

WHEN RECORDED RETURN TO:

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

**FIRST AMENDMENT
TO
PRE-ANNEXATION DEVELOPMENT AGREEMENT**

THIS AMENDMENT (this "Amendment") is entered into as of the _____ day of _____, 2021, by and between the CITY OF MESA, an Arizona municipal corporation ("City"); PACIFIC PROVING, LLC., a Delaware limited liability company ("Owner") and LEGACY CARES, INC., an Arizona non-profit corporation ("Lessee"). City, Owner and Lessee are herein referred to individually as a "Party," and collectively as the "Parties."

RECITALS

A. The Parties entered into that certain Pre-Annexation Development Agreement("PADA") dated April 13, 2021, approved by the Council of the City of Mesa No. 11644 and recorded in the office of the Maricopa Recorder's office at Document No. 20210431590.

B. Owner and Lessee desires to accelerate the improvement of the intersection at Ellsworth Road and Williams Field Road as well as acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange.

C. The One Million Five Hundred Thousand dollars (\$1.5M) that was intended to be used as a reimbursement to the Owner or Lessee for the Williams Field Road Improvements will now be used to pay for the costs of the acceleration of the improvement of the Williams Field Road and the Ellsworth Road intersection by the City and the costs of the acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange.

D. City agrees that it is in the best interest of City and its constituents to accelerate improvement of the intersection at Ellsworth Road and Williams Field Road as well as acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and representations, all of which are fully incorporated into this Amendment and made a part of this Amendment for all purposes,

and the mutual covenants and agreements and conditions in this Amendment, the Parties agree as follows:

1. Reimbursement of Williams Field Road Improvements. Instead of having the cost (not to exceed One Million Five Hundred Thousand dollars (\$1.5M)), of the Williams Field Road Improvements reimbursed to Owner or Lessee, Owner, Lessee and City desire to accelerate the improvement of the intersection of Ellsworth Road and Williams Field Road by the City, as well as acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange. Therefore, a new Section 6.1.1 shall be added as follows.

6.1.1 Payment for Certain Road Improvements. Instead of having the costs of the Williams Field Road Improvements reimbursed to Lessee, as provided in 6.1 hereof, Owner and Lessee desire to accelerate the improvement of the intersection of Ellsworth Road and Williams Field Road by City, as well as acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange. Therefore, notwithstanding, what is stated in Section 6.1 above, and because the intersection of Williams Field Road and Ellsworth Road and the SR24 interchange at Williams Field Road are important to the development of the Project, as well as the City, was part of the City's CIP Program and was included in the City's 2020 Mesa Moves Bond Program, the One Million Five Hundred Thousand dollars (\$1.5M) that was intended to be used as reimbursement for the Williams Field Road Improvements shall be used to cover the City's cost and expenses for the following projects (not in any specific order):

(i) all costs related to the acceleration of the improvement of the Williams Field Road and the Ellsworth Road intersection by City, including but not limited to, construction acceleration costs, Police costs, traffic control costs; and

(ii) all costs related to the acceleration of the project timeline for the opening of State Route 24 from Ellsworth Road to and including the Williams Field Road Interchange, subject to Amendment No. One to the Intergovernmental Agreement 19-0007461, (Approximately \$1,200,000), which will be approved at the same Council meeting as this Amendment.

In no event shall the total costs and expenses for (i) and (ii), above, exceed One Million Five Hundred Thousand dollars (\$1.5M).

2. Recordation. This Amendment shall be recorded in its entirety, except for exhibits deemed not recordable by the Maricopa County Recorder's Office, in the Maricopa County Recorder's Office not later than ten days after its full execution by the Parties.

3. Governing Law; Choice of Forum. This Amendment will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Amendment will 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).

4. Construction. The terms and provisions of this Amendment represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Amendment will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Amendment that ambiguous or conflicting terms or provisions contained in this Amendment will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Amendment.

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

6. Exhibits. The Parties agree that all references to this Amendment include all Exhibits designated in and attached to this Amendment, such Exhibits being incorporated into and made an integral part of this Amendment for all purposes.

7. Conflict of Interest Statute. This Amendment is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

8. Legacy Cares Inc. The Parties acknowledge that the Owner has leased the Property to Legacy Cares Inc., to develop the Property pursuant to the Lease. Legacy Cares Inc., by executing this Amendment and the Assumption of Obligations, attached hereto as Exhibit G, agrees to assume and be bound by the obligations of this Amendment.

9. Survival. Nothing in this Amendment deletes, waives or modifies the provisions contained in Section 4.5 (Rights of Ways and Easements), Section 5, (Utility Services), Section 7, (Prohibited Uses), Section 14.1 (Indemnity), and Section 15.22 (Proposition 207 Waiver) of the Pre-Annexation Development Agreement that the provisions stated above shall survive the execution and delivery of this Amendment and the rescission, cancellation, expiration or termination of the Pre-Annexation Development Agreement, as amended by this Amendment.

10. Counterparts. This Amendment 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 on the following 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 _____, 2021, 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

[Signature]
By: Andrew M. Cohn
Its: Authorized Rep.

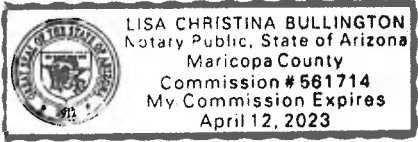
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 26 day of OCTOBER 2021,
by ANDREW M. COHN the Authorized Rep of PACIFIC PROVING LLC,
INC., a Delaware limited liability company.

Lisa C. Bullington
Notary Public

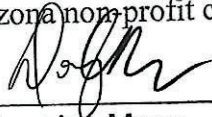
My commission expires:

4-12-2023



LESSEE:

LEGACY CARES INC.
an Arizona non-profit corporation



By: Douglas Moss
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 16 day of October, 2021,
by Douglas Moss the President of LEGACY CARES INC., an
Arizona non-profit corporation.



Notary Public

My commissions expires:

4/29/2025

