moines Airport Authority for the Provision of City Services executed on or about February 1, 2018, which terminated effective June 30, 2023.

4.9 AMENDMENTS

Any and all amendments to this Agreement must be in writing duly executed by the parties.

4.10 LICENSES AND PERMITS

The Authority shall obtain all applicable licenses and permits required by federal, state, or local law.

4.11 COMPLIANCE WITH FEDERAL AVIATION AND TRANSPORTATION SECURITY REGULATIONS

The Authority shall comply at all times with Federal Aviation Regulations (FAR) Part 139, and Transportation Security Regulations (TSR) Parts 1500, 1520 1540 and 1542, and any other applicable laws, regulations and rules of a like nature.

4.12 DUTY TO AMEND

In the event that the Federal Aviation Administration or its successor requires modifications or changes in this Agreement (as a condition precedent to the granting of funds for the improvement of the Airport or otherwise), the parties shall consent to negotiate such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement or termination of this Agreement as may be agreed by the parties.

4.13 AGREEMENT CONSTRUCTION

- (a) The Recitals are by this reference incorporated in this Agreement. Words and phrases used in this Agreement are intended to be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement or any of its amendments or exhibits.
- (b) This Agreement will be construed so as to comply with federal statutes governing airports, Federal Aviation Administration Airport Improvement Program grant assurances and the FAA Policy and Procedures Concerning the Use of Airport Revenue.

4.14 NO THIRD PARTY BENEFICIARIES

It is not the intention of the parties by entering into this Agreement to create any

rights in or provide any remedies to any person not a party to this Agreement.

4.15 NOTICES

(a) Notices required in this Agreement must be given in a manner reasonably calculated to give actual notice to the other party. E-mail addressed to the representative listed below; personal delivery to the representative listed below; ordinary mail, and registered or certified mail return receipt requested, deposited in the United States mail, postage prepaid addressed to the representative listed below; are all deemed reasonable methods of giving notice. Either party has the right, by giving ten days prior written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices are to be delivered as follows:

(1) Authority:

Executive Director
Des Moines Airport Authority
Des Moines International Airport
5800 Fleur Drive, Room 207
Des Moines, Iowa 50321-2800
Telephone: 515-256-5100

(2) City:

City Manager
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309
Telephone: 515-283-4106

(b) Any notice given by e-mail, registered or certified mail, or by personal or courier delivery will be effective upon receipt. Notice given by ordinary mail will be presumed to have been received by the addressee 72 hours after deposit in the mail.

4.16 RECORD RETENTION AND COOPERATION

In the event that the Authority is audited by the FAA or any other governmental agency, the City will cooperate with the applicable governmental agency including but not limited to providing all public records relevant to the audit. In the event that the FAA or other governmental agency or court orders the City to reimburse the Authority due to charges for services provided, the City reserves the right to challenge the authority, jurisdiction or amount of the order at its cost.

4.17 RATIFICATION

The parties agree to ratify the actions of each party during the expiration of the First Amendment to Agreement Between the City of Des Moines and the Des Moines Airport Authority for the Provision of City Services and the effective date of this Agreement. The parties agree to deem that period an extension of the First Amendment and the terms of the underlying Agreement.

DES MOINES AIRPORT AUTHORITY


By:



Jake Christensen, Board Chairperson

ATTEST:

By:



Mary Benson, Board Clerk

CITY OF DES MOINES, IOWA
ATTEST:

By: _____
Laura Baumgartner, City Clerk

By: _____
Connie Boesen, Mayor

STATE OF IOWA }
 } ss.
COUNTY OF POLK

On this ___ day of 2024, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared CONNIE BOESEN and LAURA BAUMGARTNER, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. _____ of City Council on the ___ day of _____, 2024, and that CONNIE BOESEN and LAURA BAUMGARTNER acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa

FORM APPROVED:

Thomas G. Fisher Jr.
Deputy City Attorney

Appendix A

Description of Law Enforcement Officer Services, Duties and Obligations

1. Performs routine patrol of Airport property and facilities to identify security concerns, hazards or operational issues and resolves issues in compliance with applicable laws and Airport Rules and Regulations.
2. Ensures compliance with airline and Airport security requirements defined under Transportation Safety Regulation Part 1542 and the Airport Security Program. Initiates and implements action to maintain compliance when noncompliance is observed within the discretion of the Police Department.
3. Responds to and aids in the resolution of emergency or crisis situations. May provide first response in health crisis situations in order to stabilize individuals until Fire Department Paramedic/EMT personnel arrive. Responds to, investigates, and resolves alarms.
4. Responsible to ensure the smooth & safe flow of traffic throughout Airport property. Provides crowd control, roadway, and parking enforcement. Monitors and ensures compliance with traffic management and safety in roadway areas.
5. Ensures visible law enforcement deterrent on Airport property to include foot patrol in the terminal and on front curb, a presence at the screening checkpoint, on the Air Operations Area and on public areas of Airport property. Conducts preliminary & follow up investigations and take appropriate enforcement action. Ensures that the necessary reports are accurately, appropriately, and expeditiously completed and forwarded to the Authority and necessary agencies. May testify as a witness in legal matters, as required.
6. Assist with coordination of security for VIP escort, as determined by the Officers on and through the security identification display areas of the Airport premises (areas where a security badge is required) (the "Security Identification Display Areas"). Collaborate with other law enforcement agencies in providing security for prisoner transport or other law enforcement matters on and through the Security Identification Display Areas. Notwithstanding the forgoing, nothing in this Section 6 shall require the Officers to escort any person(s) outside of the Security Identification Display Areas.
7. Participates in on-the-job training regarding the policies and procedures of the Authority. This includes participation in security breach drills, emergency plan training exercises, emergency plan tabletop exercises and active shooter training.
8. Officers must possess certification as a peace officer in the state of Iowa and complete

all required annual training to maintain certification. Must maintain the highest level of ethical standards and remain eligible for an Airport issued Secure Identification Display Area badge.

9. Coordinate activities with Airport staff to ensure the needed response for security and safety of the Airport users.