

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85201

PRE-ANNEXATION DEVELOPMENT AGREEMENT
DA24-00023

This Pre-Annexation Development Agreement (this “**Agreement**”) is entered into as of the _____ day of _____, 2024, by and between the City of Mesa, an Arizona municipal corporation (“**City**”); and Pacific Proving, LLC, a Delaware limited liability company and Mesa BA Land, LLC, a Delaware limited liability company (collectively “**Owner**”). City and Owner are herein referred to individually as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. This Agreement pertains to certain real property consisting of approximately one hundred sixty-eight acres (168) acres of real property within the 10000-10400 blocks of East Pecos Road (north side) and within the 6200-6800 blocks of the future South Crismon Road alignment (east side), located north of Pecos Road and east of Ellsworth Road, as legally described in Exhibit A and depicted on Exhibit B, which consists of both Parcel A and the County Property (collectively the “**Property**”).

B. Approximately thirty-eight (38) acres of the Property located east of the northeast corner of Pecos Road and the Crismon Road alignment, as depicted and labeled on Exhibit B as “**Parcel A**,” is within the corporate limits of the City of Mesa and is currently zoned Light Industrial with a Planned Area Development Overlay (LI PAD).

C. The remaining approximately one hundred thirty (130) acres of the Property, depicted and labeled on Exhibit B as the “**County Property**,” is in Maricopa County, Arizona (the “**County**”). Owner desires to annex the County Property into the corporate limits of the City of Mesa and cause the County Property along with Parcel A to be developed to City standards and receive City services.

D. Owner has applied to annex the County Property into the City (ANX24-00192) and a blank annexation petition has been recorded with the County (Maricopa County Recorder No. 20240297619), and the public hearing prior to the release of the petition was held in connection with the annexation of the County Property into the City.

E. The County Property is currently zoned in the County with a combination of Rural-43 on approximately 70 acres and Light Industrial on approximately 60 acres. Upon annexation,

into the City the County Property will initially be zoned Agricultural (AG), which is comparable to the current County zoning and will not permit densities and uses greater than those permitted by the County.

F. Owner is proposing to develop a data center and technology employment campus development referred to as the “Pacific Proving Technology Campus” on the Property (the “**Project**”).

G. According to the Mesa 2040 General Plan the Property is within the City’s Mixed Use Community character area.

H. To develop the Project, Owner has applied for a minor general plan amendment to change the character area designation of the County Property to Employment with an Industrial Sub-type (Case No. ZON24-00561) and to rezone the Property to Light Industrial with a Planned Area Development Overlay, Site Plan Review, and Council Use Permit (Case No. ZON24-00190) (collectively “**Zoning Case**”).

I. Owner has agreed to prohibit certain uses on the Property that are allowed in the Light Industrial zoning district as provided herein.

J. Owner also owns 43 acres located at the northwest corner of the Crismon Road alignment and Pecos Road (“**County 43 Acres**”) and has separately applied for annexation, a minor general plan amendment and rezoning to Light Industrial with a Planned Development Overlay, Site Plan Review, and Council Use Permit (Case No. ZON23-00802 & ZON24-00617). The County 43 Acres is immediately adjacent to a portion of the Property.

K. The property owner of the County 43 Acres and the Owner of the Property are each responsible for building a portion of the Crismon Road Improvements and both property owners have responsibilities associated with the Deferred Crismon Road Improvements as more fully set forth in Section 3.2 below.

L. The City would not have agreed to defer a portion of the Crismon Road Improvements as set forth in in this Agreement without Owner agreeing to the prohibited uses in this Agreement.

M. This Agreement concurrently with the annexation and Zoning Case will be on the City Council agenda as a single item with multiple sub-parts and City Council may act on these items in one motion.

N. The development of the Project pursuant to this Agreement in conjunction with Zoning Case set forth above is consistent with the Mesa 2040 General Plan.

O. The Parties acknowledge and agree that the development of the Property will result in significant planning and economic benefits to the City and its residents by (i) ensuring the Property is developed as an integral part of the City; (ii) providing for orderly, compatible, and quality growth in the area; (iii) increasing tax and other revenues to the City based on

improvements to be constructed within the Property; (iv) adding property to the tax rolls of the City; and (v) providing for other matters relating to the development of the Property.

P. The Parties also acknowledge and agree that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to, the terms of, A.R.S. § 9-500.05 to facilitate the development of the Property by providing for, among other things the terms, conditions, limitations, restrictions and other matters related to the development of the Property; and the terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. Definitions.

The terms in this Section, wherever used in this Agreement, whether the term is capitalized or not, shall be construed as defined in this Section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The term “including” means “including but not limited to” or “including without limitation.” The term “shall” means a requirement or mandate. All references to laws or regulations mean such laws and regulations as amended or replaced.

(a) “**ADOT**” means the Arizona Department of Transportation.

(b) “**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through P, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) “**Applicable Laws**” means federal, state, county, and City laws (statutory and common law), codes, ordinances, rules, regulations, official policies and requirements that apply to the Property, the Project, or both, all as they may be amended from time to time.

(d) “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

(e) “**City**” means the City of Mesa, an Arizona municipal corporation.

(f) “**City Code**” or “**Mesa City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

(g) “**City Council**” means the City Council of City.

- (h) **“City Indemnified Parties”** means the City and its officers, employees, elected and appointed officials, agents, and representatives.
- (i) **“City Manager”** means the person designated by City as its City Manager.
- (j) **“Claims”** means as stated in Section 8.1.
- (k) **“County”** means Maricopa County, Arizona.
- (l) **“County 43 Acres”** means as defined in Recital J.
- (m) **“County Property”** means as defined in Recital C.
- (n) **“Crismon Road Improvements”** means as defined in Section 3.1.
- (o) **“Defaulting Party”** means as defined in Section 7.1.
- (p) **“Deferral Period”** means as defined in Section 3.2.
- (q) **“Deferred Crismon Road Improvements”** means as defined in Section 3.2.
- (r) **“Effective Date”** means as defined in Section 6.
- (s) **“Event of Default”** means as defined in Section 7.2.
- (t) **“Fee”** means as defined in Subsection 2.3.
- (u) **“General Plan”** means *This is My Mesa: Mesa 2040 General Plan* as adopted by City, and as may be amended from time-to-time.
- (v) **“Indemnity”** means as defined in Section 8.1.
- (w) **“MLM Customer”** means as defined Mesa City Code Title 8 Chapter 10.
- (x) **“Non-Defaulting Party”** means as defined in Section 7.1.
- (y) **“Non-Deferred Crismon Road Improvements”** means as defined in Section 3.2.
- (z) **“Notice of Default”** means as defined in Section 7.1.
- (aa) **“Owner”** means Pacific Proving, LLC, Mesa BA Land, LLC, and permitted successors and assigns.
- (bb) **“Parcel A”** means as defined in Recital B.
- (cc) **“Party”** or **“Parties”** means as defined on the first page of this Agreement and include any such Party’s permitted successors and assigns.
- (dd) **“Project”** means as defined in Recital F.

(ee) **“Property”** means as defined in Recital A and includes both Parcel A and the County Property.

(ff) **“Public Infrastructure Improvements”** means the public off-site infrastructure improvements (i.e., water, wastewater, drainage, and roadway improvements) required as part of the development of the Project as set forth in Mesa City Code, which include but are not limited to the Crismon Road Improvements.

(gg) **“Temporary Improvements”** means as defined in Section 3.2(a).

(hh) **“Tenant”** means as defined in Section 5.5.

(ii) **“Term”** means as defined in Section 6.

(jj) **“Waiver”** means as defined in Subsection 9.17.

(kk) **“Zoning”** or **“Zoning Ordinance”** means Mesa City Code Title 11, Zoning Ordinance, as may be amended from time-to-time during the Term.

(ll) **“Zoning Case”** means as defined in Recital H.

2. Development Plans.

2.1 Applicable Laws and Development of the Project. Owner shall develop the Project in compliance with this Agreement, the Zoning Case, and Applicable Laws, all as may be amended from time to time, and that apply to the development of the Project as of the date of any application or submission to the City.

2.2 Airport Overlay Area. The Property is located within the Phoenix Mesa Gateway Airport Overlay Area AOA2 and shall be developed pursuant to the restrictions stated in City Code Title 11, Chapter 19.

2.3 Permit and Other Fees. Owner shall pay the applicable building permit, inspection, development impact, and all other applicable fees for the development of the Property (each, a **“Fee”**) that are in effect at the time of any application or submission. Owner shall go through the City standard permit process for all permits for the Project and Public Infrastructure Improvements, and the permits for the Public Infrastructure Improvements will include the City’s standard language allowing the Owner to access the City’s rights-of-ways and easements in accordance with the Applicable Laws and compliance with the permits.

3. Public Infrastructure Improvements.

3.1 Public Infrastructure Improvements. As a condition to the development of the Project, and for the Property to obtain City utility services, Owner acknowledges and agrees that Owner must dedicate rights of way and easements (temporary, permanent or otherwise), and finance, design, construct (or cause to be constructed) and install certain Public Infrastructure Improvements to applicable City codes, standards, and details. If the Project is developed in

phases, the Public Infrastructure Improvements, dedication of rights-of-way, and dedication of easements must be completed in phase one of the Project (except for the portion of Crismon Road that may be deferred, as provided in Section 3.2 below). The Public Infrastructure Improvements include, but are not limited to, the roadway improvements on Crismon Road, a four-lane arterial with center turn lane as set forth in Mesa Standard Details (referred to herein as the “**Crismon Road Improvements**”).

3.2 Deferral of Crismon Road Improvements. Because the Arizona Department of Transportation (“**ADOT**”) has not completed design or construction of the SR-24 overpass at Crismon Road, the City, using its authority in Mesa City Code Section 9-8-4(D)(2), agrees to temporarily defer (the “**Deferral Period**”) Owner’s obligation to design, install, and construct that portion of the Crismon Road Improvements depicted on Exhibit C and labeled as the “**Deferred Crismon Road Improvements**” as set forth below. The remaining portion of Crismon Road depicted on Exhibit C and labeled as the “**Non-Deferred Crismon Road Improvements**” must be constructed at the time of development of the Project and if the Project is built in phases, must be built in phase one. The Deferred Crismon Road Improvements are subject to the following terms and conditions:

(a) Temporary Crismon Road Cul-De-Sac. A condition precedent to City deferring the Deferred Crismon Road Improvements is prior to the Deferral Period, when the Non-Deferred Crismon Road Improvements terminate at the northernmost driveway access of the County 43 Acres, a temporary cul-de-sac, as conceptually shown on Exhibit D (the “**Temporary Improvements**”), is built by the applicable property owner as further set forth in this section. If Owner secures any building permit for the Project before the property owner of the County 43 Acres is issued any building permit for its project, then Owner, is obligated, at its sole cost and expense, to design and construct the Temporary Improvements. If Owner is required to design and construct the Temporary Improvements, Owner shall follow the City’s normal and customary permit and review process and pay all applicable Fees for designing and engineering the Temporary Improvements and such Temporary Improvements must be built during the construction of the Non-Deferred Crismon Road Improvements. The Temporary Improvements must remain in place on Crismon Road until such time as Owner begins construction of the Deferred Crismon Road Improvements. Upon Owner commencing construction of the Deferred Crismon Road Improvements Owner at its sole cost and expense must remove the Temporary Improvements to make way for the construction of the Deferred Crismon Road Improvements.

(b) Term of Deferral Period. The Deferral Period shall end at the earlier of: (i) when ADOT commences construction of the SR 24 overpass at Crismon Road or (ii) when written notice from the City by its City Manager (such notice may be given in the City Manager’s sole and absolute discretion after consulting with the City Traffic Engineer) is provided to Owner indicating the end of the Deferral Period. Upon termination of the Deferral Period, Owner shall promptly apply for a construction permit and complete construction of the Deferred Crismon Road Improvements on or before ADOT completes construction of the SR 24 project.

(c) Financial Assurances. To ensure that Owner has the financial means to construct the Deferred Crismon Road Improvements, on every two-year anniversary of the Effective Date, Owner shall provide written notice to the Development Services Department Director that the tangible net worth of the Owner is at least five times the estimated then-current

cost to complete the Deferred Crismon Road Improvements, which notice will be on a form reasonably acceptable to Owner and City and similar to other City forms. If Owner fails or is unable to provide such written notice, the City Manager may elect to end the Deferral Period and require the design and construction of the Deferred Crismon Road Improvements (or require the in-lieu payment under Section 3.2(d)).

(d) In-Lieu Payment—Deferred Crismon Road Improvements. As set forth in Mesa City Code Section 9-8-4(D) in lieu of Owner designing, installing, and constructing the Deferred Crismon Road Improvements the City Manager in his sole and absolute discretion may elect to have Owner make an in-lieu payment by providing written notice to Owner. Owner shall submit the in-lieu payment to City within 60 days from the date of City's written notice to Owner. The in-lieu payment shall be based on a cost estimate that is prepared by a professionally registered civil engineer and approved by the City Engineer and shall include the costs for all design, labor and material costs and construction of the Deferred Crismon Road Improvements plus twenty percent (20%) for future contingency costs.

(e) Maintenance of Rights-of-Way. During the Deferral Period and until Owner commences construction of the Deferred Crismon Road Improvements, Owner at its sole cost and expense, shall maintain the portion of the rights-of-way dedicated for the Deferred Crismon Road Improvements free of garbage, junk, obstructions, and weeds or grass pursuant to and in compliance with Mesa City Code Section 8-6-3(C).

(f) City's Right to Construct. In the event Owner fails to design or construct the Temporary Improvements or Deferred Crismon Road Improvements as required in this Agreement, then City, after giving written notice to Owner has the right, but not the obligation, to perform such design and construction at Owner's sole cost and expense and said actual costs and expenses are due and payable to City within 30 days from the date of the City's written invoice to Owner. City shall have the right to access the Property, as necessary, to perform Owner's construction obligations.

3.3 Dedication and Acceptance of Public Infrastructure Improvements. Upon completion by Owner of any Public Infrastructure Improvements, Owner shall comply with all Applicable Laws and City processes, and dedicate to the City, at no cost to the City, such Public Infrastructure Improvements free and clear of all liens and encumbrances and in accordance with City standards applicable to such dedication and acceptance.

3.4 Rights-of Way and Easements. Owner, at its sole cost and expense, and at no cost to the City, shall dedicate to the City all the rights-of-way and easements (temporary, permanent or otherwise) for the construction, installation, operation, maintenance, repair and replacement of the Public Infrastructure Improvements (including the Crismon Road Improvements) and the Temporary Improvements, as required by the City. Owner shall dedicate all rights-of-way and easements prior to the issuance of the first building permit for the Project. Owner's obligations in this Section, shall survive the termination, cancellation, or expiration of this Agreement and are enforceable by specific performance, and any other means permitted in law or equity.

3.5 Warranty. Owner shall give the City a one-year warranty for all Public Infrastructure Improvements, which warranty shall begin on the date that the City accepts the

Public Infrastructure Improvements, as applicable. Any material deficiencies in material or workmanship identified by City staff during the applicable warranty period shall be brought to the attention of the Owner, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City. Continuing material deficiencies in a particular portion of the Public Infrastructure Improvements shall be sufficient grounds for the City to require: (a) an extension of the warranty for an additional one-year period, and (b) the proper repair of, or the removal and reinstallation of the Public Infrastructure Improvements subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, Owner agrees to repair any damage to the Public Infrastructure Improvements caused by Owner or its agents on the Property. Nothing contained herein shall prevent the City or Owner from seeking recourse against any third party for damage to the Public Infrastructure Improvements caused by such third party.

4. City Services. City Utility Service availability is subject to extension of the water and wastewater systems to and across all frontages of the Property at Owner's sole cost and expense. City utility service (including water and wastewater within the City's service area) is otherwise made available to the Property through the City's regular systems in the manner provided to other similarly situated customers within the City and without special rights or remedies. For the avoidance of doubt, any City service(s) is subject to and conditioned on compliance with the Mesa City Code (including the Water Shortage Management Plan and measures taken thereunder), the Terms and Conditions for the Sale of Utilities, all other Applicable Laws, and the timely payment of applicable rates, fees, and charges, all the foregoing as are in effect at any given time. Additionally, and notwithstanding the provisions of any other Section of this Agreement, any obligations City may have under this Section are contingent on the Arizona Department of Water Resources continuing City's designation of Assured Water Supply under A.R.S. § 45-576 and no moratorium having been declared under A.R.S. § 9-463.06. Nothing herein constitutes the waiver of or any limitation on the City's ability to enforce or adopt additional wastewater pretreatment requirements. Owner acknowledges that Owner, Tenant(s), and any other occupant of the Property that proposes to be an MLM Customer is subject to Title 8 Chapter 10 of the Mesa City Code. This Agreement does not constitute authorization or approval of Owner, Tenant(s), or any other occupant as an MLM Customer.

5. Prohibited Uses.

5.1 Prohibited Uses on the Property: General. The following land uses in the Zoning Ordinance are prohibited on the Property:

- (a) Correctional Transitional Housing Facility (CTHF)
- (b) Cultural Institutions
- (c) Day Care Centers
- (d) Automobile/Vehicle Repair, Major
- (e) Towing and Impound
- (f) Funeral Parlors and Mortuaries
- (g) Marijuana Dual Licensee Facilities
- (h) Medical Marijuana Dispensaries
- (i) Marijuana Cultivation Facilities

- (j) Marijuana Infusion Facilities
- (k) Reverse Vending Machines
- (l) Contractor's Yards
- (m) Mini-Storage
- (n) Aircraft Refueling Stations
- (o) Aircraft Light Maintenance
- (p) Airport Transit Station
- (q) Solar Farms
- (r) Swap Meets and Flea Markets

5.2 Prohibited Use on the Property: Transloading. Transloading is prohibited and is not allowed anywhere on the Property. For purposes of this Agreement, "transloading" means the logistics practice of unloading goods from inbound delivery vehicles and loading them onto outbound vehicles, and may include unpackaging, repackaging, sorting, or palletizing the goods prior to loading the goods onto outbound vehicles. Transloading does not include Warehousing and Storage, Indoor Warehousing and Storage, Wholesale, or Freight/Truck Terminals and Warehouses as these terms are defined in the Zoning Ordinance.

5.3 Prohibition. No use in violation of Section 5 is permitted on the Property. Owner shall not lease, license, or allow any use in violation of Section 5 and no Tenant shall convert the use of its space in a manner that would result in a violation of Section 5.

5.4 Disputes. The prohibitions on uses are material and essential provisions of this Agreement and City would not have entered into this Agreement but for their inclusion herein. To the extent there is a disagreement between the Parties as to whether a use or activity is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use or activity is prohibited or restricted under the Agreement and such decision by the Zoning Administrator is a final decision, which may be appealed, and is governed by the appeal rights, in Chapter 77 of the Zoning Ordinance.

5.5 Tenants. Owner acknowledges that the prohibition and restrictions on uses or activities in this Agreement applies to the Owner and any tenant, subtenant, licensee, or sublicensee that occupies any portion of the Property during the term of this Agreement (collectively, "**Tenant**"). Prior to any Tenant entering into an agreement with Owner to occupy the Property, Owner shall notify each such prospective Tenant in writing of the prohibitions and limitations applicable to the tenant's use or activities on the Property set forth in Section 5 of this Agreement. The requirements for notice to a Tenant or the inclusion of language in a lease, license, or similar agreement shall not apply to a Tenant of residential housing for human habitation when such Tenant shall occupy space on the Property as their residence if allowed under the Zoning Ordinance and this Agreement.

6. Term. This Agreement shall become effective on the date on which all the following events have occurred: (i) this Agreement has been adopted and approved by the City Council, (ii) executed by duly authorized representatives of City and Owner, and (iii) recorded in the office of the Recorder of the County (the "**Effective Date**"). The term of this Agreement ("**Term**") will begin

on the Effective Date and shall automatically terminate upon the earlier of: (i) termination by mutual written consent of the Parties or (ii) fifty (50) years from the Effective Date of this Agreement, unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

7. Default and Remedies.

7.1 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the “**Defaulting Party**”) then the other Party (the “**Non-Defaulting Party**”) may provide written notice to perform to the Defaulting Party (the “**Notice of Default**”). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

7.2 Remedies for Default. Whenever a Party fails to perform or fails to otherwise act in accordance with the term or provision of this Agreement (each an “**Event of Default**”) that is not cured (or cure undertaken) by the Defaulting Party in accordance with Section 7.1 of this Agreement, the Non-Defaulting Party may take any of one or more of the following actions, subject to any additional notice and cure periods provided in this Section 7.2:

7.2.1 Remedies of City. City’s sole remedies for an uncured Event of Default by Owner consist of the following:

(a) Seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post a bond or other security. The specific performance remedy provided in this Section is cumulative relief and is not a limitation on the City’s other remedies, including the right to seek contract damages, actual damages, and the monetary damages set forth in Section 3.2(f). In no event is City entitled to punitive, consequential, or special damages except as a remedy under the Indemnity provisions of this Agreement.

(b) The right to withhold any City permits or approvals the Owner may need to develop the Property and the right to revoke any City approval, permit, or certificate of occupancy if the Owner allows any of the prohibited uses in Section 5 to operate on the Property.

(c) For any action against Owner with respect to Owner’s Indemnity obligations the City Indemnified Parties, City may seek any remedies available in equity or law including, but not limited to, seek or recover all damages assessed against City in connection with Owner’s Indemnity obligations.

7.2.2 Remedies of Owner. Owner's sole remedies for an uncured Event of Default by City consists of and is limited to the ability to seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post a bond or other security. Owner hereby waives all rights to recover actual, punitive, consequential, special, and any other type of damages.

8. Indemnity and Risk of Loss.

8.1 Indemnity of City by Owner. Owner will pay, defend, indemnify and hold harmless "**City Indemnified Parties**" from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively "**Claims**") which arise or result from or in connection with or relate in any way, whether in whole or in part, to (i) the design, construction and structural engineering of the Public Infrastructure Improvements and other work and improvements by or on behalf of Owner, ii) any act or omission by Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Owner's other obligations under this Agreement, or (iii) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained by the Arizona Attorney General under A.R.S. § 41-194.01 (collectively, "**Indemnity**"). It is the specific intent of the Parties to this Agreement that the Indemnity of the City Indemnified parties shall apply to all Claims except those resulting from the sole and exclusive negligence of the City Indemnified Parties. The Indemnity obligations set forth in (i) in this Section related to the Public Infrastructure Improvements will not apply to the extent that the Owner obligations related to Public Infrastructure Improvements for the Crismon Road Improvements are satisfied by In-Lieu Payment (i.e., Owner does not design or construct such improvements), and shall otherwise survive for a period of two (2) years following acceptance of the Public Infrastructure Improvements by the City. The Indemnity obligations of this Section shall survive for a period of two (2) years after the expiration or earlier termination of this Agreement.

8.2 Risk of Loss. Owner assumes the risk of any and all losses, damages, or Claims to the Public Infrastructure Improvements unless and until title is transferred to City, at which time City assumes the risk of any and all loss, damage or Claims to any portion of the Public Infrastructure Improvements transferred to the City. At the time title to the Public Infrastructure Improvements is transferred to City by dedication deed, or otherwise, Owner will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Infrastructure Improvements and Owner shall have no liability therefor, unless specifically stated otherwise herein. Acceptance of the Public Infrastructure Improvements will be conditioned on City's receipt of the two-year warranty of workmanship, materials and equipment set forth in Section 3.6 in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Owner's contractor or contractors directly to City and are not required from Owner, and that any such warranties will extend from the date of completion of any Public Infrastructure Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

9. General Provisions.

9.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten days after its full execution by the Parties.

9.2 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party is entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

9.3 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of both Arizona and Delaware with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

9.4 Notices.

(a) Addresses. Except as otherwise required by law, any notice or communication required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Subsection, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

The City:

City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85201-7425
Attn: City Manager

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With copy to:

Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 852101-7425
Attn: City Attorney

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

Owner:

Pacific Proving, LLC
2801 E. Camelback Rd., #450
Phoenix, Arizona 85016
Attention: Andrew Cohn

Mesa BA Land, LLC
2801 E. Camelback Rd., #450
Phoenix, Arizona 85016
Attention: Andrew Cohn

With Copy to:

Gammage & Burnham, PLC
40 N. Central Ave. 20th Floor
Phoenix, Arizona 85004
Attention: Susan E. Demmitt

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

(b) Changes of Address. Addresses of the Parties may be changed by notice given to the other Parties in strict compliance with this Section.

9.5 Assignment. This Agreement may be assigned as follows:

(a) Assignment Prior to Termination of Deferral Period. Prior to the termination of Deferral Period and before the Deferred Crismon Road Improvements are built if Owner's assignee provides City with the financial assurances required in Section 3.2(c), then the City will allow a one-time assignment without the City's consent. After this one-time assignment, a second assignment of this Agreement requires prior written consent of the City, which consent may be given or withheld in City's reasonable discretion, and after a second assignment any additional assignment of this Agreement requires prior written consent of the City, which consent may be given or withheld in City's sole discretion. In addition to City's prior written consent, Owner's assignee must provide the City with the financial assurances required in Section 3.2(c).

(b) Assignment After Termination of Deferral Period. After the termination of the Deferral Period and the Deferred Crismon Road Improvements have been built, Owner may assign this Agreement without the City's consent and without providing the City with the financial assurances in Section 3.2(c).

(c) Covenants Running with The Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to, the benefit of the Parties as well as to their respective permitted successors and assigns as set forth in this Section 9.5(c). Upon an assignment that complies with either Section 9.5(a) or Section 9.5(b), as applicable, Owner will no longer be considered an Owner with respect to the property assigned and will be released from, and will no longer have any rights or obligations under, this Agreement with respect to the property assigned except Owner will not be released from any of its obligations under this Agreement arising before such assignment. If the assignee is an entity that is indirectly or directly controlling, controlled by, or under common control with Owner, or to any entity that acquires all or substantially all of Owner's assets, then that Owner and the assignee shall be jointly and severally liable to City for all obligations in this Agreement. In no event shall Owner have any right of approval or consent over amendments or extensions of this Agreement following Owner's assignment of its portion of the Property. This Agreement will control any conflict between this Agreement and the terms of any assignment, or any document related to any assignment. Any assignment that does not comply with this Section is void and will constitute a default of this Agreement by Owner.

9.6 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

9.7 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

9.8 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

9.9 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

9.10 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a

Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein. A reference to “days” in this Agreement means calendar days.

9.11 Conflict of Interest. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

9.12 Entire Agreement. This Agreement, together with the following Exhibits attached hereto, which are incorporated herein by this reference, constitute the entire agreement between the Parties:

- Exhibit A: Legal Description of the Property
- Exhibit B: Depiction of the Property including Parcel A and the County Property
- Exhibit C: Depiction and Location of Deferred Crismon Road Improvements and Non-Deferred Crismon Road Improvements
- Exhibit D: Depiction and Location of Temporary Improvements

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

9.13 Section Headings and References. 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. Any references in this Agreement to a “Section” or a “Subsection” shall include all subsections and paragraphs thereof.

9.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

9.15 Severability. If any provision(s) of this Agreement is declared void or unenforceable, such provision(s) shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.16 Amendments to this Agreement. Any change, addition, or deletion to this Agreement must be by written amendment executed by City and Owner and approved by City Council. Within ten (10) days after any amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

9.17 Proposition 207 Waiver. Owner hereby waive and release City (“**Waiver**”) from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to any permits approved by Maricopa County that is not in compliance with the Mesa City Code, any right to any compensation for reduction to the fair market value of all or any part of the Property, as a result of City’s approval of this Agreement, any and all restrictions and requirements imposed on Owner, the Project and the Property by this Agreement, the Zoning Case, the City’s approval of Owner’s plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building

and development matters arising from, relating to, or reasonably inferable from this Agreement or from any “land use law” (as such term is defined in the aforementioned statute sections). The terms of this Waiver shall run with the land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

9.18 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Arizona Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, then City and the Owner, in good faith, will attempt to modify this Agreement so as to resolve the violation with the Arizona Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1). If, by the twenty-ninth day after the date of the notice from the Arizona Attorney General, the Parties, after good faith efforts, are not successful in modifying this Agreement to the satisfaction of the Arizona Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth day after the date of such notice from the Arizona Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if, under A.R.S. § 41-194.01(B)(2), the Arizona Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona, and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Owner posts such bond; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further obligations hereunder.

9.19 Prior Appropriation. Notice is hereby given that pursuant to A.R.S. § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations.

9.20 Survival. The provisions contained in Section 3.4 (Rights of Ways and Easements), Section 8.1 (Indemnity), and Section 9.17 (Proposition 207 Waiver) shall survive the execution and delivery of this Agreement and the rescission, cancellation, expiration or termination of this Agreement.

9.21 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[Signatures of the Parties are on the following three pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: Christopher J. Brady
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
James N. Smith, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Christopher J. Brady, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

Notary Public

My commission expires:

OWNER:

PACIFIC PROVING, LLC,
a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024,
by _____ the _____ of PACIFIC PROVING LLC,
INC., a Delaware limited liability company.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL A

**PACIFIC PROVING GROUNDS
NEC PECOS & CRISMON DEVELOPMENT AGREEMENT
LEGAL DESCRIPTION**

A portion of the West Half of Section 35, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found cotton picker spindle accepted as the Southwest corner of said Section 35 from which a found 2 inch aluminum cap accepted as the West Quarter corner thereof bears North 00°33'21" West, 2643.21 feet;

Thence North 00°33'18" West, 50.01 feet along the proposed centerline of Crismon Road to the **POINT OF BEGINNING**;

Thence the following four (4) courses along said proposed centerline of Crismon Road;

Thence continuing, North 00°33'18" West, 539.78 feet to the beginning of a tangent curve, concave easterly, having a radius of 6000.00 feet;

Thence northerly along said curve, through a central angle of 05°43'34", an arc length of 599.64 feet to a tangent line;

Thence North 05°10'16" East, 233.99 feet to the beginning of a tangent curve, concave westerly, having a radius of 6000.00 feet;

Thence northerly along said curve, through a central angle of 00°16'27", an arc length of 28.70 feet to a non-tangent line;

Thence leaving said centerline, South 89°34'13" East, 65.20 feet to the proposed easterly Right of Way line of said Crismon Road and a non-tangent curve, concave westerly, having a radius of 6065.00 feet, the center of which bears North 85°09'03" West;

Thence northerly along said curve and said easterly Right of Way line, through a central angle of 04°27'09", an arc length of 471.32 feet to a tangent line;

Thence North 00°23'48" East, 1323.30 feet along said easterly Right of Way line to the southerly Right of Way line of SR 24 described within the Order of Immediate Possession filed as Document No. 2019-0309832, Maricopa County Records;

Thence the following eleven (11) courses along said southerly Right of Way line:

Thence South 89°36'07" East, 57.70 feet;

Thence North 08°22'20" East, 136.84 feet;

Thence South 62°40'32" East, 195.68 feet;

Thence South 63°16'55" East, 294.67 feet;

Thence South 65°16'33" East, 198.75 feet;

Thence South 65°35'03" East, 395.14 feet;

Thence South 74°51'06" East, 349.99 feet;

Thence South 70°24'57" East, 226.16 feet;

Thence South 73°41'16" East, 648.74 feet;

Thence South 76°28'44" East, 207.94 feet;

Thence South 81°41'34" East, 50.47 feet to the north-south mid-section line of said Section 35;

Thence leaving said southerly Right of Way line, South 00°33'55" East, 2481.00 feet along said north-south mid-section line;

Thence leaving said north-south mid-section line, North 89°25'50" West, 2643.69 feet along a line 50.00 feet north of and parallel with the south line of the Southwest Quarter of said Section 35 to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 7,309,251 sq. ft. (167.7973 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 2063
Date: August 2024



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N00°33'18"W	539.78'
L2	N05°10'16"E	233.99'
L3	S89°34'13"E	65.20'
L4	N00°23'48"E	1323.30'
L5	S89°36'07"E	57.70'
L6	N08°22'20"E	136.84'
L7	S62°40'32"E	195.68'
L8	S63°16'55"E	294.67'
L9	S65°16'33"E	198.75'
L10	S65°35'03"E	395.14'

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L11	S74°51'06"E	349.99'
L12	S70°24'57"E	226.16'
L13	S73°41'16"E	648.74'
L14	S76°28'44"E	207.94'
L15	S81°41'34"E	50.47'
L16	S00°33'55"E	2481.00'
L17	N89°25'50"W	2643.69'

CURVE TABLE			
CURVE NO.	RADIUS	DELTA	LENGTH
C1	6000.00'	5°43'34"	599.64'
C2	6000.00'	0°16'27"	28.70'
C3	6065.00'	4°27'09"	471.32'



PAGE 2 OF 2

PROJ.NO.: 2063	PACIFIC PROVING GROUNDS NEC PECOS & CRISMON DEVELOPMENT AGREEMENT MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: AUG 2024		
SCALE: NONE	EXHIBIT	
DRAWN BY: GS/MRM		
CHECKED BY: BJB		

© 2024, HILGARTWILSON, LLC

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EXHIBIT C

DEPICTION AND LOCATION OF DEFERRED CRISMON ROAD IMPROVEMENTS AND NON-DEFERRED CRISMON ROAD IMPROVEMENTS AND LOCATION

Non-Deferred Crismon Road Improvements.

East half-street improvements as required per City Code along the west Property boundary from Pecos Road to the northernmost access drive for the County 43 Acres, or if a site plan has not been approved for the County 43 Acres then to the northern property boundary of the County 43 Acres, as approved by the City.

Deferred Crismon Road Improvements.

East half-street improvements as required per City Code along the west Property boundary from the northernmost access drive for the County 43 Acres, or if a site plan has not been approved for the County 43 Acres then to the northern property boundary of the County 43 Acres to the northern Property boundary at the ADOT access control area, as approved by the City.



EXHIBIT D

DEPICTION AND LOCATION OF TEMPORARY IMPROVEMENTS AND LOCATION

Temporary Improvements.

Temporary turn around with specifications to be determined by the City at the terminus of the Non-Deferred Crismon Road Improvements, as approved by the City.

