

# INTERGOVERNMENTAL AGREEMENT

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

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is entered into this date \_\_\_\_\_, 2022 (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. Under an agreement with the adjacent developer, PMGAA is committed to designing and building the Aviation Way improvements (the “Project.”), which will aid in the future development of southeast Mesa and the eastside of the Phoenix-Mesa Gateway Airport generally located in the City of Mesa, Maricopa County, Arizona (the “Airport”). This agreement is being enter into with the City to assist PMGAA in the construction of the Project.
4. The Project includes the construction of Aviation Way roadway and associated utilities (specifically water, wastewater, and stormwater infrastructure) within PMGAA property, to serve the future development and the Airport. Portions of that infrastructure will become part of the City’s roadway, drainage, water and wastewater systems. PMGAA has agreed to reimburse the City for all City costs associated with the construction of the part of the Project (“Construction Reimbursables”) on Aviation Way based on the approved Guaranteed Maximum Price (GMP) , pre-construction services costs and the City’s permitting, staff and administration costs. The approved GMP, not attached to this Agreement, will provide a breakdown of the actual costs of the work proposed for the Project and identifies the portions thereof, plus any other City costs associated with the construction; including but not limited to the GMP costs, permitting, capital overhead, staff time, materials testing and change orders; for which PMGAA will reimburse the City. PMGAA will be consulted on any proposed construction change orders prior to authorization of said change orders that will increase the cost of the Construction Reimbursables.
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 project.

**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 Aviation Way portion of the Project according to the current City of Mesa Engineering & Design Standards. PMGAA will also submit for and obtain any permits necessary to build the work including but not limited to permits from Maricopa County Environmental Services Department.
- 1.2. PMGAA will submit the plans, specifications, and estimates (“PS&E”) to the City 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 Roadway Easement and Public Utility Easement (PUE), and Temporary Construction Easements (TCE) (in a form acceptable to the City) along the length of Aviation Way, and for the water line and wastewater line along the future Gateway Boulevard alignment for the City to access it on PMGAA property.
- 1.4. PMGAA will reimburse to the City the actual costs associated with the approved Construction Reimbursables for the Aviation Way portion of the Project. The total amount for Construction Reimbursables shall be the extent of PMGAA’s financial obligation for the Project. PMGAA will reimburse the final agreed upon Project costs to the City within 30 days of PMGAA receiving from the City, 1) sealed record drawings of the Project; 2) a signed Maricopa County Environmental Services Department (MCESD) Approval of Construction Certificate; and 3) a copy of the “Letter of Acceptance” for the Aviation Way portion of the Project. The required documents as described are herein referred to as the Project Approval Documentation.
- 1.5. Upon the Parties’ mutual agreement and subject to all necessary approvals, PMGAA shall have the option to make payment for the Construction Reimbursable in the form of a dollar-for-dollar credit towards the City’s future Member contributions, which the PMGAA Board of Directors assesses on all Members of the Airport Authority annually.
- 1.6. PMGAA will require PMGAA’s developer to assume responsibility for the operation and maintenance of the Project landscaping on Gateway Boulevard and Aviation Way.
- 1.7. PMGAA agrees that ownership of the specified roadway and infrastructure improvements shall transfer to the City (without any further documentation) upon the City accepting the work.
- 1.8. PMGAA acknowledges that utility service provided by the City, including but not limited to service through the 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 review all pertinent documents associated with the Aviation Way portion of the Project including, but not limited to, the PS&E, 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.

- 2.2. City shall upfront all costs associated with the construction, pre-construction, applicable permit fees (if any), construction administration, staff time and administration of the Project. Upon PMGAA receiving and accepting, in writing, the City's Project Approval Documentation, the City will prepare final accounting for costs not previously paid, including applicable change orders and the items of work previously identified and invoice PMGAA for reimbursement.
- 2.3. The City will complete the construction of the Aviation Way transportation and utility improvements (including but not limited to roadway, lighting, storm drain, water, and sewer) as part of the City's project to construct the first 1000-feet of Gateway Boulevard within PMGAA property.
- 2.4. The City will perform all 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.
- 2.5. The City will assume the ownership (including operation and maintenance), for the completed roadway, water and wastewater improvements upon the City's acceptance of the work.
- 2.6. The City will consult with PMGAA prior to approving any change order that will cause the cost of completing the Construction Reimbursables to exceed the approved GMP estimate.

### 3. **Term:**

- 3.1. The term of this Agreement shall commence on the Effective Date and shall automatically terminate upon the PMGAA's reimbursement to the City, provided, however, termination of this Agreement shall not affect the transfer of ownership as described in 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. This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 4.4. This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 4.5. 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.

- 4.6. 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.
- 4.7. 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: \_\_\_\_\_