

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
EAST VALLEY INSTITUTE OF TECHNOLOGY
AND
THE CITY OF MESA**

This Intergovernmental Agreement ("Agreement") is made and entered into this ____ day of _____, 2018 ("Effective Date"), by and between the City of Mesa, a municipal corporation of the State of Arizona ("Mesa" or "City") and East Valley Institute of Technology, a political subdivision of the State of Arizona ("EVIT"). The City and EVIT may collectively be referred to as the "Parties" and individually as a "Party".

RECITALS:

WHEREAS, EVIT owns the property commonly known as the EVIT, 1601 W. Main Street, Mesa, Arizona 85204 ("**EVIT Parcel**").
and

WHEREAS, A portion of the EVIT Parcel is subject to the Public Use Facility Easement ("**PUFE**"), attached hereto as Exhibit A, and recorded as Document No. _____ in the office of the Maricopa County Recorder's Office, Arizona; and

WHEREAS, EVIT and the City desire to set forth their agreement as to their respective rights and obligations regarding the installation, maintenance, repair and replacement of the lights to be wrapped around the 24 palm trees along the entrance of the EVIT Parcel fronting Main Street, which palm trees may be located on portions of the EVIT Parcel subject to the PUFE or any other easement in favor of the City; and

WHEREAS, A depiction of the location of the 24 palm trees that are the subject of this Agreement (the "**Trees**"), is attached as Exhibit B (the "**Construction Plans**"); and

WHEREAS, City and EVIT are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes Section 11-951, et. seq. and 15-342 (13)

NOW, THEREFORE, in consideration of the foregoing recitals, promises, mutual covenants, and agreements contained herein, the parties agree as follows:

AGREEMENT:

Section 1. Specialty Features and Materials.

- 1.1 Design and installation of Specialty Features and Materials. City shall design and install the lights to be wrapped around the Trees, including but not limited to the decorative lighting, conduit(s), wires, and receptacles/outlets ("**Specialty Features and Materials**") near and on the Trees within the Easement area. As consideration for City designing and installing the Specialty Features and Materials, EVIT agrees to maintain the Specialty Features and Materials for at least 5 years after final acceptance. If the Specialty Features and Materials are terminated or removed within 2 years after final acceptance by City, EVIT shall reimburse City the entire cost of project. If the Specialty Features and Materials are terminated or removed in years 3 to 5 after final acceptance by City, EVIT shall reimburse City the entire cost of the project, on a prorated basis, based on the difference between a full five-year term (60 months) and the number of months that the Specialty Features and Materials have been in place and then dividing that difference by 60 months and multiplying that quotient by the total project cost of the project."
- 1.2 Ownership of Specialty Features and Materials. After installation and testing of the functionality of the decorative lights and acceptance by the City (collectively, "**City's Acceptance**"), EVIT shall be deemed to own the Specialty Features and Materials without any further documentation, grant or other

legal action. Upon EVIT's request, City will confirm the date of City's Acceptance in writing. EVIT shall grant the City use of this electrical service at no charge during installation and testing.

- 1.3 Maintenance of Specialty Features and Materials. From and after City's Acceptance, EVIT shall be solely responsible for maintaining the Specialty Features and Materials, at its sole cost and expense, including replacing components in-kind if they fail or otherwise cease to function for their intended purposes within the term of this Agreement. Any changes or modifications to what is attached as Exhibit B will require an amendment to this Agreement as stated in Section 6.4 below. The City hereby grants to EVIT, its successors and assigns, a revocable license, subject to the City's insurance requirements, to enter upon the Easement Area, to the extent reasonably necessary to affect such maintenance, repair and replacement, subject to the terms of this Agreement. The City reserves the right to revoke the license created by this Agreement at any time and require EVIT to apply for a permit through the City's ordinary permitting process for each maintenance event in the Easement Areas, provided, however, that EVIT shall have no obligations under this Agreement during any period in which City has revoked such license and has not granted EVIT with a permit to perform such obligations. EVIT shall provide the City with not less than five (5) business days' notice of its intended activities before entering the Easement Area in exercise of its license rights, except that, in the case of an emergency, EVIT shall only be required to give such notice as early as reasonably possible under the circumstances and shall not be required to give such notice before taking action to address such emergency; provided, however, that nothing in this Section shall excuse EVIT from the responsibility to repair any damage or correct any other condition to the extent caused by EVIT in taking action to address such emergency.
- 1.4 Maintenance Standards. All maintenance, repair or replacement work required or permitted to be performed by EVIT (including by its employees, agents and contractors) for the maintenance of the Specialty Features and Materials shall comply with the applicable requirements of applicable City, state and federal laws and regulations then in effect, including all applicable laws and regulations regarding safety and regarding minimizing any inconvenience to the pub.
- 1.5 City Maintenance Authority.
 - 1.5.1 The City hereby reserves its existing authority to undertake any maintenance, repair or replacement of all of the Specialty Features and Materials, including without limitation any maintenance, repair or replacement that is (a) required, in the reasonable opinion of the City Manager, or designee, to address an emergency or threat to public safety, in which event no notice or opportunity to cure is required, or (b) otherwise appropriate under applicable City standards, subject to notice and cure as provided in this Agreement. If the City performs the maintenance, after appropriate notice and cure, EVIT shall be responsible for reimbursing the City for any such reasonable expenses associated with maintaining the Specialty Features and Materials. To the extent that the City does not already have the authority to undertake the foregoing maintenance, repair or replacement of the Specialty Features and Materials (including the Specialty Features and Materials), Owner hereby grants such authority to the City.
 - 1.5.2 If the City determines that EVIT has failed to perform maintenance, repair or replacement of any Specialty Features and Materials required under the terms of this Agreement (other than to address an emergency or threat to public safety, in which event no notice or opportunity to cure is required), then before the City may exercise the remedies provided in this Agreement, City shall give EVIT not less than ten (10) business days' written notice of such determination and EVIT shall have until the end of such ten (10) business day period to undertake such maintenance, repair or replacement or, if such maintenance, repair or replacement cannot reasonably be completed within such ten business day period, EVIT shall have the right to commence such maintenance, repair or replacement within such ten business day period and thereafter such additional time as reasonably necessary to diligently pursue such maintenance, repair or replacement until completion.
 - 1.5.3 In any case in which the City undertakes any maintenance, repair or replacement of any Specialty Features and Materials, the City may use City-standard replacement parts from the City's own inventory. If replacement parts from the City's inventory are used in connection with the maintenance, repair or replacement of any Specialty Features and Materials, EVIT may later replace such City-standard parts with other parts, and return such City-standard parts to the City.

Section 2. Term and Termination of Agreement

2.1 Term. The initial term of this Agreement shall be for twenty-five (25) years beginning on the Effective Date, which shall be the date of the last of signature, and shall be renewable for a successive twenty-five (25) year term unless terminated by the parties as stated in Section 2.2.

2.2 Termination. This Agreement may only be terminated by a writing executed by the City and EVIT.

Section 3. Indemnification. Each party shall indemnify, defend and hold harmless the other Party, its agents, officers, employees, successor or assigns against any and all claims, actions, costs, expenses, or reasonable attorneys' fees, caused by and/or related to and/or arising out of the actions and/or omissions of the other Party, its agents, officers and employees.

Section 4. Conflict of Interest. This Agreement is subject to cancellation by either party pursuant to the provision of Arizona Revised Statutes §38-511.

Section 5. Notices. All notices given, or to be given, by either party to the other, shall be given in writing, by registered mail, and shall be addressed to the parties at the addresses hereinafter set forth, or at such other address as the parties may be written notice hereafter designate. All notices shall be deemed received upon actual receipt or 3 business days after deposit in the United States mail, whichever date is earlier. Notices shall be addressed as follows:

To City:
City of Mesa
Transportation Director
P.O. Box 1466
Mesa AZ 85211-1466

To EVIT:
East Valley Institute of Technology
Director of Facilities
Mesa AZ 85201-7422
Attn: Billy DeWitt

Section 6. Miscellaneous Provisions

6.1 Conflict Resolution. If a dispute arises out of or related to this Agreement, or breach thereof, that cannot be resolved by the staff of the Parties, the City Manager of the City, or his designee ("City Manager") and Superintendent of EVIT, or his designee ("Superintendent") shall first meet as soon as reasonably possible, but in no case later than thirty (30) days after a request, to attempt to resolve the dispute. Prior to any meetings between the City Manager and the Superintendent, the Parties shall exchange relevant information that will assist the Parties in resolving the dispute. If the City Manager and the Superintendent are unable to resolve the dispute, the Parties shall try to settle the dispute through mediation before resorting to litigation. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, or within a different timeframe agreed to by the Parties, the City Manager and the Superintendent shall select a mediator and the selected mediators shall select the mediator to be used. Such selection shall be binding on the Parties. The cost of any such mediation shall be divided equally between City and EVIT. If mediation does not resolve the dispute, either Party may pursue their legal remedies

6.2 Good Faith. City and EVIT hereby acknowledge and agree that they shall cooperate in good faith with each other and use commercially reasonable efforts to pursue the obligations imposed by this Agreement.

6.3 Continuation During Disputes. City and District agree that during any dispute between the parties, the parties will continue to perform their obligations under this Agreement until the dispute is settled, instructed to cease performance by City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

6.4 Entire Agreement, Amendments. This Agreement, including the recitals and any exhibits attached hereto, if any, and any agreements contemplated herein, represents the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are

superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by City and EVIT.

6.5 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

6.6 Governing Law, Choice of Forum. This Agreement shall be deemed to be governed by, and construed in accordance with, the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action).

6.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

6.8 Severability. If any term or provision in this Agreement is declared void or unenforceable, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain in full force and effect to the fullest extent allowed by law.

6.9 Non-Discrimination. City and EVIT represents and warrants that neither party knowingly discriminates against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. City and EVIT personnel will comply with all applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

6.10. No Assignment. No party shall transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of the other party, which approval may be given or withheld in said other party's sole and unfettered discretion.

6.11 Provisions Required by Law. Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

6.12 Approval by Parties. Before this Agreement shall become effective and binding upon the parties, the appropriate governing authorities of each party must approve it. In the event that such appropriate authority fails or refuses to approve this Agreement, it shall be null and void with no effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date as of the date indicated below.

City of Mesa

East Valley Institute of Technology

By: _____
Chris Brady
Its: City Manager

By: _____
Its: Superintendent

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the ____ day of _____, 2018, before me, the undersigned Notary, Christopher J, Brady, and being authorized to do, executed the foregoing document for the purpose therein confirmed.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the ____ day of _____, 2018, before me, the undersigned Notary, _____, and being authorized to do, executed the foregoing document for the purpose therein confirmed.

Notary Public

My Commission Expires:

ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona and East Valley Institute of Technology, has been reviewed pursuant to A.R.S. § 15-342 by the undersigned EVIT attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the EVIT attorney.

DATED this ____ day of _____, 2018

EVIT Attorney

ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and East Valley Institute of Technology, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned City of Mesa attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the City of Mesa attorney.

DATED this ____ day of _____, 2018

City of Mesa Attorney

EXHIBIT A
PUBLIC UTILITIES AND FACILITIES EASEMENT

EXHIBIT B
CONSTRUCTION PLANS