

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE CITY OF MESA
AND
THE PHOENIX-MESA GATEWAY AIRPORT AUTHORITY

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this date _____, 2020 (the “Effective Date”) pursuant to the Arizona Revised Statutes (“A.R.S.”) §§ 11-951 et seq., between the CITY OF MESA, an Arizona municipal corporation (the “City”), and PHOENIX-MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized and existing under the laws of the State of Arizona (“PMGAA”). The City and the PMGAA are collectively referred to as “Parties.”

I. RECITALS

1. A.R.S. §§ 11-951 et seq., authorizes the City and PMGAA to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions.
2. A.R.S. § 48-572 also empowers the City to enter into this Agreement, and it has by resolution (a copy of which is attached and made a part of) resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. PMGAA is administering the design and construction of the Phoenix-Mesa Gateway Airport Authority Ellsworth Channel Relocation Project (the “Project.”), which will aid in the future development of the eastside of the Phoenix-Mesa Gateway Airport generally located at the intersection of Ray Road and Sossaman Road, City of Mesa, Maricopa County, Arizona (the “Airport”) by relocating the Ellsworth Channel and constructing Hawes Road south of Ray Road as an entrance to the Airport property.
4. The Project includes improvements to Hawes Road that will extend the roadway and associated utilities into the site and specifically includes water and wastewater infrastructure to serve the future development and the Airport. Portions of that infrastructure will become part of the City’s water and wastewater system, and therefore the City has agreed to reimburse PMGAA for the costs specifically related to that part of the Project (the “Reimbursable Facilities”). Exhibit, 1 attached to this Agreement, provides a breakdown of the actual bid costs of the work proposed for the Project and identifies the portions thereof for which the City agrees to reimburse PMGAA.
5. This Agreement is intended to set forth the roles and responsibilities of the Parties with respect to the Project, including contracting consultant engineering design services, design review, construction administration, construction permitting and inspection, and ownership of the completed Reimbursable Facilities.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. SCOPE

1. Responsibilities of PMGAA:

- 1.1. PMGAA shall certify the design of the Project according to the current City Engineering & Design Standards.
- 1.2. PMGAA will submit the plans, specifications, and estimates (“PS&E”) to the City and the Maricopa County Environmental Services Department (“MCESD”) for review and approval of the Project prior to the commencement of any construction for the Project under City jurisdiction.
- 1.3. PMGAA will provide a P.U.E (in a form acceptable to the City) along the length of the water line and wastewater line for the City to access it on PMGAA property.
- 1.4. PMGAA will coordinate with the City regarding times when construction activities of the Project are to be performed so as to allow the City to perform Quality Assurance (“QA”) services as needed by the City.
- 1.5. PMGAA will consult with the City prior to approving any change order that will cause the cost of completing the Reimbursable Facilities to exceed the current construction estimate of \$712,186.00.
- 1.6. PMGAA shall upfront all costs associated with the design, applicable permit fees (if any), construction administration, and construction of the Project. Upon the City receiving and accepting, in writing, the PMGAA’s Project Approval Documentation (as defined in Section 2.2), PMGAA will prepare final accounting for costs not previously paid, including City-approved change orders and the items of work identified in Section 2.2, and invoice the City for reimbursement.
- 1.7. PMGAA will provide to the City, at its request, all pertinent documents related to the Project including, but not limited to, legal and exhibit documents of the P.U.E., MCESD documentation, final sealed PS&E, record drawings, and construction documentation.
- 1.8. PMGAA will require PMGAA’s contractor to assume responsibility for the operation and maintenance of the Project until the City accepts the permitted work and the permit is closed out.
- 1.9. PMGAA agrees that ownership of the Reimbursable Facilities and specified roadway improvement shall transfer to the City (without any further documentation) upon the City accepting the permitted work pursuant to Section 2.4. Furthermore, such transfer of ownership shall include an assignment to the City of any and all warranties associated with any improvement transferred to City ownership.
- 1.10. PMGAA acknowledges that utility service provided by the City, including but not limited to service through the Reimbursable Facilities, is subject to the City’s Terms and Conditions for the Sale of Utilities and payment of applicable rates, fees and charges, all as adopted and made effective by the City.

2. Responsibilities of the City:

- 2.1. The City shall review all pertinent documents associated with the Project including, but not limited to, the PS&E, the P.U.E. documents, construction documentation, and the MCESD documentation. The City shall provide comments, if necessary, and approve the final PS&E, sealed by a Registered Professional Engineer - Civil in the State of Arizona, prior to the start of the Project construction via a PMGAA funded permit.
- 2.2. The City will reimburse to PMGAA its actual costs associated with the approved Reimbursable Facilities constructed for the Project, as detailed in the attached Exhibit 1. All other costs will be borne by PMGAA. The total estimated cost of the Reimbursable Facilities is \$712,186.00, which shall be the extent of the City's financial obligation for the Project, except where the City consents in writing to increase its commitment pursuant to a valid change order approved by PMGAA. The City will reimburse the final agreed upon Project costs to the Airport within 30 days of the City receiving from PMGAA, 1) sealed record drawings of the Project; 2) a signed MCESD Approval of Construction Certificate; and 3) a copy of the "Certificate of Final Completion" for the entire Project. The required documents as described are herein referred to as the Project Approval Documentation.
- 2.3. The City will perform all permit required inspections and QA services to verify that the construction of the Project is in compliance with the approved PS&E. The City will coordinate with the Airport to obtain times when construction activities and QA services for the Project are to be performed.
- 2.4. The City will assume the ownership (including operation and maintenance), for the completed roadway, water, wastewater and drainage improvements upon the City receiving and accepting, in writing, PMGAA's Project Approval Documentation.

3. Term:

- 3.1. The term of this Agreement shall commence on the Effective Date and shall automatically terminate upon the City's reimbursement to PMGAA; provided, however, termination of this Agreement shall not affect the transfer of ownership in subsections 1.9. and 2.4 of this Agreement.

4. General Provisions:

- 4.1. Each Party reserves all rights that it may have to cancel this Agreement under A.R.S. § 38-511.
- 4.2. PMGAA warrants compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). PMGAA will require any contractor, and all subcontractors, to provide the same warranty. Failure by PMGAA, PMGAA's contractors, or subcontractors, to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement.
- 4.3. *Intentionally deleted.*
- 4.4. This Agreement contains the entire understanding between the Parties with respect to the

subjects addressed and supersedes all prior negotiations and agreements.

- 4.5. This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 4.6. Each Party shall (as “Indemnitor”) indemnify, defend, and hold harmless the other Party, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as “Indemnitee”) from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys’ fees and/or litigation expenses (collectively referred to in this paragraph as the “Claims”), which may be brought or made against or incurred by the Indemnitee on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused in whole or in part by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of Indemnitor, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. Indemnitor’s obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the Indemnitee. The obligations under this paragraph shall survive the termination of this Agreement.
- 4.7. The Parties are governmental agencies which rely upon the appropriation of funds by their respective governing bodies to satisfy their obligations. If a party reasonably determines that it does not have funds to meet its obligations under this Agreement, such party shall have the right to terminate this Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such a termination, such terminating party agrees to provide written notice of its intent to terminate 30 days prior to the termination date.
- 4.8. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement is the written determination of each Party’s legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on or as of the day and year first written above

Phoenix-Mesa Gateway Airport Authority,
a Joint Powers Airport Authority Authorized by
the State of Arizona

City of Mesa, an Arizona Municipal
Corporation

By: _____
J. Brian O'Neill, A.A.E.
Executive Director/CEO

By: _____
Christopher J. Brady
City Manager

Date: _____

Date: _____

Approved as to form by Phoenix-Mesa Gateway
Airport Authority Legal Counsel

Approved as to form by City of Mesa
Attorney's Office

By: _____
Jill Casson Owen, Esq.

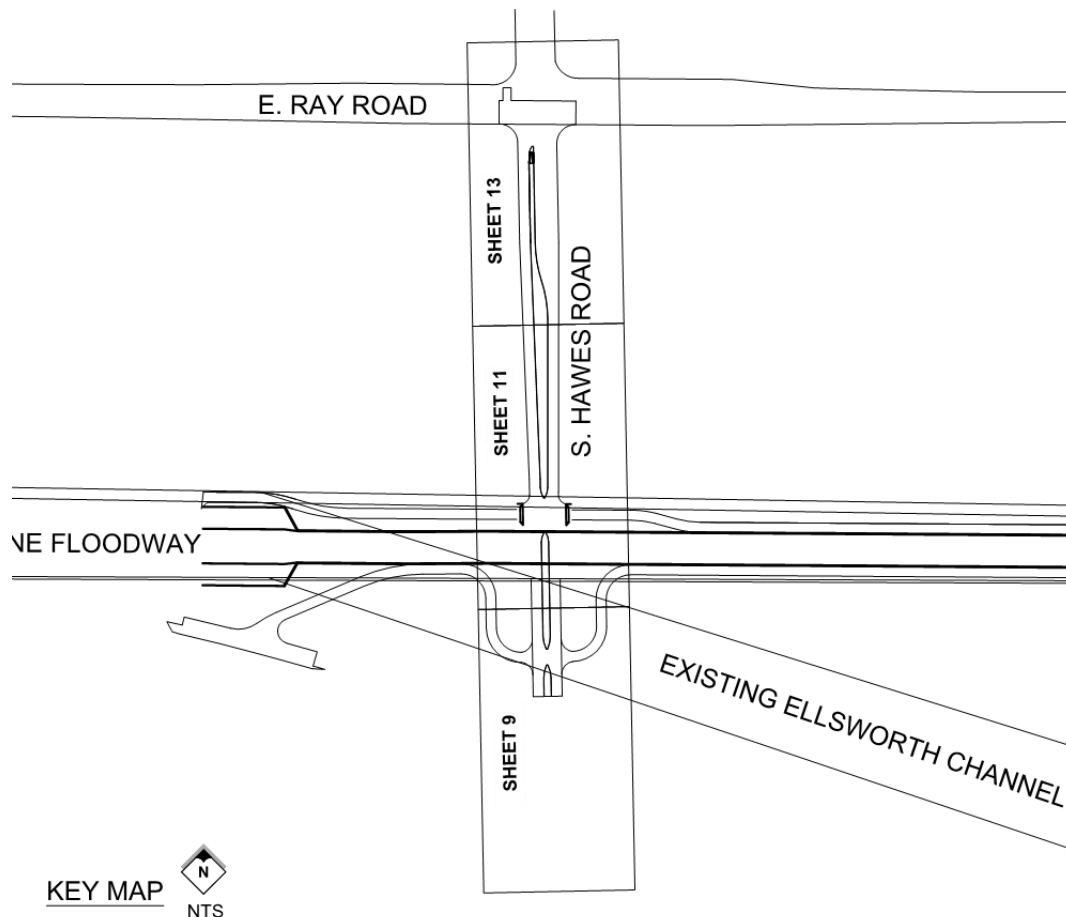
By: _____
Name: _____

EXHIBIT 1

Ellsworth Channel Relocation

Hawes Road Extension

The Phoenix Mesa Gateway Authority will be relocating the Ellsworth Channel in 2020. Pulice Construction Inc. will be constructing the new roadway and bridge starting in February through December of 2020. This improvement will include the extension of Hawes Road from Ray Road to just south of the existing Powerline Floodway. This will also include the extension of the storm water, sanitary sewer, water, gas, and electric. To get across the Powerline Floodway the Airport will be building a bridge which will include the above-mentioned utilities as well as additional conduit for future use.



This project will include 1 bridge, 4,224 square yards of asphalt, 9,020 cubic yards of roadway embankment, over 200 feet of storm drain, 936 feet of waterline and 990 feet of sanitary sewer line.

Ellsworth Channel Relocation PMGAA Project 950
Water and Wastewater Cost Breakout



Line Item	Description	Approx QTY	Unit	Price	Amount (\$)
WASTEWATER					
16	Remove Existing 8" PVC Sewer Line	96	LF	45	4,320
17	Remove Existing Sanitary Sewer Manhole	1	EA	750	750
60	42" Steel Casing per COM DTL M-55	375	LF	340	127,500
65	21" HDPE SDR35 Sanitary Sewer Line	989	LF	170	168,130
66	21" HDPE Water Stop per MAG Specification 738	1	EA	1,100	1,100
70	5' Diameter Manhole with 30" Frame and Cover, No Steps, per MAG STD DTL 420-1 Type A, 420-2 & 423-2	5	EA	15,000	75,000
71	Manhole Frame and Cover Adjustment per MAG STD DTL 422	1	EA	550	550
Subtotal					377,350
Tax					20,358
TOTAL W/ TAX					\$397,708



WATER

61	36" Steel Casing per COM DTL M-55	371	LF	280	103,880
62	16" DIP Water Line per COM STD DTL M-19.05	936	LF	175	163,800
63	Cathodic Protection Test Stations	4	EA	3,000	12,000
64	Pipe Bonding Cathodic Protection & Isolation Flange Kits	1	LS	13,500	13,500
72	Connect to 16" Distribution Main	1	EA	3,000	3,000
73	2" Tapped Cap with Curb Stop and Flushing Pipe per MAG STD DTL 39	1	EA	2,200	2,200
Subtotal					298,380
Tax					16,098
TOTAL W/ TAX					\$314,478

COMBINED TOTAL W/ TAX **\$712,186**