

INTERGOVERNMENTAL AGREEMENT

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

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this date _____, 2021 (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. The City is administering the design and construction of four infrastructure projects, collectively referred to as the “City Projects,” which will improve the City’s utility service delivery and 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”). The infrastructure projects include a new signalized intersection at Ellsworth Road and the realigned Williams Field Road (“Intersection”), a new box culvert across the Ellsworth channel with associated utility stubs thereby connecting the Intersection to PMGAA property and eight hundred linear feet of roadway designed as a 4 + 1 Major Collector extending west into PMGAA property from the western edge of the Intersection (“Culvert and Road”), the extension of a 20-inch waterline along Ellsworth Road from SR24 to Pecos Road and across the Culvert and Road into PMGAA property (“Water Line”), and an alignment study of the entire Spine Road from Ellsworth Road to Ray Road (“Spine Road Alignment Study”). Exhibit 1 provides additional details about the City Projects.
4. PMGAA is administering the design and construction of a sewer line extension from Old Pecos Road to PMGAA property, a lift station (if required) and a private sewer line north within PMGAA property to facilitate development within the GatewayEast site (“PMGAA Project”). The Parties understand that a portion of the PMGAA Project will be located outside of public Rights-of-Way (“ROW”) and PMGAA will own and maintain the portion of the PMGAA Project that is outside of the ROW. Exhibit 1 provides additional details about the PMGAA Project.
5. This Agreement is intended to set forth the roles and responsibilities of the Parties with respect to the City Projects and PMGAA Projects, including contracting consultant engineering design services, design review, construction administration, construction permitting and inspection, and ownership of the completed projects.
6. The Parties recognize and agree that neither Party can guaranty that a contractor will meet the deadlines proposed in this Agreement, particularly in light of recent external influences on labor and supply chain

availability. Nevertheless, each Party agrees that it will utilize all contractual remedies available under its respective construction and design contracts in a prudent manner to encourage contractor compliance with completion deadlines.

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 PMGAA Project according to the current City Engineering & Design Standards.
- 1.2. PMGAA will submit the plans, specifications, and estimates (“PS&E”) to the City for review and approval of the PMGAA Project prior to the commencement of any construction.
- 1.3. PMGAA will provide Easements (in a form acceptable to the City) if required to accommodate the City Projects and the PMGAA Project for the City to access them on PMGAA property.
- 1.4. PMGAA will coordinate with the City regarding times when construction activities of the PMGAA Project are to be performed so as to allow the City to perform Quality Assurance (“QA”) services as needed by the City. PMGAA shall allow the City to inspect all portions of the PMGAA Project located within the ROW.
- 1.5. PMGAA shall pay all costs associated with the design, applicable permit fees (if any), construction administration, and construction of the PMGAA Project.
- 1.6. PMGAA will provide to the City, at its request, all pertinent documents related to the PMGAA Project including, but not limited to, legal and exhibit documents of the Easements, final sealed PS&E, record drawings, and construction documentation.
- 1.7. PMGAA will require PMGAA’s contractor to assume responsibility for the operation and maintenance of the PMGAA Project until the City accepts the permitted work and the permit is closed out.
- 1.8. PMGAA will require PMGAA’s contractor to substantially complete the PMGAA Project on or before April 1, 2023.
- 1.9. PMGAA agrees that ownership of the PMGAA Project within City ROW 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 PMGAA Project, 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 certify through the permit process the design of the Intersection, Culvert and Road, Spine Road Alignment Study, and Water Line according to the current City Engineering & Design Standards.
- 2.2. The City will include PMGAA in the review of the design plans for the City Projects.
- 2.3. The City shall pay all costs associated with the design, construction administration, and construction of the City Projects.
- 2.4. The City will perform all permit required inspections and QA services to verify that the construction of the City Projects is in compliance with the approved PS&E.
- 2.5. The City will require the City's contractor(s) to substantially complete the Intersection by April 1, 2022.
- 2.6. The City will require the City's contractor(s) to substantially complete the Culvert and Road by April 1, 2023.
- 2.7. The City will require the City's contractor(s) to substantially complete the Spine Road Alignment Study by February 1, 2022.
- 2.8. The City will require the City's contractor(s) to substantially complete the Water Line by April 1, 2023.
- 2.9. The City will assume the ownership (including operation and maintenance), for the completed City Projects and PMGAA Project within the ROW upon the City receiving and accepting them, in writing.

3. Term:

- 3.1. The term of this Agreement shall commence on the Effective Date and shall automatically terminate upon the City's written acceptance of the City Projects and PMGAA Project; provided, however, termination of this Agreement shall not affect the transfer of ownership in subsections 1.9. and 2.9 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. The Parties reserve the right to extend the deadlines set forth in Section 1.8, 2.5, 2.6, 2.7, and 2.8 administratively and through written agreement should there be a material change in plans for economic development tied to the PMGAA Project and/or City Project.

- 4.3. 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.
- 4.4. 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

COM Projects Scope:

- New signalized intersection at Ellsworth Road and the realigned Williams Field Road
- New box culvert across the Ellsworth channel with associated utility stubs thereby connecting the “Intersection” to PMGAA property and eight hundred linear feet of roadway designed as a 4 + 1 Major Collector extending west into PMGAA property from the western edge of the Intersection
- Extension of a 20-inch waterline along Ellsworth Road from SR24 to Pecos Road and across the Box Culvert and Road into PMGAA property
- An alignment study of the entire Spine Road from Ellsworth Road to Ray Road

PMGAA Project Scope:

- PMGAA is administering the design and construction of a sewer line extension from Old Pecos Road to PMGAA property, a lift station (if required) and a private sewer line north within PMGAA property to facilitate development within the GatewayEast site