



## NOTICE AND AGENDA OF MEETING OF THE MESA GATEWAY AIRPORT AUTHORITY BOARD OF DIRECTORS

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Mesa Gateway Airport Authority and to the public that the Mesa Gateway Airport Authority will hold a meeting open to the public on **Tuesday, September 16, 2025 beginning at 9:00 a.m.** in the Board Room (Saguaro A & B) of the Gateway Administration Building, 5835 South Sossaman Road, Mesa, Arizona. Members of the Mesa Gateway Airport Authority may attend either in person or by audioconference. The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03 (A)(3)&(4).

The agenda for the meeting is as follows:

1. **Call to Order** (Mayor Mark Freeman, Vice Chair)  
*Members of the Mesa Gateway Airport Authority will attend either in person or via videoconference.*
2. **Pledge of Allegiance**
3. **Call to the Public**  
*Members of the Board may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date. Maximum of three minutes per speaker.*
4. **Executive Director's Report** - J. Brian O'Neill, A.A.E., Executive Director/CEO
5. **Presentation** –The Boyer Company, L.C.
6. **Consent Agenda**
  - a) **Minutes** of the Board Meeting held on **August 19, 2025.**
  - b) **Resolution No. 25-36** – Authorizing an Amendment of the **FY26 Capital Budget** to provide an additional \$14,587,121 in funding, to the initial \$30,000,000 Capital Budget that was approved in March 2025, for the TSA In-Line Checked Baggage System Design/Construct Project under CIP 1265, subject to receipt of a TSA OTA Grant. The new project total will be \$44,587,121, which includes the Design costs of \$1,125,991.50.
  - c) **Resolution No. 25-37** – Authorizing a Construction Manager at Risk Construction Services Contract with **The Weitz Company, LLC** for the TSA In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$41,643,882 pending receipt of a Transportation Security Administration grant.
  - d) **Resolution No. 25-38** – Approve a Professional Services Agreement to provide Construction Administration Services with **Studdiford Technical Solutions, LLC** for the In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$925,997 pending the receipt of a Transportation Security Administration grant.

- e) **Resolution No. 25-39** – Authorizing a contract with **Cross Fire Protection, LLC**, to provide Airport Wide Fire System Test, Inspect, Monitoring, and Repair services for all fire protection/alarm systems installed throughout the Airport's property, in an amount not-to-exceed \$55,848.50, (excluding repair services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5%, subject to written approval by the Airport. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of the Airport.
- f) **Resolution No. 25-40** – Authorizing a contract with **Kleen-Tech Services, LLC** for Power Washing Services, in an amount not to exceed \$23564.00 (excluding as needed services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5% provided the adjustments are submitted in writing with thirty (30) days' advance notice. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of MGAA.
- g) **Resolution No. 25-41** – Authorizing an Amendment to the Development Lease on Lot 210 with **Boyer Gateway East Mesa Building 1, L.C.**, a Utah limited liability company, to adjust the base rent schedule and update the name of the Airport and Airport Authority.
- h) **Resolution No. 25-42** – Authorizing the First Amendment to the Master Development Agreement with **Boyer Gateway East L.C.**, to update the boundaries for the Development Phases of the Project.

**Consideration and Approval of:**

- 7. **Resolution No. 25-43** – Authorizing a Development Lease with **Boyer Gateway East Mesa Hotel 1, L.C.**, a Utah limited liability company, for 1.725 acres (75,138 square feet) located within the Gateway East project and identified as Lot 201. The lease term is SIXTY-FIVE (65) years commencing on October 1<sup>st</sup>, 2025. To authorize a Second Amendment to the Master Lease with **Boyer Gateway East L.C.**, to concurrently remove Lot 201 from the Master Lease Agreement and update the Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East.

**8. Board Member Comments/Announcements**

**9. Next Meeting: Tuesday, October 21, 2025 at 9:00 a.m.**

**10. Adjournment**

*Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Misty Johnson at 480-988-7607 or [mjohnson@gatewayairport.com](mailto:mjohnson@gatewayairport.com). Requests should be made as early as possible to allow time to arrange the accommodation.*



- Gateway Airport Reports Record July for Passenger Activity
- Gateway Airport Reports Record July for Financial Performance
- Construction of TSA Checked Baggage Inspection Facility to Begin this Fall
- Gateway Commerce Center III Buildings Nearing Completion
- Additional Covered Parking Planned for Ray Road Economy Parking Lot
- Phase II of Runway 12R-30L Reconstruction Gets Underway on October 1<sup>st</sup>

## Executive Director's Report September 2025

---

**FlightSafety International is Building a 100,000 Sq. Ft.  
Learning Center at Mesa Gateway Airport**



## Financial Snapshot

OPERATING INCOME	July		Month Variance	FYTD Comparison		FYTD Variance
	2024	2025		FY25	FY26	
Revenues	\$3,050,247	\$3,656,828	<b>\$606,581</b>	\$3,050,247	\$3,656,828	<b>\$606,581</b>
Less Expenses	\$2,239,383	\$2,767,301	<b>\$527,918</b>	\$2,239,383	\$2,767,301	<b>\$527,918</b>
Operating Income (Before Depreciation)	\$810,864	<b>\$889,527</b>	<b>\$78,663</b>	\$810,864	<b>\$889,527</b>	<b>\$78,663</b>

**Investment Fund Balances:** As of July, the Local Governmental Investment Pool (LGIP) 700 = \$3,774,546; Wells Fargo; Collateralized Money Market = \$8,223,791 and Commercial/Paper Brokered CD's = \$59,745,178; Total \$71,743,515. MGAA invests in fixed rate instruments.

## Finance and Accounting

### Gateway Airport Reports Record July for Financial Performance

Mesa Gateway Airport Authority (MGAA, Authority) reported a net operating income of \$889,527 for July 2025. **This is the best July monthly financial results in the history of MGAA.**

July 2025 aeronautical revenues increased by 29% and non-aeronautical revenues increased by 4% on a year-over-year monthly comparison. The aeronautical revenue increase was generated by fuel flowage fees (11%), landing fees (9%), lease income (17%) and fuel sales (75%). The increase in non-aeronautical revenues was a generated by additional land lease income (24%).

Operating expenditures for July increased by 24% and totaled \$2,767,301. The increase was due to an increase in fuel related cost-of-goods-sold due to increased aviation fuel sales volume.

Fiscal-year-to-date 2026 (FYTD26) operating expenditures are \$446,905 over budgeted amounts, due to the increased fuel cost-of-goods sold.

### Active/Pending Solicitations

TYPE OF SOLICITATION	Number	Title	Anticipated Contract Award
Request for Proposals	2025-009-RFP	Fire Test, Inspect, Monitor, and Repair Services	September 2025
Invitation for Bid	2026-001-IFB	Power Washing Services	September 2025
Invitation for Bid	2026-002-IFB	Passenger Boarding Ramps	October 2025
Request for Qualifications	2025-003-RFQ	South Apron Aeronautical Redevelopment	October 2025

### Future Solicitations

TYPE OF SOLICITATION	Number	Title	Anticipated Contract Award
Invitation for Bid	2026-003-IFB	Baggage Tractor	November 2025
Request for Qualifications	2026-004-RFQ	Website Redesign Services	January 2026

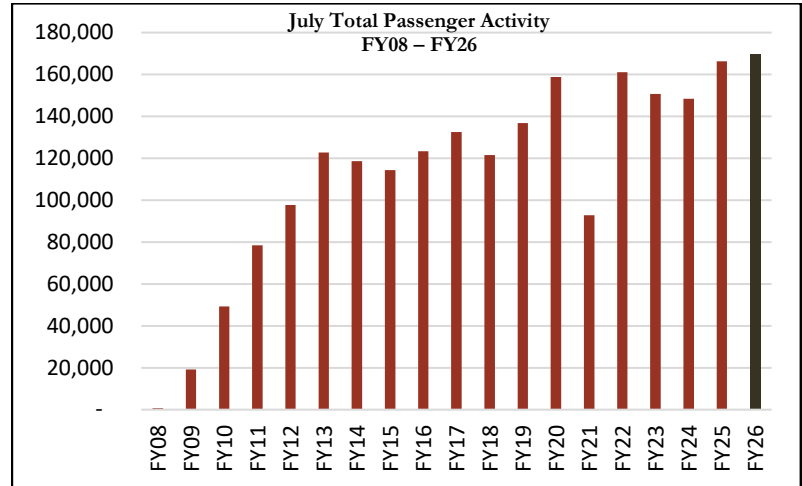


## Airport Operations

### Gateway Airport Reports Record July for Passenger Activity

More air travelers used Mesa Gateway Airport (Airport, Gateway Airport) during the month of July 2025 than any other previous July in the history of the Airport. In total, 169,729 passengers chose Gateway Airport for its unparalleled convenience, ease of access, and value.

In FY25, Gateway Airport set a new annual passenger activity record, with more than two million total passengers traveling through the Airport during the year. Both Allegiant and Sun Country set new records for passenger activity.



*Gateway Airport Set a New Passenger Activity Record in July 2025*

PASSENGERS AND AIR CARGO		July		% Change	FYTD		% Change
		2024	2025		FY25	FY26	
Passengers	TOTAL	166,269	169,729	2%	166,269	169,729	2%
	Deplaned	85,436	87,186	2%	85,436	87,186	2%
	Enplaned	80,833	82,543	2%	80,833	82,543	2%
Allegiant		166,269	169,341	2%	166,269	169,341	2%
Sun Country		0	388	100%	0	388	100%
Air Cargo (lbs.)		118,718	1,770,945	1,392%	118,718	1,770,945	1,392%

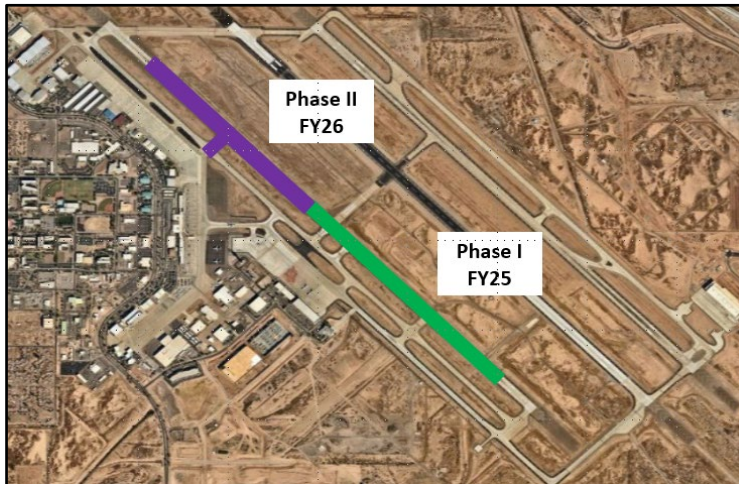
  

OPERATIONS		July		% Change	FYTD		% Change
		2024	2025		FY25	FY26	
Air Carrier		1,446	1,204	-17%	1,446	1,204	-17%
Military		101	166	64%	101	166	64%
General Aviation		21,873	24,517	12%	21,873	24,517	12%
TOTAL		23,420	25,887	11%	23,420	25,887	11%

## Engineering, Planning, and Facilities

### Phase II of Runway 12R-30L Reconstruction Gets Underway on October 1<sup>st</sup>

MGAA is very fortunate to have three 10,000 ft. runways as part of its expansive airfield. An ongoing challenge for Authority staff is maintaining the miles and miles of concrete, electrical wiring, and runway/taxiway lighting to ensure the continued safe and efficient operation of Gateway Airport for the growing number of commercial, corporate, general aviation, and military aircraft using the Airport.



*Northern Portion of Runway 12R-30L to be Reconstructed*

In FY25, Gateway Airport began a two-year project to reconstruct its inside runway, Runway 12R-30L. This \$45MM project is the single largest infrastructure project in the history of the Airport.

Thanks to the first installment of a two-year grant commitment from our partners at the Federal Aviation Administration (FAA) and Arizona Department of Transportation (ADOT), the aging concrete of the southern portion of the 10,400 ft. was removed and replaced with new, 16-inch thick concrete in FY25.

Starting on October 1<sup>st</sup>, the northern portion of the runway will undergo the same rehabilitation process. The project is expected to take one year, with a scheduled reopening date for the runway on October 1, 2026.

### **Additional Covered Parking Planned for Ray Road Economy Parking Lot**

**Q. *What should an airport do when covered parking starts to regularly fill up?***

**A. *Build more covered parking!***

Due to the growing popularity of covered parking in the Ray Road Economy Parking Lot – priced at only \$11.00/day – MGAA has begun planning for an additional 200 covered parking spaces within the lot. MGAA's initial financial investment in fencing, covered parking structures, and revenue control equipment has been repaid, and MGAA staff believes the time is now to build some more.

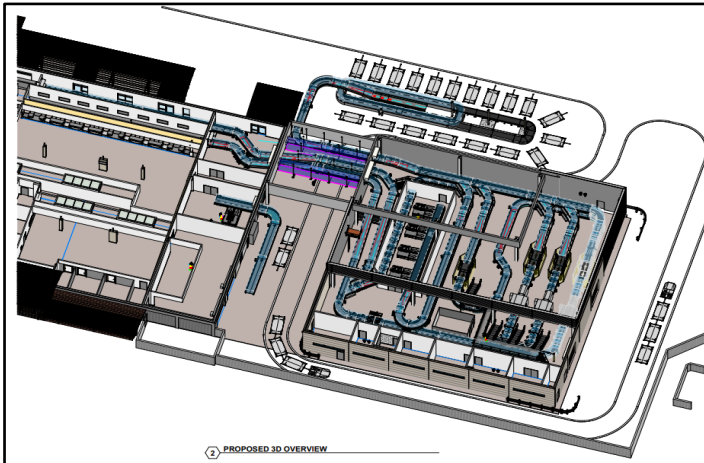


*Covered Parking in Ray Road Economy Parking Lot*

As passenger activity at the Airport continues to increase, additional covered parking spaces will be a real customer service enhancement. During the hot summer months in Arizona, parking a vehicle under a shade structure can reduce the inside temperature by up to forty degrees Fahrenheit. Wow, 40°

### **Construction of TSA Checked Baggage Inspection Facility to Begin this Fall**

At commercial service airport nationwide, checked baggage received at the airline ticket counter is processed through explosive detection systems (EDS) prior to being placed in the belly of an aircraft. Many of these fully automated systems include explosive detection equipment, transport conveyors, baggage sorters, and secondary inspection areas.



*New EDS Facility Design for Gateway Airport*

At Gateway Airport, MGAA has partnering with the TSA on a \$45MM project to modernize and upgrade the EDS currently in the terminal.

The current EDS has older explosive detection equipment capable of processing 200-300 bags per hour. The new EDS, scheduled to begin construction this fall, can process 800-1,000 bags per hour and provides for a much more efficient flow of checked baggage. MGAA would like to thank the TSA for their continued investment in, and support of, Gateway Airport.

## Business Development

### Gateway Commerce Center III Buildings Nearing Completion

An impressive new industrial complex is under construction at the corner of Sossaman Road and Velocity Way. The two building project totals approximately 100,000 SF and is scheduled to be fully complete by late August. The developer is already constructing speculative office suites in each building to make spaces as “move-in ready as possible” for potential users.

One of the two buildings will have permit-ready plans for suites ranging between 6,700± SF and 18,700± SF that can be completed in 90 days from a signed lease.



*Gateway Commerce Center III Buildings*

### Gateway Aviation Services

FUEL (Gallons)	July			FYTD		
	2024	2025	% Change	FY25	FY26	% Change
AvGas	42,526	47,805	12%	42,526	47,805	12%
Retail Jet A	80,355	240,591	199%	80,355	240,591	199%
Contract	360,225	196,460	-45%	360,225	196,460	-45%
Commercial	1,262,966	1,167,007	-8%	1,262,966	1,167,007	-8%
Cargo	0	64,316	100%	0	64,316	100%
<b>TOTAL</b>	<b>1,746,072</b>	<b>1,716,179</b>	<b>-2%</b>	<b>1,746,072</b>	<b>1,716,179</b>	<b>-2%</b>

Gateway Aviation Services, the Airport Authority owned and operated FBO, pumped 1,716,179 gallons of aviation fuel during the month of July 2025, a 2% decrease compared to last July. A big “Thank You” to the



hard-working and dedicated men and women on the Gateway Aviation Services Team for working out in the Arizona heat this summer.

## Community Noise Report

CALLERS	July		FYTD	
	2024	2025	FY25	FY26
Total	7	14	7	14

AIRCRAFT TYPE	July		FYTD	
	2024	2025	FY25	FY26
	Callers	Callers	Callers	Callers
Commercial	3	11	3	11
GA Total	4	3	4	3
Helicopter	0	0	0	0
Military	0	0	0	0
Total	7	14	7	14

MGAA received communications from a total of 14 individuals regarding aircraft noise issues during the month of July 2025, compared to seven individuals last July.

LOCATION	July		FYTD	
	2024	2025	FY25	FY26
Mesa	2	9	2	9
Gilbert	1	3	1	3
Gold Canyon	0	0	0	0
Queen Creek	1	2	1	2
Queen Valley	1	0	1	0
Apache Junction	0	0	0	0
San Tan Valley	1	0	1	0
Chandler	0	0	0	0
Florence	1	0	1	0
Goodyear	0	0	0	0
Phoenix	0	0	0	0
Tempe	0	0	0	0
TOTAL	7	14	7	14

## Community and Government Relations

### Gateway Airport Celebrates National Aviation Week 2025 with Treats and Giveaways



*Gateway Airport Cookies and Swag*

Gateway Airport, along with many other airports across the country celebrated National Aviation Week 2025 from August 19 – 25; coinciding with National Aviation Day on August 19, 2025 in honor of Orville Wright's birthday. This annual celebration honors the history and future of flight, with various organizations nationwide hosting events during the week.

**Trivia Question: How old would Orville Wright be if he were alive today?**

**Answer: 154 Years Old**



## MGAA TEAM MEMBER SPOTLIGHT

**Employee Name:** Ksenia Kerentseva  
**Employee Title:** Airport Planner  
**MGAA Department:** Engineering and Facilities  
**Years with MGAA:** 1+



**What are your job responsibilities for MGAA?** I collaborate with local governmental agencies, developers, and internal departments on proposed land use and development near the Mesa Gateway Airport to ensure alignment with the Airport Land Use Compatibility Plan (ALUCP). I conduct height and airspace evaluations using GIS and iALP software for proposals within designated airspace overlay areas (AOA I, II, III), and manage on-airport FAA 7460 filings for developers, crane operators, and tenants. I also make sure planning documents are up to date including the Airport Master Plan, Airport Layout Plan (ALP), and Airport Capital Improvement Plan (ACIP).

**What is your most memorable Gateway Airport moment?** One of my most memorable moments was back in 2020, when I was an intern with the ENF department and helped organize Aviation Career Education Day. It was incredible to see so many students excited about aviation and eager to learn more about the industry. I was part of the security team, ensuring all the VIP members were accounted for and escorted to the proper areas for the event. Later, I had the opportunity to explore the inside of a KC-135.

**What is something people may not know about you?** During my time at ASU, I was part of a couple start-ups, including one that partnered with the 355<sup>th</sup> Maintenance Group at the Davis Monthan Airforce Base to develop a virtual reality training for their A-10 aircraft. As part of that project, I had the opportunity to sit in both their A-10 simulator and an actual A-10 aircraft.





**MINUTES OF THE PUBLIC MEETING OF THE  
MESA GATEWAY AIRPORT AUTHORITY  
BOARD OF DIRECTORS | August 19, 2025**

A public meeting of the Mesa Gateway Airport Authority (MGAA, Authority) was convened on Tuesday, August 19, 2025, beginning at 9:00 a.m. in the Board Room (Saguaro A&B) of the Gateway Administration Building, 5835 S Sossaman Road, Mesa, Arizona.

**Members Present**

Lt. Governor Regina Antone, Gila River Indian Community  
Councilmember Scott Somers, Mesa  
Mayor Scott Anderson, Gilbert  
Mayor Chip Wilson, Apache Junction  
Councilmember Jeff Brown, Queen Creek

**Airport Staff Present**

J. Brian O'Neill, Executive Director/CEO  
Scott Brownlee, Deputy Director/COO  
Chuck Odom, CFO  
Misty Johnson, Clerk of the Board  
Jill Casson Owen, Attorney

*\* Neither present nor represented*

**1. Call to Order** at 9:02 a.m. (Lt. Governor Antone, Chair)

**2. Pledge of Allegiance**

**3. Call to the Public**

There were no public comments.

**4. Executive Director's Report** – J. Brian O'Neill, A.A.E., Executive Director/CEO

Executive Director O'Neill provided a briefing on MGAA financial performance, passenger activity, the community noise report, and various Airport projects.

- Fiscal Year-to-Date 2025 (FYTD) Net Operating Income is \$5,411,348 compared to \$4,111,268 FYTD24. This is a new all-time financial performance record for the Authority. The record financial results can be attributed to new land leases and increased passenger activity.
- Mesa Gateway Airport (Airport, Gateway Airport) welcomed 164,741 commercial passengers in June 2025. This is up from the 158,512 passengers during June of last year. Fiscal Year 2025 was the best year ever for total passenger activity with 2,006,347 commercial passengers.
- MGAA Briefs
  - FY25 was a very good year with new records set in all operational performance metrics categories.
  - Air cargo activity continues to soar to new heights with totals surpassing seven million pounds during this past fiscal year.
  - The Authority is working with the member communities, the congressional delegation from Arizona and U.S. Customs and Border Protection (USCBP) to request a second USCBP agent in order to have the infrastructure and staffing to accommodate the developing international air cargo market.
  - Another opportunity associated with the continued growth and success of the Airport is to evaluate the Airport's long-term aviation fuel storage needs and to strategically plan for increased fuel storage demand in the future.
  - The initial investment of 200 spaces in the Ray Road Economy Parking Lot Covered Parking Area has been paid back within six years. The anticipated pay back of this investment was 10 to 12 years. The Authority is exploring adding another 200 spaces to covered parking to meet the increasing customer demand.

- **MGAA Private Development**
  - The two building Gateway Commerce Center III project totals approximately 100,000 sq. ft. and is scheduled to be fully complete by late August. The developer is constructing speculative office suites in each building to make the spaces “move-in ready” for potential users. Tenant activity is anticipated for the end of September and beginning of October.
  - The demolition of several old Airport buildings has created a new aeronautical development opportunity at the south end of the Airport. In September 2024 a Request for Qualifications (RFQ) for the ± 8.00 acres of property designated for aeronautical redevelopment was released. The evaluation panel met to review all qualified submittals and selected a developer. The developer will present their design plans before the MGAA Board for consideration and approval at the October 2025 Board meeting.
  - SkyBridge Arizona is a 360-acre master development project offering both aeronautical and non-aeronautical private development opportunities. SkyBridge has built and leased more than 600,000 sq. ft. of building space. To date, \$30MM has been invested in infrastructure, utilities and roadways by SkyBridge Arizona. Phase II of the development will open up the aeronautical parcels along Taxiway Alpha.
  - The Gateway East developer, The Boyer Company is working with the City of Mesa to finalize design plans and securing the necessary permits for a five-acre development at the intersection of Ellsworth Road and Gateway Boulevard. The project includes a five-story, 125-room SpringHill Suites by Marriott Hotel, two retail buildings, and two restaurant pads.
- **MGAA Project Updates**
  - The reconstruction of Runway 12R-30L is halfway complete. Phase I, the southern half, began in October 2024 and was completed at the end of May. The full runway has been open since May. Phase II, the northern half, will begin reconstruction in the fall of 2025. This important infrastructure project totals approximately \$45MM, with a majority of the funding coming from FAA grants.
  - A new TSA checked baggage system will replace two older explosive detection machines that can only clear 200 – 300 checked bags an hour. The new upgraded explosive detection equipment will be capable of clearing 800 – 1,000 bags an hour. This additional capacity will be necessary as the Airport continues to grow. A portion the project’s funding, estimated to be \$45MM, is coming from a TSA grant. The project is scheduled to get underway in the fall of 2025 pending receipt of a TSA grant.
  - The Hourly Parking Lot, located directly in front of the terminal, has recently been milled and overlaid with asphalt. A new shade structure, designed to protect customers and the revenue control equipment from the intense Arizona sun, has also been installed as part of the project.
  - Strategically-placed speed bumps were installed in July along the curb in front of the Airport terminal. These four-lane speed bumps, with enhanced pavement markings, have dramatically reduced the speed of traffic along the terminal curb.
  - The Authority has received a federal grant to update the aging airfield electrical system. Over the next two years, the electrical system will be updated in conjunction with ongoing runway projects. This will include new LED lighting, upgrading the vaults, and the wiring connecting all aspects of the airfield.

## **5. FlightSafety International Presentation – Barbara Telek, President**

FlightSafety International, a Berkshire Hathaway company, is a professional aviation training company operating the world’s largest fleet of advanced full-flight simulators at learning centers and

training locations internationally. The expansion of its operations will include an investment in a new 100,000 sq. ft. Learning Center at Mesa Gateway Airport.

## **6. Consent Agenda**

- a) **Minutes** of the Board Meeting held on **June 17, 2025**.
- b) **Resolution No. 25-30** – Authorizing a Construction Manager at Risk Construction Services Contract, with **Pulice Construction, Inc.**, for the Runway 12R-30L Reconstruction Phase 2 Project in an amount not to exceed \$27,103,229.20, pending receipt of FAA Grant Funding.
- c) **Resolution No. 25-31** – Approving an Authorization of Services to provide Construction Administration Services with **Kimley-Horn & Associates** for the Runway 12R-30L Reconstruction Phase 2 Project in an amount not to exceed \$1,180,178.79, pending receipt of FAA Grant Funding.
- d) **Resolution No. 25-32** – Authorizing the purchase of airfield asphalt repair services with **Hi-Lite Airfield Services, LLC** for an amount not to exceed \$325,000.
- e) **Resolution No. 25-33** – Authorizing the purchase of two vehicles from **San Tan Auto Partners, LLC, dba San Tan Ford**, in an amount not to exceed \$72,979.60.

**Mayor Chip Wilson moved to approve the Consent Agenda.**  
**Councilmember Jeff Brown seconded the motion.**  
**The motion was carried unanimously.**

## **Consideration and Approval of:**

- 7. **Resolution No. 25-34** – Authorizing an Amendment of the FY26 Capital Budget to provide \$4,152,446.25 in funding, for the Construction of Aviation Way. The Mesa Gateway Airport Authority and the **City of Mesa** entered into an Intergovernmental Agreement on August 10, 2022, for the construction of Aviation Way, which aided the Airport with the eastside development.

**Councilmember Jeff Brown moved to approve Resolution No. 25-34.**  
**Mayor Scott Anderson seconded the motion.**  
**The motion was carried unanimously.**

- 8. **Resolution No. 25-35** – Authorizing a Land Lease Agreement with **FlightSafety International Inc.** for approximately 7.944 acres (346,046 SF) located at the intersection of Aviation Way and Gateway Boulevard. The lease term is fifty (50) years with the option to extend the term for three (3) additional periods of five (5) years each. The initial Base Rent is \$197,246.22 annually, payable in equal monthly installments of \$16,437.19 plus applicable taxes.

**Councilmember Scott Somers moved to approve Resolution No. 25-35.**  
**Mayor Chip Wilson seconded the motion.**  
**The motion was carried unanimously.**

## **9. Board Member Comments/Announcements.**

Lt. Governor Antone announced a sign unveiling for FlightSafety International immediately following today's meeting. Shuttle transportation is being provided for members of the Board who would like to participate.

**10. Next Meeting: Tuesday, September 16, 2025** at 9:00 a.m. in the Board Room (Saguaro A&B) of the Gateway Administration Building, 5835 S Sossaman Road, Mesa, Arizona. Members of the Mesa Gateway Airport Authority may attend either in person or by audioconference.

**11. Adjournment.**

The meeting adjourned at 9:53 a.m.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

---

Misty Johnson, Clerk of the Board



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

Re: Resolution 25-36

**To:** Board of Directors  
**From:** Scott Brownlee, Deputy Director/COO  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** FY26 Capital Budget Amendment – TSA In-Line Checked Baggage System Design/Construct Project – CIP 1265  
**Date:** September 16, 2025

---

### Proposed Motion

To Authorize an Amendment of the FY26 Capital Budget to provide an additional \$14,587,121 in funding, to the initial \$30,000,000 Capital Budget that was approved in March 2025, for the TSA In-Line Checked Baggage System Design/Construct Project under CIP 1265, subject to receipt of a TSA OTA Grant. The new project total will be \$44,587,121, which includes the Design costs of \$1,125,991.50.

### Narrative

Due to the increase in passenger traffic at the Mesa Gateway Airport (MGAA), it was determined that the existing Baggage Handling System (BHS) will not be able to adequately keep up with the number of bags being checked. MGAA staff are working with Studdiford Technical Solutions, LLC (STS), an Engineering and Design Architectural Firm, to provide planning and design services for a new in-line Checked Baggage Inspection System (CBIS). This project is being done in collaboration and coordination with the Transportation Security Administration (TSA), airlines and other airport stakeholders to deliver a system which meets the screening requirements set forth by the TSA.

The project will require the current Baggage Handling System to be removed and replaced with a new network of conveyor belts that will transport checked baggage to a new Checked Baggage Inspection System, comprising in-line Explosives Detection System (EDS) units, followed by transport of cleared bags to a common existing make-up unit for loading onto carts and transport to the aircraft.

### Fiscal Impact

Requesting that these funds, for the TSA In-Line Checked Baggage System Design/Construct Project, be added and included in the FY26 Capital Budget utilizing TSA and MGAA non-grant funds under CIP 1265, subject to the receipt of a TSA OTA Grant. TSA is funding approximately \$22 million of the project and MGAA is funding approximately \$22 million which will be recouped via PFC funding.





## RESOLUTION NO. 25-36

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize an Amendment of the FY26 Capital Budget to provide an additional \$14,587,121 in funding, to the initial \$30,000,000 Capital Budget that was approved in March 2025, for the TSA In-Line Checked Baggage System Design/Construct Project under CIP 1265, subject to receipt of a TSA OTA Grant. The new project total will be \$44,587,121, which includes the Design costs of \$1,125,991.50;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes an Amendment of the FY26 Capital Budget to provide an additional \$14,587,121 in funding, to the initial \$30,000,000 Capital Budget that was approved in March 2025, for the TSA In-Line Checked Baggage System Design/Construct Project under CIP 1265, subject to receipt of a TSA OTA Grant. The new project total will be \$44,587,121, which includes the Design costs of \$1,125,991.50. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

**Re: Resolution 25-37**

**To:** Board of Directors  
**From:** Scott Brownlee, Deputy Director/COO  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** TSA In-Line Checked Baggage System Improvements Project – Construction  
Manager at Risk Construction Services Contract – The Weitz Company - CIP 1265  
**Date:** September 16, 2025

---

### Proposed Motion

To authorize a Construction Manager at Risk Construction Services Contract with The Weitz Company, LLC for the TSA In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$41,643,882 pending receipt of a Transportation Security Administration grant.

### Narrative

Due to the increase in passenger traffic at MGAA, it has been determined that the existing Baggage Handling System (BHS) will not be able to adequately keep up with the number of bags being checked. The current BHS will be removed and replaced with a new network of conveyor belts that will transport checked baggage to a new Checked Baggage Inspection System (CBIS) comprising in-line Explosives Detection System (EDS) units, followed by transport of cleared bags to a common existing make-up unit for loading onto carts and transport to the aircraft.

Through a pre-construction services contract with the Airport, The Weitz Company, LLC (Weitz) has actively participated in the design process for the In-Line Checked Baggage Inspection and Delivery System and has provided information regarding safety, constructability, material lead times. The construction portion of this project will encompass site preparation, concrete placement, steel frame construction, interior and exterior finishes, along with mechanical, electrical and plumbing components, and an entirely new, fully automated, baggage handling system.

The Notice of Request for Qualifications (RFQ), Solicitation 2025-001-RFQ for In-Line Checked Baggage Improvements was issued July 15, 2024, and advertised in the Arizona Business Gazette on 7/18, 7/25, 8/1, 8/8/24; it was also posted on the AzAA, ACC, ACI-NA, and SWAAAE Websites as well as the Mesa Gateway Airport Authority Website. In addition, the RFQ was emailed to a list of 109 prospective firms. MGAA received six (6) Statement of Qualifications. Upon conclusion of interviews with three of the firms, the Evaluation Panel selected The Weitz Company, as the CMAR firm that best satisfied the requirements, based on the qualifications of the firm, project team experience, project understanding, and approach to performing the required services.

### Fiscal Impact

Funding for this project will be comprised of TSA grant funding and MGAA non-grant funding under CIP 1265.

**Attachment(s): CMAR Construction Services Contract**



## RESOLUTION NO. 25-37

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize a Construction Manager at Risk Construction Services Contract with The Weitz Company, LLC for the TSA In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$41,643,882 pending receipt of a Transportation Security Administration grant;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes a Construction Manager at Risk Construction Services Contract with The Weitz Company, LLC for the TSA In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$41,643,882 pending receipt of a Transportation Security Administration grant. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



**CONSTRUCTION MANAGER AT RISK (CMAR)  
CONSTRUCTION SERVICES CONTRACT**

**IN-LINE CHECKED BAGGAGE IMPROVEMENTS**

**PROJECT NO. 1265**

## **TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
ARTICLE 1 – PARTICIPANTS AND PROJECT	2
ARTICLE 2 – CONTRACT DOCUMENTS	3
ARTICLE 3 – PRE-CONSTRUCTION SERVICES	3
ARTICLE 4 – CONSTRUCTION SERVICES	4
ARTICLE 5 – OWNER RESPONSIBILITIES	5
ARTICLE 6 – CONTRACT TIME	6
ARTICLE 7 – CONTRACT PRICE	7
ARTICLE 8 – PAYMENT	8
ARTICLE 9 – CHANGES TO THE CONTRACT	8
ARTICLE 10 – SUSPENSION AND TERMINATION	8
ARTICLE 11 – INSURANCE AND BONDS	8
ARTICLE 12 – INDEMNIFICATION	8
ARTICLE 13 – DISPUTE RESOLUTION	9
ARTICLE 14 – MISCELLANEOUS PROVISIONS	9
ARTICLE 15 – TITLE VI	9
<b><u>EXHIBIT</u></b>	<b><u>PAGE</u></b>
A – ACCEPTED GMP/PRICE PROPOSAL AND PROJECT SCHEDULE	12
B – PROJECT SPECIFIC CONDITIONS & PROJECT PLANS & SPECIFICATIONS	13
C – REQUIRED FORMS	14
D – DEFINITIONS	27
E – OWNER’S PUBLISHED RULES AND REGULATIONS AND MINIMUM STANDARDS	29
F – CMAR’S KEY PERSONNEL	30



## Mesa Gateway Airport Authority

---

### **Construction Manager at Risk Construction Services Project No.: 1265**

**THIS CONTRACT** is made and entered into by and between the Mesa Gateway Airport Authority, formerly Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the state of Arizona, hereinafter called "Owner" and the "Construction Manager at Risk" or "CMAR" designated below, individually, each is a "Party" and collectively, the "Parties", and shall be effective as of the date signed by Owner.

NOW, THEREFORE, intending to be legally bound and for valuable consideration, the receipt and sufficiency of which are acknowledged, the Owner and CMAR agree as follows:

### **ARTICLE 1 – PARTICIPANTS AND PROJECT**

**Owner:** Mesa Gateway Airport Authority  
Project Manager: Michael Hanas  
Telephone: 480-988-7636  
E-mail: mhanas@gatewayairport.com

**CMAR:** The Weitz Company, LLC  
2111 E. Highland Avenue, Suite 400  
Phoenix, AZ 85016  
CMAR Representative: Chris Harrison  
Telephone: 515-240-1370  
E-mail: chris.harrison@weitz.com

**DESIGN PROFESSIONAL:** Studdiford Technical Solutions, LLC  
1608 Old Stage Road  
Alexandria, VA 22308  
Design Professional Representative: Larry Studdiford  
Telephone: 203-206-0533  
E-mail: larry@studdifordtech.com

### **PROJECT DESCRIPTION:**

The project will encompass site preparation, concrete placement, steel frame construction, block construction, and interior and exterior finishes, along with mechanical, electrical, and plumbing components, and a new automated baggage handling system.

## **ARTICLE 2 – CONTRACT DOCUMENTS**

### **2.1 CONTRACT DOCUMENTS**

The Contract between Owner and CMAR shall consist of the following Contract Documents. Notwithstanding Article 50-04 of the General Provisions, should any of the Contract Documents conflict with each other, the conflict will be resolved by using the following order of precedence:

1. Any amendments or modifications to the Contract Documents in reverse chronological order, including (a) a written amendment signed by both parties, (b) a Change Order, (c) a Change Directive, (d) Supplementary Instructions, or (e) a written order for a minor change in the work (collectively the “Contract”);
2. Exhibit A to the CMAR Construction Contract, Accepted GMP/Price Proposal and Project Schedule – the “Basis of GMP” and “Basis of Schedule”;
3. The Guaranteed Maximum Price Proposal sections outside of item (2) above;
4. The General Conditions to the CMAR Contract;
5. The CMAR Construction Services Contract and all of its Exhibits;
6. The General Provisions to the CMAR Contract;
7. The Special Provisions to the CMAR Contract;
8. Drawings;
9. Specifications;
10. The Request for Qualifications requirements, document and exhibits (#2025-001-RFQ), documents and CMAR’s submittal to such solicitation dated August 12, 2024;
11. Any other Contract Documents.

### **2.3 PROJECT SPECIFIC CONDITIONS**

If there are any additional conditions that apply to this Project, they are set forth in the attached Exhibit A, and are incorporated herein.

### **2.4 PROJECT PLANS AND SPECIFICATIONS**

A detailed list of the Plans and Specifications for this Project are set forth in the attached Exhibit B.

## **ARTICLE 3 – PRE-CONSTRUCTION SERVICES**

Although CMAR has performed Pre-Construction Services pursuant to a separate Contract between Owner and CMAR, the completion, quality and accuracy of those services and the deliverables provided by Owner thereunder directly impact CMAR’s performance of its obligations under this Contract. Therefore, all of CMAR’s obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Contract are incorporated herein. Any breach of any of CMAR’s duties, obligations or warranties under the Pre-Construction Services Contract shall likewise be considered a breach of this Contract.

## **ARTICLE 4 – CONSTRUCTION SERVICES**

### **4.1 GENERAL**

4.1.1 CMAR agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the Project Schedule included in Exhibit A of this Contract.

4.1.2 CMAR shall provide all of the labor and materials and perform the Work in accordance with the General Conditions and General Provisions. Some but not all of the major components of the

Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.

4.1.3 At all times relevant to the Contract and performance of the Work, the CMAR and its subcontractors shall fully comply with all Laws, Regulations, or Legal Requirements applicable to Owner, the Project and the Contract.

4.1.4 CMAR has been selected to perform the Work herein, in part, because of the skills and expertise of the key firms, team members and individuals (collectively, “CMAR’s Key Personnel”) that are listed in Exhibit F and that are consistent with the Statement of Qualification (SOQ) dated August 12, 2024. CMAR shall perform the Work under this Contract using CMAR’s Key Personnel. CMAR’s Key Personnel shall not be removed or replaced during the term of the Contract without prior written consent of MGAA. MGAA recognizes that CMAR’s Key Personnel may leave the employ of CMAR for reasons beyond CMAR’s control. Whenever practicable, CMAR shall give MGAA at least 14 calendar days’ notice prior to the departure of any of CMAR’s Key Personnel from the Project. MGAA shall have the right to approve or reject any replacements for CMAR’s Key Personnel when personnel leave that are beyond the control of the CMAR. When within CMAR’s control, CMAR’s failure to use CMAR’s Key Personnel to perform the Work under the Contract without MGAA’s prior written consent will be a material breach and grounds for suspension or termination for cause of this Contract by MGAA.

Without limitation of the foregoing, in the event CMAR removes any Key Personnel without the consent of MGAA, which shall not unreasonably be withheld, CMAR shall deduct and/or reimburse all cost and expense charged to MGAA, whether included in CMAR’s general conditions or otherwise, and including any markups thereon, for any replacement personnel who are not approved by MGAA. Notwithstanding any provisions herein to contrary, MGAA shall have audit rights to CMAR’s records with respect to verifying such costs, expenses and markups for purposes of deduction and/or reimbursement.

4.1.5 CMAR will comply with all terms and conditions of the General Conditions, General Provisions and Special Provisions, as well as the Owner’s published Rules & Regulations and Minimum Standards (Exhibit E).

4.1.6 In the event of a conflict between this Contract and the General Conditions, General Provisions, Special Provisions or any exhibit hereto or appendix thereto, the terms of this Contract shall control, but nothing in this contract shall be construed so as to either (i) Violate any term or condition of the Owner’s published Rules & Regulations or Minimum Standards; or (ii) Violate Owner’s mandatory subordination to its federal obligations, pursuant to Federal Aviation Administration (“FAA”) Policies (2009) (including, but not limited to § 1.1, § 1.5, § 12.3, §10, § 14.1, *et. seq.*) and federal statutory authority, including, but not limited to, 49 U.S.C. §40103(a) (establishes the federal government’s total dominance over the airspace of the United States, including, U.S. airports).

**4.1.7 Ownership of Work Product.** Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Owner. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, CMAR hereby transfers and assigns ownership of the copyright in such Work to Owner. The rights in this section are exclusive to Owner in perpetuity.

#### **4.2 CMAR's PRE-CONTRACT AND PRE-WORK DELIVERABLES**

The CMAR will provide the insurance and bond(s) requirements in accordance with Article 11 of the General Conditions prior to any work commencing.

Owner will obtain and pay for all permits necessary for the work, with the exception of construction water, dust control and SWWP.

#### **4.3 PRE-CONSTRUCTION CONFERENCE**

CMAR shall attend the Pre-Construction Conference.

#### **4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**

CMAR shall perform the Work in accordance with the General Conditions.

#### **4.5 CONTROL OF THE PROJECT SITE**

CMAR shall control and maintain the Project Site in accordance with Article 4 of the General Conditions.

#### **4.6 PROJECT SAFETY**

CMAR shall implement and enforce Project safety in accordance with Article 10 of the General Conditions.

#### **4.7 MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS**

CMAR shall provide materials testing and submit substitute materials and Shop Drawings in accordance with Article 3 of the General Conditions.

#### **4.8 PROJECT RECORD DOCUMENTS**

CMAR shall maintain and make available the Project Record Documents in accordance with Article 3.12 of the General Conditions.

#### **4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK**

CMAR shall provide warranties and correct defective Work in accordance with Article 3.6 of the General Conditions.

### **ARTICLE 5 – OWNER RESPONSIBILITIES**

**5.1** Owner shall have the responsibilities, and provide the information specified in, and subject to the conditions set forth throughout the Contract Documents.

5.2 Additional information to be provided by Owner, if any, is listed below:

Final contract documents, including, but not limited to General Conditions, General Provisions, Special Provisions, applicable as-built drawings, stamped Construction Documents and Technical Specifications.

## **ARTICLE 6 – CONTRACT TIME**

### **Contract Duration is 855 calendar days**

#### **6.1 CONTRACT TIME**

- 6.1.1 The Contract Time shall start with the Notice to Proceed (“NTP”) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued prior to the approval and acceptance by Owner of the GMP or Fixed Price.
- 6.1.2 CMAR agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.
- 6.1.3 Time is of the essence of this Contract, for the Project, and for each phase and/or designated Milestone thereof.

#### **6.2 PROJECT SCHEDULE**

The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached Exhibit A shall be updated and maintained throughout CMAR’s performance under this Contract in accordance with Article 3 of the General Conditions.

- 6.2.1 Failure on the part of CMAR to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination for cause of this Contract by Owner.

#### **6.3 SUBSTANTIAL COMPLETION**

Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion shall be determined in accordance with Article 9.8 of the General Conditions.

#### **6.4 FINAL COMPLETION AND FINAL ACCEPTANCE**

- 6.4.1 Final Completion will be obtained within the time period set forth in the Project Schedule.
- 6.4.2 Final Completion will be determined, and a Final Acceptance will be issued, pursuant to Article 9.9 of the General Conditions.

#### **6.5 LIQUIDATED DAMAGES**

- 6.5.1 **Final Completion Liquidated Damages.** For the same reason set forth in Article 6.1.3 above, Owner and CMAR further agree that if CMAR fails to achieve Final Completion of the Work within the time set forth in Article 6.4.1 above, Owner shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amounts (which the Parties agree is a reasonable approximation of any resulting damages) commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion:

**\$1,780.00 per calendar day.**

- 6.5.2 Owner may deduct liquidated damages described in this Article 6.5 above from any unpaid amounts then or thereafter due CMAR under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due CMAR shall be payable to Owner at the demand of Owner, together with interest from the date of the demand at the highest lawful rate of interest payable by CMAR.

## **ARTICLE 7 – CONTRACT PRICE**

### **7.1 CONTRACT PRICE**

- 7.1.1 In exchange for CMAR's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, Owner will pay CMAR the "Contract Price" which:
- The sum of the CMAR's Fee and reimbursable Cost of the Work, which the CMAR guarantees will not exceed the GMP set forth in Exhibit A, in the amount of **\$39,686,172.00**. Costs which would cause the GMP to be exceeded shall be paid by CMAR without reimbursement from Owner.
- 7.1.2 The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes any type necessary to fully, properly and timely perform and construct the Work encompassed in attached Exhibit A.
- 7.1.3 The contract price may only be changed as set forth in the Contract Documents.
- 7.1.4 Only costs specifically designated as reimbursable costs are eligible for payment by Owner or may be charged against the Contract Price. All other costs will not be paid by Owner and shall not be chargeable against the Contract Price.
- 7.1.5 For Contract Amendments, Change Orders, or Job Orders reimbursable costs shall be determined pursuant to MAG Specifications 109.5.

### **7.2 ALLOWANCES**

Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by Owner. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct, provided Contractor will not be required to employ persons against whom

Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Owner in accordance with a schedule to be mutually agreed upon by Owner, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

- 7.2.1 Unless otherwise provided in the Contract Documents:
- 7.2.1.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowances, delivered at the Site, and all applicable taxes;
- 7.2.1.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and Equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and
- 7.2.1.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.



### **7.3 CONTINGENCY**

An agreed to amount in the GMP that may only be used in accordance with the terms set forth in these General Conditions and with prior written approval by Owner.

### **7.4 FINAL PAYMENT**

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by Owner, Contractor must submit to the Project Manager a complete final accounting of the Actual Reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Owner may require, to establish whether the payments made to Contractor equal, exceed, or are less than the Actual Reimbursable Cost of the Work to date.

Any excess payments by Owner, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Owner. Disputes relating to the Final Cost of the Work shall be subject to Owner's audit rights under Article 13.14 of the General Conditions and 7.5 below, and the dispute resolution process under Article 4 of the General Conditions.

### **7.5 OPEN BOOK**

On any GMP-based or Change Order, Owner may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

## **ARTICLE 8 – PAYMENT**

Payments shall be made to CMAR in accordance with Article 9 of the General Conditions and Article 7 above.

## **ARTICLE 9 – CHANGES TO THE CONTRACT**

Changes to the Contract may be made in strict accordance with Article 7 of the General Conditions.

## **ARTICLE 10 – SUSPENSION AND TERMINATION**

This Contract may be suspended and/or terminated in accordance with Article 14 of the General Conditions.

## **ARTICLE 11 – INSURANCE AND BONDS**

- 11.1** CMAR shall provide insurance in accordance with Article 11 of the General Conditions to the CMAR Contract. CMAR shall provide proof of such insurance and all required endorsements in forms acceptable to Owner prior to commencing any Work under this Contract.
- 11.2** CMAR shall provide performance and payment bonds to Owner in accordance with Article 11 of the General Conditions and A.R.S. § 34-610(A).
- 11.3** Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to Owner will be material breach and grounds for termination for cause of this Contract by Owner.

## **ARTICLE 12 – INDEMNIFICATION**

CMAR shall have and assume the indemnity obligations set forth in Article 3 of the General Conditions.

## **ARTICLE 13 – DISPUTE RESOLUTION**

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in Article 4 of the General Conditions.

## **ARTICLE 14 – MISCELLANEOUS PROVISIONS**

The miscellaneous provisions set forth in Article 13 of the General Conditions shall apply to this Contract.

## **ARTICLE 15 – TITLE VI**

### **15.1 CIVIL RIGHTS ACT OF 1964, TITLE VI – GENERAL**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

### **15.2 CIVIL RIGHTS ACT OF 1964, TITLE VI- ASSURANCE COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

**1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**3. Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who

fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

### 15.3 CIVIL RIGHTS –TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

Executed as of the Effective Date.

**CMAR**  
**The Weitz Company, LLC**

By: Frank Dascanio

Name: Frank Dascanio

Title: Vice President

Date: 8/28/2025

**OWNER**  
**MESA GATEWAY AIRPORT AUTHORITY,**  
a joint powers airport authority authorized by the  
state of Arizona

By: \_\_\_\_\_

Name: J. Brian O'Neill, A.A.E.

Title: Executive Director/CEO

Date: \_\_\_\_\_

**EXHIBIT A – ACCEPTED GMP/PRICE PROPOSAL & PROJECT SCHEDULE**

**(Under Separate Cover)**

**See Appendix D**

All terms and conditions are set forth in the Contract. Any terms and conditions and/or exceptions noted in the CMAR's proposal, GMP, or other documents do not apply unless agreed to in this Contract or an approved addendum.

**EXHIBIT B – PROJECT SPECIFIC CONDITIONS & PROJECT PLANS AND SPECIFICATIONS**

**(Under Separate Cover)**

**See Appendices E, F, G, and H**



**EXHIBIT C – REQUIRED FORMS**  
**STATUTORY PERFORMANCE BOND**

PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES

**KNOW ALL MEN BY THESE PRESENTS:**

That, \_\_\_\_\_, (hereinafter called the Principal), as Principal, and the \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto Mesa Gateway Airport Authority, Maricopa County, Arizona (hereinafter called the Obligee), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 202\_ to construct the following projects under the **Authority Solicitation No. 2025-001-RFQ; CMAR for In-Line Checked Baggage Improvements (Authority Project No. 1265)**, which contract is hereby referred to and made a part of this bond as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment to reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
**AGENCY OF RECORD, STATE OF ARIZONA**

BY:

\_\_\_\_\_  
**PRINCIPAL**

\_\_\_\_\_  
AGENCY ADDRESS

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
**SURETY**

BY:

TITLE: \_\_\_\_\_

BOND NUMBER: \_\_\_\_\_

ATTACH SURETY POWER OF ATTORNEY

**STATUTORY PAYMENT BOND**

PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES

**KNOW ALL MEN BY THESE PRESENTS:**

That, \_\_\_\_\_, (hereinafter called the Principal), as Principal and \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto Mesa Gateway Airport Authority, Maricopa County, Arizona (hereinafter called the Obligee), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with Obligee, dated the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ to construct the following projects under the **Authority Solicitation No. 2025-001-RFQ: CMAR for In-Line Checked Baggage Improvements (Authority Project No. 1265)**, which contract is hereby referred to and made a part of this bond as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

---

AGENCY OF RECORD, STATE OF ARIZONA

---

PRINCIPAL

BY: \_\_\_\_\_

---

AGENCY ADDRESS

---

TITLE:

---

SURETY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

BOND NUMBER: \_\_\_\_\_

ATTACH SURETY POWER OF ATTORNEY

**NOTICE OF INTENT TO AWARD CMAR CONTRACT**

MM/DD/YR

The Weitz Company, LLC  
2111 E. Highland Avenue, Suite 400  
Phoenix, AZ 85016**Attn:****Re: In-Line Checked Baggage Improvements  
Authority Project No. 1265  
Authority Solicitation No. 2025-001-RFQ**

Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (Owner), has considered the Statement of Qualifications (SOQ) submitted and interview performed (if applicable) by your firm for the above described WORK in response to the Advertisement for SOQ's dated August 12, 2024. You are hereby notified that you were awarded this CMAR Contract by Mesa Gateway Airport Authority on \_\_\_\_\_, in the amount of \$\_\_\_\_\_. You are required by the Terms and Conditions of this bid to execute the CMAR Contract and to furnish Contractor's Performance and Payment Bonds and submit the appropriate Certificate(s) of Insurance within fifteen (15) calendar days from this Notice.

If you fail to execute the CMAR Contract, furnish the required bonds, and submit Insurance Certificate(s) within Fifteen (15) calendar days from the date of this Notice, the Owner will consider this as a forfeiture of your consideration to be selected as CMAR. The Owner will be entitled to such other rights as may be granted by law.

A pre-construction meeting will be scheduled by your Project Manager at a later date and will be held in the Mesa Gateway Airport Authority Board Room, 5835 South Sossaman Road, Mesa.

You are required to return an acknowledged copy of the NOTICE OF AWARD to the Mesa Gateway Airport Authority.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized by the State of Arizona**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE OF NOTICE:**

Receipt of the above NOTICE OF AWARD is hereby acknowledged.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

NOTARY PUBLIC

My Commission Expires

**NOTICE TO PROCEED**

MM/DD/YR

The Weitz Company, LLC  
2111 E. Highland Avenue, Suite 400  
Phoenix, AZ 85016

Attn:

**In-Line Checked Baggage Improvements**  
**Authority Project No. 1265**  
**Authority Solicitation No. 2025-001-RFQ**

Dear \_\_\_\_\_:

You are unconditionally authorized to proceed with the above-referenced project effective the date of this letter. The contract time is 855 calendar days. All work shall be performed strictly in accordance with the Contract Documents, including all project schedule requirements.

Your contact for this project is Michael Hanas, phone no. (480) 988-7636 and all project communications should be directed to him. If the preconstruction conference has not already occurred, he will contact you shortly about scheduling it.

Remember, the Owner must approve *in writing* any and all changes in the project scope of work before you start work on the change.

Mesa Gateway Airport Authority looks forward to a successful project with your firm.

Sincerely,

**MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized by the State of Arizona**

Authorized Representative

**APPLICATION AND CERTIFICATE FOR PAYMENT**

**In-Line Checked Baggage Improvements**  
**Authority Solicitation No. 2025-001-RFQ**  
**Authority Project No. 1265**

CONSULTANT: \_\_\_\_\_

CMAR: \_\_\_\_\_

Application No. \_\_\_\_\_ Period From: \_\_\_\_\_ To: \_\_\_\_\_

Application is made for payment, as shown below, and on the attached Construction Progress Estimate Form,  
in accordance with the Contract Documents:

Original GMP: \$ \_\_\_\_\_

Approved Change Orders and Dates:

Change Order No.1                      Date \_\_\_\_\_                      \$ \_\_\_\_\_

Change Order No.2                      Date \_\_\_\_\_                      \$ \_\_\_\_\_

Change Order No.3                      Date \_\_\_\_\_                      \$ \_\_\_\_\_

Total Change Orders Approved to Date: \$ \_\_\_\_\_

Adjusted GMP \$ \_\_\_\_\_

Total Amount Due to Date  
(from attached Construction Progress Estimate) \$ \_\_\_\_\_

Less Previous Certificates for Payment \$ \_\_\_\_\_

Current Payment Due \$ \_\_\_\_\_

Retainage \_\_\_\_\_ % \$ \_\_\_\_\_

Total Earned Less Retainage \$ \_\_\_\_\_

Notice to Proceed Date \_\_\_\_\_ Date of Substantial Completion \_\_\_\_\_

Time Used \_\_\_\_\_ % Complete \_\_\_\_\_ %

**CHANGE ORDER**

PROJECT: In-Line Checked Baggage Improvements

CHANGE ORDER NO: \_ \_

Authority Project No. 1265

Authority Solicitation No. 2025-001-RFQ

TO CMAR: The Weitz Company  
2111 E. Highland Avenue, Suite 400  
Phoenix, AZ 85016CONTRACT NO: \_\_\_\_\_  
CONTRACT DATE: \_\_\_\_\_, 202\_\_

**The Contract is changed as follows.** CMAR shall provide all labor, materials, equipment, services, transportation, utilities, and facilities to perform all of the following changes: **[describe]**.

This Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order, including but not limited to all direct or indirect costs associated with such change, all delay and disruption costs, any impact such change may have on unchanged work, and any and all adjustments to the Contract Sum or the Contract Time. This Change Order supersedes all prior reservations stated or implied.

**Not Valid until signed by the Owner, Architect, and CMAR.**

The original **Contract Sum** was.....\$ \_\_\_\_\_  
Net change by previously authorized Change Orders .....\$ \_\_\_\_\_  
The **Contract Sum** prior to this Change Order was.....\$ \_\_\_\_\_  
The **Contract Sum** will be **increased** [or **decreased**] by this Change Order.....\$ \_\_\_\_\_  
The new **Contract Sum** including this Change Order is .....\$ \_\_\_\_\_

The Contract Time will be **unchanged** [or **increased/decreased by** \_\_\_\_\_ **calendar days.**]

The Substantial Completion date for base contract work is **unchanged** [or **changed to** \_\_\_\_\_, 202\_\_.]

**The Weitz Company**

By \_\_\_\_\_ Date \_\_\_\_\_

It's \_\_\_\_\_

**Owner**

By \_\_\_\_\_ Date \_\_\_\_\_

It's \_\_\_\_\_

**Studdiford Technical Solutions, LLC**

By \_\_\_\_\_ Date \_\_\_\_\_

It's \_\_\_\_\_



**CERTIFICATE OF SUBSTANTIAL COMPLETION**

(To be completed by Owner/Architect)

I hereby certify that \_\_\_\_\_ has substantially completed  
(Name of CMAR)

The work under the following project:

**In-Line Checked Baggage Improvements**  
**Authority Solicitation No. 2025-001-RFQ**  
**Authority Project No. 1265**

in accordance with the contract documents and bid specifications, and all activities required by the Contractor under the Contract have been substantially completed as of \_\_\_\_\_ (date).

Firm Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**CERTIFICATE OF FINAL COMPLETION**

(To be Completed by CMAR and Owner)

**In-Line Checked Baggage Improvements**  
**Authority Solicitation No. 2025-001-RFQ**  
**Authority Project No. 1265**

I hereby certify that all goods and/or services required by **MESA GATEWAY AIRPORT AUTHORITY**, have been delivered in accordance with the Contract Documents and Specifications, and all activities required by the CMAR under the Contract have been completed, including all items on the final punch list, including administrative items, as of \_\_\_\_\_ (date).

Firm Name: \_\_\_\_\_

Principal: \_\_\_\_\_  
(Name)\_\_\_\_\_  
(Title)\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)

---

**MESA GATEWAY AIRPORT AUTHORITY** has performed a final inspection of MGAA's **In-Line Checked Baggage Improvements Project, MGAA Project Number 1265**, and find that to the best of our knowledge and belief, the work on this project has been completed in accordance with the **Contract**.

The date of final completion for this project is \_\_\_\_\_, 20\_\_

Mesa Gateway Airport Authority

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CMAR'S AFFIDAVIT REGARDING  
SETTLEMENT OF CLAIMS****In-Line Checked Baggage Improvements  
Authority Solicitation No. 2025-001-RFQ  
Authority Project No. 1265**

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$\_\_\_\_\_, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless **MESA GATEWAY AIRPORT AUTHORITY, ARCHITECT**, the OWNER's **DESIGNATED CONSTRUCTION ADMINISTRATOR**, their employees, agents or representatives, against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said OWNER and Architect may suffer arising out of the failure or the undersigned to pay for all labor performances and materials furnished for the performance of said installation.

Signed and dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
CMAR\_\_\_\_\_  
By:STATE OF ARIZONA    )  
                                  )       ss  
COUNTY OF         )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
(Notary Public)\_\_\_\_\_  
(My Commission Expires)

**CONDITIONAL  
FULL RELEASE OF ALL CLAIMS AND WAIVER OF LIEN  
UPON PAYMENT  
(CMAR)**

WHEREAS, the undersigned, \_\_\_\_\_ (CMAR) has furnished labor, materials, and services and/or equipment for the construction of the **In-Line Checked Baggage Improvements, Authority Project No. 1265**, at the Mesa Gateway Airport, Maricopa County, State of Arizona, on the Property of the Mesa Gateway Airport Authority, Mesa, Arizona.

NOW, THEREFORE, the undersigned, upon receipt of a check from the Owner payable to the CMAR in the sum of \$ \_\_\_\_\_, said sum representing full and final payment for the above-mentioned labor, materials, services and/or equipment, does hereby waive and release any and all liens, claims of lien, and demands whatsoever that now exist or may hereafter accrue against the Owner and the Property on account of labor and materials furnished by the undersigned.

The undersigned warrants that all materials and labor placed by the undersigned in the Project are free from any claims, liens, or encumbrances and that all bills and obligations incurred for labor, taxes, withholding taxes based on payroll and payable to the United States of America or State of Arizona, premiums under a voluntary disability insurance policy, if any, carried with a private insurer, and payments to all union health, welfare, pension, apprentice training and vacation funds applicable for workmen employed on the above-described Project, in connection with the work of improvement on the Project, have been paid in full. The undersigned warrants that all subcontractors and material-men that may have delivered materials and performed work upon the Property for the Project have been fully paid or will be paid from monies received from this final payment. The undersigned shall and does hereby indemnify, save, and hold harmless the Owner and CMAR from all claims, damages, liens and losses, including all costs, professional fees, and reasonable attorney's fees, which the Owner may suffer by reason of filing of any claims, notices, liens or encumbrances, or the failure of the undersigned to obtain cancellation and discharge thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

\_\_\_\_\_  
Company Name

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

**CONDITIONAL  
FULL RELEASE OF ALL CLAIMS AND WAIVER OF LIEN  
UPON PAYMENT  
(SUB-CONTRACTOR / SUPPLIER)**

WHEREAS, the undersigned, \_\_\_\_\_ (Sub-contractor) has furnished labor, materials, and services and/or equipment to \_\_\_\_\_ (CMAR) for the construction of the **In-Line Checked Baggage Improvements, Authority Project No. 1265**, at the Mesa Gateway Airport, Maricopa County, State of Arizona, on the Property of the Mesa Gateway Airport Authority, Mesa, Arizona.

NOW, THEREFORE, the undersigned, upon receipt of a check from the CMAR payable to the Sub-contractor in the sum of \$ \_\_\_\_\_, said sum representing payment for the above-mentioned labor, materials, services and/or equipment, does hereby waive and release any and all liens, claims of lien, and demands whatsoever that now exist or may hereafter accrue against the Owner and the Property on account of labor and materials furnished by the undersigned.

The undersigned warrants that all materials and labor placed by the undersigned in the Project are free from any claims, liens, or encumbrances and that all bills and obligations incurred for labor, taxes, withholding taxes based on payroll and payable to the United State of America or State of Arizona, premiums under a voluntary disability insurance policy, if any, carried with a private insurer, and payments to all union health, welfare, pension, apprentice training and vacation funds applicable for workmen employed on the above-described Project, in connection with the work of improvement on the Project, have been paid in full. The undersigned warrants that all subcontractors and material-men that may have delivered materials and performed work upon the Property for the Project have been fully paid or will be paid from monies received from this payment. The undersigned shall and does hereby indemnify, save, and hold harmless the Owner and CMAR from all claims, damages, liens and losses, including all costs, professional fees, and reasonable attorney's fees, which the Owner may suffer by reason of filing of any claims, notices, liens or encumbrances, or the failure of the undersigned to obtain cancellation and discharge thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 202 \_\_\_\_.

\_\_\_\_\_  
Company Name

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

**UNCONDITIONAL  
FULL RELEASE OF ALL CLAIMS AND WAIVER OF LIEN  
UPON PAYMENT  
(CMAR)**

WHEREAS, the undersigned, \_\_\_\_\_ (CMAR) has furnished labor, materials, and services and/or equipment for the construction of the **In-Line Checked Baggage Improvements, Authority Project No. 1265**, at the Mesa Gateway Airport, Maricopa County, State of Arizona, on the Property of the Mesa Gateway Airport Authority, Mesa, Arizona.

NOW, THEREFORE, the undersigned, has been paid and has received a check from the Owner payable to the CMAR in the sum of \$ \_\_\_\_\_, said sum representing full and final payment for the above-mentioned labor, materials, services and/or equipment, does hereby waive and release any and all liens, claims of lien, and demands whatsoever that now exist or may hereafter accrue against the Owner and the Property on account of labor and materials furnished by the undersigned.

The undersigned warrants that all materials and labor placed by the undersigned in the Project are free from any claims, liens, or encumbrances and that all bills and obligations incurred for labor, taxes, withholding taxes based on payroll and payable to the United States of America or State of Arizona, premiums under a voluntary disability insurance policy, if any, carried with a private insurer, and payments to all union health, welfare, pension, apprentice training and vacation funds applicable for workmen employed on the above-described Project, in connection with the work of improvement on the Project, have been paid in full. The undersigned warrants that all subcontractors and material-men that may have delivered materials and performed work upon the Property for the Project have been fully paid or will be paid from monies received from this final payment. The undersigned shall and does hereby indemnify, save, and hold harmless the Owner and CMAR from all claims, damages, liens and losses, including all costs, professional fees, and reasonable attorney's fees, which the Owner may suffer by reason of filing of any claims, notices, liens or encumbrances, or the failure of the undersigned to obtain cancellation and discharge thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

\_\_\_\_\_  
Company Name

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

**UNCONDITIONAL  
FULL RELEASE OF ALL CLAIMS AND WAIVER OF LIEN  
UPON PAYMENT  
(SUB-CONTRACTOR / SUPPLIER)**

WHEREAS, the undersigned, \_\_\_\_\_ (Sub-contractor) has furnished labor, materials, and services and/or equipment to \_\_\_\_\_ (CMAR) for the construction of the **In-Line Checked Baggage Improvements, Authority Project No. 1265**, at the Mesa Gateway Airport, Maricopa County, State of Arizona, on the Property of the Mesa Gateway Airport Authority, Mesa, Arizona.

NOW, THEREFORE, the undersigned, has been paid and has received a check from the CMAR payable to the Sub-contractor in the sum of \$ \_\_\_\_\_, said sum representing payment for the above-mentioned labor, materials, services and/or equipment, does hereby waive and release any and all liens, claims of lien, and demands whatsoever that now exist or may hereafter accrue against the Owner and the Property on account of labor and materials furnished by the undersigned.

The undersigned warrants that all materials and labor placed by the undersigned in the Project are free from any claims, liens, or encumbrances and that all bills and obligations incurred for labor, taxes, withholding taxes based on payroll and payable to the United State of America or State of Arizona, premiums under a voluntary disability insurance policy, if any, carried with a private insurer, and payments to all union health, welfare, pension, apprentice training and vacation funds applicable for workmen employed on the above-described Project, in connection with the work of improvement on the Project, have been paid in full. The undersigned warrants that all subcontractors and material-men that may have delivered materials and performed work upon the Property for the Project have been fully paid or will be paid from monies received from this payment. The undersigned shall and does hereby indemnify, save, and hold harmless the Owner and CMAR from all claims, damages, liens and losses, including all costs, professional fees, and reasonable attorney's fees, which the Owner may suffer by reason of filing of any claims, notices, liens or encumbrances, or the failure of the undersigned to obtain cancellation and discharge thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 202 \_\_\_\_.

\_\_\_\_\_  
Company Name

By \_\_\_\_\_

\_\_\_\_\_  
(Title)



## **EXHIBIT D – DEFINITIONS**

**Allowance** – A specific amount for a specific item of Work, if any, that Owner agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of the Owner) at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Article 7.2 above.

**Baseline Cost Model** – A breakdown and estimate of the scope of the Project developed by CMAR.

**CMAR or Construction Manager at Risk** – The person or firm selected by Owner to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with Owner. In these General Conditions, the term “Contractor” includes CMAR under both Pre-Construction and Construction Services Contracts.

**CMAR Fee or Contractor’s Fee** – An agreed to percentage in an accepted GMP that represents the Contractor’s fee for performance of the Work.

**Contract Documents** – Where compensation under the Contract is based upon a GMP accepted by Owner, the term “Contract Documents” also includes the accepted GMP Proposal.

**Contract Price** – Where compensation under the Contract based upon a GMP accepted by Owner, the term “Contract Price” refers to the GMP.

**Cost-Based Contract, Change Order, or Job Order** – A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents. These would include those generally referred to as “Cost of the Work plus a Fee with a GMP,” “Time and Materials,” or “Cost Plus a Fee.”

**Cost of the Work** – The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance on the Work. The Cost of the Work shall include only those costs set forth in Article 7 above.

**Deliverables** – The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during pre-construction may include but are limited to: the Baseline Cost Model and Schedule that validate Owner’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

**Pre-Construction Services Contract** – The Contract entered into between Owner and the CMAR for Pre-Construction Services to be provided by the CMAR, including, without limitation, the generation of a GMP Proposal. If the GMP Proposal is accepted by Owner and a CMAR Contract is entered into between Owner and CMAR, the duties, obligations and warranties of the CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting CMAR Contract.

**Pre-Construction Services** – The services to be provided under a Pre-Construction Services Contract.

**Detailed Project Schedule** – The Detailed Project Schedule developed by the CMAR for the review and approval of the Owner.

**GMP Plans and Specifications** – The plan and specifications upon which the Guaranteed Maximum price Proposal is based.

**GMP Proposal** – The proposal of Contractor submitted for the entire Work and/or portion (phases) of the Work.

**Guaranteed Maximum Price or GMP** – The Guaranteed Maximum Price set forth in the Contract.

**EXHIBIT E - COMPLIANCE WITH OWNER'S PUBLISHED RULES AND REGULATIONS AND MINIMUM STANDARDS, AS AMENDED FROM TIME TO TIME**

**1. Rules & Regulations (link)**

<https://www.gatewayairport.com/policiesdocumentsandforms>

**2. Minimum Standards (link)**

<https://www.gatewayairport.com/policiesdocumentsandforms>



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

**Re: Resolution 25-38**

**To:** Board of Directors  
**From:** Scott Brownlee, Deputy Director/COO  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** TSA In-Line Checked Baggage System Improvements Project – Construction  
Administration Services – Studdiford Technical Solutions, LLC - CIP 1265  
**Date:** September 16, 2025

---

### Proposed Motion

**To approve a Professional Services Agreement to provide Construction Administration Services with Studdiford Technical Solutions, LLC for the In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$925,997 pending the receipt of a Transportation Security Administration grant.**

### Narrative

Due to the increase in passenger traffic at MGAA, it has been determined that the existing Baggage Handling System (BHS) will not be able to adequately keep up with the number of bags being checked. The current BHS will be removed and replaced with a new network of conveyor belts that will transport checked baggage to a new Checked Baggage Inspection System (CBIS) comprising in-line Explosives Detection System (EDS) units, followed by transport of cleared bags to a common existing make-up unit for loading onto carts and transport to the aircraft.

As part of the In-Line Checked Baggage Improvements project, Studdiford was engaged to provide full design services, including schematic design, design development, and construction documents. The project is now transitioning into the Construction Administration phase. The Construction Administration Services will include providing project management and coordination with Mesa Gateway Airport Authority (MGAA) staff, the Transportation Security Administration (TSA), the Construction Manager at Risk, and subconsultants. Through this agreement, Studdiford Technical Solutions, LLC (Studdiford) is responsible for construction administration of architectural, civil, structural, mechanical, electrical, plumbing, and special systems.

This purchase is made following the Airport's Procurement Policy, allowing direct selection for professional services. While competitive procurement remains MGAA's standard approach, a direct selection award provides the best value by: 1) ensuring continuity, as Studdiford has led the project from inception and is fully familiar with the design intent; 2) minimizing risk and delays by avoiding the engaging of a new consultant; and 3) Offering a cost-effective proposal aligned with industry benchmarks and internal budgets. This approach supports project efficiency, reduces risk, and maintains budget discipline.

### Fiscal Impact

The funding for this project will be comprised of TSA grant and MGAA non-grant funding under CIP 1265.

**Attachment(s): Professional Services Agreement**



## RESOLUTION NO. 25-38

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to approve a Professional Services Agreement to provide Construction Administration Services with Studdiford Technical Solutions, LLC for the In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$925,997 pending the receipt of a Transportation Security Administration grant;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby approves a Professional Services Agreement to provide Construction Administration Services with Studdiford Technical Solutions, LLC for the In-Line Checked Baggage System Improvements Project, in an amount not to exceed \$925,997 pending the receipt of a Transportation Security Administration grant. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



**SERVICES AGREEMENT**

**MESA GATEWAY AIRPORT AUTHORITY**

**AND**

**STUDDIFORD TECHNICAL SOLUTIONS, LLC**

**FOR**

**IN-LINE CHECKED BAGGAGE INSPECTION SYSTEM –  
CONSTRUCTION ADMINISTRATION SERVICES**

**CIP NUMBER 1265**

## Table of Contents

Section I - Consultant Services	3
Section II - MGAA Responsibilities	3
Section III - Period of Service	3
Section IV – Key Personnel	4
Section V – Payments to the Consultant	4
Section VI – Alteration in Scope of Services	4
Section VII – Work Assignment Completion	4
Section VIII – Ownership of Documents	4
Section IX – Compliance with Laws	5
Section X – General Considerations	5
Section XI – No Kick-back Certification	5
Section XII – Suspension of Services	5
Section XIII – Times of Payments	5
Section XIV – Timely Review	5
Section XV – Dispute Resolution	5
Section XVI – Liability of Consultant	6
Section XVII – Laws and Regulations	6
Section XVIII – Archaeological Resource Protection	6
Section XIX – Insurance Requirements	6
Section XX – Notices	7
EXHIBIT A – Scope of Services & Fee Schedule	9
EXHIBIT B – Compensation	35
EXHIBIT C – Special Provisions	36
EXHIBIT D – MGAA Standard Terms and Conditions	40



**Mesa Gateway Airport Authority, formerly known as Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona** (“MGAA”), desires the performance of the services more fully described in this Services Agreement (“Agreement”) and the attached exhibits. Studdiford Technical Solutions, LLC, a Virginia Limited Liability Company (“Consultant”), with its principal offices located at 1608 Old Stage Road, Alexandria, Virginia, 22308, desires to perform these services.

### **Recitals**

- A. MGAA requires the services as described in this Agreement, including any and all exhibits and amendments, and Consultant is willing to provide these and other services under this Agreement; and
- B. MGAA desires to contract with Consultant to provide services as noted herein.

**Now therefore**, in consideration of the recitals and the mutual covenants set forth below, MGAA and Consultant agree as follows.

### **SECTION I – CONSULTANT SERVICES**

The services to be performed by Consultant are specified in this Agreement. MGAA will not pay Consultant for any services that have not been authorized under the Agreement. There is no guarantee of a minimum purchase of services.

The anticipated services to be provided by Consultant under this Agreement shall generally include, but not be limited to, the following: Construction Administration services, as more specifically described in the detailed scope of services attached as **EXHIBIT A**, “Scope of Services & Fee Schedule.”

MGAA’s authorized representative shall be the MGAA Deputy Director, or his/her duly authorized representative, and that he/she shall be the sole contact for administering this Agreement.

All services provided by Consultant under this Agreement must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Arizona. Consultant makes no other warranty, expressed or implied.

### **SECTION II – MGAA RESPONSIBILITIES**

MGAA shall furnish Consultant, at no cost to Consultant, the following information or services for this Agreement:

- A. Access to copies of readily available maps, records, as-built drawings, benchmarks or other data pertinent to work assignments affiliated with this Agreement. This does not, however, relieve Consultant of the responsibility of searching records for additional information, for requesting specific information or for verification of that information provided. MGAA does not warrant the accuracy or comprehensiveness of any information or documents provided to Consultant.
- B. In MGAA’s discretion and upon Consultant’s reasonable request, access to staff for consultation with Consultant during the performance of this Agreement in order to identify the problems, needs, and other functional aspects of the work.
- C. Prompt review of and feedback on Consultant’s deliverables. MGAA will advise Consultant concerning progress of MGAA’s review of the work, as needed.

### **SECTION III - PERIOD OF SERVICE**

Consultant shall complete all work in accordance with the provisions of this Agreement as amended.

All work initiated under this Agreement must be completed on or before the expiration date of the Agreement.

This Agreement is effective as of the date signed by MGAA and ends on upon final completion and acceptance by MGAA of the project, as defined by the Scope of Services (“Base Term”), unless terminated, canceled or extended as provided in this Agreement.

Consultant shall commence its services within seven (7) days of the written authorization by MGAA. Consultant shall perform its services in a diligent manner and in accordance with this Agreement.

## SECTION IV – KEY PERSONNEL

The Consultant, and its subconsultants as listed below, shall provide all services to be performed under this Agreement. If Consultant determines that additional subconsultants are necessary to perform any services under this Agreement, Consultant shall notify MGAA in writing and obtain MGAA's prior written approval before authorizing any work by such subconsultants. MGAA may, at its sole discretion, approve or reject any proposed additional subconsultants.

Subconsultants: DWL Architects + Planners, Inc.  
LSW Engineers Arizona, Inc.  
Martin, White & Griffis Structural Engineers, Inc.  
Dibble

## SECTION V - PAYMENTS TO THE CONSULTANT

Consultant will be paid for work performed under this Agreement plus any adjustments that have been approved in writing by MGAA in accordance with MGAA's Procurement Policy. Payments will be made in accordance with **EXHIBIT B**, "Compensation."

All services to be rendered by Consultant are subject to the terms of **EXHIBIT B**, "Compensation" attached hereto.

MGAA does not guarantee any minimum or maximum fee during the Term of this Agreement, and Consultant, in executing this Agreement, shall not anticipate or require any minimum or maximum fee.

MGAA shall pay Consultant in agreed upon installments for services authorized and rendered under this Agreement at the completion of each work assignment, provided Consultant has satisfactorily completed the requested work. If any such work requires time in excess of 30 calendar days to complete, progress payment(s) may be made on invoices certified and approved by MGAA.

## SECTION VI - ALTERATION IN SCOPE OF SERVICES

For any alteration in the Scope of Services that would materially increase or decrease the Agreement fee, the parties shall negotiate an amendment to the Agreement to be executed by MGAA and Consultant. No work shall commence on any amendment or change until the amendment has been approved by MGAA and Consultant has been notified to proceed by MGAA. No claim for extra work done or materials furnished by Consultant will be allowed by MGAA, except as provided herein, nor shall Consultant do any work or furnish any materials not covered by this Agreement unless the work is first authorized in writing by MGAA and the change complies with MGAA's Procurement Policy. Any work or materials furnished by Consultant without advance, written authorization will be at Consultant's own risk, cost, and expense. Without written authorization, Consultant shall make no claim for compensation for such work or materials furnished.

## SECTION VII - WORK ASSIGNMENT COMPLETION

If, during the Term of this Agreement, situations arise which prevent work completion within the allotted time, MGAA may grant an appropriate time extension.

## SECTION VIII - OWNERSHIP OF DOCUMENTS

Any documents, including all electronic copies, graphics, designs, code, and written materials, prepared under or as a result of this Agreement, shall be the property of MGAA. To the extent necessary to effectuate such ownership, Consultant hereby assigns all right, title and interests to such documents, graphics, designs, code, and written materials to MGAA. Consultant shall execute any separate contracts or documents, if any, which may be necessary to implement the terms of this Section.

All of Consultant's documents, graphics, designs, code, and written materials prepared under this Agreement, including electronic files, are instruments of service. All of these documents, graphics, designs, code, and written materials shall become the property of MGAA upon completion of the services and payment in full to Consultant or, if the Agreement is terminated, upon termination of this Agreement. MGAA shall have the right to reuse, modify, or adapt the documents, graphics, designs, code, and written materials as it deems necessary, without requiring Consultant's prior written authorization. MGAA shall indemnify and hold harmless Consultant, its

officers, directors, employees and subconsultants (collectively, the “Consultant”) against any and all damages, liabilities or costs arising from MGAA’s modification of documents, graphics, designs, code, or written materials produced by Consultant under this Agreement unless Consultant authorizes the modification in writing.

#### **SECTION IX - COMPLIANCE WITH LAWS**

Consultant shall comply with all federal, state and local laws, local ordinances and regulations throughout the Term.

Consultant’s signature on this Agreement certifies compliance with the provisions of the I-9 requirements of the *Immigration Reform and Control Act of 1986* for all personnel that Consultant and any subconsultants employ to complete any work assignment.

MGAA shall administer this Agreement in accordance with MGAA’s Procurement Policy.

#### **SECTION X - GENERAL CONSIDERATIONS**

- A. The failure of either party to enforce any of the provisions of this Agreement or require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of the provisions, nor shall it affect the validity of this Agreement or the right of either party to enforce each and every provision.
- B. The fact that MGAA has accepted or approved Consultant’s work shall in no way relieve Consultant of responsibility for the work under this Agreement.
- C. This Agreement shall be governed by the laws of the state of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provision thereof, shall be instituted only in the courts of the state of Arizona.
- D. All exhibits to this Agreement and any amendments to this Agreement are incorporated into it.

#### **SECTION XI - NO KICK-BACK CERTIFICATION**

Consultant warrants that no person has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the MGAA Board of Directors or any employee of MGAA has any interest, financially or otherwise, in Consultant’s firm.

For breach or violation of this warranty, MGAA may annul this Agreement without liability.

#### **SECTION XII – SUSPENSION OF SERVICES**

Consultant shall, within five (5) business days upon receiving written notice from MGAA, suspend, delay, or interrupt all or a part of the Scope of Services. Consultant shall resume the Scope of Services within five (5) business days of receiving written notice from MGAA.

#### **SECTION XIII – TIMES OF PAYMENTS**

Consultant shall submit periodic invoices for any unbilled portion of the services actually completed. MGAA shall review, certify, and approve or reject each invoice in whole or in part. MGAA shall pay each approved invoice within 30 calendar days of the date that MGAA approves the invoice.

#### **SECTION XIV – TIMELY REVIEW**

MGAA will review Consultant’s studies, reports, proposals, and other related documents and render any decisions required by Consultant in a timely manner. Notwithstanding these reviews, Consultant remains solely responsible for all of its deliverables and services under this Agreement. By MGAA’s reviews, MGAA does not assume any liability for or retained control over Consultant’s work or Consultant’s responsibility for the safety of its employees.

#### **SECTION XV – DISPUTE RESOLUTION**

All disputes between MGAA and Consultant arising out of or relating to this Agreement will be subject to the Dispute Resolution provisions as set forth in **EXHIBIT D**, “MGAA Standard Terms and Conditions”, attached hereto and incorporated herein by reference.

MGAA and Consultant shall include a similar dispute resolution provision in all contracts with other contractors and consultants retained for the Project and shall require all other independent contractors and consultants to include a similar dispute resolution provision in all contracts with subcontractors, subconsultants, suppliers or fabricators retained by them.

#### **SECTION XVI - LIABILITY OF CONSULTANT**

To the fullest extent permitted by law, Consultant shall defend, save, indemnify, and hold harmless MGAA, its member governments, departments, officers, employees, and agents from and against damages arising out of any act, error, or omission of Consultant relating to its services under this Agreement.

#### **SECTION XVII - LAWS AND REGULATIONS**

All federal, state, and local laws and regulations that relate to Consultant's services apply to Consultant's performance of this Agreement throughout. These laws and regulations are deemed included in this Agreement the same as though written out in full, especially the current applicable Federal Aviation Administration (FAA) rules and regulations associated with airport projects; pertinent Airport engineering standards; and local rules, regulations, and industry standards.

#### **SECTION XVIII – ARCHAEOLOGICAL RESOURCE PROTECTION**

While performing services under this Agreement, Consultant may encounter a known or unknown archaeological site located at the Airport. If Consultant encounters what it believes to be an archaeological site, Consultant shall immediately notify MGAA of the site's location and take all reasonable precautions to protect and preserve the site until MGAA otherwise directs.

#### **SECTION XIX INSURANCE REQUIREMENTS**

- A. Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.
- B. All insurance policies required by this Contact, except *Workers Compensation* and *Professional Liability*, shall name MGAA, its agents, representatives, officers, directors, officials and employees as Additional Insured.
- C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:
  - i. Professional Liability (Errors and Omissions): Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
  - ii. Commercial General Liability: Insurance Services Office Form CG 00 01 covering Bodily Injury and Property Damage on an "occurrence" basis, including personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
  - iii. Auto Liability: ISO Form CA 00 01 covering any auto (Symbol 1), or if Consultant has no owned autos, hired, (Symbol 8) and non-owned autos (Symbol 9), with limit no less than \$1,000,000 Combined Single limit per accident for bodily injury and property damage (\$5,000,000 if operating in the Air Operations Area of the Airport).
  - iv. Workers' Compensation: Statutory Limits as required by the state of Arizona, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. If the Consultant maintains higher limits than the minimums shown above, MGAA requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MGAA.
- E. Additional insurance provisions. The insurance policies shall provide, or be endorsed to include, the following provisions:
  - i. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to MGAA.
  - ii. Waiver of Subrogation: Consultant waives any right to subrogation. Consultant shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Agreement, except *Workers Compensation* and *Professional Liability*, for

- claims arising out of the Consultant's work or service.
- iii. Primary Coverage: For all claims related to this Agreement, all of Consultant's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by MGAA, its officers, officials, employees, or volunteers will be in excess of Consultant's insurance and will not contribute with it.
  - iv. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by MGAA. MGAA may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
  - v. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, VII, unless otherwise acceptable to MGAA.
  - vi. Claims Made Policies: No Claims Made policies (other than Professional Liability) will be accepted. For policies that provide claims-made coverage:
    - a) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
    - b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work.
    - c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
  - vii. Verification of Coverage: Consultant shall furnish MGAA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by MGAA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide the required insurance. MGAA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
  - viii. Subcontractors: Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that MGAA is an additional insured on insurance required from subcontractors.
  - ix. Special Risks or Circumstances: MGAA reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances.

## SECTION XX NOTICES

Any notice, report or information which may be or is required to be given under this Agreement will be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

TO MGAA: Mesa Gateway Airport Authority  
Attn: Deputy Director  
5835 South Sossaman Road  
Mesa, Arizona 85212

TO CONSULTANT: Studdiford Technical Solutions, LLC  
Attn: Larry Studdiford  
1608 Old Stage Road  
Alexandria, VA 22308

or to such other person(s) or address(es) as any such Party may designate from time to time by notice to the other Parties in accordance with this Section.

Executed as of the Effective Date.

**CONSULTANT**  
**Studdiford Technical Solutions, LLC, a**  
Virginia Limited Liability Company

Lawrence Studdiford

Digitally signed by Lawrence Studdiford  
DN: C=US, E=larry@studdifordtech.com,  
O="Studdiford Technical Solutions,  
LLC", OU=President, CN=Lawrence  
Studdiford  
Date: 2025.08.19 10:10:09-04'00'

By: \_\_\_\_\_  
Name: Larry Studdiford  
Title: President  
Date: August 19, 2025

**MGAA**  
**MESA GATEWAY AIRPORT**  
**AUTHORITY**, a joint powers airport authority  
authorized by the state of Arizona

By: \_\_\_\_\_  
Name: J. Brian O'Neill, A.A.E.  
Title: Executive Director/CEO  
Date: \_\_\_\_\_

## EXHIBIT A – SCOPE OF SERVICES & FEE SCHEDULE

The services to be performed by Consultant and the completion of related efforts are specified in the following Scope of Services & Fee Schedule agreed to by the parties.

For the services provided herein, MGAA agrees to pay Consultant the not to exceed amount of \$925,997.00

See following pages



## NEW IN-LINE CHECKED BAGGAGE INSPECTION SYSTEM (CBIS)

### PROPOSAL FOR CONSTRUCTION ADMINISTRATION SERVICES

July 2, 2025



Studdiford Technical Solutions, LLC (STS) is pleased to provide Mesa Gateway Airport Authority (MGAA) with this proposal for construction administration (CA) services in support of the New In-Line Checked Baggage Inspection System (CBIS) Project at Mesa Gateway Airport (IWA).

## **PROJECT DESCRIPTION**

MGAA has requested construction administration services for the New In-line CBIS project at IWA. This project entails working with MGAA, the Transportation Security Administration (TSA), airport stakeholders, and the construction manager at-risk (CMAR) to deliver a system that meets the TSA's Planning Guidelines and Design Standards (PGDS). For the base scope, the existing baggage handling system (BHS) will be removed and replaced with a new network of conveyors that will transport checked baggage to the new CBIS comprised of in-line Explosives Detection System (EDS) units, followed by transport of cleared bags to a common existing make-up unit for loading onto carts and transported to the aircraft. An alternative has been developed that will allow sortation to a new run out pier. The STS-led design team has recently completed the combined 70/100% design submittal to TSA and anticipates receiving notice to proceed with construction by May 2025.

The CMAR is preparing the guaranteed maximum price (GMP) in parallel with the TSA review of the 70/100% design submittal. Finalizing the GMP on schedule is imperative to ensure the TSA other transaction agreement (OTA) with MGAA gets executed in FY25. Upon the BHSC award, the following construction phase activities are anticipated:

- Engineering
- Fabrication/procurement
- Installation
- Commissioning
- Close-out

STS will serve as the prime engineer, providing project management and coordination with MGAA, TSA, CMAR, and our subconsultants throughout the pre-construction, construction, and closeout phases. Our teaming partner, DWL Architects, and their subconsultants are responsible for construction administration of architectural, civil, structural, mechanical, electrical, plumbing, and special systems, which is included as Exhibit B in this scope of service.

## **REQUIRED SERVICES**

The following services will be provided during pre-construction:

1. Hold a pre-construction conference with MGAA, CMAR, and project stakeholders.
2. Review and respond to the CMAR requests for information (RFIs).
3. Hold a weekly status call with the pertinent stakeholders.

The following services will be provided during construction:

1. Frequent CMAR coordination is anticipated to mitigate delays in the field. Therefore, we have included time for the STS PM to stay in regular contact with the CMAR.
2. Participate in weekly owner-architect-construction (OAC) meetings hosted by the CMAR to review progress, discuss and resolve issues, and identify risks or constraints.
3. Provide a document control process in coordination with MGAA and CMAR for logging and tracking the status of submittals, RFIs, design change notices, change order requests, and change order proposals.
4. Review of the BHS equipment on-site and installation progress once per month on average, and provide MGAA a site observation report (fifteen 4-day visits maximum).

5. Conduct a visit to the BHSC's or their controls subcontractor's facility for factory acceptance testing (FAT) of the BHS controls system design (two 3-day visits).
6. Review of Division 34 specified BHS submittals per the approved submittal schedule. STS is anticipating forty (40) submittals with an average review time of four (4) hours per submittal and a maximum of two reviews per submittal. BHS submittals include, but are not limited to:
  - a. Submittal and work schedules
  - b. Controls system design
  - c. Requests for substitution (RFS)
  - d. Product data
  - e. Description of operations
  - f. Contingency plans
  - g. Shop drawings
  - h. Power distribution requirements
  - i. Product and system warranty information
  - j. Draft and final operations & maintenance (O&M) manuals
  - k. Draft and final test plans
  - l. Training plan
  - m. As-built drawings and documentation
  - n. Recommended spare parts list
7. Review and respond to RFIs submitted by the CMAR or BHSC to provide technical clarification. STS estimates fielding approximately fifty (50) RFIs germane to BHS. CMAR shall have a complete and vetted RFI before sending it to STS for review. This includes cost and schedule impacts or improvements. When an RFI requires more than one follow-up response to the initial question and answer, it will be considered a separate RFI.
8. Coordination with the TSA and its contract representatives for Explosives Detection Systems (EDS) equipment deliveries.
9. Coordination and oversight of Site Specific Test Plan (SSTP) development.
10. Act as MGAA's technical representative, providing on-site support to witness specified BHS testing and commissioning activities. STS anticipates utilizing, on average, two representatives during the (90-day) period to accomplish:
  - a. Upon readiness notification by BHSC, STS will conduct detailed static, dynamic, and functional punchlisting of equipment
  - b. Witness owner tests, including functional, load, merge, redundancy, sortation, rate, and endurance.
  - c. Full participation in TSA pre-ISAT, Test Readiness Review (TRR), and ISAT.
11. Closeout Support
  - a. Provide on-site support during the post-live operations period (30 days); (two 3-day visits maximum).
  - b. Check in with the BHSC subcontractor's standby period personnel weekly and report status of systems, including any issues.
  - c. Conduct a final punch walk with MGAA, CMAR, and stakeholders to verify completed punch list items.
  - d. Review BHS training material, Operation and Maintenance Manuals, and as-built record drawings for compliance with specifications and as-built conditions.
  - e. Conduct a 10-month warranty walk and compile a warranty list from all disciplines for issuance to the CMAR.

## COMPENSATION

STS and our subconsultant teaming partners will provide the additional above scope of work for a not-to-exceed amount of **\$925,997.00**, with breakout as follows:

Allocable (TSA Reimbursable):

- ALLOCABLE: \$479,160.00

Non-Allocable (TSA non-reimbursable):

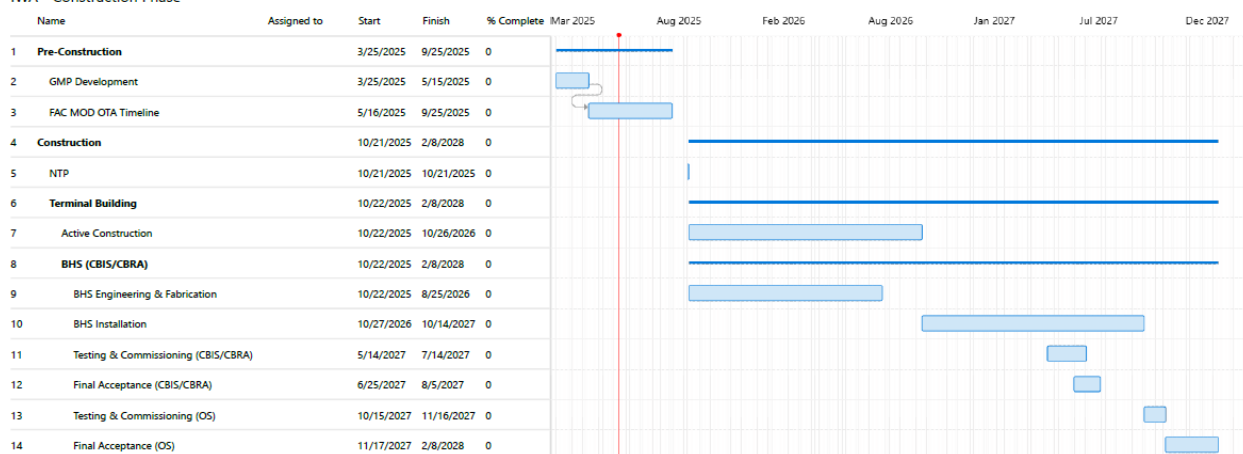
- NON-ALLOCABLE: \$446,837.00

A detailed cost breakdown is included in **Exhibit A**.

## SCHEDULE

This proposal covers the construction administration services commencing from GMP development by the CMAR through construction and final acceptance of the CBIS and OS phases. The total duration for construction administration services is approximately one hundred twenty (120) weeks as reflected in the milestone construction schedule shown below. This schedule is based on the design schedule provided to MGAA and TSA with the combined 70/100% submittal package (file name: 70%\_100% AZA\_CBIS\_SCHEDULE\_250604\_R0).

IWA - Construction Phase



## ASSUMPTIONS, CLARIFICATIONS, AND EXCLUSIONS

1. Professional Engineering analysis and stamps are excluded.
2. Costs for travel and labor for obtaining Security Identification Display Area (SIDA) badges are included in the NTE amount and will be billed to MGAA.
3. Reviews of BHS related Change Order Requests and Construction Change Directives (CCDs) are included.
4. Review of pay applications is excluded.
5. The CMAR is responsible for developing the construction project schedule. Any changes, delays, or deviations to the project schedule may result in additional services.
6. The CMAR shall provide construction phasing and tie-in plans.

7. Expenses associated with travel will be billed at cost, within the guidelines set forth by the General Services Administration (GSA) for lodging, mileage, meals, and incidental expenses. Any exceptions to the GSA expense guidelines will be pre-approved by MGAA in writing.
8. MGAA is responsible for quality assurance, and the CMAR and BHSC are responsible for quality control of the work.
9. The CMAR and BHSC shall submit their completed, signed, and dated records of internal testing with any corrective actions as specified for review before scheduling any owner inspections or testing.
10. The CMAR and BHSC are responsible for re-testing should they fail an owner witness test; however, witnessing re-testing may result in additional services for the consultant.
11. All baggage portering and management of baggage porters is excluded and assumed to be provided by the CMAR.
12. This proposal excludes the preparation of special studies not listed herein. If required and requested by MGAA, special studies and reports can be added to this scope of work by amendment and pricing negotiation.
13. This proposal is valid for 150 days.
14. All personnel working on the project will be U.S. citizens. All documents produced will be considered unclassified, other than those elements considered by TSA as "Sensitive Security Information (SSI)."
15. Invoices will be submitted monthly, to be paid within thirty (30) calendar days of receipt.

Thank you for the opportunity to submit this Change Order proposal. If you have any questions, please feel free to contact me.

Best regards,  
Studdiford Technical Solutions, LLC

A handwritten signature in black ink, appearing to read "Larry Studdiford", with a stylized flourish at the end.

Larry Studdiford, PMP President

**EXHIBIT A**

Cost Breakdown



Scope Item	Hours	Principal	Subtotal	Hours	Sr. PM	Subtotal	Hours	PM	Subtotal	Hours	Sr. Inspector	Subtotal	Hours	Inspector	Subtotal	Hours	Cost	
		305.47			145.22			124.83			94.93			92.12				
Subtotal w/ contingency	0		\$ -	0		\$ -	0		\$ -	0		\$ -	0		\$ -	0.00	\$ -	
Construction Administration Phase																		
Pre-con conference on-site	0	305.47	-	0	145.22	-	20	124.83	2,496.54	0	94.93	-	0	92.12	-	20	\$2,496.54	
Pre-con RFI responses	0	305.47	-	10	145.22	1,452.17	40	124.83	4,993.07	20	94.93	1,898.70	0	92.12	-	70	\$8,343.94	
OTA application support [Removed]	0	305.47		0	145.22	-	0	124.83	-	0	94.93	-	0	92.12	-	0	\$0.00	
Pre-con weekly status meetings	0	305.47	-	10	145.22	1,452.17	40	124.83	4,993.07	20	94.93	1,898.70	10	92.12	921.20	80	\$9,265.14	
CMAR coordination - STS PM	0	305.47	-	0	145.22	-	320	124.83	39,944.56	0	94.93	-	0	92.12	-	320	\$39,944.56	
Weekly OAC meetings	0	305.47	-	80	145.22	11,617.39	160	124.83	19,972.28	80	94.93	7,594.78	40	92.12	3,684.78	360	\$42,869.24	
Document control/file management	0	305.47	-	0	145.22	-	80	124.83	9,986.14	20	94.93	1,898.70	0	92.12	-	100	\$11,884.84	
Site observations - (15 trips)	0	305.47	-	40	145.22	5,808.70	120	124.83	14,979.21	280	94.93	26,581.74	160	92.12	14,739.14	600	\$62,108.79	
Witness Factory Acceptance Test (2 trips)	0	305.47	-	80	145.22	11,617.39	0	124.83	-	0	94.93	-	0	92.12	-	80	\$11,617.39	
BHS submittal reviews - estimating 40 submittals	0	305.47	-	50	145.22	7,260.87	50	124.83	6,241.34	50	94.93	4,746.74	50	92.12	4,605.98	200	\$22,854.93	
BHS RFIs responses - estimating 50 RFIs	0	305.47	-	32	145.22	4,646.96	68	124.83	8,488.22	50	94.93	4,746.74	50	92.12	4,605.98	200	\$22,487.90	
TSA coordination on EDS deliveries & SSTP	0	305.47	-	8	145.22	1,161.74	24	124.83	2,995.84	12	94.93	1,139.22	0	92.12	-	44	\$5,296.80	
Static & dynamic equipment inspections / punch listing	0	305.47	-	40	145.22	5,808.70	40	124.83	4,993.07	80	94.93	7,594.78	40	92.12	3,684.78	200	\$22,081.33	
Witness owner testing (functional, load, rate, sort, merge, etc.)	0	305.47	-	120	145.22	17,426.09	80	124.83	9,986.14	40	94.93	3,797.39	40	92.12	3,684.78	280	\$34,894.40	
TSA pre-ISAT, TRR, ISAT	0	305.47	-	40	145.22	5,808.70	120	124.83	14,979.21	120	94.93	11,392.18	0	92.12	-	280	\$32,180.08	
On-site support post go-live (2 trips)	0	305.47	-	0	145.22	-	0	124.83	-	40	94.93	3,797.39	40	92.12	3,684.78	80	\$7,482.18	
Run-in data collection and weekly status report	0	305.47	-	0	145.22	-	0	124.83	-	20	94.93	1,898.70	40	92.12	3,684.78	60	\$5,583.48	
Final punch walk (1 trip)	0	305.47	-	0	145.22	-	24	124.83	2,995.84	0	94.93	-	0	92.12	-	24	\$2,995.84	
Review closeout submittals (O&M, training warranty, as-builts)	0	305.47	-	16	145.22	2,323.48	40	124.83	4,993.07	40	94.93	3,797.39	16	92.12	1,473.91	112	\$12,587.85	
Conduct 10-month warranty walk (1 trip)	0	305.47	-	0	145.22	-	24	124.83	2,995.84	0	94.93	-	0	92.12	-	24	\$2,995.84	
Invoicing, monthly report & QA/QC	48	305.47	14,662.50	0	145.22	-	80	124.83	9,986.14	0	94.93	-	0	92.12	-	128	\$24,648.64	
Expenses (est.)																	\$95,009.00	
Subtotal labor (allocable)																	\$269,233.79	
Subtotal labor (non-allocable)																	\$115,385.91	
Subtotal																		
Labor (allocable)																	\$ 269,234.00	
Labor (non-allocable)																	\$ 115,386.00	
Travel Expenses (est.)																	\$ 95,009.00	
Design allowance (non-allocable)																	\$ -	
Subconsultants (allocable)																	\$ 140,284.00	
Subconsultants (non-allocable)																	\$ 304,084.00	
Subconsultants Expenses (non-allocable)																	\$ 2,000.00	
Subtotal (allocable)																	\$ 479,160.00	
Subtotal (non-allocable)																	\$ 446,837.00	
TOTAL																	\$925,997.00	

**EXHIBIT B**

Subconsultant Proposals

~~April 8, 2025~~

~~R1: April 21, 2025~~

**R2: May 12, 2025**

**FINAL**

Larry Studdiford, PMP  
President  
Studdiford Technical Solutions, LLC (STS)  
1608 Old Stage Road, Alexandria, VA 22308  
C: +1 (203) 206-0533  
[larry@studdifordtech.com](mailto:larry@studdifordtech.com) / [www.studdifordtech.com](http://www.studdifordtech.com)

RE: Mesa Gateway Airport (MGA)  
**AZA Studdiford Outbound BHS - Building Expansion**  
**Construction Phase Services - Allocable and Non-Allocable**  
Contract No. 20230112 | DWL Project No. 2316.02

Dear Larry:

We are very pleased for this opportunity to submit the Construction Administration (CA) services proposal for the construction of the Outbound Baggage Handling Expansion project at Mesa Gateway Airport (AZA/IWA).

**Assumptions:**

1. The selected project delivery method is Construction Manager at Risk (CMAR) and the CMAR is Weitz Company. Studdiford is the Prime Engineer and will provide primary Construction Administration (CA) and Project Management (PM). The DWL team to provide limited CA services as outlined in this proposal.
2. Sub consultants included in this project scope:
  - LSW Engineers (LSW): Mechanical, Electrical, Plumbing and Special Systems
  - MWG: Structural Engineering
  - Dibble Engineering: Civil
3. Studdiford will have a Project Manager (STS-PM) who will be the main point of contact for DWL and lead the design team's construction phase service efforts. Studdiford will have a regularly scheduled person on site monthly to provide site observations during BHS equipment installation.



4. For purposes of fee development, the following overall construction durations are used based on ongoing discussions with Weitz Construction and MGA:

A. Pre-Construction	31 weeks
a. GMP Development	3/25/2025 – 5/15/2025 (8 weeks)
b. FAC MOD OTA Timeline	5/16/2025 – 9/26/2025 (20 weeks)
B. Construction	77 weeks
a. NTP	10/21/2025 (Construction start)
b. Mobilization	10/21/2025 – 11/10/2025 (3 weeks)
c. Building Active Construction Start/End:	11/11/2025 – 11/11/2026 (52 weeks)
d. BHS Construction, Testing / Commissioning:	3/17/2026 – 4/14/2027 (56 weeks)
e. Project Substantial Completion:	4/14/2027
C. Project Closeout:	4/15/2027-7/7/2027 (12 weeks)

**Active Construction Duration in Weeks (Building Component): 52 weeks**

5. Any delay to schedule due to other projects or scope not identified in this proposal is subject to reevaluation of the associated fees by the DWL Team. DWL Team assumes that STS and MGA understands that increased time to this schedule directly impacts the service fee provided. Any expediting of the schedule does not necessarily change the amount of support needed to be provided by the design team.
6. STS agrees that for those services set forth in this proposal DWL shall not be responsible for any Actions and Indemnification Costs that are determined by a court of competent jurisdiction to be the sole responsibility of Studdiford, MGA, CMAR, or others for whom DWL is legally not liable.

**Scope of work – Limited Construction Phase Services**

1. Pre-Construction Activities: (31 weeks)
  - a. General pre-construction coordination and attend one pre-construction conference (with the Airport, CMAR, STS and others who will be affected by the construction. DWL assumes STS will prepare agenda, minutes and distribute to participants.
  - b. Pre-construction questions from the CMAR in the form of Pre-bid RFIs will be responded to by the design team.
  - c. Due to the TSA process, there is an extended TSA review period after the development of the CMAR's GMP to the start of construction, approximately 23 weeks. During this period, DWL assumes limited participation however will maintain weekly communication with STS.
2. Construction Administration Activities: (77 weeks)
  - a. General Communication: As construction is anticipated to be fast-paced DWL anticipates questions from the field that need immediate response. General communication time included for coordination with STS-PM, MGA-PM, CMAR, DWL project staff and consultants. The DWL team is to clarify and support the STS-PM with scope, documents and CMAR responsibility. This task also includes management of the contracts and consultants. In order for efficient time use, we request email clarifications of on-site issues to be accompanied by clear photos clearly indicating areas that require attention using clouds, arrows, etc. Each clarification item shall be considered as an RFI.

- a. Attend progress meetings weekly (virtual and in-person) to review the current schedule and work progress and to facilitate resolution of construction issues. Preparation and distribution of meeting minutes is assumed by the CMAR.
- b. Maintain a document file tracking system in conjunction with the contractor for submittals, Proposal Requests and Architect's Supplemental Instructions (ASI's). It is assumed that the contractor will maintain logs for the RFI's, change order requests, change orders, and submittals.
- b. Field Observation:
  - a. DWL will observe the site 1 times per week on average, by the field representative. (52 visits) By reviewing with the contractor's schedule we will determine the observation schedule. Each site visit includes a field report and assumes to occur during normal business hours.
  - b. DWL's Project Manager will visit the site approximately 1 times per month. (12 visits).
  - c. Inspect mechanical, electrical, plumbing & special system elements of the project. See attached consultant proposal.
  - d. Provide field observation of structural steel erection and other structural components including steel reinforcing, formwork, concrete placement, and masonry. See attached consultant proposal.
- c. Submittals: DWL's fee estimate for the project anticipates a total of 140 submittals at 3 hours each for first review and 2 hours for second review. We assume 50% will require a second review.
  - 1) Duration of review per specifications starts from the time the submittals are received by DWL. Such review or other action shall not extend to means, methods, sequences, techniques or procedures of construction selected by the contractor, or to safety precautions and programs associated thereto.
  - 2) A submittal schedule shall be submitted by the contractor within 14 days of NTP to DWL via the STS-PM. This schedule shall be reviewed by the STS-PM for submittals requiring Owner pre-approvals. This submittal schedule is required by DWL to schedule reviews in advance.
  - 3) The STS-PM and DWL will be copied on all submittals and DWL will control the receipt and distribution of submittals to our consulting engineers (MPE, Structural, Civil) who require submittal review.
  - 4) The owner will be copied on submittals and distribute to their stakeholders when appropriate for owner staff review.
  - 5) Complete submittals shall be provided by the contractor in accordance with specification section 01 33 00. When a 2<sup>nd</sup> submittal is incomplete, it will be rejected without review when permitted, in order to preserve hours. DWL and our consultants shall track the time spent on additional reviews separately.
- d. Requests for Information (RFI): DWL Team fee estimate includes a total of 120 RFI's within the base estimate. This includes informal and formal RFI's. Each distinct issue is considered a separate RFI. The intent is that the contractor not include multiple unrelated RFIs within a single RFI number. We assume 3 hours per RFI. Reviews and responses to formal RFIs shall be submitted to the STS-PM by the contractor and copy DWL when appropriate in order to expedite the process. Duration of review per specifications starts from the time the RFI is received by DWL. DWL will distribute and log consultant RFIs.

- 1) DWL Team to inform STS-PM prior to reaching 75% (90 RFIs) of this CAP to evaluate need for additional RFI's to be compensated through change order towards the Owner contingency.
- e. Architects Supplemental Instructions (ASI): Assuming a percentage of the RFIs would require ASIs in the form of sketches, we assume the following quantity of ASIs.

Discipline	RFIs*	ASIs*	CORs*
Architectural	120	12	0
MEP	40	4	0
Structural	20	3	0
Civil	20	3	0
<b>Total:</b>	<b>120</b>	<b>12</b>	<b>0</b>

1. \* DWL Team to inform the STS-PM prior to reaching 75% of this CAP to evaluate need for additional RFI's and ASI's to be compensated through change order towards the Owner contingency or by the CMAR.
2. \* DWL Team scope also includes scope as detailed in attached sub-consultant's proposals.
- f. Proposal Requests: Proposals Requests are excluded. Should MGA require a significant design change to the project, DWL will request additional services for the associated change.
- g. Substitution Requests: Up to (2) Completed substitution requests will be reviewed for the airport provided there is a benefit to the airport such as time and cost saving. Consideration for redesign. 3 hours.
- h. Prepare a Punch List for the contractor's use prior to the final project walk-through. DWL assumes that contractor will conduct their own punch list (or deficiency list) prior the architect's and engineer's punch list. The architect's punch list shall be a comprehensive excel based format, that identifies items that do not meet the construction documents (drawings and specifications). Conduct one "back-check" per punch list with the airport representative and the contractor at the completion of the construction and once the contractor declares they are ready for the back-check. Punch lists will be limited to **2** separate areas/lists. Team assumes a punch list for the EDS building and renovated areas of the Ticketing Terminal (Facilities Storage, OS Screening, and Employee Screening) Punch list beyond quantity listed will require additional services. DWL and our consultants shall track the time spent on additional punch lists separately.
3. Project Close-Out Activities (12 weeks): The DWL team shall provide the followings services:
  - a. General Communications and Meetings: After Substantial Completion DWL will participate in monthly virtual meetings (4 meetings). General communication time (4 hours/ per week for the PM) is included for coordination with STS, MGA and the CMAR. An additional 1 hour is included for consultant coordination.
  - b. Review of Operation and Maintenance (O&M) Manuals: Review O&M Manuals submitted and assembled by the Contractor in accordance with the construction documents. DWL assumes a maximum of 2 reviews per submittal. DWL and our consultants shall track the time spent on additional reviews separately and reserves the right to request additional services if time is exhausted prior to project completion.

- c. Record Drawings: Record drawings prepared from complete CMAR mark-ups (as-builts) shall be provided after final completion. The CMAR shall keep a record set of as-built redline drawings on-site in accordance with the specifications. Weekly review during the course of construction will be performed by MGA for the completeness of the as-built drawings. PDF files and (1) 24x36 set of record documents will be provided to MGA. AutoCAD files directly converted from Revit shall be provided for the floor plans via electronic file transfer.
- d. Conduct warranty inspections and prepare a warranty list for the contractor prior to the expiration of the contractor's one-year warranty period. Warranty inspections are assumed to occur approximately at the 10-month time frame prior to the completion of the warranty period.

**Additional Services:**

The following additional services will be broken out separately from other construction administration services.

- a. None

**Exclusions:**

In order to provide clarity and to prevent any misunderstandings, we want to identify items that are excluded from this proposal. If for any reason the Airport requires these services, we can provide them for additional compensation.

- 1. Services from engineers or consultants not identified in this proposal and beyond this project's scope.
- 2. Construction phasing plans.
- 3. Contractor Schedule Analysis
- 4. Observation of job site conditions and traffic control
- 5. Security Sensitive Information (SSI) tracking and management
- 6. Value Engineering
- 7. Move-In coordination and scheduling
- 8. Deliverables beyond those described below.
- 9. Government permit and plan review fees.
- 10. Quality control construction materials testing including, but not limited, to tasks listed below.
  - a. Concrete testing including:
  - b. PCCP, beams, cylinders and cores.
  - c. Foundations including footings, caissons, and grade beams.
  - d. Slabs-on-grade.
  - e. Miscellaneous concrete (sidewalks, concrete benches, etc.)
  - f. Subgrade Compaction (slab-on-grade and footings).
  - g. Aggregate Base Course (ABC) compaction.
  - h. Masonry grout and mortar mix.
  - i. Ultrasonic testing including steel beams, columns and miscellaneous steel.
  - j. Spray Applied and Intumescent Paint Fire Proofing.
  - k. Asphalt.

- I. Utility trench backfill field density testing.
- 11. Quality Control Testing which is required by the Contractor
  - a. Epoxy Anchor Bolts
  - b. Anchor Bolts
  - c. Ultrasonic testing for splices at reinforcing
  - d. Survey of subgrade utilities, piping
  - e. Plumbing testing (DWL/LSW to review results)
  - f. Fire Alarm
  - g. Special Systems (DWL/LSW to review results)
  - h. Mechanical Systems
  - i. Utility Trench backfill for Quality Control
- 12. Civil services: Construction Staking, survey, Utility Locating/Potholing, As-built survey
- 13. Resident engineer and associated duties, inspection calls, project management, meeting minutes
- 14. Special Structural Inspections
- 15. Field materials and performance tests, periodic observations and documentation required by the specifications other than what is specifically identified in this proposal or consultant proposals. Tests or investigations requiring demolition of existing construction or other types of forensic investigation.
- 16. Change Order Requests Reviews, Construction Change Directives (CCDs) reviews, and Pay Application review is not included in DWL's base scope
- 17. Substantial Completion certificate and Final Completion letter.
- 18. FAA Reports (weekly, closeout, etc.) or Federal Funding tasks, such as Davis Bacon Compliance.

**Deliverables:**

- 1. General Project Correspondence Letters and Memorandums
- 2. Site Observation Reports, Substitution Requests, Submittal Reviews, RFI's, and ASI's
- 3. Punch lists, O&M Reviews, Record Drawings

**Compensation:**

The previously mentioned services will be provided on an Hourly Not to Exceed Basis. We have estimated the total amount as summarized below.

<b>Construction Administration</b>	
Architectural - DWL	\$ 356,128
MPE and Special Systems - LSW	\$ 35,870
Structural - MWG	\$ 26,370
Civil - Dibble	\$ 26,000
<b>Design &amp; Engineering Total</b>	<b>\$ 444,368</b>
Design & Engineering – Allocable Subtotal	\$ 140,284
Design & Engineering - Non-Allocable Subtotal	\$ 304,084
Reimbursable	\$ 2,000
<b>Proposal Total</b>	<b>\$ 446,368</b>

We will invoice at cost for project related expenses such as travel, mileage, courier, printing, copying (in or out of office).

DWL will closely monitor use of hours by DWL and sub-consultant personnel and inform the STS-PM immediately of any areas where premature exhaustion of hours is anticipated.

Once again, we are very grateful for this opportunity and look forward to working with you, the STS team and the MGA Team. If you have any questions or require further explanation regarding any item, please do not hesitate to contact me or Shawn Filip.

Sincerely,

**DWL ARCHITECTS + PLANNERS, INC.**



Sandra Kukla, AIA, LEED AP  
President

cc: Mary Ann Modzelewski  
Shawn Filip  
Business Office

## COMPENSATION ESTIMATE

Hourly Not-to-Exceed

Construction Budget: \$13 M

05.12.2025

## ARCHITECTURAL - Construction Administration Phase

Task Description																							Task Total			
		Principal 242.00 per hr.		Building Code Mgr 176.00 per hr.		Proj. Manager 152.00 per hr.		Sr. Inspector 163.00 per hr.		Project Architect 137.00 per hr.		Apprentice Architect 102.00 per hr.		Field Representative 145.00 per hr.		CADD/BIM Technician 106.00 per hr.		Sr. Interior Designer 111.00 per hr.		Spec Writer 183.00 per hr.		Administration 136.00 per hr.		Clerical 98.00 per hr.		
		Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost	Hours	Direct Cost			
1	Pre-Construction	20		0		78		0		0		0		0		16		0		0		8		32		22,616.00
2.a	General Communication	8	4,840.00	0	0.00	387	11,856.00	0	0	0	0	0	0.00	77	11165	77	8,162.00	0	0.00	0	0.00	65	1,088.00	40	3,136.00	92,847.00
2b	Field Observation	0		0		96		0		0		0		312		0		0		0		0		0		59,832.00
2c	Submittals	16		0		120		0		0		0		52		340		30		0		0		0		69,022.00
2d	Requests for Information (RFI)	26		0		120		0		0		0		120		120		25		0		0		0		57,427.00
2e	Architects Supplemental Instruction s (ASI)	12		0		36		0		0		0		0		120		0		2		0		0		21,462.00
2f	Proposal Requests	0		0		0		0		0		0		0		0		0		0		0		0		0.00
2g	Substitution Requests	2		0		8		0		0		0		0		8		4		0		0		0		2,992.00
2h	Punch List	3		0		20		0		0		0		32		0		0		0		0		0		8,406.00
3a	Close-Out - General Communication/Meetings	4	968.00	0	0.00	54	8,208.00	0	0	0	0.00	20	2900	0	0.00	0	0.00	0	0.00	12	1,632.00	8	784.00			14,492.00
3c	Close-Out - O&M Manuals	0		0		6		0		0		0		0		20		0		0		0		0		3,032.00
3d	Close-Out - Record Drawings	0		0		4		0		0		0		0		32		0		0		0		0		4,000.00
	DWL CA PHASE TOTAL	91	22,022.00	0	0.00	929	141,208.00	0	0.00	0	0.00	0	0.00	613	88,885.00	733	77,698.00	59	6,549.00	2	366.00	85	11,560.00	80	7,840.00	2592
Allocable																							\$118,709.33			
Non-Allocable																							\$237,418.67			

## TEAM SUMMARY

Discipline	Construction Administration			Add'l Services						Totals
	Construction Administration Allocable	Construction Administration Non-Allocable								
Basic Design & Engineering										
Architectural - DWL	\$118,709.33	\$237,418.67								356,128.00
Structural - MWG	-	26,370.00								26,370.00
MPE & Special Systems - LSW	21,575.00	14,295.00								35,870.00
Subtotal - Basic Design & Engineering 418,368.00				Subtotal - Basic Design & Eng. 0.00						
Basic Design & Engineering Sub-Total										\$418,368.00
Other Design & Engineering										
Civil - Dibble	-	26,000.00								26,000.00
										0.00
										0.00
	\$140,284.33	\$304,083.67	-	\$0.00	-	-	-	-	-	
Subtotal - Other Design & Engineering 26,000.00				Subtotal - Other Design & Engineering 0.00						
Other Design & Engineering Sub-Total										\$26,000.00
Total										\$444,368.00
Design Allowance										\$0.00
Total with Allowance										\$444,368.00

## REIMBURSABLE EXPENSES

Firm	Expense	
DWL / Consultants	Printing, Copies, Courier - Billed only as needed	2,000.00
Total Reimbursable		\$2,000.00

## DBE PARTICIPATION

	\$	-	0.0%

**DWL's personnel hourly rates are based on an Overhead Rate of 1.7335 and includes 10% profit.**

<b>Total w/ Reimbursable</b>	<b>\$446,368.00</b>
------------------------------	---------------------

April 29, 2025

DWL Architects + Planners, Inc.  
2333 North Central Avenue  
Phoenix, AZ 85004

Attn: Sandy Kukla, AIA, LEED AP

Re: Mesa Gateway Airport (AZA) Outbound Baggage Addition Construction Administration, rev02  
LSW Proposal No. PR2025-093 / Project No. 2023-065.081 and 2023-065.082

Ms. Kukla:

We are pleased to offer our engineering construction administration services for the Outbound Baggage Addition at the Mesa Gateway Airport.

### **PROJECT UNDERSTANDING**

This project is understood to be the construction phase services for the outbound baggage addition including both allocable (~12,000 SF) and non-allocable spaces (~7,500 SF). The project delivery system is understood to be Construction Manager at Risk (CMAR) with Weitz Company as the CMAR. Studdiford is the Prime Engineer and will provide primary construction administration (CA) and project management. The DWL team (including LSW) is to provide limited CA services as outlined in this proposal.

Our mechanical, plumbing, electrical and technology engineering services for this project will consist of the following. Services not indicated below are considered outside of our basic scope and will be provided upon request as an additional service.

The active construction duration for this project is understood to be 52 weeks.

### **SCOPE OF WORK**

Our construction phase services will include the following:

1. Pre-construction Activities
  - a. General pre-construction coordination.
  - b. Respond to pre-construction questions from the CMAR in the form of Pre-bid RFI's.
2. Construction Administration Activities
  - a. General communication to support questions from the field that need immediate response.





- b. Perform up to twelve (12) field observations during construction to confirm that the work is proceeding in accordance with the plans and specifications and prepare a written report on our findings.
    - 1) Prepare a punch list from open field observation items for the contractor's use prior to the final project walk through.
  - c. Review of the Contractor submittals (up to 60) and RFIs (up to 40).
  - d. Provide Architects Supplemental Instructions (ASIs) to support RFI responses (up to 4).
  - e. Review MEP substitution requests (up to 2) with consideration for redesign (up to 3 hrs).
  - f. Assist Contractors with electrical Utility coordination including meetings (up to 3 in person and 1 on site), proving drawings and calculations for use by Utility, and assistance with compliance of Utility standards.
  - g. Attend up to four (4) 1-hour construction meetings, these meetings will be attended by our field observer and are anticipated to be scheduled to coincide with our field observations. Meetings that do not coincide with our observations can be attended virtually and will count towards the total.
3. Project Close-Out Activities
- a. Review the Contractor-prepared Operation and Maintenance Manual.
  - b. Prepare HVAC, plumbing, electrical and technology record drawings in AutoCAD format from the Contractor-prepared as-built redlines. No verification of accuracy is included; therefore, the record drawings will not be signed and sealed.

### **PROFESSIONAL FEE**

Our fee for the work outlined above will be billed hourly, at rates described herein, up to an aggregate limit as follows:

Allocable	\$21,575.
Non-Allocable	14,295.
	-----
Total	<b>\$35,870.</b>

NOTE: This fee includes all travel expenses incurred within the metropolitan Phoenix area. Travel outside the metropolitan Phoenix area will be billed as a reimbursable expense, including, but not limited to, travel, rentals, meals, lodging, and reasonable incidental expenses.

This fee does not include plotting or printing of sets of our drawings or other discipline's drawings for interprofessional coordination or distribution.



### **CLIENT SERVICES**

Services requested of the Client and/or Owner include the following:

1. Distribute meeting agendas before each meeting in order for us to assign appropriate staff to the meeting; and promptly distribute meeting minutes after each meeting.

### **EXCLUSIONS**

1. Proposal requests.
2. Change order request reviews and construction change directives.
3. FAA Reports or Federal Funding tasks.
4. Meetings or virtual meetings beyond those listed.
5. Analysis of, preparing designs for, or assisting in design modifications to any unlisted equipment for the purpose of obtaining a field listing from a Nationally Recognized Testing Laboratory (NRTL) acceptable to the Authority Having Jurisdiction (AHJ). LSW assumes that all Owner-furnished equipment and equipment specified by others will be Listed and Labeled.
6. Utility company energy rebate data collection and/or submission.
7. All support or coordination work associated with an independent Commissioning Agent.
8. Functional testing or commissioning services.
9. Value engineering services.
10. Preparation of the electrical coordination or power system study.
11. Work in relation to the delinquency or insolvency of the Contractor(s).

### **ADDITIONAL SERVICES**

Additional services will be performed on an hourly basis at our standard billing rates or a separate fixed fee contract as determined by your firm. Our current rate structure is shown below for your reference. Hourly contracted work will be invoiced based on our rates in effect at the time of such requests.

2025:	Principals	\$235.00
	Sr. Engineers	\$210.00
	Sr. Project Manager	\$205.00
	Project Manager	\$175.00
	Engineers	\$165.00
	Field Observers	\$130.00
	Sr. Designers	\$140.00
	Designers	\$120.00
	Project Coordinator	\$120.00
	Project Assistant	\$90.00



DWL Architects + Planners, Inc.

LSW Proposal No. PR2025-093 / Project No. 2023-065.081 and 2023-065.082

April 29, 2025

Page 4

CAD Operators	\$90.00
Admin	\$80.00
Outside Services	Our cost

This proposal is effective for not more than 180 days.

LSW accepts the AIA C401 contract and requests that you prepare this document reflecting the terms and conditions of this proposal for our mutual execution prior to our beginning work.

We appreciate this opportunity and look forward to working with your firm on this project.

Regards,

LSW ENGINEERS ARIZONA, INC.

A handwritten signature in black ink, appearing to read "Cory Killpack", is written over the printed name and title.

Cory Killpack, PE  
Vice President

ck:js

Please indicate your acceptance of this proposal by signing and returning one copy of this letter for our files.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

YOUR PROJECT / REFERENCE NO.: \_\_\_\_\_

[https://us-partner-integrations.egnyte.com/msoffice/wopi/files/375ad6d5-e9dd-4b96-baf1-4f23d071000d/WOPIServiceId\\_TP\\_EGNYTE\\_PLUS/WOPIUserId\\_3.lswengineers.egnyte.com/PR2025-093 fee MGA \(AZA\) Outbound Baggage Addition CA.docx](https://us-partner-integrations.egnyte.com/msoffice/wopi/files/375ad6d5-e9dd-4b96-baf1-4f23d071000d/WOPIServiceId_TP_EGNYTE_PLUS/WOPIUserId_3.lswengineers.egnyte.com/PR2025-093%20fee%20MGA%20(AZA)%20Outbound%20Baggage%20Addition%20CA.docx)

## Fee Hours

April 02, 2025

Proposal No.: PR2025-093

Project Name: MGA (AZA) Outbound Baggage Addition CA

<b>Construction Phase Services</b>	<b>% of Total Fee: 100.0%</b>
------------------------------------	-------------------------------

<b>CA Office Time</b>		<b>Task ID: 60</b>					% of Total Fee: 51.1%
Staff Type	Rate	Allocable Hrs	Allocable Cost	Non-Alocable Hrs	Non-Allocable Cost	Sub-totals	
Senior Engineer	210.00	8.0	1,680.00	6.0	1,260.00	2,940.00	
Engineer	165.00	16.0	2,640.00	12.0	1,980.00	4,620.00	
Field Observer	130.00		-		-	-	
Senior Designer	140.00	16.0	2,240.00		-	2,240.00	
Designer	120.00	24.0	2,880.00	20.0	2,400.00	5,280.00	
CAD Operator	90.00	20.00	1,800.00	16.00	1,440.00	3,240.00	
Clerical	80.00		-		-	-	
<b>Task Totals</b>		<b>84.0</b>	<b>11,240.00</b>	<b>54.0</b>	<b>7,080.00</b>	<b>18,320.00</b>	

Field Observations		Task ID: 61		Qty: 12		% of Total Fee: 37.5%	
Staff Type	Rate	Allocable Hrs	Allocable Cost	Non-Alocable Hrs	Non-Allocable Cost	Sub-totals	
Senior Engineer	210.00		-		-	-	
Engineer	165.00		-		-	-	
Field Observer	130.00	5.0	650.00	3.0	390.00	1,040.00	
Senior Designer	140.00		-		-	-	
Designer	120.00		-		-	-	
CAD Operator	90.00		-		-	-	
Clerical	80.00	0.50	40.00	0.50	40.00	80.00	
Sub-totals		5.5	690.00	3.5	430.00	1,120.00	
Task Totals		66.0	8,280.00	42.0	5,160.00	13,440.00	

Meetings		Task ID: 62		Qty:	8		% of Total Fee: 5.8%
Staff Type	Rate	Allocable Hrs	Allocable Cost	Non-Alocable Hrs	Non-Allocable Cost	Sub-totals	
Senior Engineer	210.00		-		-	-	
Engineer	165.00		-		-	-	
Field Observer	130.00	1.0	130.00	1.0	130.00	260.00	
Senior Designer	140.00		-		-	-	
Designer	120.00		-		-	-	
CAD Operator	90.00		-		-	-	
Clerical	80.00		-		-	-	
Sub-totals		1.0	130.00	1.0	130.00	260.00	
Task Totals		8.0	1,040.00	8.0	1,040.00	2,080.00	

<b>Record Drawings</b>		<b>Task ID: 65</b>					% of Total Fee: 5.7%
Staff Type	Rate	Allocable Hrs	Allocable Cost	Non-Alocable Hrs	Non-Allocable Cost	Sub-totals	
Senior Engineer	210.00	1.0	210.00	1.0	210.00	420.00	
Engineer	165.00	1.0	165.00	1.0	165.00	330.00	
Field Observer	130.00		-		-	-	
Senior Designer	140.00	2.0	280.00	2.0	280.00	560.00	
Designer	120.00		-		-	-	
CAD Operator	90.00	4.00	360.00	4.00	360.00	720.00	
Clerical	80.00		-		-	-	
<b>Task Totals</b>		<b>8.0</b>	<b>1,015.00</b>	<b>8.0</b>	<b>1,015.00</b>	<b>2,030.00</b>	

<b>Construction Phase Services Totals</b>	<b>166.0</b>	<b>21,575.00</b>	<b>112.0</b>	<b>14,295.00</b>	<b>35,870.00</b>
---	--------------	------------------	--------------	------------------	------------------

<b>Engineering Services Grand Total</b>	<b>166.0</b>	<b>21,575.00</b>	<b>112.0</b>	<b>14,295.00</b>	<b>35,870.00</b>
---	--------------	------------------	--------------	------------------	------------------

Sent via Electronic Mail to: Kukla@dwlarchitects.com

March 31<sup>st</sup>, 2025  
(Revised April 4, 2025)

Sandra Kukla, RA, NCARB, LEED, AP  
DWL Architects + Planners, Inc.  
2333 North Central Avenue  
Phoenix, AZ 85004

Re: MGA Outbound Baggage Non-Allocable  
Additional Service for CA Services  
MWG #: 22100.00



Dear Sandra:

We are pleased to provide this additional service proposal for construction administrative services. Our understanding relative to the project scope and details of the services which we propose to provide, are as follow:

**1. Scope – Construction Administrative Services:**

- a. Review the following shop drawings:
  - 1. Concrete mixes.
  - 2. Concrete reinforcement.
  - 3. Masonry materials, mortar mix and grout mix.
  - 4. Structural Steel.
  - 5. Metal deck.
  - 6. Metal Studs
- b. Respond to RFI's. Approximately 5 RFI's.
- c. ASI submittals. Total of 3 maximum.
- d. Prepare as-built drawings based on documents prepared by the Contractor.
- e. Field observations. Total of 4 maximum.

**2. Fees and Payments**

a. Hours		
Sr. Structural Engineer	8.0 hrs. X \$180.00	\$ 1,440.00
Structural Engineer	84.0 hrs. X \$145.00	\$ 12,180.00
Engineer/E.I.T.	90.0 hrs. X \$115.00	\$ 10,350.00
Revit	24.0 hrs. X \$100.00	\$ 2,400.00

**Total Hourly Amount not to exceed : \$ 26,370.00**

**Special Inspections are excluded from all fees.**

Sandra Kukla, RA, NCARB, LEED, AP  
March 31, 2025  
(Revised April 4, 2025)  
MWG #: 22100.00  
Page 2

- b. Our services will be billed monthly and are due and payable within 7 days after receipt of payment by your client for work performed for which payment has been made. Non payment could result in actions pursuant to ARS statute 32-128 C 5.

Thank you for the opportunity of submitting this proposal. If you find it satisfactory, please indicate so by signing and returning one copy, so that we will be able to proceed with the work.

Sincerely,



Thomas C. Griffis, PE  
Principal

Agreed to:

---

DWL Architects + Planners, Inc.

---

Date

TCG

*April 1, 2025*

Sandra Kukla, AIA, LEED AP  
DWL Architects + Planners, Inc.  
2333 North Central Avenue  
Phoenix, Arizona 85004

**RE: MGAA Outbound BHS Non-Allocable – Building Expansion  
Construction Administration Services Proposal**

Sandra,

Thank you for the opportunity to submit this proposal to provide Limited Construction Administration services. Dibble will provide the following support services during construction.

**SCOPE OF SERVICES:**

**1.0 Preconstruction Activities**

The proposed schedule based on ongoing discussions between Weitz Construction and MGA includes 31 weeks for preconstruction, including GMP development. Dibble will provide limited preconstruction phase services, including:

- Attend one preconstruction meeting with the Airport, CMAR, STS, and the design team's CA representatives
- Respond to civil-related preconstruction questions from the CMAR in the form of Pre-bid RFIs

**2.0 Construction Administration Activities**

Per initial coordination, the anticipated construction schedule will be 77 weeks. Dibble will provide limited construction phase services, including:

- Attend periodic construction meetings, as requested or required. Meeting attendance is estimated to include a total of 12 meetings over the 77-week project duration. Dibble anticipates that these will be more concentrated during the civil construction period and less concentrated during other periods of construction. Note that as much as practical, meeting attendance and Periodic Observations will be combined in a single visit
- Visit the site to provide Periodic Observation of the civil elements throughout the project. Periodic Observation will focus on critical civil activities including site and utility demolition, completion of rough grading, civil utility installation, and completion of civil hardscape. Periodic Observations will be documented with brief Observation Reports summarizing observations and noting any pertinent recommendations. A total of 6 Periodic Observations are estimated to be required over the 77-week project duration. Daily or other required (special) inspections are specifically excluded: these will be provided by others
- Review Contractor-provided shop drawings, product data, and substitution requests for conformance to the contract documents and make recommendations if necessary for revisions. Review in excess of two per submittal will require additional services. Transmittal by DWL to Dibble of these documents, accompanied by a request for review, will constitute an assumption that approval for reimbursement for the review has been obtained from MGAA unless otherwise noted
- Review Contractor Requests for Information (RFI's) and provide clarifications in the form of written RFI responses and/or design modification sketches
- Prepare Architect Supplemental Instructions (ASI) based on the assumption that a percentage of RFI's will require ASIs in the form of sketches. It's estimated that 2 civil related ASIs will be issued throughout construction



### 3.0 Project Close-Out Activities

Dibble will provide project close-out services at the time of substantial completion, including:

- Attend the "Final Inspection" walk-throughs (at the time the Contractor is requesting Substantial Completion) and provide DWL with comments to assist in generation of their punch list. Attend one follow-up visit when requested by MGAA/DWL to confirm compliance with the noted deficiencies. Additional punch list re-inspections over the initial visit will require additional compensation
- Complete Project Record Drawings utilizing Contractor Redlines, RFI responses, engineering sketches, etc. Deliverables for Record Drawings will include revised CAD files, and PDFs of the final Record Drawings and the Contractor-provided Redlines
- Attend warranty walk at 11-months following completion of the project and provide comments to DWL to assist in generation of their warranty punch list

Dibble proposes to provide Limited Construction Phase Services for a time-and-material, not-to-exceed fee of \$26,000. Please see the Fee Summary for a breakdown of rates and costs.

#### FEES:

1.0	Preconstruction Activities	\$ 1,970
2.0	Construction Administration Activities	\$ 18,940
3.0	Project Close-Out Activities	\$ 5,090
<b>Total</b>		<b>\$26,000</b>

#### STANDARD BILLING RATES (January 1, 2025)

Project Manager	230.00
QA/QC Manager	230.00
Project Engineer (PE)	190.00
Assistant Project Engineer (EIT)	145.00
Senior Designer	155.00
Project Coordinator	130.00

Invoices will be submitted monthly based on the percentage of the survey and civil engineering services that are complete. These invoices will be due and payable upon receipt and will be considered past due if not paid within seven days after Client's receipt of payment from the Owner.

If you have any questions, please feel free to call us at (602) 957-1155.

Sincerely,

Travis G Dunn  
Project Manager, Land Development  
**Dibble**

Jeffrey L. McBride  
Vice President, Land Development  
**Dibble**



## EXHIBIT B - COMPENSATION

All compensation for services rendered by Consultant shall be based upon criteria established below. All services must be billed through the Consultant.

1. Fees to be Specified in Agreement

Any and all services to be performed under this Agreement require approval. All compensation for services shall be identified in writing. The Agreement shall describe the scope of services to be performed (by tasks and subtasks, where appropriate), the fees associated with that performance, and any applicable special provisions. Consultant's compensation for services included in this Agreement is totaled and set forth in **EXHIBIT A**, "Scope of Services and Fee Schedule".

2. Method of Payment

Subject to the terms of this Agreement, MGAA shall pay Consultant the appropriate rate or fixed price amount for services rendered as described in the Agreement only after Consultant has submitted an invoice for services performed and MGAA has certified and approved each invoice.

For services rendered in accordance with the Agreement, Consultant shall submit to MGAA an invoice depicting tasks performed and/or hours spent for services performed. Invoices must be based on the actual hours and/or expenses incurred for the services completed during the billing period. Consultant's invoices must specify that Consultant has performed the services, and MGAA must certify and approve each invoice as a condition to payment.

3. Consultant Responsibilities for Compensation

Consultant shall prepare monthly invoices and/or progress reports in accordance with terms specified in the Agreement. Progress reports will clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices for payment shall be for work completed unless otherwise agreed to by MGAA. Invoices/requisitions for payment for services subject to funding by the FAA and/or ADOT shall include the documentation requirements of the FAA and/or ADOT, which are outlined in the *Airport Improvement Program (AIP) Handbook* dated September 30, 2014, or most current version.

4. MGAA Responsibilities for Compensation

MGAA agrees to pay Consultant's invoices for payment within 30 calendar days after the invoice is approved. MGAA may withhold payment on any invoice if it believes that Consultant has not performed the work in a satisfactory manner. If MGAA withholds payment to Consultant, MGAA shall promptly notify Consultant and explain the reasons for the decision to withhold payment.

5. Billing Address

All invoices submitted to MGAA for payment shall be submitted to:

Accounts Payable: [ap@gatewayairport.com](mailto:ap@gatewayairport.com)

## EXHIBIT C - SPECIAL PROVISIONS

### 1. Civil Rights Act of 1964, Title VI – General

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 2. Civil Rights Act of 1964, Title VI – Assurance

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English

proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

#### Title VI Compliance With Nondiscrimination Requirements:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the non-discrimination provisions of this Agreement, the Sponsor will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Consultant, by accepting this Agreement, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.

#### 4. Project Security

As some or all portions of work possible during the Term of this Agreement may be located inside the secured area of the Airport, adherence to and familiarity with federal security regulations is essential. For these projects, Consultant shall be responsible for fulfilling the security requirements described herein.

- a. Secured Area Access – All Consultant personnel who require unescorted access to the secured area of the Airport, prior to the issuance of an Airport Identification badge, must successfully complete the Security Badge Application and Security Badge Authorization forms.
- b. Employee Security Badges – If deemed necessary by MGAA Consultant and Consultant's employees and subcontractor personnel performing work functions in accordance with this Agreement shall obtain and properly display an Airport security badge. Consultant shall submit a Security Badge Application form to the MGAA security office for each employee requiring unescorted access, along with the current fee for each badge. Badge fees are identified on the current *Airport Fees, Services and Rental Rates* available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com) and are subject to change.
  - i. All fees must be paid to MGAA by cash or check.
  - ii. Airport Security Badge Application forms and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iii. An authorized representative of Consultant must also obtain and submit a Security Media Authorization form, which is to be submitted to the MGAA badging office. The Security Media Authorization form and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iv. A training class on aviation security must be successfully completed before individuals are issued a badge. Fees for the security badge include attendance for the necessary training classes. Attendance at the security classes and issuance of the security badge may take two hours per person.
  - v. Additional information, including a "Frequently Asked Questions" is available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com) or by contacting the MGAA Badging Office at (480) 988-7522. The Badging Office is located at 5803 S. Sossaman Road, Mesa AZ 85212.
  - vi. Consultant shall immediately notify the MGAA Badging Office of any Consultant personnel whose employment status has changed.
  - vii. Consultant shall retrieve all security badges and keys and return them to the MGAA Badging Office. A fee, as indicated on the most current *Airport Rates and Charges Schedule*, will be charged for each badge that is damaged, lost or not returned.
  - viii. The MGAA Badging Office will require a completed Security Badge Application from each Consultant employee so certified by Consultant as requiring such before a Security Badge is issued.
  - ix. Under certain circumstances and out of control of MGAA, security measures may change on short notice. No deviations from any security measure shall be allowed at any time.
  - x. At all times, aircraft shall have the right-of-way over all vehicle traffic.
- c. Fines – Due to both the safety and security precautions necessary at the Airport, any failure of the Consultant to adhere to prescribed Airport requirements/regulations has consequences that may jeopardize the health, welfare and lives of Airport customers and employees, as well as the Consultant's own employees. Therefore, if Consultant is found to be in non-compliance with any security, airfield badging/licensing and airfield safety requirement, a Notice of Violations (NOV) may be issued. A current listing of fines is available by contacting the MGAA Badging Office.

#### 5. Standard Terms & Conditions

MGAA's Standard Terms & Conditions (in **EXHIBIT D** attached) include clauses that pertain to both construction and professional services. For such, the term "contractor" is to be considered same as "consultant." If a clause implies construction service then it is waived for a professional services agreement. MGAA reserves the right to make that determination if there is a conflict.

#### 6. Federal and State Guidelines and Regulations

All work performed under this Agreement must satisfy FAA and applicable agency standards, and be accomplished in accordance with applicable federal, state and local guidelines and regulations, including FAA Advisory Circulars, NEPA and Arizona environmental statutes.

Consultant shall perform the services as described in approved Agreement in accordance with the applicable requirements imposed by MGAA, ADOT, FAA and any other applicable sponsoring agencies. Consultant and its subconsultants/subcontractors, if any, shall comply with any and all applicable laws, regulations, executive orders, policies, guidelines, and any other requirements for FAA Airport Improvement Program (AIP) projects. Consultant shall provide MGAA all information, reports, documents, and/or certifications requested by MGAA for the satisfaction of any grant requirements for the reimbursement of services, including, without limitation, identifying the specific services provided by Consultant and the billing period(s) during which services were or are to be provided. Nothing herein shall be construed as making the FAA or ADOT a party to this Agreement.

7. Right to Contract With Other Firms

MGAA shall have the right to contract with other firms and/or persons and/or to self-perform additional services, which may be the subject of this Agreement. Consultant shall conduct its operations and perform any services authorized under the Agreement so as not to interfere with or hinder the progress of completion of the work being performed by MGAA and/or other firms and/or persons. Consultants working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

8. Independent Contractor Status

At all relevant times, Consultant is - and shall remain - an independent contractor with regard to performance of its services. MGAA retains no control over Consultant, the performance of its work or services, or the safety of its employees. Consultant is not authorized to enter into any contract or commitment, authorize any payment, or accept any document, services, goods or materials for, in the name of, or on behalf of MGAA.

## EXHIBIT D – MGAA STANDARD TERMS & CONDITIONS

1. **Certification.** Consultant certifies:
  - a. The award of this Agreement did not involve collusion or other anti-competitive practices.
  - b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
  - c. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement; and Consultant hereby certifies that the individual signing this Agreement is an authorized agent for Consultant and has the authority to bind the Consultant to the Agreement.
2. **Termination of Agreement.**
  - a. Termination for cause. MGAA reserves the right to cancel this Agreement in whole or in part due to failure of Consultant to carry out any term, promise, or condition of the Agreement. At least ten (10) business days before terminating the Agreement, MGAA will issue a written notice of default specifying one of the following reasons. MGAA shall, at all times during the term of the Agreement or any extension term thereto, have the sole authority to determine if the default has been cured to its satisfaction. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
    - (1) Consultant has provided personnel that do not meet the requirements of the Agreement.
    - (2) Consultant has failed to perform adequately the stipulations, conditions or services/specifications required in this Agreement.
    - (3) Consultant has attempted to impose on MGAA personnel or materials, products, or workmanship of unacceptable quality.
    - (4) Consultant has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Agreement or associated Authorization of Services.
    - (5) Consultant has failed to make progress in the performance of the requirements of the Agreement or Authorization of Services, or Consultant fails to give MGAA adequate assurance the Consultant will perform the Agreement in full and on time.
  - b. This Agreement may be terminated at any time by mutual written consent or by MGAA - with or without cause - provided the terminating party gives fourteen (14) calendar days' advance written notice to the other party. MGAA may terminate this Agreement, in whole or in part, for MGAA's convenience and with fourteen (14) days' written notice.
  - c. Each payment obligation of MGAA created hereby is conditioned on the availability of MGAA, state, or federal funds appropriated for payment of the obligation. If funds are not available or allocated by MGAA for continuance of service under this Agreement, then MGAA may terminate the Agreement. MGAA shall promptly notify Consultant regarding the service that may be affected by a shortage of funds. No penalty accrues to MGAA if this provision is exercised, and MGAA shall not be liable for any future payments due or for any damages as a result of termination under this paragraph.
  - d. Upon cancellation/termination of the Agreement, the Consultant must deliver to MGAA all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Owner, its Engineer, Architect, or representative, under this Agreement, whether complete or partially complete.
  - e. If this Agreement is canceled/terminated, then MGAA is liable only for services rendered and material received, certified, and approved by MGAA under the Agreement before the cancellation/termination effective date. In the event any payments are made by MGAA to Consultant in advance of services performed, and this Agreement is canceled/terminated, Consultant shall refund MGAA's payment on a pro-rata basis for the unused portion of the term. The refund shall be paid to MGAA within thirty (30)



days of the cancellation/termination of the Agreement. This refund shall only apply to payments made for services or products that have not been rendered or delivered prior to the cancellation/termination date.

3. **Dispute Resolution.**

- a. **Negotiations.** If a dispute arises out of or relates to this Agreement or its breach, the parties to this Agreement shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.
- b. **Mediation.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations, the parties to this Agreement, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this Agreement, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Agreement, but subject to reallocation following binding dispute resolution.
- c. **Binding Dispute Resolution.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Agreement, commence formal dispute resolution proceedings. Both parties to this Agreement consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Agreement, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Agreement are excused from this arbitration requirement and the parties to this Agreement shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court as applicable.

4. **Independent Contractor.** At all times, each party acts in its individual capacity not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Neither Consultant nor any of its employees are entitled to compensation from MGAA in the form of salaries, paid vacation, or sick days. MGAA will not provide any insurance to Consultant, including *Workers' Compensation* coverage. MGAA will not withhold FICA, taxes, or any similar deductions from MGAA's payments under this Agreement.
5. **Affirmative Action.** Consultant shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Consultant shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable MGAA contracts.
7. **Non-Exclusive Agreement.** This Agreement is for the sole convenience of MGAA. MGAA reserves the right in its discretion to obtain the same or similar goods or services from any other source.
8. **Americans with Disabilities Act.** Consultant shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
9. **Confidentiality of Records.** Consultant shall establish and maintain procedures and controls that are acceptable to MGAA for the purpose of assuring that no information contained in its records or obtained from MGAA or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Agreement. Persons requesting such information should be referred to MGAA. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers

of Consultant as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by MGAA.

10. **Gratuities.** MGAA may, by written notice to the Consultant, cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Consultant or any agent or representative of Consultant, to any officer or employee of MGAA involved in the amending, or the making of any determinations with respect to the performing of such Agreement. If this Agreement is canceled by MGAA under this provision, MGAA shall, in addition to any other rights and remedies, repay to the Consultant the amount of the gratuity.
11. **Applicable Law.** This Agreement shall be governed by the laws of the state of Arizona, and suits pertaining to this Agreement shall be brought only in federal or state courts in the state of Arizona.
12. **Agreement.** This Agreement is based on and the result of a negotiated Scope of Work and Proposal, Bid or Statement of Qualifications submitted by Consultant under an RFP, IFB or RFQ. The Agreement contains the entire agreement between MGAA and Consultant. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
13. **Agreement Amendments.** This Agreement shall be modified only by a written amendment signed by the MGAA Executive Director or his/her designee, and persons duly authorized to enter into contracts on behalf of Consultant.
14. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.
15. **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement, which may remain in effect without the valid provision, or application.
16. **Protection of Government Property.** Consultant shall use reasonable care to avoid damaging all MGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Consultant damages MGAA's property in any way, Consultant shall immediately report such damage to MGAA and repair or replace the damage at no cost to MGAA, as directed by the MGAA Executive Director. If Consultant fails or refuses to repair or replace the damage, then MGAA may terminate the Agreement, and MGAA shall deduct the repair or replacement cost from money due Consultant under the Agreement.
17. **Interpretation – Parol Evidence.** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
18. **Subcontracts.** Consultant shall not assign any rights or interest nor enter into any subcontract with any other party to furnish any of the materials, goods or services specified herein without the prior written permission of MGAA. MGAA may, at its sole discretion, accept or reject proposed subcontractors or assignment. MGAA shall notify Consultant of its acceptance or rejection within forty-five (45) days or written request by Consultant. All subcontracts shall comply with federal and state laws and regulations applicable to the materials, goods or services covered by the subcontract and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Consultant referred to herein. Consultant is responsible for Agreement performance whether subcontractors are used.
19. **No Waiver.** No provision in this Agreement shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of Agreement. The failure of either party to insist on strict performance of any Agreement term or condition; to exercise or delay



exercising any right or remedy provided in the Agreement or by law; or to accept materials, services, or Consultant's services under this Agreement or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Agreement.

20. **Warranties.** Consultant warrants that all materials and services delivered under this Agreement shall conform to the specifications thereof. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by MGAA, shall not alter or affect the obligations of Consultant or the rights of MGAA under the foregoing warranties. Additional warranty requirements may be set forth in this Agreement.
21. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend, save, indemnify, and hold harmless MGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Consultant's acts, errors, omissions, or mistakes relating to Consultant's services under this Agreement.
22. **Right to Assurance.** Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Agreement.
23. **Advertising.** Consultant shall not advertise or publish information concerning this Agreement without prior written consent of MGAA.
24. **Right to Inspect.** MGAA may, at reasonable times, and at MGAA's expense, inspect the place of Consultant's or any of Consultant's subcontractor's business, which is related to the performance of this Agreement or related subcontract.
25. **Force Majeure.** In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Agreement to be performed by such party ("Required Act"), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God ("Force Majeure Event"), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Agreement, the financial inability of Consultant to perform any Required Act, including, without limitation, failure to obtain adequate or other financing shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (a) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (b) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years' climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.
26. **Inspection.** All material or service is subject to final inspection and acceptance by MGAA. Material or service failing to conform to the specifications of this Agreement will be held at Consultant's risk and may be returned to Consultant. If so returned, all costs are the responsibility of Consultant. Noncompliance shall conform to the cancellation clause set forth in this Agreement.

27. **Exclusive Possession.** All services, information, computer program elements, reports, and other deliverables, which may be created under this Agreement, are the sole property of MGAA and shall not be used or released by Consultant or any other person except with prior written permission by MGAA.
28. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to MGAA until MGAA actually receives the material or service at the Airport, unless otherwise provided within this Agreement.
29. **Liens.** All materials, services, and other deliverables supplied to MGAA under this Agreement must be free of all liens and other encumbrances. Upon request of MGAA, Consultant shall provide a formal release of all liens.
30. **Licenses.** Consultant shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Consultant as applicable to this Agreement.
31. **Subsequent Employment.** MGAA may cancel this Agreement without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement, on behalf of the MGAA is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee of, or a contractor to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to this Agreement receive written notice from MGAA, unless the notice specifies a later time.
32. **Clean Up.** Consultant shall at all times keep Agreement performance areas, including storage areas used by the Consultant, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of MGAA. Upon completion of any repair, Consultant shall leave the work and premises in clean, neat, and workmanlike condition.
33. **Patents.** Consultant shall defend, indemnify, and hold harmless MGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by MGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to MGAA by Consultant under this Agreement.
34. **Records and Audit Rights.** Consultant's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of all Consultant and subcontractor employees that work on the Agreement (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by MGAA. MGAA is entitled to evaluate and verify all invoices, payments or claims based on Consultant's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Agreement. For any audit under this Section, Consultant and its subcontractors hereby waive the right to keep such Records confidential. MGAA is entitled to access to these Records from the effective date of this Agreement for the duration of the work and until five years after the date of final payment by MGAA to Consultant under the Agreement. During normal working hours, MGAA is entitled to access to all necessary Consultant and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. MGAA shall give Consultant or subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Agreement.
35. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Consultant and its subcontractors warrant 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). Consultant's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by MGAA. MGAA shall have the right to inspect the

papers of Consultant's and any of Consultant's subcontractor's employee who works on this Agreement to ensure the Consultant is complying with this paragraph.



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

Re: Resolution 25-39

**To:** Board of Directors  
**From:** Scott Brownlee, Deputy Director/COO  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** Airport Wide Fire System Test, Inspect, Monitoring & Repair Services – Cross Fire Protection, LLC  
**Date:** September 16, 2025

---

### Proposed Motion

To authorize a contract with Cross Fire Protection, LLC, to provide Airport Wide Fire System Test, Inspect, Monitoring, and Repair services for all fire protection/alarm systems installed throughout the Airport's property, in an amount not-to-exceed \$55,848.50, (excluding repair services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5%, subject to written approval by the Airport. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of the Airport.

### Narrative

The Airport's property is comprised of twenty-nine (29) commercial buildings, warehouse buildings, hangars, and encompasses approximately 409,890 square feet.

The Airport's system consists of:

1. Two (2) Fire Pump Systems:
  - a. South Central Fire Systems
    - i. Quantity 3, 2500 GPM fire pumps
    - ii. Hangar 31: Wet Pipe Foam System; Wet Pipe Fire Sprinkler System
    - iii. Hangar 32: Wet Pipe Fire Sprinkler System
  - b. 1083 Pump House Fire Systems
    - i. Quantity 4, 1500 GPM Pumps
    - ii. Hangar 1084: Pre-Action/Deluge Foam System; Wet Pipe Fire Sprinkler System
    - iii. Hangar 1092: Pre-Action System
    - iv. Air Traffic Control Tower 1081: 4 Pre-Action Systems, Wet System, VESDA
2. Ten (10) buildings are not on the Airport's Pump System but are on city water. These 10 buildings have alarm systems with a combination of cell dialer and phone lines for monitoring.

*Page 2 of 2: BAI – Airport Wide Fire System Test, Inspect, Monitoring & Repair Services –*  
**Cross Fire Protection, LLC**

The Request for Proposals (RFP), Solicitation 2025-009-RFP, was issued on May 29, 2025, and advertised in the Arizona Business Gazette on 5/29, 6/5, 6/12, and 6/19/25; it was also posted on the AzAA and the Mesa Gateway Airport Authority's websites. In addition, the RFP was emailed to a list of 22 prospective firms. On July 10, 2025, the Airport received two (2) proposals:

1. AP Fire
2. Cross Fire Protection, LLC

The Evaluation Panel reviewed the proposals and is recommending award to Cross Fire Protection LLC. Their proven track record, depth of expertise, and ability to deliver at the scale and complexity required make them the best value for the Airport.

**Fiscal Impact**

The first year of the contract is budgeted in the FY26 Operating Budget. The remaining years costs will be budgeted in the appropriate fiscal years.

**Attachment(s): Services Agreement**



## RESOLUTION NO. 25-39

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize a contract with Cross Fire Protection, LLC, to provide Airport Wide Fire System Test, Inspect, Monitoring, and Repair services for all fire protection/alarm systems installed throughout the Airport’s property, in an amount not-to-exceed \$55,848.50, (excluding repair services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5%, subject to written approval by the Airport. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of the Airport;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes a contract with Cross Fire Protection, LLC, to provide Airport Wide Fire System Test, Inspect, Monitoring, and Repair services for all fire protection/alarm systems installed throughout the Airport’s property, in an amount not-to-exceed \$55,848.50, (excluding repair services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5%, subject to written approval by the Airport. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of the Airport. This resolution also authorizes the Executive Director/CEO to approve such annual price adjustments during the term of the contract. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



**SERVICES AGREEMENT**

**MESA GATEWAY AIRPORT AUTHORITY**

**AND**

**CROSS FIRE PROTECTION LLC**

**FOR**

**FIRE SYSTEM TESTING, INSPECTION, MONITORING,  
AND REPAIR SERVICES**

## Table of Contents

Section I - Contractor Services	3
Section II - MGAA Responsibilities	3
Section III - Period of Service	4
Section IV – Key Personnel	4
Section V – Payments to the Contractor	4
Section VI – Alteration in Scope of Services	4
Section VII – Work Assignment Completion	4
Section VIII – Ownership of Documents	4
Section IX – Compliance with Laws	5
Section X – General Considerations	5
Section XI – No Kick-back Certification	5
Section XII – Suspension of Services	5
Section XIII – Times of Payments	5
Section XIV – Timely Review	6
Section XV – Dispute Resolution	6
Section XVI – Liability of Contractor	6
Section XVII – Laws and Regulations	6
Section XVIII – Archaeological Resource Protection	6
Section XIX – Insurance Requirements	6
Section XX – Notices	7
EXHIBIT A – Scope of Services & Fee Schedule	9
EXHIBIT B – Compensation	15
EXHIBIT C – Special Provisions	16
EXHIBIT D – MGAA Standard Terms and Conditions	20
EXHIBIT E – Building and Services Breakdown and Summary	25
EXHIBIT F – MGAA Map of Buildings to be Serviced	26
EXHIBIT G – Contractor’s RFP Submittal	27



**Mesa Gateway Airport Authority, formerly known as Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona** (“MGAA”) desires the performance of the services more fully described in this Services Agreement (“Agreement”) and the attached exhibits. Cross Fire Protection LLC, an Arizona Limited Liability Company (“Contractor”), with its principal offices located at 19445 W. Indian School Road, Suite 102-207, Litchfield Park, AZ 85340, desires to perform these services.

### **Recitals**

- A. MGAA requires the services as described in this Agreement, including any and all exhibits and amendments, and Contractor is willing to provide these and other services under this Agreement; and
- B. MGAA desires to contract with Contractor to provide services as noted herein.

**Now therefore**, in consideration of the recitals and the mutual covenants set forth below, MGAA and Contractor agree as follows.

### **SECTION I – CONTRACTOR SERVICES**

The services to be performed by Contractor are specified in this Agreement. MGAA will not pay Contractor for any services that have not been authorized under the Agreement. There is no guarantee of a minimum purchase of services.

The anticipated services to be provided by Contractor under this Agreement shall generally include, but not be limited to, the following: Fire System Testing, Inspection, Monitoring, and Repair Services, as more specifically described in the detailed scope of services attached as **EXHIBIT A**, “Scope of Services & Fee Schedule.” and **EXHIBIT E**, “Building and Services Breakdown and summary”.

Contractor is to provide all labor, materials, equipment and supervision necessary to perform testing, inspection, monitoring, maintenance and repairs as detailed in this Agreement to the satisfaction of MGAA and in accordance with applicable laws, codes and standards, and specifications.

Services are to be provided during normal working hours of Monday – Friday 7:00 am to 5:00 pm, excluding holidays.

Contractor must maintain throughout the Base Term or any extension thereof, a current State of Arizona license to provide fire alarm system inspections.

MGAA’s authorized representative shall be the MGAA Director of Engineering and Facilities, or his/her duly authorized representative, and that he/she shall be the sole contact for administering this Agreement.

All services provided by Contractor under this Agreement must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Arizona. Contractor makes no other warranty, expressed or implied.

### **SECTION II – MGAA RESPONSIBILITIES**

MGAA shall furnish Contractor, at no cost to Contractor, the following information or services for this Agreement:

- A. Access to copies of readily available maps, records, as-built drawings, benchmarks or other data pertinent to work assignments affiliated with this Agreement. This does not, however, relieve Contractor of the responsibility of searching records for additional information, for requesting specific information or for verification of that information provided. MGAA does not warrant the accuracy or comprehensiveness of any information or documents provided to Contractor.
- B. In MGAA’s discretion and upon Contractor’s reasonable request, access to staff for consultation with Contractor during the performance of this Agreement in order to identify the problems, needs, and other functional aspects of the work.
- C. Prompt review of and feedback on Contractor’s deliverables. MGAA will advise Contractor concerning progress of MGAA’s review of the work, as needed.

### SECTION III - PERIOD OF SERVICE

Contractor shall complete all work in accordance with the provisions of this Agreement as amended. All work initiated under this Agreement must be completed on or before the expiration date of the Agreement.

This Agreement is effective as of November 1, 2025 and ends on October 31, 2028 (“Base Term”), unless terminated, canceled or extended as provided in this Agreement.

This Agreement has two (2) optional one-year extensions that MGAA may exercise at its sole discretion. Prior to the expiration of the Agreement Base Term, MGAA may elect to extend the Agreement. If MGAA exercises such right, all terms, conditions and provisions of the original Agreement shall remain the same and apply during the extended period with the possible exception of price. Any extension of this Agreement shall require an amendment signed by both parties.

Contractor shall perform its services in a diligent manner and in accordance with this Agreement.

### SECTION IV – KEY PERSONNEL

The Contractor itself shall provide all services to be performed under this Agreement. If Sub-Contractors are required by Contractor to perform any services listed under this Agreement, Contractor shall notify MGAA prior to authorizing work by said Sub-Contractors. MGAA may, at its sole discretion, accept or reject proposed Sub-Contractors.

### SECTION V - PAYMENTS TO THE CONTRACTOR

Contractor will be paid for work performed under this Agreement plus any adjustments that have been approved in writing by MGAA in accordance with MGAA’s Procurement Policy. Payments will be made in accordance with **EXHIBIT B**, “Compensation.”

All services to be rendered by Contractor are subject to the terms of **EXHIBIT B**, “Compensation” attached hereto.

MGAA does not guarantee any minimum or maximum fee during the Term of this Agreement, and Contractor, in executing this Agreement, shall not anticipate or require any minimum or maximum fee.

MGAA shall pay Contractor for services authorized and rendered under this Agreement at the completion of each work assignment, provided Contractor has satisfactorily completed the requested work.

### SECTION VI - ALTERATION IN SCOPE OF SERVICES

For any alteration in the Scope of Services that would materially increase or decrease the Agreement fee, the parties shall negotiate an amendment to the Agreement to be executed by MGAA and Contractor. No work shall commence on any amendment or change until the amendment has been approved by MGAA and Contractor has been notified to proceed by MGAA. No claim for extra work done or materials furnished by Contractor will be allowed by MGAA, except as provided herein, nor shall Contractor do any work or furnish any materials not covered by this Agreement unless the work is first authorized in writing by MGAA and the change complies with MGAA’s Procurement Policy. Any work or materials furnished by Contractor without advance, written authorization will be at Contractor’s own risk, cost, and expense. Without written authorization, Contractor shall make no claim for compensation for such work or materials furnished.

### SECTION VII - WORK ASSIGNMENT COMPLETION

If, during the Term of this Agreement, situations arise which prevent work completion within the allotted time, MGAA may grant an appropriate time extension.

### SECTION VIII - OWNERSHIP OF DOCUMENTS

Any documents, including all electronic copies, graphics, designs, code, and written materials, prepared under or as a result of this Agreement, shall be the property of MGAA. To the extent necessary to effectuate such ownership, Contractor hereby assigns all right, title and interests to such documents, graphics, designs, code, and written materials to MGAA. Contractor shall execute any separate contracts or documents, if any, which may be necessary to implement the terms of this Section.

All of Contractor's documents, graphics, designs, code, and written materials prepared under this Agreement, including electronic files, are instruments of service. All of these documents, graphics, designs, code, and written materials shall become the property of MGAA upon completion of the services and payment in full to Contractor or, if the Agreement is terminated, upon termination of this Agreement. MGAA shall have the right to reuse, modify, or adapt the documents, graphics, designs, code, and written materials as it deems necessary, without requiring Contractor's prior written authorization. MGAA shall indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors (collectively, the "Contractor") against any and all damages, liabilities or costs arising from MGAA's modification of documents, graphics, designs, code, or written materials produced by Contractor under this Agreement unless Contractor authorizes the modification in writing.

#### **SECTION IX - COMPLIANCE WITH LAWS**

Contractor shall comply with all federal, state and local laws, local ordinances and regulations throughout the Term.

Contractor's signature on this Agreement certifies compliance with the provisions of the I-9 requirements of the *Immigration Reform and Control Act of 1986* for all personnel that Contractor and any subcontractors employ to complete any work assignment.

MGAA shall administer this Agreement in accordance with MGAA's Procurement Policy.

#### **SECTION X - GENERAL CONSIDERATIONS**

- A. The failure of either party to enforce any of the provisions of this Agreement or require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of the provisions, nor shall it affect the validity of this Agreement or the right of either party to enforce each and every provision.
- B. The fact that MGAA has accepted or approved Contractor's work shall in no way relieve Contractor of responsibility for the work under this Agreement.
- C. This Agreement shall be governed by the laws of the state of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provision thereof, shall be instituted only in the courts of the state of Arizona.
- D. All exhibits to this Agreement and any amendments to this Agreement are incorporated into it.

#### **SECTION XI - NO KICK-BACK CERTIFICATION**

Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the MGAA Board of Directors or any employee of MGAA has any interest, financially or otherwise, in Contractor's firm.

For breach or violation of this warranty, MGAA may annul this Agreement without liability.

#### **SECTION XII – SUSPENSION OF SERVICES**

Contractor shall, within five (5) business days upon receiving written notice from MGAA, suspend, delay, or interrupt all or a part of the Scope of Services. Contractor shall resume the Scope of Services within five (5) business days of receiving written notice from MGAA.

#### **SECTION XIII – TIMES OF PAYMENTS**

Contractor shall submit invoices to MGAA for services actually completed as follows:

Test and Inspect Services – upon completion of services  
Monitoring Services – quarterly  
Repair Services – upon completion of services

MGAA shall review, certify, and approve or reject each invoice in whole or in part. MGAA shall pay each approved invoice within fifteen (15) calendar days of the date that MGAA approves the invoice.

#### SECTION XIV – TIMELY REVIEW

MGAA will review Contractor's studies, reports, proposals, and other related documents and render any decisions required by Contractor in a timely manner. Notwithstanding these reviews, Contractor remains solely responsible for all of its deliverables and services under this Agreement. By MGAA's reviews, MGAA does not assume any liability for or retained control over Contractor's work or Contractor's responsibility for the safety of its employees.

#### SECTION XV – DISPUTE RESOLUTION

All disputes between MGAA and Contractor arising out of or relating to this Agreement will be subject to the Dispute Resolution provisions as set forth in **EXHIBIT D**, "MGAA Standard Terms and Conditions", attached hereto and incorporated herein by reference.

MGAA and Contractor shall include a similar dispute resolution provision in all contracts with other contractors and consultants retained for the Project and shall require all other independent contractors and consultants to include a similar dispute resolution provision in all contracts with subcontractors, subconsultants, suppliers or fabricators retained by them.

#### SECTION XVI - LIABILITY OF CONTRACTOR

To the fullest extent permitted by law, Contractor shall defend, save, indemnify, and hold harmless MGAA, its member governments, departments, officers, employees, and agents from and against damages arising out of any act, error, or omission of Contractor relating to its services under this Agreement.

#### SECTION XVII - LAWS AND REGULATIONS

All federal, state, and local laws and regulations that relate to Contractor's services apply to Contractor's performance of this Agreement throughout. These laws and regulations are deemed included in this Agreement the same as though written out in full, especially the current applicable Federal Aviation Administration (FAA) rules and regulations associated with airport projects; pertinent Airport engineering standards; and local rules, regulations, and industry standards.

#### SECTION XVIII – ARCHAEOLOGICAL RESOURCE PROTECTION

While performing services under this Agreement, Contractor may encounter a known or unknown archaeological site located at the Airport. If Contractor encounters what it believes to be an archaeological site, Contractor shall immediately notify MGAA of the site's location and take all reasonable precautions to protect and preserve the site until MGAA otherwise directs.

#### SECTION XIX INSURANCE REQUIREMENTS

- A. Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.
- B. All insurance policies required by this Agreement, except *Workers Compensation* and *Professional Liability*, shall name MGAA, its agents, representatives, officers, directors, officials and employees as Additional Insured.
- C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:
  - i. Commercial General Liability: Insurance Services Office Form CG 00 01 covering Bodily Injury and Property Damage on an "occurrence" basis, including personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
  - ii. Auto Liability: ISO Form CA 00 01 covering any auto (Symbol 1), or if Contractor has no owned autos, hired, (Symbol 8) and non-owned autos (Symbol 9), with limit no less than \$5,000,000 Combined Single limit per accident for bodily injury and property damage.
  - iii. Workers' Compensation: Statutory Limits as required by the state of Arizona, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. If the Contractor maintains higher limits than the minimums shown above, MGAA requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MGAA.

- E. Additional insurance provisions. The insurance policies shall provide, or be endorsed to include, the following provisions:
- i. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to MGAA.
  - ii. Waiver of Subrogation: Contractor waives any right to subrogation. Contractor shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Agreement, except *Workers Compensation* and *Professional Liability*, for claims arising out of the Contractor's work or service.
  - iii. Primary Coverage: For all claims related to this Agreement, all of Contractor's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by MGAA, its officers, officials, employees, or volunteers will be in excess of Contractor's insurance and will not contribute with it.
  - iv. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by MGAA. MGAA may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
  - v. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, VII, unless otherwise acceptable to MGAA.
  - vi. Claims Made Policies: No Claims Made policies (other than Professional Liability) will be accepted. For policies that provide claims-made coverage:
    - a) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
    - b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work.
    - c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
  - vii. Verification of Coverage: Contractor shall furnish MGAA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by MGAA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide the required insurance. MGAA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
  - viii. Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that MGAA is an additional insured on insurance required from subcontractors.
  - ix. Special Risks or Circumstances: MGAA reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances.

## SECTION XX NOTICES

Any notice, report or information which may be or is required to be given under this Agreement will be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

TO MGAA: Mesa Gateway Airport Authority  
Attn: Director of Engineering and Facilities  
5835 South Sossaman Road  
Mesa, Arizona 85212



TO CONTRACTOR: Cross Fire Protection LLC  
19445 W. Indian School Road, Suite 102-207  
Litchfield Park, AZ 85340

or to such other person(s) or address(es) as any such Party may designate from time to time by notice to the other Parties in accordance with this Section.

Executed as of the Effective Date.

**CONTRACTOR**  
**Cross Fire Protection LLC**

**MGAA**  
**MESA GATEWAY AIRPORT**  
**AUTHORITY**, a joint powers airport authority  
authorized by the state of Arizona

By: P. Shayne Castellani  
Name: P. Shayne Castellani  
Title: Owner  
Date: 8/11/2025

By: \_\_\_\_\_  
Name: J. Brian O'Neill, A.A.E.  
Title: Executive Director/CEO  
Date: \_\_\_\_\_



## **EXHIBIT A – SCOPE OF SERVICES & FEE SCHEDULE**

The services to be performed by Contractor and the completion of related efforts are specified in the following Scope of Services & Fee Schedule agreed to by the parties.

MGAA reserves the right to add, remove, and/or revise the number of buildings, systems, and frequency of services as needed.

### **SCOPE OF SERVICES**

1. **Test and inspect services, as detailed below, based on the quantity and frequency, and for the buildings set forth in Exhibits E and F.**
  - a. **Fire Alarm System Inspection per NFPA 72**
    - i. A complete functional test of the control panel and all related circuits.
    - ii. Control panel switches, lights, and wiring terminations will be checked, and batteries will be load tested.
    - iii. All detection circuits, pull stations, water flow/tamper switches, and audio/visual (notification) devices will be tested.
    - iv. All smoke detectors, heat detectors, and duct detectors will be tested and cleaned.
    - v. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
  - b. **Fire Sprinkler System Inspection per NFPA 25**
    - i. Service will include all control valves being exercised and sealed.
    - ii. Water pressure will be recorded, including residual pressure during a main drain flow test.
    - iii. All inspector's test valves will be exercised, and water flow alarms will be confirmed.
    - iv. The fire sprinkler riser will be inspected for signage, valve positions, and a stocked spare sprinkler head box.
    - v. All visible distribution piping will be inspected for corrosion and visible sprinkler heads inspected for discharge blockage and foreign material.
    - vi. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
  - c. **Pre-Action / Deluge System Inspection per NFPA 25**
    - i. Service will include a complete functional test of the control panel and all related circuits.
    - ii. Control panel switches, lights, and wiring terminations will be checked, and batteries will be load tested.
    - iii. All detection circuits, manual pull stations, and audio/visual (notification) devices will be tested.
    - iv. All smoke detectors, heat detectors will be tested and cleaned.
    - v. Service also includes inspection of the pre-action fire sprinkler riser, alarm initiating devices, and a flow test of the riser.
    - vi. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
  - d. **Standpipe System Inspection per NFPA 25**
    - i. Service will include inspection of all system piping, hose connections, waterflow devices, cabinets, hose storage devices, and gauges.
    - ii. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
  - e. **Fire Pump Test and Inspection per NFPA 20**
    - i. The inspection of the electric/diesel fire pump will be conducted under minimum, rated and peak flows of fire pump by controlling the quantity of water discharged.

- ii. The test will be conducted using the available suction water supply.
  - iii. Pump suction and discharge pressure measurements will be used to determine the total pump output.
  - iv. The fire pump and associated control equipment will be energized, and suction water will be flowed for the time required to take the required measurements and meet the requirements of the test.
  - v. Water drainage and effects from water run off can be an environmental and safety hazard, and it is the responsibility of the owner to manage and maintain.
  - vi. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
- f. Backflow Valve Test and Inspection per local code requirements**
- i. The inspection and functional testing of the backflow check valve, including a visual inspection and a mechanical test to ensure the valve is in good operating condition and is operating within the correct parameters.
  - ii. If the backflow valve initial test indicates it is operating out of specifications, the valve will be disassembled, inspected, cleaned, reassembled and re-tested for proper operation.
  - iii. Additional materials and labor for any needed repairs are an additional cost. No repair work shall be done without the prior written authorization of MGAA. MGAA is under no obligation to utilize Offeror for any repairs.
  - iv. A final report based on the local water purveyor requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection. A copy of the report will be submitted to the local water purveyor.
  - v. Offeror shall be responsible for submitting all required reports of the test results to the City of Mesa, in the city's required time frame.
- g. AFFF Foam / Water Sprinkler Inspection per NFPA 25 and 16**
- i. The operation test will be conducted to ensure that the system responds as designed, both automatically and manually.
  - ii. Test procedures will simulate anticipated emergency events, so the response of the system can be evaluated.
  - iii. Where discharge from the discharge devices would create hazardous conditions or create damage to the facilities or products being protected, alternate methods will be applied to complete the operational testing.
  - iv. Testing and inspection will be completed for response time, discharge time, and discharge patterns, pressure readings, and concentration testing.
  - v. After completion of the testing, the system will be returned to service, and the foam concentrate tank shall be replenished to the designed level.
  - vi. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
- h. Fire Hose and Valve Inspection per NFPA 25**
- i. Service includes operation of the hose valve through its full range of motion, with the hose being returned to its normal operation upon completion.
  - ii. A visual verification will be done to ensure that the valve is in its normally closed position, assessable, free of external leaks, and provided with appropriate documentation.
  - iii. A final report based on the NFPA requirements will be completed detailing the results of the test and will be delivered and reviewed with the owner no later than 30 (thirty) days after the test and inspection.
- i. Offeror shall notify MGAA, no less than two (2) weeks prior to each inspection due date, to schedule the inspection.
- j. MGAA shall determine who will correct any system deficiencies found during testing by Offeror.



- k. Test and inspect services will be done in the following months:
  - Quarterly: October, January, April, and July
  - Semi-Annual: January and July
  - Annual: July

**2. Annual monitoring services, as detailed below, based on the quantity and frequency for the buildings set forth in Attachment B.**

- a. Monitoring is required to be from a remote supervising station that operates 24/7 and will report alarms to the municipal fire department, as well as report to the fire suppression contractor and MGAA.
- b. Must have the capability for remote login through a website so that authorized MGAA personnel can place a system in test and review alarm data.
- c. Offeror shall not install any proprietary hardware that would make it impossible for another contractor to monitor the system. Upon contract expiration or termination, Offeror shall coordinate the removal of any proprietary software with the new Contractor to ensure continued service to the property.
- d. Monitoring services will be done on a monthly basis at an agreed-upon date and time.

**3. Repair Services for Fire Systems**

- a. Repair services will be done on an as-needed basis.
- b. There is no guarantee of a minimum amount of services.
- c. MGAA reserves the right to call other firms/individuals for repair services.
- d. Offeror will be required to have a response time of a maximum of two (2) hours from the time a service call is dispatched from MGAA and must arrive at the site within two (2) hours, assess the problem, and recommend a possible solution within four (4) hours. Any work will be completed as agreed upon by MGAA.
- e. Emergency Services shall be responded to by Offeror within 2 hours of notification by MGAA. No repair work shall be done without the prior written authorization of MGAA. MGAA is under no obligation to utilize Offeror for emergency services or repairs resulting from such emergency call.

**FEE SCHEDULE ON FOLLOWING PAGES**

## FEE SCHEDULE

For the services provided herein, MGAA agrees to pay Contractor the following fees. All fees set forth below shall apply to the Base Term, and any extension thereof, unless Contractor requests, and MGAA grants, a price increase as allowed herein.

Contractor may increase fees effective on each anniversary date of the Agreement, up to a maximum of 5%, with the prior written approval of MGAA. Offeror must provide at least thirty (30) days' prior written notice of any proposed fee increase.

## TEST AND INSPECT SERVICES:



The fees stated herein shall remain in effect for the first year of the Contract. Offeror may increase fees effective on each anniversary date of the Contract, up to a maximum of 5%, with the prior written approval of MGAA. Offeror must provide at least thirty (30) days' prior written notice of any proposed fee increase.

System Qty	Description	Frequency	Annual Cost
24	Fire Alarm System Inspection	Annual	\$ 6,800.00
34	Fire Sprinkler System Inspection	Quarterly	\$ 10,200.00
31	Risers	Quarterly	\$ 9,300.00
15	Backflow Valve Test & Inspection	Annual	\$ 750.00
8	AFFF Foam System Inspection	Semi-Annual	\$ 4,000.00
4	Fire Hose Inspection & Reracking	Annual	\$ 500.00
5	Deluge System Inspection	Semi-Annual	\$ 1,500.00
1	Vesda System (ATCT)	Annual	\$ 175.00
7	Pre-Action System Inspection	Semi-Annual	\$ 1,960.00
26	Internal valve Inspection	Annual	\$ 4,550.00
183	Fire Extinguisher Inspection	Annual	\$ 823.50
7	Fire Pump Testing	Annual	\$ 4,550.00
345	<b>GRAND Total, All Buildings &amp; All Services, Year 1 Cost</b>		<b>\$45,108.50</b>

## FIRE SYSTEM MONITORING SERVICES:



### Attachment B Price Proposal – Fire System Monitoring Services

The fees stated herein shall remain in effect for the first year of the Contract. Offeror may increase fees effective on each anniversary date of the Contract, up to a maximum of 5%, with the prior written approval of MGAA. Offeror must provide at least thirty (30) days' prior written notice of any proposed fee increase.

16 Cell; 5 Landline Locations

Service Type	Bldg No. / Location	Address	Frequency	Annual Cost
Cell Line	Bldg 531 - (Sierra Bldg Sys)	6416 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Bldg 532 - (Car Rental Facility)	6450 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Bldg 533 - (Sun Valley)	6410 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Bldg 550 (Hylan West)	6350 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Bldg 568 (Vacant)	6145 S. Kent Street	Monthly	\$ 540.00
Cell Line	Bldg 1080 - Maint	6263 S. Taxiway Circle	Monthly	\$ 540.00
Cell Line	Bldg 1081 - Tower	6309 S. Taxiway Circle	Monthly	\$ 540.00
Cell Line	Bldg 1083 (Pump House)	6250 S. Taxiway Circle	Monthly	\$ 540.00
Cell Line	Bldg 1084 (Allegiant)	6250 S. Taxiway Circle	Monthly	\$ 540.00
Cell Line	Bldg 1090 (Essential Turbines)	7808 E. Velocity Way	Monthly	\$ 540.00
Cell Line	Bldg 1092 (Allegiant)	6309 S. Taxiway Circle	Monthly	\$ 540.00
Cell Line	Bldg 1199 - Eastside Light Vault	6002 S. Ellsworth Rd	Monthly	\$ 540.00
Cell Line	Hangar 32 (DSV)	6229 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Hangar 46	5755 S. Sossaman Rd	Monthly	\$ 540.00
Cell Line	Fuel Farm	7630 E. Velocity Way	Monthly	\$ 540.00
Cell Line	So. Central	6262 S. Sossaman Rd.	Monthly	\$ 540.00
Landline	Bldg 15 - Ticketing	6033 S. Sossaman Rd	Monthly	\$ 420.00
Landline	Bldg 15 - West Term (Ph. 1,2,3,	6033 S. Sossaman Rd	Monthly	\$ 420.00
Landline	Hangar 31 (Air Methods)	6203 S. Sossaman Rd	Monthly	\$ 420.00
Landline	Bldg 41 - Admin	5835 S. Sossaman Rd	Monthly	\$ 420.00
Landline	Bldg 45 - GAS/FBO	5803 S. Sossaman Rd.	Monthly	\$ 420.00
TOTAL YEAR 1 COST				\$ 10,740.00

## FIRE SYSTEM REPAIR SERVICES:



### Attachment C Price Proposal – Fire System Repair Services

The fees stated herein shall remain in effect for the first year of the Contract. Offeror may increase fees effective on each anniversary date of the Contract, up to a maximum of 5%, with the prior written approval of MGAA. Offeror must provide at least thirty (30) days' prior written notice of any proposed fee increase.

1. Please list all hourly labor rates for repairs and/or service, separated by skill level/category if different rates apply. The hourly rates stated below shall include all costs, excluding parts, associated with providing maintenance services.

Example:

Skilled Technician     \$Enter rate  
Technician/Laborer     \$Enter rate

Category	Hourly Rate
Lead Service Technician	\$105.00
Helper/Labor Technician	\$95.00
Fire Pump Service Technician	\$115.00

2. Please list all overtime hourly labor rates for repairs and/or service, separated by skill level/category if different rates apply. The hourly rates stated below shall include all costs, excluding parts, associated with providing repair services.

Category	Hourly Rate
Lead Service Technician	\$157.50
Helper/Labor Technician	\$142.50
Fire Pump Service Technician	\$172.50

3. Please list all after normal business hours, hourly labor rates for repairs and/or service, separated by skill level/category if different rates apply.

Category	Hourly Rate
Lead Service Technician	\$157.50
Helper/Labor Technician	\$142.50
Fire Pump Service Technician	\$172.50

## EXHIBIT B - COMPENSATION

All compensation for services rendered by Contractor shall be based upon criteria established below. All services must be billed through the Contractor.

1. Fees to be Specified in Agreement

Any and all services to be performed under this Agreement require approval. All compensation for services shall be identified in writing. The Agreement shall describe the scope of services to be performed (by tasks and subtasks, where appropriate), the fees associated with that performance, and any applicable special provisions. Contractor's compensation for services included in this Agreement is totaled and set forth in **EXHIBIT A**, "Scope of Services and Fee Schedule".

2. Method of Payment

Subject to the terms of this Agreement, MGAA shall pay Contractor the appropriate rate or fixed price amount for services rendered as described in the Agreement only after Contractor has submitted an invoice for services performed and MGAA has certified and approved each invoice.

For services rendered in accordance with the Agreement, Contractor shall submit to MGAA an invoice depicting tasks performed and/or hours spent for services performed. Invoices must be based on the actual hours and/or expenses incurred for the services completed during the billing period. Contractor's invoices must specify that Contractor has performed the services, and MGAA must certify and approve each invoice as a condition to payment.

3. Contractor Responsibilities for Compensation

Contractor shall prepare monthly invoices and/or progress reports in accordance with terms specified in the Agreement. Progress reports will clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices for payment shall be for work completed unless otherwise agreed to by MGAA. Invoices/requisitions for payment for services subject to funding by the FAA and/or ADOT shall include the documentation requirements of the FAA and/or ADOT, which are outlined in the *Airport Improvement Program (AIP) Handbook* dated September 30, 2014, or most current version.

4. MGAA Responsibilities for Compensation

MGAA agrees to pay Contractor's invoices for payment within 30 calendar days after the invoice is approved. MGAA may withhold payment on any invoice if it believes that Contractor has not performed the work in a satisfactory manner. If MGAA withholds payment to Contractor, MGAA shall promptly notify Contractor and explain the reasons for the decision to withhold payment.

5. Billing Address

All invoices submitted to MGAA for payment shall be submitted to:

Accounts Payable: [ap@gatewayairport.com](mailto:ap@gatewayairport.com)

## EXHIBIT C - SPECIAL PROVISIONS

### 1. Civil Rights Act of 1964, Title VI – General

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 2. Civil Rights Act of 1964, Title VI – Assurance

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English

proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

#### Title VI Compliance With Nondiscrimination Requirements:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices, when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the non-discrimination provisions of this Agreement, the Sponsor will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Contractor, by accepting this Agreement, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.



#### 4. Project Security

As some or all portions of work possible during the Term of this Agreement may be located inside the secured area of the Airport, adherence to and familiarity with federal security regulations is essential. For these projects, Contractor shall be responsible for fulfilling the security requirements described herein.

- a. Secured Area Access – All Contractor personnel who require unescorted access to the secured area of the Airport, prior to the issuance of an Airport Identification badge, must successfully complete the Security Badge Application and Security Badge Authorization forms.
- b. Employee Security Badges – All Contractor and/or subcontractor personnel performing work functions in accordance with this Agreement shall obtain and properly display an Airport security badge. Contractor shall submit a Security Badge Application form to the MGAA security office for each employee requiring unescorted access, along with the current fee for each badge. Badge fees are identified on the current *Airport Fees, Services and Rental Rates* available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com) and are subject to change.
  - i. All fees must be paid to MGAA by cash or check.
  - ii. Airport Security Badge Application forms and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iii. An authorized representative of Contractor must also obtain and submit a Security Media Authorization form, which is to be submitted to the MGAA badging office. The Security Media Authorization form and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iv. A training class on aviation security must be successfully completed before individuals are issued a badge. Fees for the security badge include attendance for the necessary training classes. Attendance at the security classes and issuance of the security badge may take two hours per person.
  - v. Additional information, including a “Frequently Asked Questions” is available via the Airport website at [www.gatewairport.com](http://www.gatewairport.com) or by contacting the MGAA Badging Office at (480) 988-7522. The Badging Office is located at 5803 S. Sossaman Road, Mesa AZ 85212.
  - vi. Contractor shall immediately notify the MGAA Badging Office of any Contractor personnel whose employment status has changed.
  - vii. Contractor shall retrieve all security badges and keys and return them to the MGAA Badging Office. A fee, as indicated on the most current *Airport Rates and Charges Schedule*, will be charged for each badge that is damaged, lost or not returned.
  - viii. The MGAA Badging Office will require a completed Security Badge Application from each Contractor employee so certified by Contractor as requiring such before a Security Badge is issued.
  - ix. Under certain circumstances and out of control of MGAA, security measures may change on short notice. No deviations from any security measure shall be allowed at any time.
  - x. At all times, aircraft shall have the right-of-way over all vehicle traffic.
- c. Fines – Due to both the safety and security precautions necessary at the Airport, any failure of the Contractor to adhere to prescribed Airport requirements/regulations has consequences that may jeopardize the health, welfare and lives of Airport customers and employees, as well as the Contractor’s own employees. Therefore, if Contractor is found to be in non-compliance with any security, airfield badging/licensing and airfield safety requirement, a Notice of Violations (NOV) may be issued. A current listing of fines is available by contacting the MGAA Badging Office.

#### 5. Standard Terms & Conditions

MGAA’s Standard Terms & Conditions (in **EXHIBIT D** attached) include clauses that pertain to both construction and professional services. For such, the term “contractor” is to be considered same as “consultant.” If a clause implies construction service then it is waived for a professional services agreement. MGAA reserves the right to make that determination if there is a conflict.

#### 6. Federal and State Guidelines and Regulations

All work performed under this Agreement must satisfy FAA and applicable agency standards, and be accomplished in accordance with applicable federal, state and local guidelines and regulations, including FAA Advisory Circulars, NEPA and Arizona environmental statutes.



Contractor shall perform the services as described in approved Agreement in accordance with the applicable requirements imposed by MGAA, ADOT, FAA and any other applicable sponsoring agencies. Contractor and its subconsultants/subcontractors, if any, shall comply with any and all applicable laws, regulations, executive orders, policies, guidelines, and any other requirements for FAA Airport Improvement Program (AIP) projects. Contractor shall provide MGAA all information, reports, documents, and/or certifications requested by MGAA for the satisfaction of any grant requirements for the reimbursement of services, including, without limitation, identifying the specific services provided by Contractor and the billing period(s) during which services were or are to be provided. Nothing herein shall be construed as making the FAA or ADOT a party to this Agreement.

7. Right to Contract With Other Firms

MGAA shall have the right to contract with other firms and/or persons and/or to self-perform additional services, which may be the subject of this Agreement. Contractor shall conduct its operations and perform any services authorized under the Agreement so as not to interfere with or hinder the progress of completion of the work being performed by MGAA and/or other firms and/or persons. Contractors working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

8. Independent Contractor Status

At all relevant times, Contractor is - and shall remain - an independent contractor with regard to performance of its services. MGAA retains no control over Contractor, the performance of its work or services, or the safety of its employees. Contractor is not authorized to enter into any contract or commitment, authorize any payment, or accept any document, services, goods or materials for, in the name of, or on behalf of MGAA.

## EXHIBIT D – MGAA STANDARD TERMS & CONDITIONS

1. **Certification.** Contractor certifies:
  - a. The award of this Agreement did not involve collusion or other anti-competitive practices.
  - b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
  - c. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement; and Contractor hereby certifies that the individual signing this Agreement is an authorized agent for Contractor and has the authority to bind the Contractor to the Agreement.
  
2. **Termination of Agreement.**
  - a. Termination for cause. MGAA reserves the right to cancel this Agreement in whole or in part due to failure of Contractor to carry out any term, promise, or condition of the Agreement. At least ten (10) business days before terminating the Agreement, MGAA will issue a written notice of default specifying one of the following reasons. MGAA shall, at all times during the term of the Agreement or any extension term thereto, have the sole authority to determine if the default has been cured to its satisfaction. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
    - (1) Contractor has provided personnel who do not meet the requirements of the Agreement.
    - (2) Contractor has failed to perform adequately the stipulations, conditions, or services/specifications required in this Agreement.
    - (3) Contractor has attempted to impose on MGAA personnel or materials, products, or workmanship of unacceptable quality.
    - (4) Contractor has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Agreement or associated Authorization of Services.
    - (5) Contractor has failed to make progress in the performance of the requirements of the Agreement or Authorization of Services, or Contractor fails to give MGAA adequate assurance that the Contractor will perform the Agreement in full and on time.
  - b. This Agreement may be terminated at any time by mutual written consent or by MGAA, with or without cause, provided the terminating party gives sixty (60) calendar days' advance written notice to the other party. MGAA may terminate this Agreement, in whole or in part, for MGAA's convenience and with thirty (30) days' written notice.
  - c. Each payment obligation of MGAA created hereby is conditioned on the availability of MGAA, state, or federal funds appropriated for payment of the obligation. If funds are not available or allocated by MGAA for the continuance of service under this Agreement, then MGAA may terminate the Agreement. MGAA shall promptly notify Contractor regarding the service that may be affected by a shortage of funds. No penalty accrues to MGAA if this provision is exercised, and MGAA shall not be liable for any future payments due or for any damages as a result of termination under this paragraph.
  - d. Upon cancellation/termination of the Agreement, the Contractor must deliver to MGAA all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Owner, its Engineer, Architect, or representative, under this Agreement, whether complete or partially complete.
  - e. If this Agreement is canceled/terminated, then MGAA is liable only for services rendered and material received, certified, and approved by MGAA under the Agreement before the cancellation/termination effective date. In the event any payments are made by MGAA to Contractor in advance of services performed, and this Agreement is canceled/terminated, Contractor shall refund MGAA's payment on a pro-rata basis for the unused portion of the term. The refund shall be paid to MGAA within thirty (30)

days of the cancellation/termination of the Agreement. This refund shall only apply to payments made for services or products that have not been rendered or delivered prior to the cancellation/termination date.

3. **Dispute Resolution.**

- a. **Negotiations.** If a dispute arises out of or relates to this Agreement or its breach, the parties to this Agreement shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.
- b. **Mediation.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations, the parties to this Agreement, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this Agreement, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Agreement, but subject to reallocation following binding dispute resolution.
- c. **Binding Dispute Resolution.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Agreement, commence formal dispute resolution proceedings. Both parties to this Agreement consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Agreement, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Agreement are excused from this arbitration requirement and the parties to this Agreement shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court as applicable.

4. **Independent Contractor.** At all times, each party acts in its individual capacity not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Neither Contractor nor any of its employees are entitled to compensation from MGAA in the form of salaries, paid vacation, or sick days. MGAA will not provide any insurance to Contractor, including *Workers' Compensation* coverage. MGAA will not withhold FICA, taxes, or any similar deductions from MGAA's payments under this Agreement.
5. **Affirmative Action.** Contractor shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Contractor shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable MGAA contracts.
7. **Non-Exclusive Agreement.** This Agreement is for the sole convenience of MGAA. MGAA reserves the right in its discretion to obtain the same or similar goods or services from any other source.
8. **Americans with Disabilities Act.** Contractor shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
9. **Confidentiality of Records.** Contractor shall establish and maintain procedures and controls that are acceptable to MGAA for the purpose of assuring that no information contained in its records or obtained from MGAA or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Agreement. Persons requesting such information should be referred to MGAA. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers

of Contractor as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by MGAA.

10. **Gratuities.** MGAA may, by written notice to the Contractor, cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of MGAA involved in the amending, or the making of any determinations with respect to the performing of such Agreement. If this Agreement is canceled by MGAA under this provision, MGAA shall, in addition to any other rights and remedies, repay to the Contractor the amount of the gratuity.
11. **Applicable Law.** This Agreement shall be governed by the laws of the state of Arizona, and suits pertaining to this Agreement shall be brought only in federal or state courts in the state of Arizona.
12. **Agreement.** This Agreement is based on and the result of a negotiated Scope of Work and Proposal, Bid or Statement of Qualifications submitted by Contractor under an RFP, IFB or RFQ. The Agreement contains the entire agreement between MGAA and Contractor. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
13. **Agreement Amendments.** This Agreement shall be modified only by a written amendment signed by the MGAA Executive Director or his/her designee, and persons duly authorized to enter into contracts on behalf of Contractor.
14. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.
15. **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement, which may remain in effect without the valid provision, or application.
16. **Protection of Government Property.** Contractor shall use reasonable care to avoid damaging all MGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Contractor damages MGAA's property in any way, Contractor shall immediately report such damage to MGAA and repair or replace the damage at no cost to MGAA, as directed by the MGAA Executive Director. If Contractor fails or refuses to repair or replace the damage, then MGAA may terminate the Agreement, and MGAA shall deduct the repair or replacement cost from money due Contractor under the Agreement.
17. **Interpretation – Parol Evidence.** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
18. **Subcontracts.** Contractor shall not assign any rights or interest nor enter into any subcontract with any other party to furnish any of the materials, goods or services specified herein without the prior written permission of MGAA. MGAA may, at its sole discretion, accept or reject proposed subcontractors or assignment. MGAA shall notify Contractor of its acceptance or rejection within forty-five (45) days or written request by Contractor. All subcontracts shall comply with federal and state laws and regulations applicable to the materials, goods or services covered by the subcontract and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. Contractor is responsible for Agreement performance whether subcontractors are used.
19. **No Waiver.** No provision in this Agreement shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of Agreement. The failure of either party to insist on strict performance of any Agreement term or condition; to exercise or delay

exercising any right or remedy provided in the Agreement or by law; or to accept materials, services, or Contractor's services under this Agreement or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Agreement.

20. **Warranties.** Contractor warrants that all materials and services delivered under this Agreement shall conform to the specifications thereof. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by MGAA, shall not alter or affect the obligations of Contractor or the rights of MGAA under the foregoing warranties. Additional warranty requirements may be set forth in this Agreement.
21. **Indemnification.** To the fullest extent permitted by law, Contractor shall defend, save, indemnify, and hold harmless MGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Contractor's acts, errors, omissions, or mistakes relating to Contractor's services under this Agreement.
22. **Right to Assurance.** Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Agreement.
23. **Advertising.** Contractor shall not advertise or publish information concerning this Agreement without prior written consent of MGAA.
24. **Right to Inspect.** MGAA may, at reasonable times, and at MGAA's expense, inspect the place of Contractor's or any of Contractor's subcontractor's business, which is related to the performance of this Agreement or related subcontract.
25. **Force Majeure.** In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Agreement to be performed by such party ("Required Act"), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God ("Force Majeure Event"), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Agreement, the financial inability of Contractor to perform any Required Act, including, without limitation, failure to obtain adequate or other financing shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (a) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (b) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years' climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.
26. **Inspection.** All material or service is subject to final inspection and acceptance by MGAA. Material or service failing to conform to the specifications of this Agreement will be held at Contractor's risk and may be returned to Contractor. If so returned, all costs are the responsibility of Contractor. Noncompliance shall conform to the cancellation clause set forth in this Agreement.
27. **Exclusive Possession.** All services, information, computer program elements, reports, and other deliverables, which may be created under this Agreement, are the sole property of MGAA and shall not



be used or released by Contractor or any other person except with prior written permission by MGAA.

28. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to MGAA until MGAA actually receives the material or service at the Airport, unless otherwise provided within this Agreement.
29. **Liens.** All materials, services, and other deliverables supplied to MGAA under this Agreement must be free of all liens and other encumbrances. Upon request of MGAA, Contractor shall provide a formal release of all liens.
30. **Licenses.** Contractor shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Contractor as applicable to this Agreement.
31. **Subsequent Employment.** MGAA may cancel this Agreement without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement, on behalf of the MGAA is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee of, or a contractor to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to this Agreement receive written notice from MGAA, unless the notice specifies a later time.
32. **Clean Up.** Contractor shall at all times keep Agreement performance areas, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of MGAA. Upon completion of any repair, Contractor shall leave the work and premises in clean, neat, and workmanlike condition.
33. **Patents.** Contractor shall defend, indemnify, and hold harmless MGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by MGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to MGAA by Contractor under this Agreement.
34. **Records and Audit Rights.** Contractor's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of all Contractor and subcontractor employees that work on the Agreement (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by MGAA. MGAA is entitled to evaluate and verify all invoices, payments or claims based on Contractor's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Agreement. For any audit under this Section, Contractor and its subcontractors hereby waive the right to keep such Records confidential. MGAA is entitled to access to these Records from the effective date of this Agreement for the duration of the work and until five years after the date of final payment by MGAA to Contractor under the Agreement. During normal working hours, MGAA is entitled to access to all necessary Contractor and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. MGAA shall give Contractor or subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Agreement.
35. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Contractor and its subcontractors warrant 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). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by MGAA. MGAA shall have the right to inspect the papers of Contractor's and any of Contractor's subcontractor's employee who works on this Agreement to ensure the Contractor is complying with this paragraph.

EXHIBIT E - BUILDING AND SERVICES BREAKDOWN AND SUMMARY

Building	Address	SQ FT	FACP Cntrl Panels	Voice Evac Panel	Annunciator	Cell Dialer	Power supplies Booster panels	Smoke Detectors	Manual Pull Stations	Heat Detectors	Duct Smoke Detectors	Notification Devices	Waterflow Tammer Points	Fire Alarm System Inspection	Risers	Fire Sprinkler System Inspection	Backflow Valve Test & Inspection	AFFF Foam System Inspection	Fire Hose Inspection & Reracking	Deluge System Inspection	Vesda System Test	Pre-Action System Inspection	Internal valve Inspection	Fire Extinguisher Inspection	Fire Pump Testing
														Annual	Qrtly	Qrtly	Annual	Semi Annual	Annual	Semi Annual	Annual	Semi Annual	Annual	Annual	Annual
Bldg 15 - Ticketing Term	6033 S. Sossaman Road	23,705	1	1	1	0	0	68	9	3	23	30	3	1	1	1	1	0	0	0	0	0	1	14	0
Bldg 15 - Ph 1-2 (baggage) 55,000 Enclosed Ped Walkway 31,095	6033 S. Sossaman Road	86,095	1	1	2	0	6	0	0	0	18	43	6	1	2	2	2	0	0	0	0	0	2	12	0
Bldg 15 - Ph 3	6033 S. Sossaman Road	14,336	1	0	1	0	1	1	0	0	16	15	4	1	1	1	2	0	0	0	0	0	1	4	0
Bldg 15 - So Concourse	6033 S. Sossaman Road	30,000	1	0	0	0	0	14	4	3	0	10	3	1	1	1	1	0	0	0	0	0	1	7	0
Hangar 31 - DSV Air & Sea	6203 S. Sossaman Road	22,785	1	0	0	1	1	1	7	0	2	16	18	1	1	1	0	2	0	0	0	2	3	1	0
Hangar 32 - Top Aces	6229 S. Sossaman Road	26,279	1	0	0	1	0	1	9	0	0	13	3	1	2	2	0	0	0	1	0	0	2	8	0
Bldg 41 - PMGAA Admn Office	5835 S. Sossaman Road	14,873	1	0	1	0	0	1	6	0	10	18	0	1	0	0	0	0	0	0	0	0	0	10	0
Bldg 45 - Gateway Aviation Svcs	5803 S. Sossaman Road	22,726	1	0	1	0	2	1	14	0	10	33	3	1	1	1	1	0	0	0	0	0	1	17	0
Bldg 46 - Hangar	5755 S. Sossaman Road	22,430	1	0	0	1	0	8	7	0	0	4	0	1	0	0	0	0	0	0	0	0	0	9	0
Bldg 51 - Maint Workshop	6263 S. Taxiway Circle	800	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Bldg 531 - Sierra Bldg Svcs	6416 S. Sossaman Road	2,298	1	0	0	0	0	0	2	0	0	1	0	1	0	0	0	0	0	0	0	0	0	4	0
Bldg 532 - Car Wash (new Bldgs)	6450 S. Sossaman Road	3,160	1	0	0	0	0	1	1	0	0	5	1	1	4	1	1	0	0	0	0	0	1	3	0
Bldg 533 - Sun Valley Interiors	6410 S. Sossaman Road	22,710	1	0	0	0	0	0	2	2	0	8	2	1	1	1	0	0	0	0	0	0	1	12	0
Bldg 550 - Hylan West	6350 S. Sossaman Road	26,136	1	0	0	1	0	0	6	17	1	1	0	1	0	0	0	0	0	0	0	0	0	1	0
Bldg 568 - Vacant	6145 S. Kent Street	10,193	1	0	0	1	0	33	5	3	2	10	0	1	0	0	0	0	0	0	0	0	0	6	0
Bldg 928 - OPS Airfield Bldg	6002 S. Sossaman Road	1,728	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0
Bldg 1056 - West Vault	7600 E. Velocity Way	1,322	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0
Bldg 1080 - Ops & Maint	6263 S. Taxiway Circle	23,456	1	0	0	1	1	0	10	0	0	14	0	1	0	0	1	0	0	0	0	0	0	23	0
Bldg 1081 - NEW ATCT	6309-1 S. Taxiway Circle	12,927	1	0	0	0	0	16	8	1	0	9	0	1	10	10	2	0	0	0	1	4	2	14	0
Bldg 1083 - Pump House	6263-3 S. Taxiway Circle	1,320	1	0	0	0	0	0	0	0	0	1	4	1	1	1	1	0	0	0	0	0	1	2	4
Bldg 1084 - Allegiant Hangar	6250 S. Taxiway Circle	63,598	2	0	0	0	4	2	23	0	2	40	20	1	3	3	0	6	4	4	0	0	6	2	0
Bldg 1086 - Straube's	6262 S. Taxiway Circle	6,050	0	0	0	0	0	0	0	0	0	0	0	1	2	2	0	0	0	0	0	0	0	5	0
Bldg 1090 - Essential Turbines	7808 E. Velocity Way	5,919	1	0	0	0	0	0	5	0	0	4	0	1	0	0	0	0	0	0	0	0	0	0	0
Bldg 1092 - Allegiant Hangar	6309 S. Taxiway Circle	6,820	1	0	0	1	0	1	7	0	0	2	5	1	1	1	0	0	0	0	0	1	2	9	0
Bldg 1101 - RTR Transmitter Site NEW	6002 S. Ellsworth Road - Escort	1,608	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0
Bldg 1199 - Eastside Light Vault	6002 S. Ellsworth Road - Escort	1,400	1	0	0	0	0	3	3	1	0	3	0	1	1	1	0	0	0	0	0	0	1	3	0
Bldg 7630 - Fuel Farm	7630 E. Velocity Way	502	1	0	0	0	0	0	1	0	0	1	3	1	1	1	1	0	0	0	0	0	0	1	0
Ray Road Parking Lot - North	7255 E. Ray Road	300	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0
South Central Tanks	6262 S. Sossaman Road	0	1	0	0	0	0	0	0	0	0	0	6	1	1	1	1	0	0	0	0	0	1	2	3
Spares (extinguishers)	6263 S. Taxiway Circle	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0
Totals	Totals	455,476	24	2	6	7	15	151	129	30	84	281	81	24	34	31	15	8	4	5	1	7	26	183	7

## EXHIBIT F – MGAA MAP OF BUILDINGS TO BE SERVICED





## EXHIBIT G – CONTRACTOR'S RFP SUBMITTAL

Contractor's Proposal in response to Mesa Gateway Airport Authority's Solicitation 2025-009-RFP dated July 9, 2025, is hereby incorporated herein and made part of this Agreement.



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

Re: Resolution 25-40

**To:** Board of Directors  
**From:** Margi EvanSon, Director of Operations, Security & Maintenance  
**Through:** Scott Brownlee, Deputy Director/COO  
J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** Power Washing Services, Kleen-Tech Services, LLC  
**Date:** September 16, 2025

---

### Proposed Motion

To authorize a contract with Kleen-Tech Services, LLC for Power Washing Services, in an amount not to exceed \$23,564.00 (excluding as needed services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5% provided the adjustments are submitted in writing with thirty (30) days' advance notice. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of MGAA.

### Narrative

In line with the Airport's efforts to maintain a clean, safe, and professional environment throughout the Airport, regular and as-needed power washing services are needed across key airport areas.

The airport areas, including sidewalks, terminal curbs, outdoor courtyards, and loading areas—experience high volumes of foot and vehicle traffic, leading to the accumulation of dirt, debris, and other contaminants. Routine power washing is essential not only for aesthetics but also for safety and compliance with sanitation standards.

Invitation for Bid (IFB), Solicitation 2026-001-IFB, was issued on July 30, 2025, and advertised in the Arizona Business Gazette on 8/7, 8/14, and 8/21/25; it was also posted on the AzAA and the Mesa Gateway Airport Authority websites. In addition, the IFB was emailed to a list of 6 prospective contractors. The bid opening was held on August 26, 2025, and eight (8) bids were received. While Rolling Suds of Phoenix-Scottsdale submitted the lowest, responsive bid, the company rescinded its bid after bid opening. The second lowest, responsive bid was from Kleen-Tech Services, LLC.

Bidder	Bid Amount (\$) – Year 1 Power Washing Services Annual Cost	Bid Amount (\$) – Year 1 As-Needed Services ESTIMATED NEED	Bid Amount (\$) – Year 1 Scope Additions / Reductions ESTIMATED NEED	TOTAL Bid Amount (\$) – Year 1 Annual Cost
Jani Works	\$71,424.00	\$1,500.00 (\$0.15 per sq ft x 10,000 sq ft)	\$750.00 (\$0.15 per sq ft x 5,000 sq ft)	\$73,674.00
Valley Pro Power Wash	\$65,600.00	\$700.00 (\$0.07 per sq ft x 10,000 sq ft)	\$350.00 (\$0.07 per sq ft x 5,000 sq ft)	\$66,650.00
Hatcher Power Washing	\$110,149.20	\$1,500.00 (\$0.15 per sq ft x 10,000 sq ft)	\$750.00 (\$0.15 per sq ft x 5,000 sq ft)	\$112,399.20
AquaFroce Arizona	\$146,865.00	\$2,000.00 (\$0.20 per sq ft x 10,000 sq ft)	\$1,000.00 (\$0.20 per sq ft x 5,000 sq ft)	\$149,865.00
Rolling Suds of Phoenix	\$15,600.00	\$500.00 (\$0.05 per sq ft x 10,000 sq ft)	\$250.00 (\$0.05 per sq ft x 5,000 sq ft)	\$16,350.10
No Pressure Power Washing	\$54,360.00	\$740.0 (\$0.074 per sq ft x 10,000 sq ft)	\$370.00 (\$0.074 per sq ft x 5,000 sq ft)	\$55,474.32
Kept Companies	\$123,485.00	\$2,500.00 (\$0.25 per sq ft x 10,000 sq ft)	\$1,250.00 (\$0.25 per sq ft x 5,000 sq ft)	\$127,235.00
<b>Kleen-Tech Services, LLC</b>	<b>\$23,564.00</b>	<b>\$600.00</b> <b>(\$0.06 per sq ft x 10,000 sq ft)</b>	<b>\$300.00</b> <b>(\$0.06 per sq ft x 5,000 sq ft)</b>	<b>\$24,464.00</b>

### Fiscal Impact

The first year of the contract is budgeted in the FY26 Operating Budget. The remaining years costs will be budgeted in the appropriate fiscal years.

### Attachment(s) Services Agreement



## RESOLUTION NO. 25-40

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize a contract with Kleen-Tech Services, LLC for Power Washing Services, in an amount not to exceed \$23,564.00 (excluding as needed services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5% provided the adjustments are submitted in writing with thirty (30) days’ advance notice. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of MGAA;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes a contract with Kleen-Tech Services, LLC for Power Washing Services, in an amount not to exceed \$23,564.00 (excluding as needed services), for the first year of the contract. Thereafter, price adjustments will be considered annually, up to 5% provided the adjustments are submitted in writing with thirty (30) days’ advance notice. Contract Award with an initial term of three (3) years, with two (2) one (1)-year options to renew that may be exercised at the sole discretion of MGAA. This resolution also authorizes the Executive Director/CEO to approve such annual price adjustments during the term of the contract. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



**SERVICES AGREEMENT**

**MESA GATEWAY AIRPORT AUTHORITY**

**AND**

**KLEEN-TECH SERVICES, LLC**

**FOR**

**POWER WASHING SERVICES**

## Table of Contents

Section I - Contractor Services	3
Section II - MGAA Responsibilities	3
Section III - Period of Service	3
Section IV – Key Personnel	4
Section V – Payments to the Contractor	4
Section VI – Alteration in Scope of Services	4
Section VII – Work Assignment Completion	4
Section VIII – Ownership of Documents	4
Section IX – Compliance with Laws	5
Section X – General Considerations	5
Section XI – No Kick-back Certification	5
Section XII – Suspension of Services	5
Section XIII – Times of Payments	5
Section XIV – Timely Review	5
Section XV – Dispute Resolution	5
Section XVI – Liability of Contractor	6
Section XVII – Laws and Regulations	6
Section XVIII – Archaeological Resource Protection	6
Section XIX – Insurance Requirements	6
Section XX – Notices	7
EXHIBIT A – Scope of Services & Fee Schedule	9
EXHIBIT B – Service Areas and Service Schedule	10
EXHIBIT C – Compensation	14
EXHIBIT D – Special Provisions	15
EXHIBIT E – MGAA Standard Terms and Conditions	19

**Mesa Gateway Airport Authority, formerly known as Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona** (“MGAA”) desires the performance of the services more fully described in this Services Agreement (“Agreement”) and the attached exhibits. Kleen-Tech Services, LLC, a Delaware Limited Liability Company (“Contractor”), with its principal offices located at 7100 Broadway, Suite 6-L, Denver, CO 80221, desires to perform these services.

### **Recitals**

- A. MGAA requires the services as described in this Agreement, including any and all exhibits and amendments, and Contractor is willing to provide these and other services under this Agreement; and
- B. MGAA desires to contract with Contractor to provide services as noted herein.

**Now therefore**, in consideration of the recitals and the mutual covenants set forth below, MGAA and Contractor agree as follows.

### **SECTION I – CONTRACTOR SERVICES**

The services to be performed by Contractor are specified in this Agreement. MGAA will not pay Contractor for any services that have not been authorized under the Agreement. There is no guarantee of a minimum purchase of services.

The anticipated services to be provided by Contractor under this Agreement shall generally include, but not be limited to, the following: Power Washing Services, as more specifically described in the detailed scope of services attached as **EXHIBIT A**, “Scope of Services & Fee Schedule.”

MGAA’s authorized representative shall be the MGAA Director of Operations and Maintenance or his/her duly authorized representative, and that he/she shall be the sole contact for administering this Agreement.

All services provided by Contractor under this Agreement must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Arizona. Contractor makes no other warranty, expressed or implied.

### **SECTION II – MGAA RESPONSIBILITIES**

MGAA shall furnish Contractor, at no cost to Contractor, the following information or services for this Agreement:

- A. Access to copies of readily available maps, records, as-built drawings, benchmarks or other data pertinent to work assignments affiliated with this Agreement. This does not, however, relieve Contractor of the responsibility of searching records for additional information, for requesting specific information or for verification of that information provided. MGAA does not warrant the accuracy or comprehensiveness of any information or documents provided to Contractor.
- B. In MGAA’s discretion and upon Contractor’s reasonable request, access to staff for consultation with Contractor during the performance of this Agreement in order to identify the problems, needs, and other functional aspects of the work.
- C. Prompt review of and feedback on Contractor’s deliverables. MGAA will advise Contractor concerning progress of MGAA’s review of the work, as needed.

### **SECTION III - PERIOD OF SERVICE**

Contractor shall complete all work in accordance with the provisions of this Agreement as amended.

All work initiated under this Agreement must be completed on or before the expiration date of the Agreement

This Agreement is effective as of October 1, 2025 and ends on September 30, 2028 (“Base Term”), unless terminated, canceled or extended as provided in this Agreement.

This Agreement has two (2) optional one-year extensions that MGAA may exercise at its sole discretion. Prior to the expiration of the Agreement Base Term, MGAA may elect to extend the Agreement. If MGAA exercises such right, all terms, conditions and provisions of the original Agreement shall remain the same and apply during the extended period with the possible exception of price. Any extension of this Agreement shall require an amendment signed by both parties.

Contractor shall commence its services within seven (7) days of the written authorization by MGAA. Contractor shall perform its services in a diligent manner and in accordance with this Agreement.

#### **SECTION IV – KEY PERSONNEL**

A. The Contractor itself shall provide all services to be performed under this Agreement.

#### **SECTION V - PAYMENTS TO THE CONTRACTOR**

Contractor will be paid for work performed under this Agreement, plus any adjustments that have been approved in writing by MGAA in accordance with MGAA's Procurement Policy. Payments will be made in accordance with **EXHIBIT C**, "Compensation."

All services to be rendered by Contractor are subject to the terms of **EXHIBIT C**, "Compensation" attached hereto.

MGAA does not guarantee any minimum or maximum fee during the Term of this Agreement, and Contractor, in executing this Agreement, shall not anticipate or require any minimum or maximum fee.

MGAA shall pay Contractor in agreed-upon installments for services authorized and rendered under this Agreement at the completion of each work assignment, provided Contractor has satisfactorily completed the requested work. If any such work requires time in excess of 30 calendar days to complete, progress payment(s) may be made on invoices certified and approved by MGAA.

#### **SECTION VI - ALTERATION IN SCOPE OF SERVICES**

MGAA reserves the right to modify the Scope of Services at any time during the term of the Agreement. Such modifications may include, but are not limited to, the addition or removal of areas to be power washed and the performance of services on an as-needed or reduced-frequency basis, as directed by MGAA.

For any alteration in the Scope of Services that would materially increase or decrease the Agreement Fees, the parties shall negotiate an amendment to the Agreement to be executed by MGAA and Contractor. No work shall commence on any amendment or change until the amendment has been approved by MGAA and Contractor has been notified, in writing, to proceed by MGAA. No claim for extra work done or materials furnished by Contractor will be allowed by MGAA, except as provided herein, nor shall Contractor do any work or furnish any materials not covered by this Agreement unless the work is first authorized in writing by MGAA and the change complies with MGAA's Procurement Policy. Any work or materials furnished by Contractor without advance, written authorization will be at Contractor's own risk, cost, and expense. Without written authorization, Contractor shall make no claim for compensation for such work or materials furnished.

#### **SECTION VII - WORK ASSIGNMENT COMPLETION**

If, during the Term of this Agreement, situations arise which prevent work completion within the allotted time, MGAA may grant an appropriate time extension.

#### **SECTION VIII - OWNERSHIP OF DOCUMENTS**

Any documents, including all electronic copies, graphics, designs, code, and written materials, prepared under or as a result of this Agreement, shall be the property of MGAA. To the extent necessary to effectuate such ownership, Contractor hereby assigns all right, title and interests to such documents, graphics, designs, code, and written materials to MGAA. Contractor shall execute any separate contracts or documents, if any, which may be necessary to implement the terms of this Section.

All of Contractor's documents, graphics, designs, code, and written materials prepared under this Agreement, including electronic files, are instruments of service. All of these documents, graphics, designs, code, and written materials shall become the property of MGAA upon completion of the services and payment in full to Contractor or, if the Agreement is terminated, upon termination of this Agreement. MGAA shall have the right to reuse, modify, or adapt the documents, graphics, designs, code, and written materials as it deems necessary, without requiring Contractor's prior written authorization. MGAA shall indemnify and hold harmless Contractor, its



officers, directors, employees and subcontractors (collectively, the “Contractor”) against any and all damages, liabilities or costs arising from MGAA’s modification of documents, graphics, designs, code, or written materials produced by Contractor under this Agreement unless Contractor authorizes the modification in writing.

#### **SECTION IX - COMPLIANCE WITH LAWS**

Contractor shall comply with all federal, state, and local laws, local ordinances and regulations, including but not limited to those governing wastewater collection and disposal, stormwater protection, chemical use, and hazardous materials handling, throughout the Term.

Contractor’s signature on this Agreement certifies compliance with the provisions of the I-9 requirements of the *Immigration Reform and Control Act of 1986* for all personnel that Contractor and any subcontractors employ to complete any work assignment.

MGAA shall administer this Agreement in accordance with MGAA’s Procurement Policy.

#### **SECTION X - GENERAL CONSIDERATIONS**

- A. The failure of either party to enforce any of the provisions of this Agreement or require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of the provisions, nor shall it affect the validity of this Agreement or the right of either party to enforce each and every provision.
- B. The fact that MGAA has accepted or approved Contractor’s work shall in no way relieve Contractor of responsibility for the work under this Agreement.
- C. This Agreement shall be governed by the laws of the state of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provision thereof, shall be instituted only in the courts of the state of Arizona.
- D. All exhibits to this Agreement and any amendments to this Agreement are incorporated into it.

#### **SECTION XI - NO KICK-BACK CERTIFICATION**

Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the MGAA Board of Directors or any employee of MGAA has any interest, financially or otherwise, in Contractor’s firm.

For breach or violation of this warranty, MGAA may annul this Agreement without liability.

#### **SECTION XII – SUSPENSION OF SERVICES**

Contractor shall, within five (5) business days upon receiving written notice from MGAA, suspend, delay, or interrupt all or a part of the Scope of Services. Contractor shall resume the Scope of Services within five (5) business days of receiving written notice from MGAA.

#### **SECTION XIII – TIMES OF PAYMENTS**

Contractor shall submit monthly invoices for services actually completed. MGAA shall review, certify, and approve or reject each invoice in whole or in part. MGAA shall pay each approved invoice within 30 calendar days of the date that MGAA approves the invoice. MGAA shall be entitled to take advantage of any payment discount offered by Contractor, provided payment is made within the discount period.

#### **SECTION XIV – TIMELY REVIEW**

MGAA will review Contractor’s studies, reports, proposals, and other related documents and render any decisions required by Contractor in a timely manner. Notwithstanding these reviews, Contractor remains solely responsible for all of its deliverables and services under this Agreement. By MGAA’s reviews, MGAA does not assume any liability for or retained control over Contractor’s work or Contractor’s responsibility for the safety of its employees.

## SECTION XV – DISPUTE RESOLUTION

All disputes between MGAA and Contractor arising out of or relating to this Agreement will be subject to the Dispute Resolution provisions as set forth in **EXHIBIT E**, “MGAA Standard Terms and Conditions”, attached hereto and incorporated herein by reference.

MGAA and Contractor shall include a similar dispute resolution provision in all contracts with other contractors and Contractors retained for the Project and shall require all other independent contractors and Contractors to include a similar dispute resolution provision in all contracts with subcontractors, sub-Contractors, suppliers, or fabricators retained by them.

## SECTION XVI - LIABILITY OF CONTRACTOR

To the fullest extent permitted by law, Contractor shall defend, save, indemnify, and hold harmless MGAA, its member governments, departments, officers, employees, and agents from and against damages arising out of any act, error, or omission of Contractor relating to its services under this Agreement. Further, the Contractor shall indemnify and hold harmless MGAA, its member governments, departments, officers, employees, and agents for any fines, penalties, damages, or claims arising from non-compliance with environmental laws or regulations.

## SECTION XVII - LAWS AND REGULATIONS

All federal, state, and local laws and regulations that relate to Contractor’s services apply to Contractor’s performance of this Agreement throughout. These laws and regulations are deemed included in this Agreement, the same as though written out in full, especially the current applicable Federal Aviation Administration (FAA) rules and regulations associated with airport projects; pertinent Airport engineering standards; and local rules, regulations, and industry standards.

## SECTION XVIII – ARCHAEOLOGICAL RESOURCE PROTECTION

While performing services under this Agreement, Contractor may encounter a known or unknown archaeological site located at the Airport. If Contractor encounters what it believes to be an archaeological site, Contractor shall immediately notify MGAA of the site’s location and take all reasonable precautions to protect and preserve the site until MGAA otherwise directs.

## SECTION XIX INSURANCE REQUIREMENTS

- A. Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.
- B. All insurance policies required by this Agreement, except *Workers Compensation* and *Professional Liability*, shall name MGAA, its agents, representatives, officers, directors, officials, and employees as Additional Insured.
- C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:
  - i. Commercial General Liability: Insurance Services Office Form CG 00 01 covering Bodily Injury and Property Damage on an “occurrence” basis, including personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
  - ii. Auto Liability: ISO Form CA 00 01 covering any auto (Symbol 1), or if Contractor has no owned autos, hired, (Symbol 8) and non-owned autos (Symbol 9), with limits no less than \$5,000,000 Combined Single limit per accident for bodily injury and property damage.
  - iii. Workers’ Compensation: Statutory Limits as required by the state of Arizona, and Employer’s Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. If the Contractor maintains higher limits than the minimums shown above, MGAA requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MGAA.
- E. Additional insurance provisions. The insurance policies shall provide, or be endorsed to include, the following provisions:
  - i. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not

- be canceled, except with notice to MGAA.
- ii. Waiver of Subrogation: Contractor waives any right to subrogation. Contractor shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Agreement, except *Workers Compensation* and *Professional Liability*, for claims arising out of the Contractor's work or service.
- iii. Primary Coverage: For all claims related to this Agreement, all of Contractor's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by MGAA, its officers, officials, employees, or volunteers will be in excess of Contractor's insurance and will not contribute with it.
- iv. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by MGAA. MGAA may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- v. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, VII, unless otherwise acceptable to MGAA.
- vi. Claims Made Policies: No Claims Made policies (other than Professional Liability) will be accepted. For policies that provide claims-made coverage:
  - a) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
  - b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work.
  - c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- vii. Verification of Coverage: Contractor shall furnish MGAA with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements are to be received and approved by MGAA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide the required insurance. MGAA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- viii. Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that MGAA is an additional insured on insurance required from subcontractors.
- ix. Special Risks or Circumstances: MGAA reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances.

## SECTION XX NOTICES

Any notice, report or information which may be or is required to be given under this Agreement will be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

TO MGAA: Mesa Gateway Airport Authority  
Attn: Director of Operations & Maintenance  
5835 South Sossaman Road  
Mesa, Arizona 85212

TO CONTRACTOR: Kleen-Tech Services, LLC  
Attn: Mark Assise, CFO  
7100 Broadway, Suite 6-L  
Denver, CO 80221

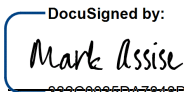


or to such other person(s) or address(es) as any such Party may designate from time to time by notice to the other Parties in accordance with this Section.

Executed as of the Effective Date.

**CONTRACTOR**  
**KLEEN-TECH SERVICES, LLC**

**MGAA**  
**MESA GATEWAY AIRPORT**  
**AUTHORITY**, a joint powers airport authority  
authorized by the state of Arizona

By:  \_\_\_\_\_  
Name: Mark Assise  
Title: Chief Financial Officer  
Date: 9/2/2025 | 5:49 AM PDT

By: \_\_\_\_\_  
Name: J. Brian O'Neill, A.A.E.  
Title: Executive Director/CEO  
Date: \_\_\_\_\_

## **EXHIBIT A – SCOPE OF SERVICES & FEE SCHEDULE**

The services to be performed by Contractor and the completion of related efforts are specified in the following Scope of Services & Fee Schedule agreed to by the parties.

### **SCOPE OF SERVICES**

Contractor is to provide all labor, materials, equipment, and supervision necessary to perform Power Washing Services as detailed in this Agreement to the satisfaction of MGAA and in accordance with applicable laws, regulations, and specifications.

MGAA may modify the Scope of Services during the term of the Agreement, which may include, but is not limited to, the addition or removal of Service Areas and the performance of services on an as-needed basis, as directed by MGAA.

The Scope of Services shall include, but is not limited to, the following:

1. Power washing of concrete, asphalt, and stone surfaces and exterior furnishings (i.e., tables/chairs) in areas identified in Exhibit B.
2. Removal of oil stains, gum, dirt, and other debris in areas identified in Exhibit B.
3. Services are to be provided following the schedule in Exhibit B, unless otherwise authorized in writing by MGAA.
4. Use of environmentally safe cleaning agents.
5. Adherence to all MGAA safety regulations.
6. Adherence to all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to those governing wastewater collection and disposal, stormwater protection, chemical use, and hazardous materials handling.
7. Performance of power washing services on an as-needed basis, as directed by MGAA.

### **FEE SCHEDULE**

Line No.	Item	Price
1	Annual Power Washing Services Year 1	\$ 23,564.00
2	As-Needed Power Washing	\$ 0.06 per square foot
3	Additional/Reduction Area Power Washing	\$ 0.06 per square foot

Line item #1 to be invoiced and paid in equal monthly installments.

The rates stated above shall remain firm and in effect for the first year of the Contract term. Offeror may request a rate adjustment effective on each anniversary date of the Contract, up to a maximum of 5%, with the prior written approval of MGAA. Offeror must provide at least thirty (30) days' prior written notice of any proposed rate increase.



EXHIBIT B – SERVICE AREAS AND SERVICE SCHEDULE

Service Area Overview



# 1. Services to be completed on the first and third Tuesday of every month:

Work may commence at 9:00 PM on Tuesdays and must be completed by 4:00 AM the following morning. Any deviation from these hours must be requested in advance from MGAA.

## Map areas in red include:

- Terminal Arrivals and Departures Curb – 18,115 sq. ft.
- North Concourse Smoking Courtyard – 297 sq. ft.
- North Concourse OHSO Courtyard – 1535 sq. ft.
- South Concourse East Courtyard – 2006 sq. ft.
- South Concourse West Courtyard – 2034 sq. ft.

Total Service Area – 23,988 sq. ft.





## 2. Services to be completed on the first Tuesday of every month:

Work may commence at 9:00 PM on Tuesdays and must be completed by 4:00 AM the following morning.  
Any deviation from these hours must be requested in advance from MGAA.

### Map areas in pink:

- Terminal Commercial Curb – 5286 sq. ft.
- Rental Car Return Sidewalk – 1121 sq. ft.
- Hourly Lot Sidewalk – 5263 sq. ft.
- Gateway Aviation Center Building Entrance – 504 sq. ft.
- Administration Building Entrance – 1044 sq. ft.

Total Service Area – 13,218 sq. ft.

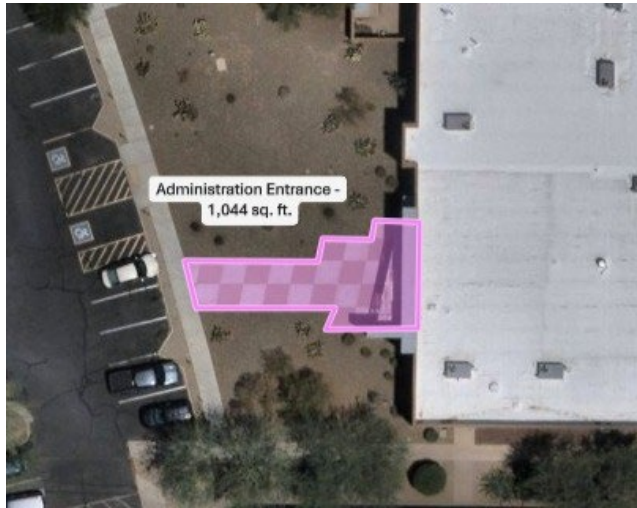


### Gateway Aviation Center Building Entrance Service Area





## Administration Building Entrance Service Area



## EXHIBIT C - COMPENSATION

All compensation for services rendered by Contractor shall be based upon criteria established below. All services must be billed through the Contractor.

1. Fees to be Specified in Agreement

Any and all services to be performed under this Agreement require approval. All compensation for services shall be identified in writing. The Agreement shall describe the scope of services to be performed (by tasks and subtasks, where appropriate), the fees associated with that performance, and any applicable special provisions. Contractor's compensation for services included in this Agreement is totaled and set forth in **EXHIBIT A**, "Scope of Services and Fee Schedule".

2. Method of Payment

Subject to the terms of this Agreement, MGAA shall pay Contractor the appropriate rate or fixed price amount for services rendered as described in the Agreement only after Contractor has submitted an invoice for services performed and MGAA has certified and approved each invoice.

For services rendered in accordance with the Agreement, Contractor shall submit to MGAA an invoice depicting tasks performed and/or hours spent for services performed. Invoices must be based on the actual hours and/or expenses incurred for the services completed during the billing period. Contractor's invoices must specify that Contractor has performed the services, and MGAA must certify and approve each invoice as a condition to payment.

3. Contractor Responsibilities for Compensation

Contractor shall prepare monthly invoices and/or progress reports in accordance with terms specified in the Agreement. Progress reports will clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices for payment shall be for work completed unless otherwise agreed to by MGAA. Invoices/requisitions for payment for services subject to funding by the FAA and/or ADOT shall include the documentation requirements of the FAA and/or ADOT, which are outlined in the *Airport Improvement Program (AIP) Handbook* dated September 30, 2014, or most current version.

4. MGAA Responsibilities for Compensation

MGAA agrees to pay Contractor's invoices for payment within 30 calendar days after the invoice is approved. MGAA may withhold payment on any invoice if it believes that Contractor has not performed the work in a satisfactory manner. If MGAA withholds payment to Contractor, MGAA shall promptly notify Contractor and explain the reasons for the decision to withhold payment.

5. Billing Address

All invoices submitted to MGAA for payment shall be submitted to:

Accounts Payable: [ap@gatewayairport.com](mailto:ap@gatewayairport.com)

## EXHIBIT D - SPECIAL PROVISIONS

### 1. Civil Rights Act of 1964, Title VI – General

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 2. Civil Rights Act of 1964, Title VI – Assurance

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English

proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

#### Title VI Compliance With Nondiscrimination Requirements:

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes Contractors) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the non-discrimination provisions of this Agreement, the Sponsor will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Contractor, by accepting this Agreement, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.

#### 4. Project Security

As some or all portions of work possible during the Term of this Agreement may be located inside the secured area of the Airport, adherence to and familiarity with federal security regulations is essential. For these projects, Contractor shall be responsible for fulfilling the security requirements described herein.

- a. Secured Area Access – All Contractor personnel who require unescorted access to the secured area of the Airport, prior to the issuance of an Airport Identification badge, must successfully complete the Security Badge Application and Security Badge Authorization forms.
- b. Employee Security Badges – All Contractor and/or subcontractor personnel performing work functions in accordance with this Agreement shall obtain and properly display an Airport security badge. Contractor shall submit a Security Badge Application form to the MGAA security office for each employee requiring unescorted access, along with the current fee for each badge. Badge fees are identified on the current *Airport Fees, Services and Rental Rates* available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com) and are subject to change.
  - i. All fees must be paid to MGAA by cash or check.
  - ii. Airport Security Badge Application forms and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iii. An authorized representative of Contractor must also obtain and submit a Security Media Authorization form, which is to be submitted to the MGAA badging office. The Security Media Authorization form and instructions are available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com).
  - iv. A training class on aviation security must be successfully completed before individuals are issued a badge. Fees for the security badge include attendance for the necessary training classes. Attendance at the security classes and issuance of the security badge may take two hours per person.
  - v. Additional information, including a “Frequently Asked Questions” is available via the Airport website at [www.gatewayairport.com](http://www.gatewayairport.com) or by contacting the MGAA Badging Office at (480) 988-7522. The Badging Office is located at 5803 S. Sossaman Road, Mesa AZ 85212.
  - vi. Contractor shall immediately notify the MGAA Badging Office of any Contractor personnel whose employment status has changed.
  - vii. Contractor shall retrieve all security badges and keys and return them to the MGAA Badging Office. A fee, as indicated on the most current *Airport Rates and Charges Schedule*, will be charged for each badge that is damaged, lost or not returned.
  - viii. The MGAA Badging Office will require a completed Security Badge Application from each Contractor employee so certified by Contractor as requiring such before a Security Badge is issued.
  - ix. Under certain circumstances and out of control of MGAA, security measures may change on short notice. No deviations from any security measure shall be allowed at any time.
  - x. At all times, aircraft shall have the right-of-way over all vehicle traffic.
- c. Fines – Due to both the safety and security precautions necessary at the Airport, any failure of the Contractor to adhere to prescribed Airport requirements/regulations has consequences that may jeopardize the health, welfare and lives of Airport customers and employees, as well as the Contractor’s own employees. Therefore, if Contractor is found to be in non-compliance with any security, airfield badging/licensing and airfield safety requirement, a Notice of Violations (NOV) may be issued. A current listing of fines is available by contacting the MGAA Badging Office.

#### 5. Standard Terms & Conditions

MGAA’s Standard Terms & Conditions (in **EXHIBIT E** attached) include clauses that pertain to both construction and services. For such, the term “contractor” is to be considered the same as “Contractor.” If a clause implies construction service then it is waived for a services agreement. MGAA reserves the right to make that determination if there is a conflict.

#### 6. Federal and State Guidelines and Regulations

All work performed under this Agreement must satisfy FAA and applicable agency standards, and be accomplished in accordance with applicable federal, state and local guidelines and regulations, including FAA Advisory Circulars, NEPA and Arizona environmental statutes.

Contractor shall perform the services as described in approved Agreement in accordance with the applicable requirements imposed by MGAA, ADOT, FAA and any other applicable sponsoring agencies. Contractor and its subContractors/subcontractors, if any, shall comply with any and all applicable laws, regulations, executive orders, policies, guidelines, and any other requirements for FAA Airport Improvement Program (AIP) projects. Contractor shall provide MGAA all information, reports, documents, and/or certifications requested by MGAA for the satisfaction of any grant requirements for the reimbursement of services, including, without limitation, identifying the specific services provided by Contractor and the billing period(s) during which services were or are to be provided. Nothing herein shall be construed as making the FAA or ADOT a party to this Agreement.

7. Right to Contract With Other Firms

MGAA shall have the right to contract with other firms and/or persons and/or to self-perform additional services, which may be the subject of this Agreement. Contractor shall conduct its operations and perform any services authorized under the Agreement so as not to interfere with or hinder the progress of completion of the work being performed by MGAA and/or other firms and/or persons. Contractors working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

8. Independent Contractor Status

At all relevant times, Contractor is - and shall remain - an independent contractor with regard to performance of its services. MGAA retains no control over Contractor, the performance of its work or services, or the safety of its employees. Contractor is not authorized to enter into any contract or commitment, authorize any payment, or accept any document, services, goods or materials for, in the name of, or on behalf of MGAA.



## EXHIBIT E – MGAA STANDARD TERMS & CONDITIONS

1. **Certification.** Contractor certifies:
  - a. The award of this Agreement did not involve collusion or other anti-competitive practices.
  - b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
  - c. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement; and Contractor hereby certifies that the individual signing this Agreement is an authorized agent for Contractor and has the authority to bind the Contractor to the Agreement.
  
2. **Termination of Agreement.**
  - a. Termination for cause. MGAA reserves the right to cancel this Agreement in whole or in part due to failure of Contractor to carry out any term, promise, or condition of the Agreement. At least ten (10) business days before terminating the Agreement, MGAA will issue a written notice of default specifying one of the following reasons. MGAA shall, at all times during the term of the Agreement or any extension term thereto, have the sole authority to determine if the default has been cured to its satisfaction. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
    - (1) Contractor has provided personnel that do not meet the requirements of the Agreement.
    - (2) Contractor has failed to perform adequately the stipulations, conditions or services/specifications required in this Agreement.
    - (3) Contractor has attempted to impose on MGAA personnel or materials, products, or workmanship of unacceptable quality.
    - (4) Contractor has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Agreement or associated Authorization of Services.
    - (5) Contractor has failed to make progress in the performance of the requirements of the Agreement or Authorization of Services, or Contractor fails to give MGAA adequate assurance the Contractor will perform the Agreement in full and on time.
  - b. This Agreement may be terminated by either party, with or without cause, provided the terminating party gives thirty (30) calendar days' advance written notice to the other party.
  - c. Each payment obligation of MGAA created hereby is conditioned on the availability of MGAA, state, or federal funds appropriated for payment of the obligation. If funds are not available or allocated by MGAA for continuance of service under this Agreement, then MGAA may terminate the Agreement. MGAA shall promptly notify Contractor regarding the service that may be affected by a shortage of funds. No penalty accrues to MGAA if this provision is exercised, and MGAA shall not be liable for any future payments due or for any damages as a result of termination under this paragraph.
  - d. Upon cancellation/termination of the Agreement, the Contractor must deliver to MGAA all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Owner, its Engineer, Architect, or representative, under this Agreement, whether complete or partially complete.
  - e. If this Agreement is canceled/terminated, then MGAA is liable only for services rendered and material received, certified, and approved by MGAA under the Agreement before the cancellation/termination effective date. In the event any payments are made by MGAA to Contractor in advance of services performed, and this Agreement is canceled/terminated, Contractor shall refund MGAA's payment on a pro-rata basis for the unused portion of the term. The refund shall be paid to MGAA within thirty (30) days of the cancellation/termination of the Agreement. This refund shall only apply to payments made

for services or products that have not been rendered or delivered prior to the cancellation/termination date.

3. **Dispute Resolution.**

- a. **Negotiations.** If a dispute arises out of or relates to this Agreement or its breach, the parties to this Agreement shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.
- b. **Mediation.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations, the parties to this Agreement, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this Agreement, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Agreement, but subject to reallocation following binding dispute resolution.
- c. **Binding Dispute Resolution.** Should the parties to this Agreement be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Agreement, commence formal dispute resolution proceedings. Both parties to this Agreement consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Agreement, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Agreement are excused from this arbitration requirement and the parties to this Agreement shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court as applicable.

4. **Independent Contractor.** At all times, each party acts in its individual capacity not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Neither Contractor nor any of its employees are entitled to compensation from MGAA in the form of salaries, paid vacation, or sick days. MGAA will not provide any insurance to Contractor, including *Workers' Compensation* coverage. MGAA will not withhold FICA, taxes, or any similar deductions from MGAA's payments under this Agreement.
5. **Affirmative Action.** Contractor shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Contractor shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable MGAA contracts.
7. **Non-Exclusive Agreement.** This Agreement is for the sole convenience of MGAA. MGAA reserves the right in its discretion to obtain the same or similar goods or services from any other source.
8. **Americans with Disabilities Act.** Contractor shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
9. **Confidentiality of Records.** Contractor shall establish and maintain procedures and controls that are acceptable to MGAA for the purpose of assuring that no information contained in its records or obtained from MGAA or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Agreement. Persons requesting such information should be referred to MGAA. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers



of Contractor as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by MGAA.

10. **Gratuities.** MGAA may, by written notice to the Contractor, cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of MGAA involved in the amending, or the making of any determinations with respect to the performing of such Agreement. If this Agreement is canceled by MGAA under this provision, MGAA shall, in addition to any other rights and remedies, repay to the Contractor the amount of the gratuity.
11. **Applicable Law.** This Agreement shall be governed by the laws of the state of Arizona, and suits pertaining to this Agreement shall be brought only in federal or state courts in the state of Arizona.
12. **Agreement.** This Agreement is based on and the result of a negotiated Scope of Work and Proposal, Bid or Statement of Qualifications submitted by Contractor under an RFP, IFB or RFQ. The Agreement contains the entire agreement between MGAA and Contractor. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
13. **Agreement Amendments.** This Agreement shall be modified only by a written amendment signed by the MGAA Executive Director or his/her designee, and persons duly authorized to enter into contracts on behalf of Contractor.
14. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.
15. **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement, which may remain in effect without the valid provision, or application.
16. **Protection of Government Property.** Contractor shall use reasonable care to avoid damaging all MGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Contractor damages MGAA's property in any way, Contractor shall immediately report such damage to MGAA and repair or replace the damage at no cost to MGAA, as directed by the MGAA Executive Director. If Contractor fails or refuses to repair or replace the damage, then MGAA may terminate the Agreement, and MGAA shall deduct the repair or replacement cost from money due Contractor under the Agreement.
17. **Interpretation – Parol Evidence.** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
18. **Subcontracts.** Contractor shall not assign any rights or interest nor enter into any subcontract with any other party to furnish any of the materials, goods or services specified herein without the prior written permission of MGAA. MGAA may, at its sole discretion, accept or reject proposed subcontractors or assignment. MGAA shall notify Contractor of its acceptance or rejection within forty-five (45) days or written request by Contractor. All subcontracts shall comply with federal and state laws and regulations applicable to the materials, goods or services covered by the subcontract and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. Contractor is responsible for Agreement performance whether subcontractors are used.
19. **No Waiver.** No provision in this Agreement shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of Agreement. The failure of either party to insist on strict performance of any Agreement term or condition; to exercise or delay

exercising any right or remedy provided in the Agreement or by law; or to accept materials, services, or Contractor's services under this Agreement or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Agreement.

20. **Warranties.** Contractor warrants that all materials and services delivered under this Agreement shall conform to the specifications thereof. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by MGAA, shall not alter or affect the obligations of Contractor or the rights of MGAA under the foregoing warranties. Additional warranty requirements may be set forth in this Agreement.
21. **Indemnification.** To the fullest extent permitted by law, Contractor shall defend, save, indemnify, and hold harmless MGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Contractor's acts, errors, omissions, or mistakes relating to Contractor's services under this Agreement.
22. **Right to Assurance.** Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Agreement.
23. **Advertising.** Contractor shall not advertise or publish information concerning this Agreement without prior written consent of MGAA.
24. **Right to Inspect.** MGAA may, at reasonable times, and at MGAA's expense, inspect the place of Contractor's or any of Contractor's subcontractor's business, which is related to the performance of this Agreement or related subcontract.
25. **Force Majeure.** In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Agreement to be performed by such party ("Required Act"), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God ("Force Majeure Event"), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Agreement, the financial inability of Contractor to perform any Required Act, including, without limitation, failure to obtain adequate or other financing shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (a) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (b) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years' climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.
26. **Inspection.** All material or service is subject to final inspection and acceptance by MGAA. Material or service failing to conform to the specifications of this Agreement will be held at Contractor's risk and may be returned to Contractor. If so returned, all costs are the responsibility of Contractor. Noncompliance shall conform to the cancellation clause set forth in this Agreement.
27. **Exclusive Possession.** All services, information, computer program elements, reports, and other deliverables, which may be created under this Agreement, are the sole property of MGAA and shall not be

used or released by Contractor or any other person except with prior written permission by MGAA.

28. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to MGAA until MGAA actually receives the material or service at the Airport, unless otherwise provided within this Agreement.
29. **Liens.** All materials, services, and other deliverables supplied to MGAA under this Agreement must be free of all liens and other encumbrances. Upon request of MGAA, Contractor shall provide a formal release of all liens.
30. **Licenses.** Contractor shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Contractor as applicable to this Agreement.
31. **Subsequent Employment.** MGAA may cancel this Agreement without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement, on behalf of the MGAA is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee of, or a contractor to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to this Agreement receive written notice from MGAA, unless the notice specifies a later time.
32. **Clean Up.** Contractor shall at all times keep Agreement performance areas, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of MGAA. Upon completion of any repair, Contractor shall leave the work and premises in clean, neat, and workmanlike condition.
33. **Patents.** Contractor shall defend, indemnify, and hold harmless MGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by MGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to MGAA by Contractor under this Agreement.
34. **Records and Audit Rights.** Contractor's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of all Contractor and subcontractor employees that work on the Agreement (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by MGAA. MGAA is entitled to evaluate and verify all invoices, payments or claims based on Contractor's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Agreement. For any audit under this Section, Contractor and its subcontractors hereby waive the right to keep such Records confidential. MGAA is entitled to access to these Records from the effective date of this Agreement for the duration of the work and until five years after the date of final payment by MGAA to Contractor under the Agreement. During normal working hours, MGAA is entitled to access to all necessary Contractor and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. MGAA shall give Contractor or subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Agreement.
35. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Contractor and its subcontractors warrant 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). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by MGAA. MGAA shall have the right to inspect the papers of Contractor's and any of Contractor's subcontractor's employee who works on this Agreement to ensure the Contractor is complying with this paragraph.



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

**Re: Resolution 25-41**

**To:** Board of Directors  
**From:** Lori Collins, Business & Economic Development Director  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** Gateway East – Amendment to Lot 210 Development Lease  
**Date:** September 16, 2025

---

### Proposed Motion

To authorize an Amendment to the Development Lease on Lot 210 with Boyer Gateway East Mesa Building 1, L.C., a Utah limited liability company, to adjust the base rent schedule and update the name of the Airport and Airport Authority.

### Narrative

On September 19, 2023, the Mesa Gateway Airport Authority Board of Directors approved a Development Lease with Boyer Gateway East Mesa Building 1, LC (Boyer) for the purpose of constructing a two hundred seventy-eight thousand (278,000) square foot building to house the XNRGY Climate Systems headquarters and manufacturing operation. Due to unforeseen construction delays and related costs, staff is recommending adding an additional six (6) months to the construction period, in which base rent is \$0.00 per square foot. Boyer will begin paying the full amount of base rent of \$0.55 per square foot per year in month thirty-one of the Development Lease.

Additionally, references to “Phoenix-Mesa Gateway Airport” or the “Phoenix-Mesa Gateway Airport Authority” in the Lease are replaced with “Mesa Gateway Airport” and “Mesa Gateway Airport Authority,” respectively.

---

### Attachment(s)

Development Lease Amendment 1



## RESOLUTION NO. 25-41

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize an Amendment to the Development Lease on Lot 210 with Boyer Gateway East Mesa Building 1, L.C., a Utah limited liability company, to adjust the base rent schedule and update the name of the Airport and Airport Authority;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes an Amendment to the Development Lease on Lot 210 with Boyer Gateway East Mesa Building 1, L.C., a Utah limited liability company, to adjust the base rent schedule and update the name of the Airport and Airport Authority. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



Mesa Gateway Airport Authority  
**FIRST AMENDMENT TO LEASE**

This FIRST AMENDMENT TO LEASE (“**Amendment 1**”) is executed to be effective as of the 1<sup>st</sup> day of October, 2025 (“**Amendment 1 Effective Date**”) by and between the MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized and existing under the laws of the State of Arizona, formerly known as Phoenix-Mesa Gateway Airport Authority (“**Lessor**”), and BOYER GATEWAY EAST MESA BUILDING 1, L.C., a Utah limited liability company (“**Lessee**”).

**RECITALS:**

A. Lessor and Lessee are parties to that certain Development Lease dated and effective October 1, 2023, (“**Lease**”), with respect to that certain real property at the Airport located at 9019 East Technology Avenue, Mesa, Arizona 85212, consisting of Seven Hundred Thirty-Eight Thousand Six Hundred and Seventy (738,670) square feet, and described as Lot 210, which real property is more particularly described in the Lease and referred to in the Lease as the “**Premises**.”

B. The Parties desire to enter into this Amendment 1 to reflect the new name of Lessor/Airport and adjust the Base Rent schedule as further set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Amendment 1 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Each capitalized term used in this Amendment 1 and not defined herein shall be deemed to have the same meaning ascribed to it in the Lease.

2. **Name of Lessor/Airport.** All references to the “Phoenix-Mesa Gateway Airport” or the “Phoenix-Mesa Gateway Airport Authority” in the Lease are replaced with “Mesa Gateway Airport” and “Mesa Gateway Airport Authority,” respectively.

3. **Rent.** Section 4.1 is hereby amended by replacing the chart with the following:

<u>Period</u>	<u>Rent PSF Per Year</u>	<u>Monthly Installment</u>	<u>Annual Rent</u>
Effective Date through day immediately prior to the THIRTY-FIRST (31 <sup>st</sup> ) month.	\$0.00	\$0.00	\$0.00
THIRTY-FIRST (31 <sup>st</sup> ) month through day immediately prior to the THIRD (3 <sup>rd</sup> ) anniversary of the Effective Date.	\$0.55	\$33,855.71	\$406,268.50

4. **Declaration.** Exhibit G to the Lease is hereby deleted in its entirety. Section 43.1 of the Lease is hereby deleted in its entirety and replaced with the following:

43.1 **Subordination.** The Premises shall be subject and subordinate to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East dated August 28, 2025 and recorded on September 10, 2025 in the Official Records of Maricopa County, Arizona as Instrument No. 2025-0523001 ("**Declaration**"). Lessee hereby agrees to fulfil and comply with its duties and obligations of a "Lessee" and an "Occupant" as defined under the Declaration with respect to the Premises.

5. **Authority of Lessee.** Lessee warrants and represents to Lessor that: (a) all necessary actions have been taken to authorize the execution of this Amendment 1 by Lessee; (b) the persons who have executed this Amendment 1 on behalf of Lessee are duly authorized to do so; and (c) this Amendment 1 constitutes a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms and the terms of the Agreement.

6. **Full Force and Effect.** In all other respects the Lease shall remain unchanged and in full force and effect. The Lease, as amended by this Amendment 1 shall continue to be binding upon Lessor and Lessee and their permitted successors and assigns.

7. **Headings.** The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Amendment 1 of any term thereof.

8. **Recitals.** All of the Recitals set forth above are incorporated into this Amendment 1 by this reference.

**[Remainder of Page Left Blank; Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have entered into this AMENDMENT 1 as of the date first set forth above.

**FOR LESSOR:**

**MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona, formerly known as Phoenix-Mesa Gateway Airport Authority

By: \_\_\_\_\_  
Name: J. Brian O'Neill, A.A.E.  
Title: Executive Director/CEO

**FOR LESSEE:**

**BOYER GATEWAY EAST MESA BUILDING 1, L.C.**, a Utah limited liability company, by its Manager

By: The Boyer Company, L.C., a Utah limited liability company

By: \_\_\_\_\_  
Name:  
Title:





Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

**Re: Resolution 25-42**

**To:** Board of Directors  
**From:** Lori Collins, Business & Economic Development Director  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** Gateway East – First Amendment to the Master Development Agreement  
**Date:** September 16, 2025

---

### **Proposed Motion**

**To authorize the First Amendment to the Master Development Agreement with Boyer Gateway East L.C., to update the boundaries for the Development Phases of the Project.**

### **Narrative**

The Mesa Gateway Airport Authority (“MGAA”) and Boyer Gateway East, L.C. (Boyer) entered into a Master Development Agreement on June 21, 2022, for approximately 273 acres located on the east side of the airport, south and west of Ellsworth Road and State Route 24. The Master Development Agreement requires Boyer to finance and construct the horizontal improvements within Gateway East, lead the development of Gateway East in accordance with the Master Plan and successfully complete Minimum Development Requirements within specific development phases.

Boyer has worked with MGAA to adjust its infrastructure and roadway plan, causing the boundaries of each development phase to shift slightly. The First Amendment modifies the Agreement to depict that adjustment.

---

### **Attachment(s)**

First Amendment to the Master Development Agreement



## RESOLUTION NO. 25-42

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize the First Amendment to the Master Development Agreement with Boyer Gateway East L.C., to update the boundaries for the Development Phases of the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes the First Amendment to the Master Development Agreement with Boyer Gateway East L.C., to update the boundaries for the Development Phases of the Project. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



## **FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT** (“**Amendment 1**”) is made as of the 1st day of October, 2025 by and between **MESA GATEWAY AIRPORT AUTHORITY**, formerly Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized and existing under the laws of the State of Arizona (“**Authority**”), and **BOYER GATEWAY EAST, L.C.**, a Utah limited liability company (“**Developer**”).

### **RECITALS**

A. Authority and Developer are parties to that certain Master Development Agreement dated June 21, 2022 (“**Agreement**”) covering the Project commonly known as Gateway East at the Mesa Gateway Airport, which Project is more particularly described in the Agreement.

B. The boundaries for the Development Phases of the Project have changed, and the Parties desire to modify the Agreement to adjust the boundaries of Development Phases as set forth herein.

**NOW, THEREFORE**, in exchange for the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Developer agree as follows:

1. Recitals. The above recitals are hereby confirmed as true and correct and are reaffirmed herein.

2. Phasing Exhibits.

2.1. **EXHIBIT B** to the Agreement is deleted in its entirety and the attached **EXHIBIT B** inserted in its place.

2.2. **EXHIBIT B-I, EXHIBIT B-II, and EXHIBIT B-III** to the Agreement are hereby deleted in their entirety.

3. Phasing. Section 2.2.1(a), Section 2.21(b) and Section 2.2.1(c) of the Agreement are hereby amended to read as follows:

(a) Development Phase I: approximately 118 acres of undeveloped land, as depicted in **Exhibit B**.

(b) Development Phase II: approximately 97 acres of undeveloped land, as depicted in **Exhibit B**.

(c) Development Phase III: approximately 84 acres of undeveloped land, as depicted in **Exhibit B**.

4. Miscellaneous.

(a) Capitalized Terms/Definitions. Each capitalized term used in this Amendment 1 and not defined herein shall be deemed to have the same meaning ascribed to it in the Agreement.

(b) Continuing Effect. Except as specifically provided in this Amendment 1, the provisions of the Agreement shall remain unchanged and in full force and effect. In the event of a conflict between the Agreement and this Amendment 1, this Amendment 1 shall control.

(c) Authority. Each person executing this Amendment 1 on behalf of a Party represents and warrants that it has the full power, authority, and legal right to execute and deliver this Amendment 1 on behalf of such Party and that this Amendment 1 constitutes the legal, valid and binding obligations of such Party, its heirs, representatives, successors and assigns, enforceable against such Party or Parties in accordance with its terms.

(d) Counterparts. To facilitate execution of this Amendment 1, this Amendment 1 may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Amendment 1 delivered electronically by e-mail shall have the effect of an original, executed instrument. All counterparts of this Amendment 1 shall collectively constitute a single instrument; but, in making proof of this Amendment 1 it shall not be necessary to produce or account for more than one such counterpart executed by each Party hereto. It shall not be necessary for the signature of, or on behalf of, each Party hereto, or that the signature of all persons required to bind any such Party appear on each counterpart of this Amendment 1.

**[Remainder of Page Left Intentionally Blank; Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have executed this Amendment 1 as of the day and year first above written.

**AUTHORITY:**

**MESA GATEWAY AIRPORT AUTHORITY**,  
formerly Phoenix-Mesa Gateway Airport Authority, an  
Arizona joint powers airport authority

By: \_\_\_\_\_

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

**DEVELOPER:**

**BOYER GATEWAY EAST, L.C.**, a Utah limited  
liability company

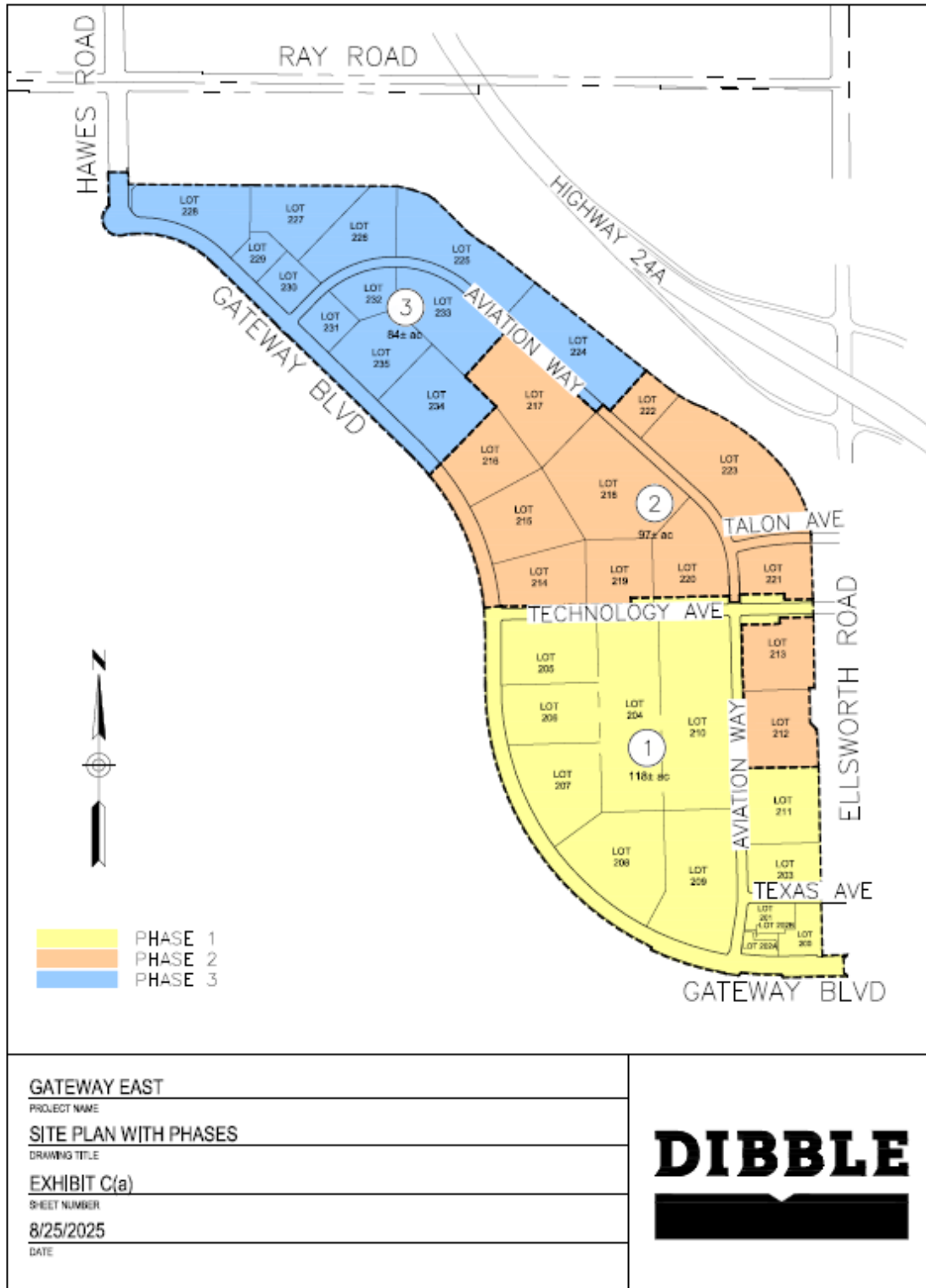
By: The Boyer Company, L.C., a Utah limited liability  
company, its Manager

By: \_\_\_\_\_  
Brian Gochnour, Manager

**[Remainder of Page Left Intentionally Blank; Exhibit Follows]**

## EXHIBIT B

### Depiction of Development Phases





Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Board Action Item

Re: Resolution 25-43

**To:** Board of Directors  
**From:** Lori Collins, Business & Economic Development Director  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Subject:** Gateway East Mesa Hotel 1, L.C. Lot 201 Development Lease and Second Amendment to the Master Lease with Boyer Gateway East L.C.  
**Date:** September 16, 2025

---

### Proposed Motion

To authorize a Development Lease with Boyer Gateway East Mesa Hotel 1, L.C., a Utah limited liability company, for 1.725 acres (75,138 square feet) located within the Gateway East project and identified as Lot 201. The lease term is SIXTY-FIVE (65) years commencing on October 1<sup>st</sup>, 2025. To authorize a Second Amendment to the Master Lease with Boyer Gateway East L.C., to concurrently remove Lot 201 from the Master Lease Agreement and update the Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East.

### Narrative

The Mesa Gateway Airport Authority ("MGAA") and Boyer Gateway East, L.C. (Boyer) entered into a Master Lease Agreement on June 21, 2022, for approximately 273 acres located on the east side of the airport, south and west of Ellsworth Road and State Route 24. The Master Lease Agreement transferred leasehold control of the Property to Boyer, but it did not convey vertical development rights. As part of the Master Lease, MGAA and Boyer agreed to "spin out" property from the Master Lease into Development Leases as projects become ready for vertical development.

Boyer will sublease Lot 201 to a hospitality development and management company who will construct a 78,937-square-foot, 127-room SpringHill Suites by Marriott. The hotel will include meeting and restaurant space along with a pool and patio area. Lot 201 is 1.725-acres (75,138 square feet) and has been identified as a non-aeronautical parcel. A reciprocal easement for the purpose of pedestrian and vehicular access, ingress, and egress and vehicular parking has also being granted. The proposed development is compliant with the Gateway East Master Plan, City of Mesa Planned Area Development (PAD) zoning and the Gateway East Design Guidelines.

### Agreement Term and Rate

The Lot 201 Development Lease proposes a lease term of SIXTY-FIVE (65) years. The base rent for Lot 201 will be \$0.00 annually through the end of the second (2<sup>nd</sup>) lease year and \$41,207.76 annually beginning on the third (3<sup>rd</sup>) anniversary of the effective date.



*Page 2 of 2: BAI - Gateway East Mesa Hotel 1, L.C. Lot 201 Development Lease and Second Amendment to the Master Lease with Boyer Gateway East L.C.*

Boyer Gateway East Mesa Hotel 1, L.C (Lot 201) Development Lease

Master Lease Amendment #2

Declaration of Reciprocal Access and Parking Easements

Declaration of Covenants, Conditions, Restrictions and Easements



## RESOLUTION NO. 25-43

WHEREAS, the Mesa Gateway Airport Authority (“Authority”), a joint powers airport authority formed pursuant to Arizona Revised Statute §28-8521 *et seq.* owns and operates the Mesa Gateway Airport (“Airport”); and

WHEREAS the Authority desires to authorize a Development Lease with Boyer Gateway East Mesa Hotel 1, L.C., a Utah limited liability company, for 1.725 acres (75,138 square feet) located within the Gateway East project and identified as Lot 201. The lease term is SIXTY-FIVE (65) years commencing on October 1<sup>st</sup>, 2025. To authorize a Second Amendment to the Master Lease with Boyer Gateway East L.C., to concurrently remove Lot 201 from the Master Lease Agreement and update the Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

**The Board of Directors of the Authority hereby authorizes a Development Lease with Boyer Gateway East Mesa Hotel 1, L.C., a Utah limited liability company, for 1.725 acres (75,138 square feet) located within the Gateway East project and identified as Lot 201. The lease term is SIXTY-FIVE (65) years commencing on October 1<sup>st</sup>, 2025. To authorize a Second Amendment to the Master Lease with Boyer Gateway East L.C., to concurrently remove Lot 201 from the Master Lease Agreement and update the Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East. This resolution also authorizes the Chair or Executive Director/CEO to make such additions, deletions, and changes as may be approved by the Chair or Executive Director/CEO, necessary to carry out the purposes and intent of this Resolution.**

Passed and adopted by the Authority this 16<sup>th</sup> day of September, 2025.

---

Mark Freeman, Vice Chair

ATTEST:

APPROVED AS TO FORM:

---

Misty Johnson, Clerk of the Board

---

Jill Casson Owen, Attorney



*Mesa Gateway Airport Authority*

DEVELOPMENT LEASE

*with*

**BOYER GATEWAY EAST MESA HOTEL 1, L.C.**

Effective Date: October 1, 2025

**TABLE OF CONTENTS**

<u>Section No.</u>	<u>Title</u>	<u>Page</u>
1.	LEASE .....	1
2.	TERM. ....	2
3.	NONEXCLUSIVE RIGHTS. ....	2
4.	RENT. ....	3
5.	PERFORMANCE GUARANTEE.....	6
6.	INTENTIONALLY DELETED .....	8
7.	IMPROVEMENTS.....	8
8.	MAINTENANCE. ....	12
9.	ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS. ....	12
10.	IDENTIFICATION SIGNS. ....	14
11.	DEFAULT; TERMINATION BY LESSOR. ....	14
12.	INTENTIONALLY DELETED. ....	16
13.	INDEMNIFICATION.....	16
14.	ENVIRONMENTAL PROTECTION. ....	17
15.	PROTECTION OF WETLANDS.....	22
16.	INSURANCE. ....	22
17.	SURRENDER OF POSSESSION. ....	23
18.	INSPECTION BY LESSOR. ....	24
19.	NOTICES. ....	24
20.	SEVERABILITY.....	25
21.	APPROVALS, CONSENTS AND NOTICES. ....	25
22.	LIENS AND MORTGAGES.....	25
23.	GOVERNING LAW; ATTORNEY’S FEES.....	27
24.	COMPLIANCE WITH LAWS, RULES AND REGULATIONS .....	27
25.	CORPORATE AUTHORIZATION .....	28
26.	UTILITY LINES AND SERVICE CHARGES. ....	28
27.	RESERVATIONS TO LESSOR. ....	28
28.	FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS. ....	29
29.	TITLE VI. ....	30
30.	FEDERAL FAIR LABOR STANDARDS ACT.....	33
31.	OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 .....	33
32.	INCORPORATION OF QUITCLAIM DEED.....	33
33.	REQUIRED PROVISIONS OF QUITCLAIM DEED.....	33

34. INTENTIONALLY DELETED .....	34
35. DEFAULT BY LESSOR. ....	34
36. BROKERS .....	34
37. SALE BY LESSOR. ....	34
38. ESTOPPEL CERTIFICATE.....	34
39. UNAVOIDABLE DELAY .....	35
40. ADDITIONAL PAYMENTS.....	35
41. MISCELLANEOUS.....	37
42. INCORPORATION OF RECITALS. ....	37
43. DECLARATIONS. ....	38
44. 49 CFR PART 23.....	38
<b>EXHIBIT A</b> Legal Description and Depiction of the Premises.....	A-1
<b>EXHIBIT B</b> Airport Rates & Charges Schedule and Airport Fees, Services and Rental Rates Schedule.....	B-1
<b>EXHIBIT C</b> Permitted Exceptions.....	C-1
<b>EXHIBIT D</b> Depiction of Proposed Improvements.....	D-1
<b>EXHIBIT E</b> Memorandum of Lease.....	E-1
<b>EXHIBIT F</b> Prohibited Uses.....	F-1



*Mesa Gateway Airport Authority*  
**DEVELOPMENT LEASE**

This Development Lease (the “**Lease**”) is executed to be effective the FIRST (1<sup>ST</sup>) day of October, 2025 (the “**Effective Date**”) between the **MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona (“**Lessor**”), and **BOYER GATEWAY EAST MESA HOTEL 1, L.C.**, a Utah limited liability company authorized to do business in the State of Arizona (“**Lessee**”). Lessor and Lessee may be referred to jointly as “**Parties**,” and each separately may be referred to as a “**Party**.”

**WITNESSETH:**

A. Lessor is the owner and operator 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**”); and

B. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, that certain real property at the Airport located at the southeast corner of Aviation Way and Texas Avenue consisting of 74,923.2 square feet, and described as Lot 201, as set forth in **EXHIBIT A** attached hereto (the “**Premises**”) on the terms and conditions set forth herein; and

C. The Premises is identified in the Master Plan and the Airport Layout Plan as a Non-Aeronautical Development Parcel;

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties do hereby undertake, promise and agree, each for itself and its successors and assigns, as follows:

**1. LEASE.**

Lessor hereby leases the Premises to Lessee, subject to the matters set forth on **EXHIBIT C**, (the “**Permitted Exceptions**”), and further subject to all operational and use restrictions and other terms and conditions set forth in this Lease. Subject to the terms and conditions of this Lease, Lessee shall have the right to access and use the Premises 24 hours per day, 7 days per week.

1.1 Right to Use Premises. Lessor agrees that so long as no Event of Default shall have occurred and is continuing, Lessee shall peaceably have and enjoy the use of the Premises without hindrance from Lessor and those claiming through Lessor. Lessee specifically acknowledges that Lessee has inspected the Premises prior to entering into this Lease and agrees to accept the Premises in an “as is, where is” condition without any warranty or representation from Lessor, either express or implied, of any kind or nature whatsoever with respect to the Premises, including, but not limited to, any warranty of merchantability, habitability, or fitness for any particular or specific purpose, and all such warranties are hereby disclaimed, except for representations and warranties contained in this Lease. Should Lessee desire any inspection report, environmental assessment, survey, creation of a legal description, drainage report, or any similar study, Lessee shall be responsible for the same at Lessee’s sole expense. Lessor agrees to cooperate with Lessee, at no or nominal cost to Lessor, in connection with such activities and undertakings.

1.2 Reserved.

1.3 Access. Lessee is granted the right of reasonable access to and from the Premises via such portions of the Airport as are or may be necessary to allow Lessee to conduct its business operations permitted herein at and on the Premises and the Airport. Lessor reserves the right to designate the location of such access and to change its location from time to time, as Lessor deems reasonably necessary and appropriate; provided such changes do not materially interfere with Lessee's use of or access to the Premises.

1.4 Permitted Uses. Subject to the provisions of SECTION 1.5, Lessee may use the Premises for the development, construction and operation of a hotel, including, without limitation, for a Springhill Suites Hotel, and other uses related thereto to the extent approved by Lessor, and for no other use. Lessee shall not use any portion of the Premises for a Prohibited Use, which Prohibited Uses are set forth on **EXHIBIT F**. Lessee's use of the Premises and operation of its business at and on the Airport and the Premises is subject to all applicable laws, rules and regulations of any governmental authority, including Lessor. Notwithstanding the foregoing, or anything to the contrary contained herein, Lessee shall be permitted to serve retail products, including food and beverages for on-premises consumption, typical of other Springhill Suite Hotels or similar hotel establishments in the immediate geographical area.

1.5 Prohibited Activities. Lessee shall not use or permit its agents, employees, contractors, invitees, licensees or customers to use the Premises or the Airport for any use that is in violation of the Permitted Exceptions or applicable laws, rules, regulations and operating policies of any governmental authority, including Lessor, or for any other activity or operation not specified in SECTION 1.4 herein, or that does not have advance, written approval of Lessor's Executive Director.

1.6 On-Site Manager. Upon commencement of business operations at and on the Premises and the Airport, Lessee shall designate a manager for the Term (as defined below) who shall be available to Lessor and Lessee's or Lessee's subtenant's customers, if any, during normal business hours.

1.7 Lessee Acknowledgement. Lessee acknowledges and agrees that its obligations to pay Base Rent and all other charges due and owing under the terms hereof shall be absolute and unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor or the United States of America or anyone else for any reason whatsoever; (ii) the Permitted Exceptions; (iii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease or any lack of right, power or authority of Lessor or Lessee to enter into this Lease; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee, or any other person; or (v) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties hereto that all rent being payable by Lessee hereunder shall continue to be payable in all events and in the manner and at the times provided herein.

## **2. TERM.**

The initial term of this Lease shall be for a period of SIXTY-FIVE (65) years, commencing on the Effective Date and terminating on September 30, 2090 thereafter (the "**Term**").

## **3. NONEXCLUSIVE RIGHTS.**

Lessee shall have the exclusive right to occupy and use the Premises while in compliance with the terms and conditions of this Lease, subject to SECTION 27 below. All other rights granted to Lessee under this Lease with respect to the Airport, not including the Premises, are nonexclusive. Lessor may, in its sole discretion and at any time, permit third parties to conduct any and all business activities at the Airport (but not the Premises except as set forth in SECTIONS 26.1.3 and 27 below) that Lessor deems appropriate, or conduct such activities itself, provided that such activities do not require or materially interfere with Lessee's use of the Premises.



#### 4. RENT.

4.1 Base Rent. Subject to SECTIONS 4.3 and 4.4 herein, Lessee agrees to pay Lessor rent for the use of the Premises (the “**Base Rent**”) as follows:

<u>Period</u>	<u>Rent PSF Per Year</u>	<u>Monthly Installment</u>	<u>Annual Rent</u>
Effective Date through day immediately prior to the to the SECOND (2 <sup>nd</sup> ) anniversary of the Effective Date	\$0.00	\$0.00	\$0.00
SECOND (2 <sup>nd</sup> ) anniversary of the Effective Date through day immediately prior to THIRD (3 <sup>rd</sup> ) anniversary of the Effective Date	\$0.55	\$3,433.98	\$41,207.76

The Base Rent shall be payable in advance, without any prior demand therefor and without any abatement, deductions or set-offs whatsoever, and tendered in lawful currency of the United States, either by check or electronic transfer.

#### 4.2 Reserved.

4.3 Annual Increases. Starting on the THIRD (3<sup>rd</sup>) anniversary of the Effective Date and every anniversary of the Effective Date thereafter other than on an anniversary where the annual Base Rent will be adjusted pursuant to SECTION 4.4, the annual Base Rent paid by Lessee shall be increased by TWO AND ONE-HALF PERCENT (2.5%).

#### 4.4 Market Adjustments to Base Rent.

4.4.1 In addition to the annual increases provided for in SECTION 4.3, on (a) the FIFTEENTH (15<sup>th</sup>) anniversary of the Effective Date of this Lease, and (b) each subsequent FIFTEEN (15) year anniversary of the date set forth in preceding subsection (a), the annual Base Rent shall be increased (but never decreased) (the “**Adjustment Date(s)**”) as hereinafter set forth in this SECTION. On each such Adjustment Date, the Base Rent shall be adjusted to the Fair Market Base Rent of the Premises. For purposes hereof, “**Fair Market Base Rent**” shall mean the amount that a willing, comparable, non-equity lessee would pay, and a willing, comparable landlord of in the same market as the Premises would accept, for comparable (in quality, size, and value) airport-related leasehold interest in vacant land, and specifically excluding any improvements constructed or caused to be constructed by Lessee and/or its affiliates to the Premises or the Airport and any lease or sublease for such improvements. No single adjustment to the annual Base Rent pursuant to this SECTION 4.4 shall increase the annual Base Rent by more than TEN PERCENT (10%) from the annual Base Rent in effect immediately prior to the increase pursuant to this SECTION 4.4.

4.4.2 Lessor’s determination of such Fair Market Base Rent for the Premises shall be delivered to Lessee no later than NINETY (90) calendar days prior to the Adjustment Date along with any and all substantiated information used by Lessor in connection with such determination. If Lessee

disputes Lessor's determination of such Fair Market Base Rent, Lessee shall deliver written notice of such dispute, together with Lessee's determination of such Fair Market Base Rent, to Lessor within THIRTY (30) calendar days of Lessee's receipt of Lessor's determination. The Parties shall then attempt in good faith to agree upon such Fair Market Base Rent. If the Parties fail to agree within FIFTEEN (15) business days, they shall, within SEVEN (7) calendar days thereafter, mutually appoint an appraiser to determine the Fair Market Base Rent. Said appraiser shall have at least FIVE (5) years of full-time commercial appraisal experience and be a member of the Appraisal Institute or comparable professional organization. Within SEVEN (7) calendar days of the appointment of the appraiser, the Parties shall submit to the appraiser, with a copy to the other Party, their respective determinations of the Fair Market Base Rent and any/all substantiated information. Within TWENTY (20) business days thereafter, the appraiser shall review each Party's submittal and shall select one Party's submittal as representing the most reasonable approximation of such Fair Market Base Rent. The appraiser shall promptly notify the Parties of their decision, which shall be final and binding upon Lessor and Lessee. The appraiser's fees and expenses shall be paid by the Party whose submittal was not selected.

4.4.3 If the Parties are unable to agree upon an appraiser pursuant to SECTION 4.4.2 within such SEVEN (7) calendar days, then within THREE (3) business days after expiration of the 7-day period, Lessor and Lessee shall each (a) appoint an appraiser with the above qualifications, and (b) give notice to the other identifying that party's appraiser. If a Party fails to timely appoint an appraiser, the other Party's appraiser shall determine the Fair Market Base Rent in accordance with this SECTION 4.4.3. Not later than SEVEN (7) calendar days after both appraisers have been appointed, Lessor and Lessee shall each submit to each appraiser, with a copy to the other Party, their respective determinations of the Fair Market Base Rent and any/all substantiated information. Within TWENTY-ONE (21) days after receipt of both Parties' proposals, the appraisers shall review the submissions and shall select one Party's submittal as representing the most reasonable approximation of such Fair Market Base Rent. The appraisers shall promptly notify the Parties of their decision, which shall be final and binding upon Lessor and Lessee. Each Party shall be responsible for the fees and expenses of their own selected appraiser.

4.4.4 If the appraisers selected pursuant to SECTION 4.4.3 do not agree as to which Party's proposal is closest to the actual Fair Market Base Rent, then not later than TEN (10) business days after the appraisers have notified the Parties of this fact, unless both Lessor and Lessee direct otherwise, the appraisers shall jointly select an arbitrator who shall determine which proposal is the closest to the actual Fair Market Base Rent. The arbitrator must have the same qualifications stated for an appraiser under SUBSECTION 4.4.2 above. The arbitrator shall conduct an arbitration under the provisions of the commercial arbitration rules of the American Arbitration Association. The arbitrator shall decide only which Fair Market Base Rent submission is closest to the actual Fair Market Rent for the Premises. The arbitrator's decision shall be binding on all parties and shall apply retroactively as of the Adjustment Date. The arbitrator shall make a final decision within THIRTY (30) days of the arbitrator's appointment.

4.5 Airport Rates and Charges Schedule. Lessee or its subtenants, as applicable and including its contractors, agents, etc., shall pay all fees identified in the most current *Airport Rates and Charges Schedule* and/or *Airport Fees, Services and Rental Rates Schedule* at the time of receipt of any covered service or use of any covered facilities, unless specifically outlined in this Lease. The current *Airport Rates and Charges Schedule* and *Airport Fees, Services and Rental Rates Schedule* are included as **EXHIBIT B** and are subject to change without prior notice to or approval of Lessee. Lessee acknowledges and agrees that Lessor may amend the *Airport Rates and Charges Schedule* and/or *Airport Fees, Services and Rental Rates Schedule* at any time at Lessor's sole discretion. No fee shall apply to the use of the Premises or access to the Premises.

#### 4.6 Payment.

4.6.1 Unless otherwise specified herein, the first payment of Base Rent shall be paid to Lessor upon the delivery of this Lease, for the period from the Effective Date until the end of the calendar month in which the Effective Date occurs, prorated on the basis of the number of such days to the total number of days in said month. Thereafter, all Base Rent payments shall be paid in monthly installments, in advance, on the first day of each calendar month. On each such date, Lessee shall pay the full Base Rent payment.

4.6.2 No payment to or receipt by Lessor of a lesser amount than that which is due and payable under the provisions of this Lease at the time of such payment shall be deemed to be other than a payment on account of the earliest payment due, nor shall any endorsement or statement on any check or payment prejudice in any way Lessor's right to recover the balance of such payment or pursue any other remedy provided in this Lease or by law.

4.6.3 All payments required by this SECTION 4.6 shall be remitted to the following address by the due date(s) specified hereinabove:

Mesa Gateway Airport Authority  
Attn.: Department of Finance (Accounts Receivable)  
5835 S. Sossaman Road  
Mesa, Arizona 85212-6014

or such other address specified in writing by Lessor to Lessee.

4.7 Finance Charges and Late Fees. If Lessee fails to pay any installment of Base Rent or any other charge due and owing to Lessor in full on or before the applicable due date, Lessee shall be responsible for interest on the unpaid installment at the rate of EIGHTEEN PERCENT (18%) per annum (but not to exceed the maximum interest rate permissible by law), from the due date until payment in full is made. In addition, in the event any installment of Base Rent or other charge owing to Lessor is paid more than TEN (10) days after the due date, a late penalty of TEN PERCENT (10%) of the amount of such delinquent Base Rent installment or other charge shall be due and payable in addition thereto.

4.8 Taxes. Lessee shall pay, prior to delinquency, any leasehold tax, sales tax, personal property tax, transaction privilege tax, license or permit fee, or any other tax or assessment imposed during the Term against the Premises or as the result of Lessee's occupancy of Premises or conduct of any activity at the Premises under the authority of this Lease, including any such tax assessable on Lessor. Lessee shall pay such taxes and assessments directly to the taxing authority charged with collecting such taxes and assessments, provided that in the event that laws or judicial decisions result in the imposition of a real property tax or any other form of tax or imposition on the interest of Lessor and to the extent such taxes are reasonably attributable to the Premises or a portion thereof or the operation of Lessee's business thereon, Lessee shall pay such amounts to Lessor in the manner set forth in SECTION 4.6. Such taxes to be paid directly to Lessor include, without limitation, payment of all rent taxes, i.e., taxes imposed specifically on the gross receipts in the form of rent received by Lessor.

4.9 Survival. Lessee's obligation to pay all amounts stated herein, together with any interest thereon and/or penalties therefor, shall survive the termination of this Lease.

## 5. PERFORMANCE GUARANTEE.

### 5.1 Security Deposit.

5.1.1 On or before the Effective Date, Lessee shall pay to Lessor an amount equivalent to the first monthly installment of Base Rent due after the second (2<sup>nd</sup>) anniversary of the Effective Date THREE THOUSAND FOUR HUNDRED THIRTY-THREE and 98/100 DOLLARS (\$3,433.98), as a security deposit (the “**Security Deposit**”) to insure the faithful performance of all of Lessee’s obligations hereunder.

5.1.2 The Security Deposit, at the election of Lessor, may be applied in reduction of any loss and/or damage sustained by Lessor by reason of the occurrence of any breach, nonperformance or default by Lessee under this Lease without the waiver of any other right or remedy available to Lessor at law, in equity or under the terms of this Lease. If any portion of the Security Deposit is so used or applied, Lessee shall, within FIVE (5) business days after written notice from Lessor, deposit with Lessor immediately available funds in an amount sufficient to restore the Security Deposit to its original amount. In the event of a sale or other transfer of the Premises by Lessor, Lessor shall transfer the remaining balance (if any) of the Security Deposit to Lessor’s successor in interest, whereupon the transferor Lessor shall be released from liability to Lessee for the return of such Security Deposit. Unless this Lease is terminated as a result of Lessee’s default whereupon Lessee shall immediately forfeit its Security Deposit to Lessor, upon termination, Lessor shall return to Lessee all portions of the Security Deposit which were not otherwise applied by Lessor as permitted above. Lessor shall have no obligation to maintain a separate account for such Security Deposit and shall have no obligation to pay interest thereon.

Following the timely payment when due by Lessee of THIRTY-SIX (36) consecutive monthly installments of Base Rent due after the SECOND (2<sup>nd</sup>) anniversary of the Effective Date, Lessor shall return the Security Deposit to Lessee and the terms of this SECTION 5.1 shall thereafter be null and void; provided that, except as otherwise set forth in SECTION 22 with respect to an Enforcement Action (as defined in SECTION 22.11 below), upon any assignment of this Lease to a third party, such assignee shall be required to deposit the Security Deposit with Lessor in accordance with, and subject to, this SECTION 5.1, including, without limitation, the return of such Security Deposit to Lessee upon the timely payment when due of THIRTY-SIX (36) consecutive monthly installments of Base Rent by such assignee.

### 5.2 Construction Payment and Performance Guarantees.

5.2.1 Payment Guarantee. Notwithstanding and in addition to the Security Deposit, Lessee shall protect claimants supplying labor and materials in connection with any construction on the Premises, by providing, at Lessee’s sole cost and expense and prior to commencement of construction of any improvements on the Premises, one of the following instruments, chosen at Lessee’s discretion:

(a) Payment Bond. Lessee shall provide a labor and materials payment bond in the full contract amount to protect claimants supplying labor and materials in connection with the construction. The bond shall comply in all respects with the requirements of A.R.S. § 33-1003 as it may be amended or renumbered from time to time. The Parties agree that Lessee is not a public body, and the improvements to be constructed under this Lease by Lessee at Lessee’s sole cost are not public buildings, public works or public improvements. The bond shall be issued by a surety company reasonably acceptable to Lessor and duly licensed for such undertaking in the state of Arizona and shall be accompanied by a power of attorney disclosing the authority of the person executing it on behalf of the surety. The bond and a copy of the contract shall be recorded in the office of the Maricopa County Recorder as required under A.R.S. § 33-1003, and a copy of the bond shall be provided to Lessor; or

(b) Letter of Credit. A letter of credit ("**Letter of Credit**") shall be irrevocable, in an amount equal to the total amount of the construction contract(s) for the construction of the Improvements (as defined in SECTION 7 below) plus TEN PERCENT (10%) of such amount and be issued to Lessee by a financial institution ("**Bank**") reasonably acceptable to Lessor. The Letter of Credit shall have a term extending from the date of commencement of construction until the date which is TWENTY-FOUR (24) months thereafter, after which date it shall be renewed on a year-to-year basis until the earlier of (a) construction of the Improvements are completed, and final and unconditional lien waivers have been obtained from all contractors supplying labor and materials in connection with the construction, or (b) six (6) months after the issuance of a Certificate of Occupancy for the Improvements (as defined below). Should Lessee utilize the Letter of Credit option hereunder, and should Lessee fail to pay any sum owing to contractors supplying labor and materials in connection with the construction then, in addition to any other remedies set forth in this Lease, Lessor shall be entitled to apply to the Bank, following a period of THIRTY (30) calendar days prior written notice to Lessee (which notice shall include a reasonably-detailed description of Lessee's failure to pay any sum owing), for release to Lessor (in accordance with the terms of the Letter of Credit) from the Letter of Credit of a dollar amount sufficient to pay amounts owing to contractors supplying labor and materials in connection with the construction and obtain final, unconditional lien waivers in connection therewith. Lessor's application shall contain evidence of the failure of payment and the estimated dollar amount needed to satisfy payment obligations. The terms of the Letter of Credit shall require prompt payment to Lessor for the amount set forth in Lessor's application upon satisfaction of the conditions set forth in the Letter of Credit. Upon and following any partial payment to Lessor, the Letter of Credit shall remain in full force for the remaining undisbursed amount of the Letter of Credit to accommodate further applications, if any, and shall not be subject to cancellation or revocation until fully drawn or otherwise released or satisfied upon completion of construction of the Improvements and final, unconditional lien waivers have been obtained from all contractors supplying labor and materials in connection with the construction. Lessor must approve the form and content of any Letter of Credit in writing, which approval shall not be unreasonably withheld, conditioned, or delayed.

(c) Parent Guaranty. A payment guaranty from The Boyer Company, L.C., a Utah limited liability company ("**Guarantor**"), in favor of Lessor guarantying the prompt and complete payment of all amounts due in connection with the construction of the Improvements in form and substance reasonably satisfactory to Lessor, which payment guaranty shall provide that Guarantor shall maintain, during the construction of the Improvements, a minimum net worth of at least \$100,000,000 and liquidity of not less than \$10,000,000.

5.2.2 Performance Guarantee. Lessee's obligation to timely complete the Improvements shall be secured, at Lessee's sole cost and expense and prior to commencement of construction of said Improvements, by any one of the following instruments, chosen at Lessee's discretion:

(a) Performance Bond. Lessee shall require the contractor to provide a performance bond in the full contract amount conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions thereof. The bond shall be in a form reasonably acceptable to Lessor; shall be issued by a surety company reasonably acceptable to Lessor and duly licensed for such undertaking in the state of Arizona; and shall be accompanied by a power of attorney disclosing the authority of the person executing it on behalf of the surety; or

(b) Completion Bond. Lessee shall deliver to Lessor a completion bond in form and substance reasonably acceptable to Lessor pursuant to which Lessor shall have the unconditional, direct and unilateral right to draw upon or use such bond for completion of construction of the Improvements under SECTION 7.1 of this Lease if an Event of Default occurs and is continuing under SECTION 7.2 of this Lease. The bond shall be in a form reasonably acceptable to Lessor; shall be issued by a surety company reasonably acceptable to Lessor and duly licensed for such undertaking in the state of Arizona; and shall be accompanied by a power of attorney disclosing the authority of the person executing it on behalf of the surety.

(c) Parent Guaranty. A completion guaranty from Guarantor in favor of Lessor guarantying the timely completion of the Improvements in form and substance reasonably satisfactory to Lessor, which guaranty shall provide that Guarantor shall maintain, during the construction of the Improvements, a minimum net worth of at least \$100,000,000 and liquidity of not less than \$10,000,000.

## 6. INTENTIONALLY DELETED

## 7. IMPROVEMENTS.

7.1 Construction by Lessee. Lessee shall, at its sole cost and expense, construct improvements on the Premises that generally shall consist of a five (5)-story, approximately 127-room, approximately 78,937 square foot hotel and related improvements and amenities with a total planned improvements cost of approximately \$27,500,000 as generally depicted in **EXHIBIT D** (the “**Improvements**”) and in accordance in all material respects with a site plan approved by Lessor’s Design Review Committee, such approval not to be unreasonably withheld or delayed, and in compliance with all applicable governmental regulations, restrictions and building codes and any declaration of covenants, conditions, restrictions and easements of record affecting the Premises (including, without limitation, the Gateway East Declaration and the Parking Declaration as defined in SECTION 43 hereof) and any design guidelines that are applicable to the Premises. Lessor and Lessee agree that Lessee shall be solely responsible for: (i) any required connection(s) between the Premises and the terminating point of the existing vehicular access way to the Premises, as reasonably required by Lessor; (ii) constructing all Improvements necessary to bring all utilities onto the Premises, including, without limitation, electrical, gas, water, sewer, cable and telephone utilities; and (iii) installing all utility meters and water and sewer lines to service all Improvements constructed on the Premises.

7.2 Construction Milestones; Termination. Lessee shall construct its Improvements pursuant to the following schedule (each of which events are herein called a “**Construction Milestone**”):

7.2.1 Lessee shall submit its Improvement design plans to Lessor for review and approval no later than THREE (3) months from the Effective Date. Lessor shall promptly, and in all events within TWENTY-ONE (21) calendar days, notify Lessee in writing if Lessor believes such plans (or any revised plans submitted by Lessee) would cause the Improvements to fail to comply with the Master Plan. Any such notice shall specify in reasonable detail the items Lessor believes do not comply with the Master Plan and the changes, which if made, would cause the Improvements to comply with the Master Plan. Thereafter the Parties will negotiate in good faith to resolve any concerns raised by Lessor. If Lessor fails to timely provide any objections to such plans, such plans shall be deemed to be approved by Lessor.

7.2.2 Lessee shall submit its Improvement construction plans to the City of Mesa for a construction permit no later than NINETY (90) calendar days from the date Lessor approved or is deemed to have approved Lessee’s Improvement design plans and shall thereafter diligently pursue;

7.2.3 Reserved.

7.2.4 Lessee shall diligently prosecute construction of all Improvements and shall complete, or cause to be completed, construction of all Improvements to be constructed by Lessee at and on the Premises and shall obtain a certificate of occupancy (a “**CofO**”) (or its equivalent) from the City of Mesa therefor, no later than THIRTY (30) months from the date the City of Mesa issues a building permit for the Improvements and all government approvals required for such, including any approvals required from the FAA (the “**Outside Completion Date**”). If Lessee is unable to meet a Construction Milestone due to Unavoidable Delay (as set forth and defined in SECTION 39), then the Outside Completion Date shall be extended by ONE (1) day for each day of such Unavoidable Delay impacting the Construction Milestone.

7.2.5 If Lessee fails to obtain a temporary or final CofO by the Outside Completion Date, Lessee shall pay to Lessor an amount equal to FIVE HUNDRED DOLLARS (\$500.00) for each day that Lessee is late obtaining a temporary or final CofO (a “**Late Completion Fee**”), which payment by Lessee shall be in addition to any Base Rent due from Lessee hereunder. Lessee shall pay Lessor all Late Completion Fees to Lessor on the FIRST (1<sup>st</sup>) day of the month following the date on which such Late Completion Fees first accrues, until such time as all Late Completion Fees are paid in full. If Lessee fails to obtain a temporary or final CofO within ONE (1) year after the Outside Completion Date, Lessee shall have no further obligation to pay a Late Completion Fee for any days following such one-year period and Lessor can pursue its other remedies available under this Lease.

7.2.6 If Lessee fails to commence construction within SIXTY (60) calendar days after the issuance of all necessary construction permits and receipt of all approvals required for such, including any approvals required from the FAA, but subject to any applicable notice and cure periods provided for in SECTION 11, Lessor shall have the right to terminate this Lease by written notice to Lessee delivered at any time prior to commencement of construction. For purposes of this section “**commencement of construction**” shall be the date on which Lessee has obtained its permits, has executed a contract for construction of the Improvements and engaged in material work, such as grading and pouring of footings and slabs.

7.3 No Alterations. Except as otherwise permitted in this SECTION 7.3, Lessee shall make no material improvements or alterations to the exterior of any building on the Premises during the Term of this Lease without the prior written permission of Lessor, which shall not be unreasonably withheld or delayed and, if and to the extent applicable, without the approval by Lessor’s Design Review Committee. Lessee shall provide Lessor with electronic as-built drawings (or their equivalent) when any improvement or alteration is completed for which such drawings are reasonably required. Notwithstanding the foregoing, Lessee may make any modification or alterations and improvements to the Premises that do not affect the exterior of the Premises or the mechanical systems or structural components thereof (e.g., changes that require plans from a civil or structural engineer) without the prior consent of Lessor, so long as such modifications or alterations are consistent with the permitted use.

7.4 Title to Alterations and Improvements. Title to all improvements and alterations on the Premises that are owned by Lessee (but not personal property or trade fixtures) shall automatically vest in Lessor upon the expiration or termination of this Lease, and Lessee agrees to execute and deliver to Lessor, within EIGHT (8) business days after Lessor’s request therefor, a quitclaim deed or other instrument satisfactory to Lessor and Lessee confirming that title to such improvements and alterations is vested in Lessor. This SECTION 7.4 shall survive the termination of this Lease.

7.5 Mechanics’ Liens. Lessee shall keep the Premises and all improvements thereon free of any mechanic or materialmen’s liens arising by, through or under Lessee. In the event that any such lien is filed, Lessee shall, at its sole cost, cause such lien to be removed from the Premises by bonding or otherwise within NINETY (90) calendar days of written notice thereof.

7.6 Permit Required. Lessee shall be responsible for determining whether it is subject to local building/construction codes or permit requirements, and for compliance with them to the extent they are applicable. All structural, electrical, plumbing or mechanical construction or reconstruction shall conform to applicable City of Mesa (the “**City**”) building/construction codes. No such work shall be commenced without first submitting required plans and obtaining required permits from the City, if any. To the extent required by applicable City building/construction codes, all such work shall be permitted, inspected and approved by the City prior to concealment or use. Lessee shall provide to Lessor a contemporaneous copy of Lessee’s permit application and the associated plans and specifications.



7.7 Damage or Destruction. Lessee shall maintain insurance on all of Lessee's Improvements to the Premises, including any subsequent alterations and improvements thereto. In the event that all or any portion of Lessee's Improvements are destroyed or rendered unusable due to fire or other catastrophe, Lessee shall, at Lessee's election, either:

7.7.1 replace, repair, restore, modify or improve said Improvements, subject to the provisions of SECTION 7.6, using available insurance proceeds (which shall be paid to Lessee or its Leasehold Mortgagee, as required by Leasehold Mortgagee, or to the Approved Subtenant or its Subleasehold Mortgagee (as defined in the Approved Sublease [as defined in SECTION 9.4.5]), as required by Subleasehold Mortgagee, if any) together with any additional funds from other available sources; or

7.7.2 raze the Improvements and return the Premises to the condition that existed prior to the construction of the Improvements (until such time as Lessee elects to construct additional Improvements on the Premises as market conditions permit) and following Lessee's razing of the Improvements apply the balance of such insurance proceeds to the payment of a Leasehold Mortgage or Subleasehold Mortgage (as defined in the Approved Sublease), if any; provided, however, Lessee shall continue to be obligated to perform its obligations under this Lease (including, without limitation, paying all Rent, but excluding any obligation to construct a new building until such time as Lessee elects to commence construction of such new building in accordance with the terms of this Lease, including without limitation the provisions of SECTIONS 7.3 and 7.6).

Notwithstanding the foregoing to the contrary, if any damage or destruction occurs to the Premises during the last five (5) years of the Term or any and the cost to repair the damage exceeds Five Hundred Thousand Dollars (\$500,000.00), then, subject to the provisions of Section 22 hereof, Lessee may terminate this Lease upon giving Lessor THIRTY (30) days written notice. In the event Lessee elects to terminate this Lease pursuant to this SECTION, all property insurance proceeds will be allocated between Lessee and Approved Subtenant, on the one hand, and Lessor, on the other hand, with Lessee and Approved Subtenant receiving such proceeds up to the value of the Improvements for the remaining Term (but for the damage and destruction) and Lessor receiving such proceeds up to the residual value of the Improvements after the Term (but for the damage and destruction); provided, however, Lessee's and/or Approved Subtenant's insurance proceeds shall be applied first to the cost of razing the Improvements and returning the Premises to the condition that existed prior to the construction of the Improvements. Each Leasehold Mortgagee and Subleasehold Mortgagee shall have the right to participate in the adjustment of any insurance proceeds for insurance maintained by Lessee or Approved Subtenant. If required by a Leasehold Mortgagee or Subleasehold Mortgagee in the Leasehold Mortgage, Subleasehold Mortgage or other loan documents, the senior most Leasehold Mortgagee or Subleasehold Mortgagee shall have the right to supervise and control the receipt and disbursement of insurance proceeds payable to Lessee or Approved Subtenant pursuant to this Lease and the Approved Sublease for purposes of the restoration and/or repair of the Improvements.

7.8 Condemnation.

7.8.1 Condemnation of Premises. If any portion of the Premises is taken by a government entity exercising the power of eminent domain or sold to a government entity by Lessor under the exercise of said power (final judicial order that permits the taking is herein referred to as "**Condemnation**"), this Lease and the Approved Sublease shall terminate, without any requirement for consent or approval from a Leasehold Mortgagee or Subleasehold Mortgagee, as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Premises ("**Condemnation Date**"). If so much of the Premises is taken that, in Lessee's business judgment, the Premises is no longer reasonably suitable for Lessee's and/or Approved Subtenant's operations in Lessee's reasonable business judgment, subject to the provisions of SECTION 22.3 hereof, Lessee may terminate this Lease at any time after Lessee receives the Condemnation Notice by giving Lessor

THIRTY (30) days written notice, but not later than SIXTY (60) days following the Condemnation Date. If the entire Premises are condemned, then this Lease shall automatically terminate as of the Condemnation Date. The Party who receives the condemnor's notice of intention to take ("**Condemnation Notice**") shall immediately give a copy of such notice to the other Party.

7.8.2 Allocation of Award Following Lease Termination. The total award in the condemnation proceedings, whether payable due to a purchase in lieu of condemnation, a settlement reached after the initiation of condemnation proceedings, a final judgment or otherwise, will be allocated between Lessor, on the one hand, and Lessee and Approved Subtenant, on the other hand, as follows:

(a) Lessee, Leasehold Mortgagee and Subleasehold Mortgagee shall be entitled to seek and claim and receive the value of Lessee's and/or Approved Subtenant's interest in the Improvements and Lessee's and/or Approved Subtenant's leasehold interests in the Premises (including, without limitation, any loss or rents, relocation and moving costs), and any other amounts payable in connection with Lessee's leasehold interest in the Premises and the Improvements; and

(b) Lessor shall be entitled to seek and claim and receive the value of its fee interest in the land constituting the part of the Premises taken and the reversionary interest of Lessor in the Improvements.

7.8.3 Allocation of Award without Lease Termination. If this Lease is not terminated as provided in SECTION 7.8.1, Lessee shall, at Lessee's election, either:

(a) replace, repair, restore, modify or improve, or cause Approved Subtenant to replace, repair, restore, modify or improve, said Improvements, subject to the provisions of SECTION 7.6, using available award proceeds (which shall be paid to Lessee or its Leasehold Mortgagee, as required by such Leasehold Mortgagee or Approved Subtenant or Subtenant's Leasehold Mortgagee, as required by such Subtenant's Leasehold Mortgage, if any) together with any additional funds from other available sources; or

(b) restore, or cause Approved Subtenant to restore, any damage to the Premises which resulted in an unsafe condition (including, if required, raising any improvements subject to such Condemnation) and then apply the balance of such award proceeds to the payment of a Leasehold Mortgage or Subtenant's Leasehold Mortgage, if any; provided, however, Lessee shall continue to be obligated to perform its obligations under this Lease (including, without limitation, paying all Rent, but excluding any obligation to construct a new building until such time as Lessee elects to commence construction of such new building).

7.8.4 Temporary Taking. In the event of a taking of all or any portion of the Premises for temporary use, the foregoing provisions of this Article shall be inapplicable thereto, this Lease shall continue in full force and effect without reduction or abatement of rent and Lessee, or Approved Subtenant alone (subject to the rights of the Leasehold Mortgagee or Subleasehold Mortgagee), shall be entitled to make claim for, recover and retain any award recoverable in respect of such temporary use whether in the form of rental or otherwise. If the award is made in a lump sum covering a period beyond the expiration of the Lease Term, Lessor also shall be entitled to make claim for and participate in the award proportionately. If any portion of the award for such temporary use is intended to cover the cost of restoration of the Improvements located on the Premises to the condition they were in prior to such temporary use or to make repairs occasioned by or resulting from such temporary use, such portion shall be (i) so long as any portion of the debt securing a Leasehold Mortgage or Subtenant's Leasehold Mortgage remains unpaid, applied in accordance with the terms of the Leasehold Mortgage or Subtenant's Leasehold Mortgage, and thereafter, (ii) used by Lessee or Approved Subtenant to cover the cost of such restoration and repair, and any balance remaining shall belong to and be paid to Lessee.

7.8.5 Leasehold Mortgagee. In the event of any Condemnation, each Leasehold Mortgagee and Subleasehold Mortgagee shall have the right to participate in the adjustment of any portion of the condemnation award belonging to Lessee. In addition, the senior most Leasehold Mortgagee or Subleasehold Mortgagee shall have the right to hold, control and disburse any portion of the condemnation award belonging to Lessee or Approved Subtenant, so long as such proceeds are used as required by the provisions of this Lease.

## **8. MAINTENANCE.**

8.1 Lessee Responsibilities. Lessee shall, at its sole cost and expense, keep the Premises and all improvements thereon in a neat and clean condition and in good order and repair throughout the Term. Lessee shall prepare, maintain and follow a preventative maintenance schedule in keeping with industry-standard good practices for all mechanical, electrical plumbing, drain, piping, and air conditioning systems on the Premises. Lessee's maintenance of the Premises shall include, without limitation, the inspection, servicing and repair of all improvements, including pest control, landscaping and grounds maintenance.

8.2 Damage to Premises. Any real or personal property of Lessor damaged or destroyed by Lessee as a result of Lessee's use or occupancy of the Premises shall be promptly repaired or replaced by Lessee to the satisfaction of Lessor. In lieu of such repair or replacement, where required by Lessor, Lessee shall pay to Lessor an amount sufficient to compensate for the loss sustained by Lessor. Any real or personal property of Lessee damaged or destroyed by Lessor shall be promptly repaired or replaced by Lessor to the satisfaction of Lessee. In lieu of such repair or replacement, where required by Lessee, Lessor shall pay to Lessee an amount sufficient to compensate for the loss sustained by Lessee.

8.3 Trash Removal. Lessee shall at all times keep the Premises in a neat, clean, safe, sanitary and orderly condition and shall keep such area free of all trash and debris. Lessee shall be responsible for all trash removal from the Premises and Lessee shall deposit all trash and debris only at collection stations located on or in proximity to the Premises, in accordance with City code.

8.4 Emergency Repairs. Within FIFTEEN (15) days of the Effective Date, Lessee shall provide Lessor with a list of names and telephone numbers for 24-hour emergency contact for the Premises. Lessee shall promptly provide Lessor with updated lists and changes as they occur.

## **9. ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS.**

9.1 Any Transfer of Lease Interest Requires Lessor Advance Written Approval. Except as set forth in SECTION 22.11 to a Leasehold Mortgagee or a purchaser at a foreclosure sale, or in accordance with SECTION 9.4 below, in the event Lessee desires to transfer, assign, encumber, pledge or hypothecate any portion of its interest in this Lease or any right or interest hereunder (individually and collectively, "**Transfer**"), or sublet the Premises or any part thereof, Lessee must obtain the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with Lessee's request for Lessor's approval of a Transfer, Lessee and or the proposed transferee shall provide to Lessor written financial assurances, including, but not limited to financial statements, business plans and other information related to the financial condition and plans of any proposed transferee. Unless otherwise agreed upon in connection with Lessor's approval of a Transfer, or as otherwise expressly provided herein, Lessee shall remain liable under the Lease for all of Lessee's obligations under this Lease. Lessee understands and agrees to these terms and conditions regarding any proposed Transfer, and that any violation of this SECTION 9, may irreparably harm Lessor as the requirements set forth herein are directly related to Lessor's (and any Lessee's) legal and financial obligations to the Federal Aviation Administration. This SECTION 9 shall remain valid and enforceable even in the event of amendment to or repeal of FAA regulations, so long as this SECTION 9 does not directly conflict therewith.

9.2 Lessee's Required Advance Notice to Lessor of Proposed Transfer. In order for Lessor to consider approval of a Transfer, Lessee must: (i) notify Lessor in writing at least FORTY-FIVE (45) days prior to such proposed transfer; (ii) deliver to Lessor, at the time of Lessee's notice, current financial statements of Lessee and the proposed transferee (along with transferee's business plans) that are reasonably acceptable to Lessor; and (iii) the transferee assumes and agrees in writing to perform Lessee's obligations under this Lease. However, nothing herein shall be construed as Lessor providing its consent to any Transfer or relieving Lessee of any legal, financial or other obligation under the Lease, regardless of Lessor's acceptance or refusal to accept such proposed transfer of Lease.

9.3 Deemed Transfers. For the purposes of this Lease, a Transfer shall be deemed to include the following: (i) if Lessee is a corporation, partnership, limited liability company or other legal entity, the transfer of any ownership interest in such entity resulting in a change in the present control of such entity by the person or persons owning a majority of the ownership interest thereof as of the date of this Lease; provided, however, if Lessee is a corporation whose stock is traded on a nationally recognized stock exchange, the transfer of Lessee's stock shall not constitute a Transfer requiring Lessor's consent; or (ii) the sale of FIFTY PERCENT (50%) or more in value of the assets of Lessee. For purposes of this Lease, "**control**" shall mean possessing the power to direct or cause the direction of the management and policies of the entity by the ownership of a majority of the voting securities of the entity. For clarity, a change in control of The Boyer Company, L.C., shall not be a Transfer.

9.4 Subletting.

9.4.1 Lessee may sublease all or portions of the Premises if the following conditions are met:

(a) Rent for subleased premises shall not be less than fair market value as reasonably determined by Lessee unless otherwise approved in writing by Lessor.

(b) The sublease(s) and sublessee(s) shall at all times be subject to the terms and conditions of this Lease.

(c) The permitted and prohibited uses of the Premises under any sublease shall not violate Permitted Uses under this Lease. Sublessees shall agree in the sublease not to engage in any prohibited use.

(d) The term of any sublease shall not extend beyond the stated expiration of this Lease.

(e) Except for the payment of a security deposit or amounts related to the construction of any tenant improvements, the sublessee under such sublease shall not pay rent more than ONE (1) month in advance of its due date under the sublease.

9.4.2 Upon request from Lessee, Lessor shall enter into a Non-Disturbance and Attornment Agreement (in form and substance reasonably acceptable to Lessor, Lessee, sublessee and any applicable Leasehold Mortgagee, and during the term of the Approved Sublease, the Approved Subtenant and Subleasehold Mortgagee), which Non-Disturbance and Attornment shall, if requested by Lessee on behalf of Approved Subtenant and its lender, contain provisions in favor of Approved Subtenant and its Subleasehold Mortgagee similar to SECTION 22.2 below with respect to any Subleasehold Mortgage, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancing, and consolidation thereof, so long as (i) the conditions of SECTION 9.4.1 have been met; and (ii) the sublessee is not then in default beyond an applicable notice and cure period under the sublease and there is no existing Event of Default under this Lease, and (iii) either, (x)

Lessor has approved or is deemed to have approved the sublease, or (y) the sublease is on a form previously approved by Lessor. All reasonable legal fees incurred by Lessor in connection with any reasonably necessary legal counsel review and approval of a Non-Disturbance and Attornment Agreement shall be reimbursed in advance by Lessee.

9.4.3 Upon receipt of a sublease from Lessor and a request for a Non-Disturbance and Attornment Agreement with respect to such sublease, Lessor shall have TEN (10) business days to either approve or disapprove the same. Lessor agrees that its approval of any sublease shall not be unreasonably withheld, conditioned or delayed. If Lessor disapproves, Lessor shall provide Lessee with a reasonably detailed explanation for Lessor's disapproval and suggestions for revisions that would reasonably satisfy Lessor's disapproval. If Lessor fails to respond within such TEN (10)-business-day period the sublease shall be deemed to have been approved by Lessor. If Lessor disapproves a request for approval, then Lessee may resubmit a revised sublease for approval in accordance with this SECTION 9.4.3. This cycle will repeat itself until Lessor either approves the sublease or is deemed to have approved the same.

9.4.4 Lessee shall submit a copy of each fully executed sublease to Lessor within Five (5) business days after request.

9.4.5 For purposes of this Lease, "**Approved Subtenant**" means the sublessee approved in writing by Lessor and "**Approved Sublease**" means the form of sublease approved in writing by Lessor.

## 10. IDENTIFICATION SIGNS.

Lessee may install or permit to be installed on the Premises any sign(s) that conforms to any signage rules, codes and/or regulations of any governmental authority applicable to the Premises.

## 11. DEFAULT; TERMINATION BY LESSOR.

11.1 Events of Default. Each of the following shall constitute a material default of this Lease by Lessee (an "**Event of Default**"):

11.1.1 Failure to pay any installment of Base Rent or other amount due from Lessee hereunder, provided that Lessee does not cure such failure within TEN (10) business days after delivery by Lessor of a written notice of such failure.

11.1.2 A breach of any covenant or failure to perform any of its other obligations under this Lease or failure to perform any of its obligations (i) as a "Occupant" under the Gateway East Declaration or (ii) as a "Lessee" under the Access and Parking Declaration, as such obligations relate to the Premises, provided that Lessee does not cure such breach or failure within THIRTY (30) calendar days after delivery by Lessor of a written notice of such default; and further provided, however, if a cure of the default reasonably requires more than THIRTY (30) calendar days to complete, then the time to cure shall be extended so long as the cure is commenced within such THIRTY (30) day period and thereafter diligently pursues such cure to completion.

11.1.3 The filing of any mechanic's, materialmen's or other lien or any kind against the Premises because of any act or omission of Lessee which lien is not discharged, by bonding or otherwise, within NINETY (90) calendar days of receipt of actual notice thereof by Lessee.

11.1.4 Failure to pay its Common Expense Share of any Common Expenses in accordance with the Gateway East Declaration as provided in Section 43 below, provided that Lessee

does not cure such failure within TEN (10) business days after delivery by Lessor to Lessee of a written notice of such failure.

11.2 Lessor's Remedies. Upon the occurrence of an Event of Default under this Lease, Lessor may, without prejudice to any other rights and remedies available to a Lessor at law, in equity or by statute, but subject to the provisions of SECTIONS 9.4.2 and 22, exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive:

11.2.1 Terminate this Lease and re-enter and take possession of the Premises; or

11.2.2 Without terminating this Lease, re-enter and take possession of the Premises;  
or

11.2.3 Without such re-entry, recover possession of the Premises in the manner prescribed by any statute relating to summary process, and any demand for Base Rent, re-entry for condition broken, and any and all notices to quit, or other formalities of any nature to which Lessee may be entitled, are hereby specifically waived to the extent permitted by law; or

11.2.4 With or without terminating this Lease, Lessor may re-let the Premises or any portion thereof.

In all events, Lessor shall use commercially reasonable efforts to mitigate Lessor's damages upon the occurrence of an uncured Event of Default by Lessee.

11.3 No Implied Termination. Lessor shall not be deemed to have terminated this Lease unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease. Lessee hereby waives all claims based on Lessor's reentering and taking possession of the Premises, or removing and storing the property of Lessee, and shall save Lessor harmless from all losses, costs or damages occasioned thereby. No such reentry shall be considered or construed to be a forcible entry by Lessor.

11.4 Lessor's Current Damages. Upon the occurrence and during the continuance of an Event of Default, Lessor is authorized to make such repairs, refurbishments or improvements to the Premises as may be necessary for the purpose of attempting to re-let the Premises, and the reasonable costs and expenses incurred in respect of such repairs, redecorating, refurbishments and improvements shall be paid by Lessee to Lessor within TEN (10) business days after receipt of Lessor's statement. If Lessor exercises any of the remedies stated above, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of the Event of Default, which shall include, without limitation, (i) the amount of the Base Rent and all other payments which would be payable under this Lease by Lessee for the remainder of the Term as if this Lease were still in effect, less (ii) the net proceeds of any re-letting by Lessor after deducting all of Lessor's reasonable expenses in connection with such re-letting, which shall include, without limitation, repossession costs, repairs, redecorating, refurbishments or improvements to the Premises, brokerage commissions, attorneys' fees, and legal expenses. Lessee shall pay such current damages to Lessor, in the amount set forth in the preceding sentence ("**Deficiency**"), in monthly installments on the days on which the Base Rent would have been payable under this Lease as if this Lease were still in effect.

11.5 Lessor's Final Damages. At any time after an Event of Default, whether or not Lessor shall have collected any monthly Deficiency as set forth above, Lessor shall be entitled to recover (without duplication) from Lessee, and Lessee shall pay to Lessor, promptly on demand, as Lessor's final damages for the applicable Event of Default, the sum of (a) the then present worth (at a discount of SIX PERCENT (6%) per annum) of (i) the aggregate of the Base Rent and all other amounts to be paid by Lessee hereunder for the unexpired portion of the Term of this Lease (assuming this Lease had not been terminated), less (ii) the amount of Rent and any losses that could have been reasonably avoided, plus (b) reasonable repossession costs,

reasonable Lessor's expenses in connection with any attempts it may have made to re-let the Premises (which shall include, without limitation, repairs, refurbishments or improvements to the Premises and brokerage commissions), reasonable attorneys' fees, reasonable legal expenses, and all other damages incurred by Lessor as a result of such Event of Default.

11.6 No Waiver by Lessor. No waiver by Lessor of any breach or default by Lessee in the performance of its obligations under this Lease shall be deemed to be a waiver of any subsequent default by Lessee in the performance of any such obligations, and no express waiver shall affect an Event of Default in a manner other than as specified in said waiver. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee.

11.7 Content of Default Notice. Any default notice tendered to Lessee hereunder shall be deemed to be sufficient if it states in bold letters within the Subject Line (i.e., the Re line): **"Notice of Default"** and is otherwise reasonably calculated to put Lessee on inquiry as to the nature and extent of such default and is made in accordance with SECTION 19 herein.

11.8 Limitation on Exercise of Termination Remedy by Lessor. Notwithstanding anything to the contrary in SECTION 11.2 hereinabove, if an Event of Default occurs, Lessor shall not have the remedy of terminating this Lease or of taking possession of the Premises unless: (i) the Event of Default consists of a failure to pay Base Rent or other amounts owed to Lessor; or (ii) Lessor has no other remedy that is adequate to protect Lessor's interests. Other remedies that are available to Lessor include self-help and recovery of damages, and nothing in this SECTION 11 shall limit the exercise of any such other remedy.

11.9 Subordination of Lessor's Lien. Lessor hereby agrees from time to time to subordinate to one or more Leasehold Mortgagees all statutory or common law landlord's lien rights with respect to property or assets of Lessee located on the Premises, including, without limitation, Lessor's rights under Arizona Revised Statutes Sections 33-361 and 362 and other similar laws. Upon written request from Lessee, Lessor agrees to promptly execute and deliver such commercially reasonable landlord subordination agreement and access agreement that any Leasehold Mortgagee may request of Lessor. Lessee shall reimburse Lessor for reasonable third-party costs, including reasonable attorneys' fees, incurred by Lessor in connection with the review and negotiation of any such agreement within THIRTY (30) days after receipt of an invoice from Lessor.

## 12. INTENTIONALLY DELETED.

## 13. INDEMNIFICATION.

13.1 Lessee's Indemnity. To the fullest extent permitted by law, Lessee hereby agrees to defend, indemnify and hold harmless Lessor and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as the "Lessor" for purposes of this SECTION 13.1) for, from and against any and all third-party claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever to the extent such arise out of or in connection with (i) any accident, injury or actual damages occurring within the Premises during the Term; (ii) any grossly negligent act or omission of Lessee or its agents, employees, contractors, or subcontractors (including, without limitation, Approved Subtenant) (hereinafter referred to collectively as "Lessee" for purposes of this SECTION 13.1) on the Premises or the Airport and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property or other damages or losses to Lessor; and/or (iii) the failure of Lessee to comply with any provisions of this Lease. This indemnification shall exclude responsibility for any damages and for claims arising by reason of the acts or omissions of Lessor or its employees, contractors or agents.

13.2 Lessor's Indemnity. To the fullest extent permitted by law, Lessor hereby agrees to defend, indemnify and hold harmless Lessee and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as the "Lessee" for purposes of this SECTION 13.2) for, from and against any and all third-party claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever to the extent such arise out of or in connection with (i) any accident, injury or actual damages occurring within the Premises during the Term caused by Lessor or its agents, employees, contractors or subcontractors; (ii) any grossly negligent act or omission or intentional misconduct by Lessor or its agents, employees, contractors, or subcontractors (hereinafter referred to collectively as "Lessor" for purposes of this SECTION 13.2) on the Premises, and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property or other damages or losses to Lessee, or (iii) the failure of Lessor to comply with any provisions of this Lease. This indemnification shall exclude responsibility for any damages and for claims arising by reason of the acts or omissions of Lessee or its employees, contractors or agents.

#### 14. ENVIRONMENTAL PROTECTION.

14.1 Definitions. Unless the context shall clearly require otherwise, the terms defined in this SECTION 14.1 shall, for all purposes of this Lease and of any agreement amendatory hereof or supplemental hereto, have the meanings herein specified, with the following definitions to be equally applicable to both the single and plural forms of any of the following:

14.1.1 *Environmental Laws.* The term "**Environmental Laws**" shall mean any one or all of the following, as the same are amended from time to time: the *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 USC Section 9601 et seq.; the *Solid Waste Disposal Act*, 42 USC Section 6901, et seq.; the *Toxic Substances Control Act*, 15 USC Section 2601 et seq.; the *Safe Drinking Water Act*, 42 USC Section 300f et seq.; the Clean Water Act, 33 USC Section 1251 et seq.; the *Clean Air Act*, 42 USC Section 7401 et seq.; A.R.S. Title 49; and all regulations thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereafter enacted that deal with the regulation or protection of the environment, including the ambient (including indoor and outdoor) air, ground water, surface water, and land use, including substrata land, or that govern the use of hazardous materials, hazardous waste and hazardous substances and petroleum products.

14.1.2 *Hazardous Material.* The term "**Hazardous Material**" shall mean any toxic or hazardous material, substance or waste, or any pollutant or contaminant as defined or regulated pursuant to any Environmental Laws, per- and polyfluoroalkyl substances, and petroleum products. For purposes of this definition, petroleum includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing (e.g., distillate fuel oils, petroleum solvents and used oils). For purposes of this definition, per- and polyfluoroalkyl substances shall include aqueous film-forming foams.

#### 14.2 Environmental Compliance.

14.2.1 Lessee shall, at the Lessee's own expense, comply with all present and hereafter enacted Environmental Laws, including any amendments thereto, affecting Lessee's activities on and property interest in the Premises during the period of Lessee's occupancy of thereof under this Lease. To the extent that Lessor, or any Lessor's employees, agents or contractors, conducts any activities on the Premises during the period of Lessee's occupancy, Lessor shall, at Lessor's own expense, comply with all present and hereafter enacted Environmental Laws, including any amendments thereto, affecting any of Lessor's activities on the Premises.



14.2.2 Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises or the Airport by Lessee's agents, employees, contractors or invitees in violation of any Environmental Laws. The Parties recognize and agree that Lessee may bring on the Premises and Airport and use Hazardous Material that is ordinarily and customarily used in the conduct of Lessee's permitted activities under this Lease, provided that such use shall comply fully with all applicable Environmental Laws. Lessor shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises or by Lessor's agents, employees, contractors for any activity Lessor conducts on the Premises during Lessee's occupancy, without prior notification to and approval by Lessee (which shall not be unreasonably withheld), and any such use or presence shall be in compliance with Environmental Laws.

14.2.3 Lessee shall not install any underground storage tanks on the Premises or elsewhere on the Airport.

#### 14.3 Indemnification.

14.3.1 To the fullest extent permitted by law, Lessee shall indemnify, defend (with counsel reasonably acceptable to Lessor), protect and hold harmless Lessor and its employees and agents for, from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of the environment, the presence of Hazardous Material or violation of any Environmental Laws or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity ("**Environmental Damages**") which are incurred or assessed as a result of any of Lessee's or Approved Subtenant's activities or operations on the Premises. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the property, land, soil and underground or surface water as required under the law. Lessee's obligations and liabilities under this SECTION 14.3 shall survive the termination of this Lease. The indemnification of Lessor by Lessee as described above includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision. Lessor reserves the right to seek injunctive relief as may be permitted under law and equity. This SECTION 14.3 explicitly excludes Lessee's duty, liability or indemnity to Lessor for any claims or Environmental Damages of any kind whatsoever arising from or in connection with any contamination of any kind existing on the Premises prior to the Effective Date, except and only to the extent contamination that is known to Lessee is exacerbated by Lessee or unknown contamination is exacerbated by Lessee's gross negligence.

14.3.2 To the fullest extent permitted by applicable law, Lessor shall indemnify, defend (with counsel reasonably acceptable to Lessee), protect and hold harmless Lessee and its employees and agents for, from and against any and all Environmental Damages which are incurred or assessed as a result of any of Lessor's activities or operations on the Premises. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the property, land, soil and underground or surface water as required under the law. Lessor's obligations and liabilities under this SECTION 14.3 shall survive the termination of this Lease. The indemnification of Lessee by Lessor as described above includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision. Lessee reserves the right to seek injunctive relief as may be permitted under law and equity. This SECTION 14.3 explicitly excludes Lessor's duty, liability or indemnity to Lessee for any claims or Environmental Damages of any kind whatsoever arising from or in connection with any contamination of any kind existing on the Premises prior to the Effective Date, except and only to the extent known contamination is caused by or exacerbated by Lessor or unknown contamination is caused by or exacerbated by Lessor's negligence.

14.4 Remediation. Without limiting the foregoing, if the presence of any Hazardous Material during the Term of this Lease caused or permitted by Lessee to be first brought on the Airport or Premises upon or after the Effective Date results in any Release on the Airport or Premises in violation of any Environmental Laws, Lessee shall promptly take action to remediate the affected property at its sole expense as necessary to return the Airport or Premises to the condition existing prior to the introduction of any such Hazardous Material to the Airport or Premises; provided that Lessor's approval of such actions shall first be obtained, which approval shall not, except in an emergency, be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Airport and Lessee is not under administrative or court order related to such remediation action. Notwithstanding Lessor's approval pursuant to this SECTION 14.4, Lessor is not responsible for directing or managing any remediation action. The term "**Release**" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

14.5 Governmental Submittals. Lessee shall, at Lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority ("**Government**") under the Environmental Laws in connection with Lessee's activities or operations on the Premises. Should the Government determine that a site characterization, site assessment and/or cleanup plan should be prepared and/or that a cleanup should be undertaken because of any Release of Hazardous Material by reasons of Lessee's activities or actions at the Airport which occur during the Term of this Lease, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans.

14.6 Information Sharing. Lessee shall immediately notify Lessor of any of the following: (i) Lessee's or Approved Subtenant's receipt of any notification from any governmental entity either charging or informing Lessee or Approved Subtenant that Lessee or Approved Subtenant will be charged with a violation of Environmental Laws, and (ii) any significant change in Lessee's or Approved Subtenant's activities on the Premises that is reasonably likely to adversely change Lessee's or Approved Subtenant's obligations or liabilities under the Environmental Laws. In addition, Lessee agrees to provide Lessor with non-privileged copies of documents reflecting the physical condition of the Premises, including but not limited to, environmental testing of soils and groundwater, and existing, non-privileged information reasonably requested by Lessor to determine the applicability of the Environmental Laws to the Premises, or to assist in the response to any governmental investigation or claim of liability by third parties which is related to environmental contamination of the Premises, to the extent that such investigations or claims are related to Lessee's or Approved Subtenant's activities thereon.

14.7 Sublease. Lessee shall insert provisions substantially identical, or more favorable to Lessor and Lessee (as sublessor or sublandlord under the sublease) to the provisions of this SECTION 14 in any sublease agreement or contract by which it grants a right or privilege to any person, firm, corporation or other entity under this Lease.

14.8 Actions of Lessee and Lessor. The activities or actions of Lessee under this SECTION 14 shall include the activities or actions of Lessee's officers, directors, employees, agents, contractors, and successors. The activities or actions of Lessor under this SECTION 14 shall include the activities or actions of Lessor's officers, directors, employees, agents, contractors and successors.

14.9 Clean Water Act; NPDES Permits and SWPPPs. Without in any way limiting the foregoing, Lessee shall comply, and shall cause Approved Subtenant to comply, with all Environmental Laws regarding discharges to water and land, including, without limitation, obtaining and complying with an individual National Pollutant Discharge Elimination System (NPDES) permit, or requesting coverage under and complying with any applicable Multi-Sector General Permit ("**MSGP**"). If applicable, Lessee shall also prepare and comply with a site-specific MSGP with an individual Storm Water Pollution Prevention Plan ("**SWPPP**") or any revisions to a SWPPP, with respect to Lessee's operations or activities on the Premises or Airport. Proof of

individual compliance shall be provided in the form of both the Lessee's or Approved Subtenant's Notice of Intent ("**NOI**") that has been received by the Arizona Department of Environmental Quality ("**ADEQ**") and the individual Arizona Multi-Sector General Permit (AZMSGP) number associated with the NOI, within the times prescribed by law.

14.10 Reserved.

14.11 Protective Devices and Plans. If Lessee or Approved Subtenant is required by the City to estimate the possible constituents of sanitary sewer discharges in order that the City may define certain discharge limitations for the Premises, Lessee shall complete and return an *Industrial Wastewater Discharge Questionnaire* ("**Questionnaire**") to the City and promptly provide Lessor with updates to the Questionnaire as they arise. Also, if the City so requires, Lessee shall install and maintain appropriate protective devices to prevent accidental discharge of any Hazardous Material into domestic or industrial drains on or near the Premises and elsewhere on the Airport, as appropriate, and for any other material for which a slug load discharge could pollute the Airport's storm water discharge or disrupt operations at the sewage treatment plant serving the Premises. Lessee shall post a notice in a prominent place on the Premises advising employees what actions to take and whom to call in the event of said discharge and shall ensure that all employees of Lessee are trained with regard to the spill protection plan hereinafter referenced. Lessee also shall provide Lessor with immediate notice of any spill.

14.12 Right to Enter Premises. In addition to the rights afforded to Lessor in SECTION 18, this Lease specifically includes the right of the United States Government, the Environmental Protection Agency ("**EPA**"), ADEQ, Lessor, and the Arizona Department of Occupational Safety and Health (ADOSH) to enter the Premises upon reasonable notice to Lessee for purposes of: (i) inspecting Lessee's compliance with environmental, occupational safety and health laws and regulations, whether or not such party is responsible for enforcing such laws; (ii) conducting environmental investigation or remediation, including, without limitation, performing tests and surveys, drillings, test-pitting, borings, compiling data and/or records, and other activities related to environmental investigation; and (iii) carrying out remedial or removal actions as required or permitted under applicable laws, including, without limitation, installing monitoring wells, pumping wells and/or treatment facilities. Lessee shall have no claim against Lessor for any such entries by the United States, EPA, ADEQ, Arizona ADOSH, or any officer, agent, employee or contractor thereof.

14.13 U.S. Air Force Use and Remedial Action.

14.13.1 The Parties assume no liability or responsibility for environmental impacts and Environmental Damages or claims of any kind whatsoever caused by or resulting from the U.S. Air Force's use of Hazardous Material on any portion of the Airport, including the Premises, prior to the Effective Date, and have no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use of or release of any Hazardous Material or deposits of solid waste on or from any part of the Airport, including, but not limited to, the Premises, even if such claims or contamination are first discovered or made after the Effective Date. Further, the Parties have no obligation under this Lease to undertake environmental response, remediation, or cleanup relating to any contamination caused by or related to such use or release. For purposes of this SECTION 14.13, "**defense**" or "**environmental response, remediation, or cleanup**" shall include liability and responsibility for the costs of damage, penalties, legal and investigative services relating to such use or release.

14.13.2 Pursuant to Section VII.E.3 of the Deed (as defined herein), the U.S. Air Force warrants and covenants that all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Airport, including the Premises, has been completed prior to the date of the Deed and, further, any remedial action found to be necessary after the date of the Deed shall be conducted by the U.S. Air Force; provided, however, that the foregoing

covenant does not apply where Lessor or Lessee is a potentially responsible party with respect to any portion of the Premises or the Airport.

14.14 Cleanup Requirements.

14.14.1 Lessee agrees that Lessor assumes no liability to Lessee should Hazardous Material cleanup or related requirements, whether imposed by law, regulatory agencies, the U.S. Air Force or Department of Defense cause delays or interferes with Lessee's use of the Premises. Lessee shall have no claim against Lessor or any officer, agent, employee or contractor thereof on account of any such interference whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the Federal Facilities Agreement (FFA) or the Installation Restoration Program (IRP) or under this Lease or otherwise. Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action conducted by governmental authorities or Lessor shall, to the extent practicable, be coordinated with representatives designated by Lessee.

14.14.2 Lessor agrees that Lessee assumes no liability to Lessor should Hazardous Material cleanup or related requirements, whether imposed by law, regulatory agencies, the U.S. Air Force or Department of Defense cause delays or interferes with Lessor's use of the Premises. Lessor shall have no claim against Lessee or any officer, agent, employee or contractor thereof on account of any such interference whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the Federal Facilities Agreement (FFA) or the Installation Restoration Program (IRP) or under this Lease or otherwise.

14.15 Reserved.

14.16 Wells. Lessee shall not install any drinking water or other wells in any location on the Premises without the prior written approval of Lessor.

14.17 Surface Disturbances. After construction of Lessee's Improvements on the Premises as provided herein, Lessee shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface other than what is usual and customary for the anticipated uses without the prior written approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed.

14.18 Later Discovered Hazmat. If any Hazardous Material is newly discovered on a portion of the Premises after the Effective Date that:

(a) (i) were not placed on or introduced to the Premises by Lessee, and (ii) were present on the Premises prior to the Effective Date (collectively, "**Later-Discovered, Pre-Existing Hazmat**"); and

(b) such Later-Discovered, Pre-Existing Hazmat will cause Unavoidable Delay in the construction of Improvements;

then Lessee shall immediately notify Lessor and cease development activity in the impacted area of the Premises, and Lessee shall either:

(1) conduct such investigations and remedial actions as necessary under applicable Environmental Laws and continue development activity as the remedial process allows (and reserve any rights it may have to seek whatever compensation it is entitled to recover), if Lessor does not agree, within SEVEN (7) business days of receiving notice contemplated under this SECTION, to promptly investigate and

remediate the detected contamination in accordance with Environmental Laws, and on a schedule and in a manner that does not interfere with Lessee's development, use or construction plans, or

(2) obtain approval of any Leasehold Mortgagee, if any, and terminate this Lease upon written notice to Lessor.

## 15. PROTECTION OF WETLANDS.

Lessee shall minimize the destruction, loss, or degradation of any wetlands located on the Premises. Lessor believes there are no wetlands existing on the Premises as of the Effective Date. However, before locating new construction in wetlands, if any exist, Lessee shall contact Lessor and the United States Army Corps of Engineers and obtain a permit or waivers under Section 404 of the Clean Water Act (or if such regulatory authority has been delegated to ADEQ, shall obtain the equivalent permit or waivers from ADEQ). For purposes of this SECTION 15, the term, "**new construction**," includes structures, facilities, draining, dredging, channeling, filling, diking, impounding, and related activities.

## 16. INSURANCE.

16.1 Coverage Required. Lessee shall procure and maintain, or cause to be procured and maintained, the following types and amounts of insurance with respect to the Premises:

16.1.1 Builder's Risk insurance covering the insured's premises Improvements and all replacements and/or additions thereto for their full insurable value on a "replacement cost" basis, and requires an ISO Special Causes of Loss form or equivalent.

16.1.2 Comprehensive General Liability (\$5,000,000.00 per occurrence) insurance covering third party bodily injury and property damage, including coverage for "premises/operations," "products and completed operations," "host liquor" and "blanket contractual liabilities."

16.1.3 Environmental Impairment Liability (\$2,000,000.00 per occurrence) insurance covering third party bodily injury and property damage associated with hazardous material storage facilities, tanks, piping, ancillary equipment and containment structures, or structures that are used, controlled, constructed or maintained on the Airport, and including expenses for defense, release mitigation and off- and on-site remediation.

16.1.4 Property (full value of personal property + improvements) insurance covering all essential personal property (property essential to continued business operations) and all operator improvements made to buildings or facilities on the Airport, including all replacements and/or additions thereto, for their full insurable value (All Risks) on a replacement cost basis, and requires an ISO Special Causes of Loss form or equivalency.

16.1.5 Worker's Compensation insurance, as required by law, and Employer's Liability insurance in the amount of \$1,000,000.00 covering work-related injuries to employees and others permitted to operate or otherwise conduct business on the Premises.

16.1.6 Commercial Automobile Liability (\$1,000,000 per occurrence) insurance covering all owned, non-owned and hire vehicles operated on the Airport that are assigned to or used in the performance of commercial activities. If any hazardous materials are transported within Airport boundaries in conjunction with the operator's business activities, an MSC-90 Endorsement is required. Coverage amounts generally apply to Basic Injury per Person, Basic Injury per Accident and Property Damage.

16.2 Form. Each insurance policy obtained pursuant to this SECTION, except for *Worker's Compensation* and *Employer's Liability* policies, shall: (i) name Lessor as a certificate holder and additional insured via endorsement; (ii) contain a provision that written notice of cancellation or modification thereof shall be given to Lessor not less than THIRTY (30) calendar days before such cancellation or modification takes effect (TEN (10) days in case of nonpayment of premium); and (iii) contain a waiver of subrogation in favor of Lessor. Lessee shall not permit any insurance policy to be canceled or modified without Lessor's written consent unless equivalent or better replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies licensed to do business in the State of Arizona and possessing a rating of at least A – VII or higher from the A.M. Best Company, or an equivalent rating and approved by Lessor.

16.3 Certificates of Insurance. Lessee shall deliver a certificate of insurance for each policy required herein to Lessor, in standard Acord or equivalent form, prior to the Effective Date and shall continue to provide such certificates throughout the Term of this Lease.

16.4 Additional Insurance. At any time during the Term of this Lease, Lessor may, if in its reasonable determination the insurance coverage required by this SECTION 16 is no longer adequate, require Lessee to increase its coverage to commercially reasonable amounts.

16.5 Blanket Insurance. Lessee's insurance obligations under this Lease may be satisfied by means of "blanket" or excess policies.

16.6 Insurance by Lessor. In the event Lessee shall fail to procure, or cause to be procured, any insurance required hereunder, Lessor may, upon written notice to Lessee, procure and maintain any or all of the insurance required of Lessee under this SECTION. In such event, all costs of such insurance procured and maintained by Lessor on behalf of Lessee shall be the responsibility of Lessee and shall be fully reimbursed to Lessor within TEN (10) business days after Lessor advises Lessee of the cost thereof.

## 17. SURRENDER OF POSSESSION.

### 17.1 Condition of Premises.

17.1.1 Upon the expiration or earlier termination of this Lease, Lessee's right to occupy the Premises and exercise the privileges and rights granted thereunder shall cease, and Lessee shall peaceably surrender the same and leave the Premises broom clean and in good condition except for normal wear and tear, casualty (subject to Lessee's obligations under SECTION 7.7) and condemnation (subject to Lessee's obligations under SECTION 7.8). All trade fixtures, equipment, and other personal property installed or placed by Lessee on the Premises which can be removed without affecting the structure of the Building shall remain the property of Lessee, and Lessee shall have the right at any time during the Term of this Lease, to remove the same from the Airport and Lessee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Lessee within FIFTEEN (15) calendar days of the expiration or earlier termination of this Lease, or revocation of Lessee's right to occupy the Premises, shall be deemed abandoned, and ownership thereof shall vest in Lessor. Lessee shall, however, remain financially liable to Lessor for the reasonable cost of repairs to the Premises incurred as a result of Lessor's removal and/or relocation of property formerly belonging to Lessee and not otherwise removed from the Premises, as provided herein, and shall remit to Lessor payment for such costs within TEN (10) business days of Lessee's receipt of Lessor's invoice therefor.

17.1.2 Any trade fixtures, equipment or other property affixed to the Premises by Lessee shall, if required by Lessor, be permanently removed from the Premises by Lessee, at Lessee's expense, within FIVE (5) business days of Lease termination. Should Lessee fail to remove such trade fixtures, equipment or other property within said time, Lessor may remove and dispose of such trade

fixtures, equipment or other property at Lessee's expense, and Lessee shall reimburse Lessor for the costs thereof within TEN (10) business days of receipt of Lessor's invoice therefor.

17.2 **Holding Over.** Lessee shall not remain in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Lessor. Should Lessee hold over without the express written consent of Lessor, such tenancy shall be at the sufferance of Lessor and not a renewal of the Term. In such case, the Base Rent and all other charges due pursuant to this Lease shall be payable at ONE HUNDRED FIFTY PERCENT (150%) of the amount payable during the last year of the Term, and such tenancy at sufferance shall be subject to every other term, covenant and provision of this Lease. In the event Lessee holds over, Lessee shall be liable for all of Lessor's direct and consequential damages, which shall include, without limitation, costs, fees, expenses, damages and attorneys' fees incurred by Lessor as a result of Lessee's holding over, and damages and expenses incurred by Lessor for its inability to deliver possession of the Premises to a new lessee.

## 18. INSPECTION BY LESSOR.

Lessor may enter upon the Premises at reasonable times during Lessee's normal business hours and upon at least TWO (2) business days' prior written notice to Lessee (except in emergencies, in which event Lessor may enter immediately and shall notify Lessee promptly following such emergency entry) for any reasonable purpose, including, but not limited to, compliance with the terms and conditions of this Lease and the exercise of its governmental functions for such activities as fire protection or security. Lessee may accompany Lessor on any Lessor inspections and entries. Lessor shall take reasonable steps to avoid interrupting or disrupting the conduct of business of Lessee or its sublessees on the Premises.

## 19. NOTICES.

19.1 All notices required or permitted under this Lease shall not be effective unless personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or by reputable commercial overnight courier service, to the following addresses or at such address as either Party may advise the other from time to time:

TO LESSOR: Mesa Gateway Airport Authority  
Attn: Business Development Department  
5835 South Sossaman Road  
Mesa, Arizona 85212

TO LESSEE: Boyer Gateway East Mesa Hotel 1, L.C.  
c/o The Boyer Company, L.C.  
101 South 200 East, Suite 200  
Salt Lake City, Utah 84111

With required copy to: Parr Brown Gee & Loveless  
(which shall not Attn.: Barton L. Gertsch, Esq.  
constitute notice) 101 S 200 E, Suite 700  
Salt Lake City, Utah 84111

19.2 Any notice shall be deemed to have been received TWO (2) business days after the date of mailing, if given by certified mail, or upon actual receipt if personally delivered or if given by reputable commercial overnight courier service.

## 20. SEVERABILITY.

Should a court of competent jurisdiction declare any provision of this Lease invalid, the remaining terms shall remain effective.

## 21. APPROVALS, CONSENTS AND NOTICES.

All approvals, consents and notices called for in this Lease shall be in writing, signed by the appropriate Party, and may not be established solely by oral testimony.

## 22. LIENS AND MORTGAGES.

22.1 Fee Mortgages. Lessor may mortgage its fee interest in the Premises; provided, however, that such fee mortgage (whether entered into prior and after the date of this Lease) is and shall be in all respects subject and subordinate to the Lease and the Approved Sublease, including, without limitation, rights and remedies of the Leasehold Mortgagee under the Leasehold Mortgage and under any consent of the Lessor to an assignment of this Lease. Any mortgagee under a fee mortgage shall, prior to execution and recordation of such fee mortgage if this Lease is in effect (or prior to the execution of this Lease if such fee mortgage is then in existence), acknowledge and recognize in a writing, in form and substance satisfactory to Lessee and its Leasehold Mortgagee (as defined hereinafter), that such fee mortgage is subject and subordinate to the terms of this Lease and the Approved Sublease.

### 22.2 Mortgaging of the Leasehold.

22.2.1 Definitions. “**Leasehold Mortgage**” shall mean any loan financing obtained by Lessee, as evidenced by any mortgage, deed of trust, assignment of leases and rents, financing statement, or other instrument and secured by Lessee’s interest in this Lease and the leasehold estate created hereby, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancing, and consolidation thereof. “**Leasehold Mortgagee**” shall mean the holder of a Leasehold Mortgage.

22.2.2 Leasehold Mortgage. Notwithstanding anything in this Lease to the contrary, including, without limitation, the provisions of SECTION 9, Lessee, without Lessor’s consent may mortgage, collaterally assign, pledge, grant a security interest in, or otherwise encumber Lessee’s interest in this Lease and its leasehold interest (including any interest in the Improvements) under this Lease pursuant to one or more Leasehold Mortgages to secure indebtedness, including, without limitation, one or more loans to finance construction and/or acquisition of Improvements and other development on the Premises or the leasehold estate created by this Lease, and including refinancings thereof, provided that (a) such leasehold liens comply with this SECTION 22, and (b) no Leasehold Mortgage shall extend to or affect the fee, the reversionary fee interest or the estate of Lessor in the Premises. If, from time to time, Lessee or Lessee’s permitted successors or assigns encumbers this Lease with a Leasehold Mortgage, and if the Leasehold Mortgagee delivers to Lessor: (i) an executed counterpart of such Leasehold Mortgage; (ii) any assignment thereof; (iii) written notice of the Leasehold Mortgagee’s name and address; and (iv) the pertinent recording data for the Leasehold Mortgage, Lessor agrees that from and after the date of receipt by Lessor of such notice and for the duration of such Leasehold Mortgage, the provisions of this SECTION 22 shall apply.

22.3 Termination of Lease. There shall be no cancellation, amendment, supplement, surrender, or modification of this Lease by Lessor or Lessee without the prior written consent of Leasehold Mortgagee, which may be withheld in the Leasehold Mortgagee’s sole and absolute discretion. Notwithstanding the foregoing (but subject to Leasehold Mortgagee’s rights set forth in this SECTION 22), nothing herein shall be deemed to prohibit Lessor from terminating this Lease in accordance with its terms.



22.4 Notices to Leasehold Mortgagees. Provided that each Leasehold Mortgagee has delivered a notice to Lessor of the existence of such Leasehold Mortgage and such Leasehold Mortgagee's notice address as provided in SECTION 22.2 hereof, if serving Lessee with any notice of default, Event of Default or termination, Lessor shall simultaneously send a copy of such notice to Leasehold Mortgagee. No notice of a default, Event of Default or termination shall be effective unless such notice is also delivered to each Leasehold Mortgagee. Any notice required to be given to Leasehold Mortgagee shall be given in the same manner as sent to Lessee, addressed to Leasehold Mortgagee at the address and to the attention of the person designated by such Leasehold Mortgagee under SECTION 22.2 hereof.

22.5 Curative Rights of Leasehold Mortgagees. Leasehold Mortgagee shall have the same rights as Lessee to cure such Event of Default plus an additional period of THIRTY (30) days to remedy or cause to be remedied any monetary Event of Default, and an additional NINETY (90) days to cure any non-monetary Event of Default, in each case, of which it receives notice pursuant to Section 22.4, provided such Leasehold Mortgagee shall reimburse Lessor, at the time of so remedying the default, for all reasonable documented out of pocket costs and expenses of Lessor for maintaining, protecting, insuring, and operating the Premises during the additional THIRTY (30) or NINETY (90) day period.

22.6 Limitation Upon Termination Rights of Lessor. If an Event of Default has occurred and has not been cured in accordance with the provisions of this Lease, notwithstanding the existence of such Event of Default, Lessor may not terminate this Lease so long as the Leasehold Mortgagee has commenced an Enforcement Action against Lessee within the cure periods provided to Leasehold Mortgagee pursuant to SECTION 22.7.1 below, and is diligently prosecuting such Enforcement Action to completion, and the Leasehold Mortgagee (a) has cured, or has caused to be cured, any then-existing monetary Event of Defaults and non-monetary Events of Default which Leasehold Mortgagee can cure without having obtained possession of the Premises (with the exception of Lessee's non-monetary defaults of such a personal nature that they cannot be cured by Leasehold Mortgagee); and (b) pays the Rent and other charges due under this Lease during the continuance of such proceeding. If a Leasehold Mortgagee is required to obtain possession of the Premises before such Leasehold Mortgagee can cure a non-monetary default, the cure periods set forth above shall be tolled for such amount of time as is necessary for the Leasehold Mortgagee to obtain possession of the Premises. Upon the completion of such foreclosure action, all defaults which are not capable of being cured shall be deemed waived. In no event shall Leasehold Mortgagee have any obligation to cure any default of Lessee under this Lease unless and until Leasehold Mortgagee becomes the owner of said leasehold estate by foreclosure, sale in lieu of foreclosure, or otherwise.

22.7 Mortgagee Lease. Lessor agrees that if this Lease is terminated for any reason (other than as provided in accordance with SECTIONS 7.7 (if Leasehold Mortgage has consented to such termination), 7.8 (if there is a Condemnation of the entire Premises or otherwise if Leasehold Mortgage has consented to such termination), and 14.18), or if the Lease is rejected in a bankruptcy proceeding, subject to the rights herein granted to Leasehold Mortgagee, Lessor will enter into a new lease (the "**Mortgagee Lease**") of the Premises with the Leasehold Mortgagee for the remainder of the Term effective as of the date of termination, at the same Base Rent and on the same terms, provisions, covenants, and agreements as contained in this Lease, provided;

22.7.1 Leasehold Mortgagee shall request Lessor execute such a Mortgagee Lease within NINETY (90) days after the date of termination and shall, within THIRTY (30) days after its receipt from Lessor of a written statement of all Base Rent and other amounts then due to Lessor under this Lease, pay to Lessor all such amounts (with the exception of amounts due by reason of Lessee's indemnification obligations set forth in SECTION 14);

22.7.2 Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the Mortgagee Lease: (a) any sums due under this Lease but for the termination; and (b) all

reasonable attorney's fees and expenses actually incurred by Lessor in connection with entering into such new Lease;

22.7.3 Leasehold Mortgagee shall cure all defaults of Lessee under the terms of this Lease (excluding Lessee's non-monetary defaults of such a personal nature that they cannot be cured by Leasehold Mortgagee, which defaults shall be deemed waived);

22.7.4 Leasehold Mortgagee, as replacement Lessee under the Mortgagee Lease, shall have the same right, title, and interest in and to the Premises and the right to use the Improvements thereon as Lessee had under this Lease.

22.8 Agreement Between Lessor and Leasehold Mortgagee. Lessor, upon request, shall execute, acknowledge, and deliver to Leasehold Mortgagee an agreement, by and among Lessor, Lessee, and Leasehold Mortgagee (provided the same has been previously executed by Lessee and Leasehold Mortgagee) agreeing to all of the provisions of this SECTION 22, in form and substance reasonably satisfactory to Leasehold Mortgagee and Lessor.

22.9 Limitation on Liability of Leasehold Mortgagee. Notwithstanding any other provision of this Lease, Lessor agrees that Leasehold Mortgagee shall in no manner or respect whatsoever be liable or responsible for any of Lessee's obligations or covenants under this Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), unless and until Leasehold Mortgagee becomes the owner of said leasehold estate by foreclosure, sale in lieu of foreclosure, or otherwise, in which event such Leasehold Mortgagee shall be liable for such obligations and covenants only while it remains the owner of said leasehold estate.

22.10 No Merger. So long as any Leasehold Mortgage remains outstanding, the fee title and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in either the Lessor or the Lessee or a third party, by purchase or otherwise.

22.11 Foreclosure by Leasehold Mortgagee. In no event shall Lessor's consent be required, for any transfer or assignment of this Lease to Leasehold Mortgagee, any purchaser at a foreclosure sale or any other third party as a result of a foreclosure, trustee's sale or delivery of a deed in lieu of foreclosure (an "**Enforcement Action**"). In the event of any transfer of assignment of this Lease as a result of the foreclosure action, Lessor shall recognize such Leasehold Mortgagee, any purchaser at a foreclosure sale or any other third party who has succeeded to Lessee's interest under this Lease as a result of an Enforcement Action as "Lessee" for all purposes under this Lease. Promptly following an Enforcement Action, the then Lessee shall provide Lessor with such Lessee's notice address and shall make the Security Deposit to the extent required by SECTION 5.1 of this Lease.

22.12 Conflicts. In the event of a conflict between the provisions of this SECTION 22 and the provisions of the Lease, this SECTION 22 shall control.

## **23. GOVERNING LAW; ATTORNEY'S FEES.**

The laws of the State of Arizona shall govern the matters set forth in this Lease. Venue of any action brought under this Lease shall, at the option of Lessor, lie in Maricopa County, Arizona.

## **24. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.**

Lessee shall at all times comply with, and shall cause Approved Subtenant to comply with, all Federal, state and local laws, ordinances, rules, and regulations which are applicable to Lessee's or Approved Subtenant's

activities on the Airport, the Premises itself (including but not limited to the *Americans with Disabilities Act*), or the operation, management, maintenance, or administration of the Premises, including all laws, ordinances, rules and regulations adopted after the Effective Date. Lessee shall be responsible for controlling and preventing disruptive pedestrian and vehicle traffic associated with its activities on the Premises. Lessee also shall display, or shall cause Approved Subtenant to display, to Lessor any permits, licenses, or other evidence of compliance with laws upon request.

## **25. CORPORATE AUTHORIZATION.**

In executing this Agreement, Lessee represents and warrants to Lessor that if Lessee is a corporation, Lessee has obtained and been granted the full right, power and authority to enter into this Lease. In executing this Agreement, Lessor represents and warrants to Lessee that Lessor has obtained and been granted the full right, power and authority to enter into this Lease.

## **26. UTILITY LINES AND SERVICE CHARGES.**

26.1.1 Connections and Services. Lessee shall, at no cost or expense to Lessor, provide or arrange for any public utility, water and sewage lines, connections and services that are needed in connection with any building(s), structure(s) or other improvement(s) placed on the Premises by Lessee, or required for Lessee's activities thereon, and shall be responsible for the maintenance of such lines and connections from where they enter the Premises. If requested in advance to do so by Lessee, Lessor will grant reasonable rights-of-way on or across the Airport to suppliers of public utility services for the purpose of supplying Lessee with such services, but Lessor reserves the right to designate the lands along which such rights-of-way shall be granted so as to cause the least inconvenience in the operation of the Airport and other Airport tenants.

26.1.2 Payment. Lessee shall pay for all utilities, including trash collection, used in its operations at the Premises. The charges and method of payment for each utility or service shall be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish.

26.1.3 Continued Use and Repair. Notwithstanding the execution of this Lease, Lessor retains the right to the continued use of such utility lines and services as are presently on the Premises and the right to repair the same when necessary in Lessor's reasonable discretion, including but not limited to, any utility easements on the Premises. Lessor agrees to coordinate any entry onto the Premises with Lessee and shall conduct such repairs in such a manner and at such times as to not unreasonably interfere with Lessee's activities or the activities of Lessee's employees, agents, contractors, subtenants or invitees (collectively, "**Lessee's Occupants**") thereon.

## **27. RESERVATIONS TO LESSOR.**

The Premises are accepted "as is, where is" by Lessee, subject to the Permitted Exceptions. Lessor reserves the right to grant reasonable easements, rights-of-way, and permits, over, on, or across any portions of the Premises for commercially reasonable purposes; provided, that Lessor and the grantee, as applicable, shall not exercise such rights so as to unreasonably interfere with or disrupt Lessee's or and Lessee's Occupant's activities on the Premises, including the development of the Premises, to be determined in the reasonable judgment of Lessor and Lessee, and all such interference shall be minimized. The location of any such easements, rights-of-way and/or permits shall be subject to Lessee's prior written consent which shall not be unreasonably withheld, conditioned or delayed. Lessor shall provide Lessee reasonable notice of any plan to undertake the activities contemplated under this SECTION and shall coordinate with Lessee regarding the execution of such plans to minimize any interference with Lessee's or any Lessee's Occupant's activities on the Premises. All work shall be in compliance with all applicable laws, including Environmental Laws, and the

surface of the Premises shall be restored to its original condition, including any necessary remediation in accordance with Environmental Laws of any contamination associated with any Hazardous Material disturbed during any construction, at no cost to Lessee, upon the completion of any construction. Lessor agrees that any rights granted to any parties by reason of this clause shall contain provisions obligating such parties to, at a minimum, the same conditions applicable to Lessor under this Section 27, including but not limited to that the surface of the Premises and any Improvements shall be promptly restored to their original condition, at no cost to Lessee, promptly upon the completion of any construction.

## **28. FEDERAL AVIATION ADMINISTRATION (FAA) PROVISIONS.**

To the extent required by applicable law or applicable FAA guidance, as it may be updated from time to time:

28.1 Lessee agrees that in the event Lessee's improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation (DOT) program or activity is intended, or for another purpose involving the providing of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*, as it may be amended.

28.2 Lessee agrees that: (a) no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, creed, disability, age, sex or national origin in the use of the Premises; (b) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, or national origin; and (c) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, as it may be amended.

28.3 Lessee assures Lessor that it will comply with pertinent statutes, Executive Orders, and rules promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, age or handicap, be excluded from participating in any activity.

28.4 Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance therefrom; provided that the foregoing does not give Lessor the right to develop new landing areas on the Premises.

28.5 Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. Lessor and Lessee agree that Lessee has no responsibility whatsoever with respect to maintenance and repair of the landing area of the Airport, or any publicly owned facilities of the Airport.

28.6 This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation or maintenance of the Airport.

28.7 There is reserved unto Lessor, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, which shall include the right to cause in the airspace any noise inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in or through the airspace, and for the use of such airspace for landing on, taking off from, or operation on the Airport.

28.8 Lessee agrees to comply with the notification and review requirements covered in 14 CFR Part 77 in the event future construction of a building is planned for the Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

28.9 Lessee shall not erect or permit the erection of any structure or building, nor permit the growth of any tree on the Premises, or any other obstruction that exceeds height requirements contained in 14 CFR Part 77 or amendments thereto or interferes with the runway and/or taxiway "line of sight" of the control tower. In the event these covenants are breached, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object at the expense of Lessee.

28.10 Lessee shall not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

28.11 Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning 49 U.S.C. §§ 40103(e) and 47107(a)(4).

28.12 This Lease and all of the provisions hereof shall be subject to whatever right the United States government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

## 29. TITLE VI.

29.1 Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated or identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. Lessee understands and acknowledges that the FAA requires inclusion of and adherence to the terms and conditions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) ("**Title VI**") in all airport/aviation lease agreements where Lessor receives federal funding, including the Lease in this instance.

29.2 During the Term, Lessee, for itself, its assignees, and successors in interest agrees as follows:

29.2.1 Compliance with Regulations. Lessee will comply with the Title VI List of Pertinent Non-Discrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

29.2.2 Non-discrimination. Lessee, with regard to the work performed by it during Lease, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

29.2.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each

potential subcontractor or supplier will be notified by Lessee of Lessee's obligations under this Lease and the Non-discrimination Acts And Authorities on the grounds of race, color, or national origin.

29.2.4 Information and Reports. Lessee will provide all information and reports required by the acts, the regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to Lessor or the FAA as appropriate and will set forth what efforts it has made to obtain the information.

29.2.5 Sanctions for Noncompliance. In the event of Lessee's noncompliance with the Nondiscrimination provisions of this Lease, Lessor will impose such default remedies as it or the FAA may determine to be appropriate, including, but not limited to:

(a) withholding payments, if any, to Lessee under the Lease until Lessee complies; and/or

(b) cancelling, terminating, or suspending the Lease, in whole or in part, in accordance with, but subject to, SECTIONS 11 and 22.

29.2.6 Incorporation of Provisions. Lessee will include the provisions SUBSECTIONS 29.2.1 through 29.2.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the acts, the regulations and directives issued pursuant thereto. Lessee will take action with respect to any subcontract or procurement as Lessor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

29.3 The Lessee for itself, and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Non-Discrimination Acts and Authorities.

29.4 During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to the following (which Lessor is required to disclose and include in such Lease and other agreements, pursuant to FAA regulation):

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The FAA’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087) (2005); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

29.5 Lessee agrees that in the event improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation (DOT) program or activity is intended, or for another purpose involving the providing of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR

Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as it may be amended.

### **30. FEDERAL FAIR LABOR STANDARDS ACT**

This Lease incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. Lessee has full responsibility to monitor compliance to the referenced statute or regulation. Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **31. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

This Lease incorporates by reference the provisions of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide, and shall cause Approved Subtenant to provide, a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **32. INCORPORATION OF QUITCLAIM DEED**

Lessor owns the Airport pursuant to a Quitclaim Deed from the United States Government dated April 14, 1998 and recorded in the official records of Maricopa County, Arizona on April 30, 1998 as Entry No. 98-0354787 (the “**Deed**”), a copy of which is available to Lessee upon request and is hereby incorporated in its entirety. To the extent the Deed has terms, conditions, obligations, requirements or restrictions that apply to this Lease, Lessor, Lessee or any matter in connection herewith, Lessee agrees to be bound by all the terms, covenants and conditions of the Deed, including the following:

32.1 That this Lease is subject to all terms and conditions of the Deed; and

32.2 That in case of any conflict between the Deed and this Lease, the Deed shall control.

### **33. REQUIRED PROVISIONS OF QUITCLAIM DEED.**

33.1 Section VI (A)(5)(c) of the Deed requires that the following provisions be included in this Lease:

33.1.1 In furnishing services to the public, Lessee shall not discriminate against any person or class of persons by reason of race, color, creed, or national origin, and Lessee shall otherwise provide such services on a fair, equal, and not unjustly discriminatory basis to all users thereof.

33.1.2 Lessee shall charge fair, reasonable, and not unjustly discriminatory prices for each unit for service; except, however, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

33.2 If the Premises are within any of the archaeological sites identified in Section VIII.A of the Deed, then, the provisions of Section VIII of the Deed shall be deemed incorporated in this Lease by this express reference to Section VIII of the Deed.



33.3 To the extent the Deed requires that other specific provisions thereof be inserted in this Lease by express reference to the Deed, this sentence shall constitute an express reference to all such applicable provisions of the Deed.

**34. INTENTIONALLY DELETED.**

**35. DEFAULT BY LESSOR.**

In the event of any alleged breach by Lessor of its covenants or obligations contained in this Lease, Lessee shall have available all rights and remedies provided at law or in equity, subject to the terms and conditions of this Lease; provided, however, Lessee may not exercise any such right or remedy unless Lessee has notified Lessor by written notice of such alleged default, and Lessor has not cured such default within the THIRTY (30) calendar day period subsequent to receipt of such notice or, in the event such alleged default is of such a nature that it cannot reasonably be cured within such THIRTY (30) calendar day period, Lessor has failed to cure such alleged default with all due diligence. Notwithstanding anything to the contrary contained in this Lease, in no event shall Lessee be entitled to terminate this Lease or abate or offset any installment of Base Rent, or any other payments to be made by Lessee hereunder except as expressly permitted in SECTIONS 7.7, 7.8, and 14.18 of this Lease.

**36. BROKERS.**

Lessor and Lessee each represents and warrants to the other Party that it has not had any dealings with any real estate brokers, finders or agents in connection with this Lease. Lessor and Lessee each agrees to indemnify, defend (with counsel selected by the other) and hold the other Party and other Party's nominees, successors and assigns harmless from any and all claims, costs, commissions, fees or damages arising from a breach of such Party's representation and warranty in this SECTION.

**37. SALE BY LESSOR.**

Lessee agrees to look solely to Lessor's interest in the Premises and any insurance proceeds, including rents, profits, proceeds and awards for the recovery of any judgment against Lessor, it being agreed that neither Lessor nor the holders of the equity interests of Lessor, nor the members, partners, officers, directors or shareholders of Lessor shall be personally liable for any such judgment. In the event of any sale or other conveyance by Lessor of its interest in the Premises, Lessor shall be automatically freed and released from all personal liability accruing from and after the date of such sale or conveyance as respects the performance of any covenant or obligation on the part of Lessor contained in this Lease to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of Lessor shall be binding on the Lessor and its successors and assigns only during and in respect to the respective successive periods of ownership of the Premises.

**38. ESTOPPEL CERTIFICATE.**

Each of Lessor and Lessee shall, without charge, at any time and from time to time hereafter, within TEN (10) business days after written request from the other Party to do so, certify, by written instrument duly executed and acknowledged by such Party and certified to the other Party and to any prospective lender or purchaser/assignee: (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to the existence of any default hereunder to the best of such Party's knowledge; (iii) as to the date on which Lessee was obligated to commence paying any charges hereunder and the expiration date of the Term; (iv) as to whether this Lessee has assigned or transferred its interests or any portion thereof in this Lease; and (v) as to any other matters relating to this Lease and the Premises as may be reasonably requested. The requesting Party and any prospective purchaser or lender to whom the same was certified may rely upon any such certificate.

### 39. UNAVOIDABLE DELAY.

In the event either Party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such Party (“**Required Act**”), and such delay or hindrance is due to Unavoidable Delay (as defined below), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of Unavoidable Delay. For purposes of this Lease, “**Unavoidable Delay**” shall mean, with respect to either Party, an unavoidable delay in the performance by such Party of any non-monetary conditions or obligations under this Lease due including but not limited to: (a) construction delay to the extent caused by the other Party, (b) legal proceeding brought by a non-Party with respect to the Improvements or any provision or requirement of this Lease which by its nature prohibits the Improvements from being commenced, continued and/or completed, (c) a Party not receiving a governmental permit, license, entitlement approval or inspection in time to meet a contractual time period imposed hereunder provided that Party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, (d) flood, (e) epidemic, (f) quarantine restriction, (g) unusually severe weather not reasonably anticipated, (h) strike, (i) walkout, (j) lock-out, (k) war, (l) national emergency, (m) fire, (n) act of God, (o) act of terrorism, (p) natural disaster, (q) explosion, (r) default by the other Party hereunder in the performance of its obligations hereunder, (s) delay caused by the discovery, presences or actions necessary to investigate or remediate Hazardous Material under SECTION 14 (but excluding Hazardous Material attributable to the Party claiming Unavoidable Delay), or (t) unavailability or shortage of materials or labor that could not be reasonably anticipated, or (u) other causes beyond such Party’s control; provided that no Unavoidable Delay shall exist unless the Party claiming such Unavoidable Delay shall give written notice to the other Party of the occurrence of the Unavoidable Delay not later than FORTY-FIVE (45) days after the commencement of such Unavoidable Delay.

### 40. ADDITIONAL PAYMENTS.

40.1 Within FORTY-FIVE (45) days of the end of each calendar quarter occurring during the Term, Lessee shall pay Lessor an amount equal to TEN PERCENT (10%) of Operating Cash Flow (defined below) received by Lessee from the Premises. Operating Cash Flow shall be determined on a cash basis in accordance with accounting standards currently used by The Boyer Company, L.C. and applied on a consistent basis. Because the use of cash basis accounting may cause distortions, certain adjustments may be made including but not limited to the following: (x) Lessee may establish and increase such reserves as it reasonably deems to be required for the proper management, maintenance and operation of the Premises, and (y) Lessee shall make such adjustments as may be reasonably required fairly to present Operating Cash Flow including, but not limited to, matching rents and expenditures and amortizing capital or extraordinary expenditures over more than one year. To the extent reimbursed by a sublessee, the cost of refurbishing or replacing tenant improvements and performing similar work after initial construction of the building shall be treated as an Expenditure in the year(s) in which the sublessee reimburses Lessee for such tenant improvements. If no such itemized reimbursement is made by a sublessee or to the extent the reimbursement is less than the cost incurred, the net cost of refurbishing or replacing tenant improvements and performing similar work shall be treated as an Expenditure by amortizing the cost thereof on a straight-line method over the term of the sublease. For purposes of this Article 40, (i) “**Operating Cash Flow**” means all Rent less all Expenditures; (ii) “**Rent**” means all base annual rents, percentage rents and other rents, revenues and charges actually received by Lessee from sublessees of the Premises, but excluding receipts from loans (including member loans and Refinancing Proceeds (defined below)), Sales Proceeds (defined below), contributions to capital, insurance proceeds, recoveries in connection with eminent domain proceedings or recoveries in connection with other actions (but including as part of Rent recoveries of any unpaid Rent); and (iii) “**Expenditures**” means all costs, expenses and fees incurred by Lessee in connection with the construction, ownership, financing, improvement, operation, leasing, management, maintenance and repair of the Premises and/or horizontal improvements for the Premises (which cost, expenses and fees shall be reasonably allocated to the Premises by Lessee (as so allocated, the “**Applicable Horizontal Expenditures**”)) or required by any Leasehold Mortgage including, without limitation, a

management fee of 4% of all Rents, income taxes and repayment of advances made by the owners of Lessee or another lender to pay Expenditures in prior periods and all payments of debt service, preferred returns and equity contributions or repayments of member loans made to Lessee. Any payment or demand for return of an overpayment made to Lessor pursuant to this SECTION 40.1, shall be accompanied by a written statement setting forth in reasonable detail the manner in which Operating Cash Flow was calculated. Each such statement shall be conclusive and binding upon Lessor unless within one (1) year after receipt of such statement Lessor notifies Lessee in writing that Lessor disputes the correctness of such statement, specifying the particular respects in which the statement is claimed to be incorrect. Lessee shall grant to Lessor and to attorneys or independent certified public accountants retained by Lessor, but not on a contingency basis, at Lessor's sole cost and expense, access to Lessee's books and records upon reasonable notice during normal business hours for the purpose of verifying the amounts calculated and paid pursuant to this SECTION 40.1, and whether such payments were reasonable and proper. If, after audit, the Operating Cash Flow in question is determined to have been understated, Lessee shall pay any deficiency to Lessor, and, if the Operating Cash Flow in question is determined to have been overstated, Lessor shall pay any overpayment to Lessee. To assure that Lessor receives the appropriate payment of Operating Cash Flow as set forth in this SECTION, Lessee shall not distribute any Operating Cash Flow unless and until the Lessor receives payment in an amount proportional to the amount of any Operating Cash Flow received by Lessee, provided, the foregoing shall not prevent Lessee or its affiliates from making payments of any Expenditures.

40.2 In addition, upon a refinance of the initial construction loan or a sale of the leasehold interest in the Premises, Lessee shall pay to Lessor an amount equal to TEN PERCENT (10%) of the Refinancing Proceeds (defined below) or Sales Proceeds (defined below), as applicable. For purposes hereof, (i) **"Refinancing Proceeds"** means the actual amount of cash proceeds derived from the refinancing of a construction mortgage with respect to the Premises, less the following to the extent paid or reimbursed from such cash proceeds (A) the cost and expense of the refinancing including, without limitation, commissions and attorneys' fees and costs; (B) all principal, interest, preferred returns or other payments to lenders on the mortgage or other indebtedness of Lessee related to the Premises including, without limitation, loans or advances made by affiliates of Lessee, including member loans to Lessee, (C) all other Expenditures made from such cash proceeds; (D) the cost of any improvements to the Premises and the Applicable Horizontal Expenditures; and (E) such deposits to cash reserves as Lessee determines are required to pay anticipated Expenditures or liabilities and otherwise satisfy obligations related to the Premises or any mortgage including, without limitation, contingent liabilities; and (ii) **"Sale Proceeds"** means the actual amount of cash proceeds derived from the sale or other disposition of all or any part of the leasehold interest in the Premises, less the following to the extent paid or reimbursed from such cash proceeds: (A) the cost and expense incurred in connection with the sale or other disposition of the leasehold interest in the Premises, including, without limitation, commissions and attorneys' fees and costs; (B) all principal, interest, preferred interests or other payments to lenders on indebtedness related to the Premises including, without limitation, loans or advances made by affiliates of Lessee, including member loans to Lessee; (C) all other Expenditures made from such cash proceeds; (D) the cost of any improvements to the Premises and the Applicable Horizontal Expenditures; and (E) such deposits to cash reserves as Lessee determines are required to pay anticipated Expenditures or liabilities and otherwise satisfy obligations related to the Premises or any mortgage including, without limitation, contingent liabilities. To assure that Lessor receives the appropriate payment of Refinancing Proceeds and Sales Proceeds as set forth in this SECTION, Lessee shall not distribute any Refinancing Proceeds or Sales Proceeds unless and until the Lessor receives payment in an amount proportional to the amount of any Refinancing Proceeds or Sales Proceeds received by Lessee, provided, the foregoing shall not prevent Lessee or its affiliates from making payments of any Expenditures.

40.3 The obligations under this Section 40 are personal to the Lessee named herein (or any affiliate to which Lessee transfers this Lease). Without limiting the generality of the foregoing, upon the sale of the leasehold interest in the Premises at or above fair market value as reasonably determined by Lessee to a party that is not an affiliate of Lessee and the payment by Lessee to Lessor of TEN PERCENT (10%) of the Sales Proceeds, or the sale at or a foreclosure or delivery of a deed in lieu of foreclosure or other Enforcement

Action, the provisions of SECTIONS 40.1 and 40.2 automatically shall terminate and be of no further force and effect.

#### **41. MISCELLANEOUS.**

41.1 Personal Liability. No member of or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease because of any breach thereof, or because of its execution or attempted execution.

41.2 No Waiver. No provision of this Lease may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought.

41.3 Non-Waiver of Rights. No waiver or default by Lessor of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Lessee shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Lessee, and Lessor shall not be restricted from later enforcing any of the terms and conditions of this Lease.

41.4 Amendment. This Lease contains all agreements of the Parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence, or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. Oral commitments or promises are not enforceable and shall not be binding or made part of this Lease. Any revisions or modifications to this Lease must be in writing and mutually accepted by persons with full and complete authority to bind the Party.

41.5 Litigation Expenses. In the event of litigation between Lessor and Lessee in connection with this Lease, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all costs and expenses of litigation, including witness fees, expert witness fees, and court costs.

41.6 Headings. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Lease or any term thereof.

41.7 Entire Agreement. This Lease, including exhibits attached hereto at the time of its execution, constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, understandings and agreements between the Parties concerning such matters.

41.8 Memorandum of Lease. Upon request of a Party, the Parties will execute a memorandum of lease in the form attached hereto as **EXHIBIT E**, and the requesting Party may record the memorandum against the Premises in the Official Records of Maricopa County, Arizona.

41.9 Quiet Enjoyment. So long as this Lease is in full force and effect and Lessee performs all of Lessee's obligations hereunder, Lessee shall peacefully and quietly have, hold and enjoy the Premises for the Term without interference from Lessor, or anyone claiming by, through or under Lessor, subject to all of the provisions of this Lease.

#### **42. INCORPORATION OF RECITALS.**

The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

**43. DECLARATIONS.**

43.1 Subordination. The Premises are subject and subordinate to (a) that certain Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East dated [REDACTED], 2025] and recorded on [REDACTED], 2025] in the Official Records of Maricopa County, Arizona as Instrument No. 2025-[REDACTED] (“**Gateway East Declaration**”) and (b) the Declaration of Reciprocal Access and Parking Easements dated [REDACTED], 2025] and recorded on [REDACTED], 2025] in the Official Records of Maricopa County, Arizona as Instrument No. 2025-[REDACTED] (“**Parking Declaration**”). Lessee hereby agrees to fulfill and comply with the duties and obligations (i) of a “Lessee” and an “Occupant” as defined under the Gateway East Declaration with respect to the Premises and (ii) of a “Lessee” as defined under the Parking Declaration with respect to the Premises.

43.2 Assessments and other Obligations. Lessee shall pay its “Common Expense Share” of “Common Expenses” as defined in and set forth in the Gateway East Declaration. Such payment obligation shall constitute “additional rent” under this Lease. Lessee shall fulfil any other obligations it may have as a “Occupant” in accordance with the Gateway East Declaration with respect to the Premises.

**44. 49 CFR PART 23.**

Lessee plans that all hotel operations will be conducted by an Approved Subtenant pursuant to an Approved Sublease. In the event the Approved Sublease expires or terminates, Lessee acknowledges that if Lessee conducts any hotel operations pursuant to this Lease, the requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to such hotel operations and this Lease. As of the Effective Date, Lessor’s overall program goal for ACDBE participation is .03 percent (.03%). If applicable to the Lease, and to the extent required by applicable law, (i) Lessee agrees to make outreach efforts (as defined in 49 CFR Part 23) to carry out this policy through award of subcontracts to disadvantaged business enterprises and other small businesses to the fullest extent practicable and/or the utilization of ACDBE and other small business suppliers where feasible, and (ii) Lessee will maintain such records and submit such reports in connection with ACDBE participation as reasonably required by Lessor consistent with other similarly-situated Airport ACDBE program participants.

**IN WITNESS WHEREOF**, the Parties have executed this Lease the day and year first above written.

EXECUTED to be effective on the date specified above.

**LESSOR:**

**MESA GATEWAY AIRPORT AUTHORITY**, an  
Arizona joint powers airport authority

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

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by J. Brian O'Neill, in his  
capacity as the Executive Director/CEO of the Mesa Gateway Airport Authority.

Notary Public

My Commission Expires:  
\_\_\_\_\_

**LESSEE:**

**BOYER GATEWAY EAST MESA HOTEL 1,  
L.C.,** a Utah limited liability company

By: The Boyer Company, L.C., a Utah limited liability  
company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its:     Manager

STATE OF UTAH                     )  
  ) ss.  
County of Salt Lake             )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_,  
202\_, by \_\_\_\_\_ in his capacity as Manager of The Boyer Company, L.C., a Utah limited  
liability company, the Manager of Boyer Gateway East Mesa Hotel 1, L.C., a Utah limited liability company, for  
and on behalf of said limited liability company.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
LEGAL DESCRIPTION AND DEPICTION OF THE PREMISES

**p** 602.957.1155 | 3020 East Camelback Rd, Suite 201  
**f** 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**FOR**  
**GATEWAY EAST RETAIL SITE**  
**LOT 201**

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 222.97 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 440.45 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 74.00 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 31.04 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 214.12 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 32.00 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 60.08 FEET;

THENCE NORTH 82 DEGREES 37 MINUTES 17 SECONDS WEST, A DISTANCE OF 23.20 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 98.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE WEST, WHOSE RADIUS BEARS NORTH 81 DEGREES 37 MINUTES 35 SECONDS WEST, A DISTANCE OF 1217.32 FEET;

THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03 DEGREES 45 MINUTES 45 SECONDS, A LENGTH OF 79.94 FEET;

THENCE NORTH 47 DEGREES 13 MINUTES 15 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF TEXAS AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE LINE, SOUTH 89 DEGREES 38 MINUTES 14



p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

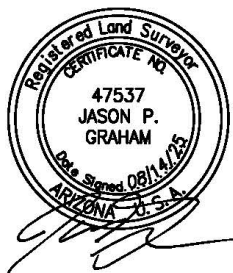
*dibblecorp.com*

SECONDS EAST, A DISTANCE OF 330.72 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 53.37 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 40 SECONDS WEST, A DISTANCE OF 1.00 FEET;

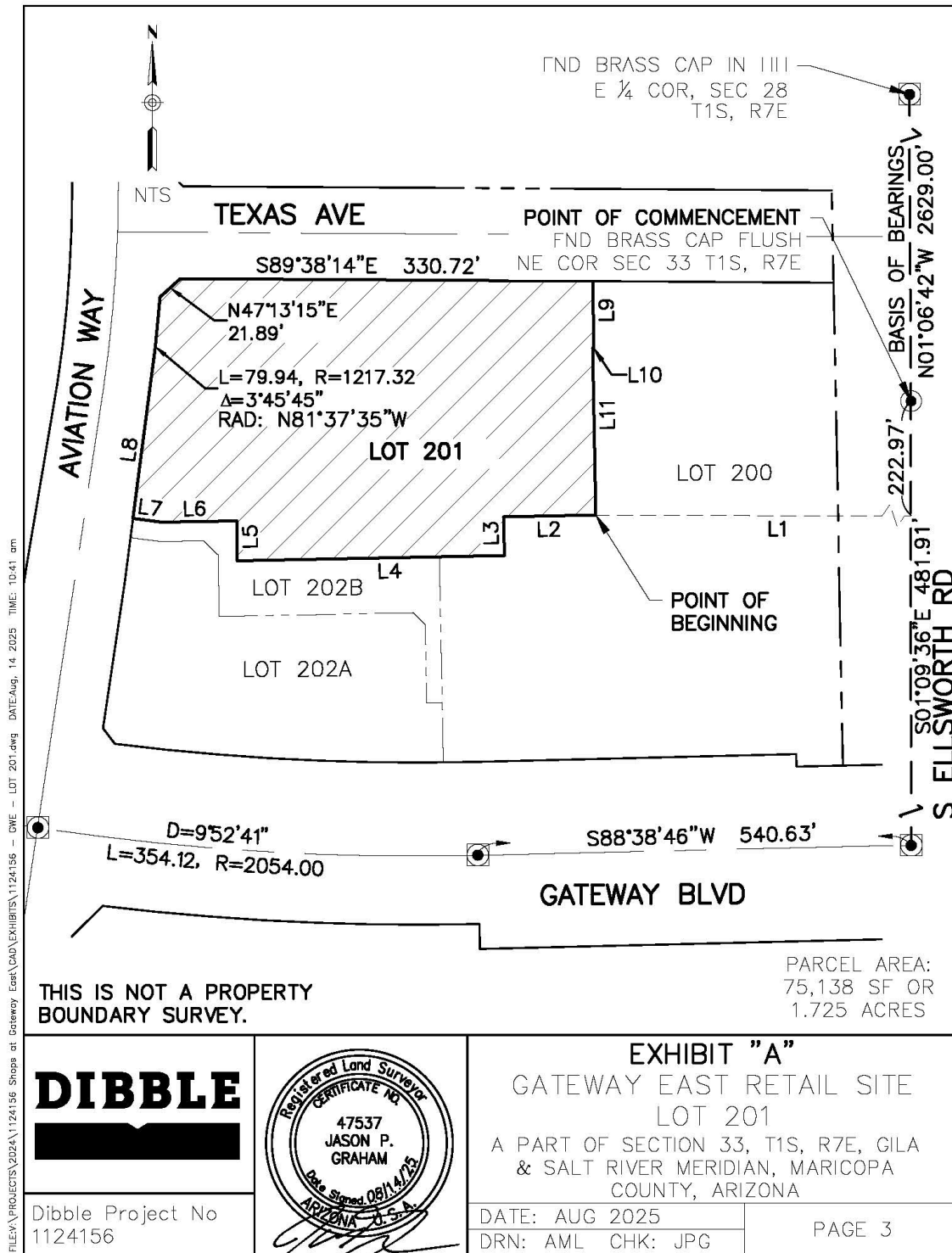
THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 134.19 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 75,138 SQUARE FEET OR 1.725 ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 201

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156

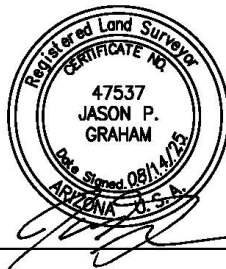


LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°50'58"W	440.45'
L2	S88°53'28"W	74.00'
L3	S01°06'32"E	31.04'
L4	S88°53'28"W	214.12'
L5	N01°06'32"W	32.00'
L6	S88°53'28"W	60.08'
L7	N82°37'17"W	23.20'
L8	N07°22'43"E	98.98'
L9	S01°06'32"E	53.37'
L10	S88°53'40"W	1.00'
L11	S01°06'32"E	134.19'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**

Dibble Project No  
1124156



**EXHIBIT "A"**

GATEWAY EAST RETAIL SITE  
LOT 201

A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025

DRN: AML CHK: JPG

PAGE 4

FILE:\PROJECTS\2024\1124156 Shops at Gateway East\CAD\EXHIBITS\1124156 - GWE - LOT 201.dwg DATE: Aug. 14, 2025 TIME: 10:42 am

**EXHIBIT B**

AIRPORT RATES & CHARGES SCHEDULE

*(Link)*

<https://www.gatewayairport.com/policiesdocumentsandforms>

AIRPORT FEES, SERVICES AND RENTAL RATES SCHEDULE

*(Link)*

<https://www.gatewayairport.com/policiesdocumentsandforms>

**EXHIBIT C**  
**PERMITTED EXCEPTIONS**

A. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

1. Taxes which may be assessed or levied subsequent to the effective date herein, and subsequent years.
2. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2025.
3. Reservations contained in the Patent

From: The United States of America  
Recording Date: January 24, 1914  
Recording No: Book 108 of Deeds, page 239

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts, and the reservation from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

4. Water rights, claims or title to water, whether or not disclosed by the Public Records.
5. Matters shown on record of survey:

Recording No: Book 409 of Maps, page 13

6. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

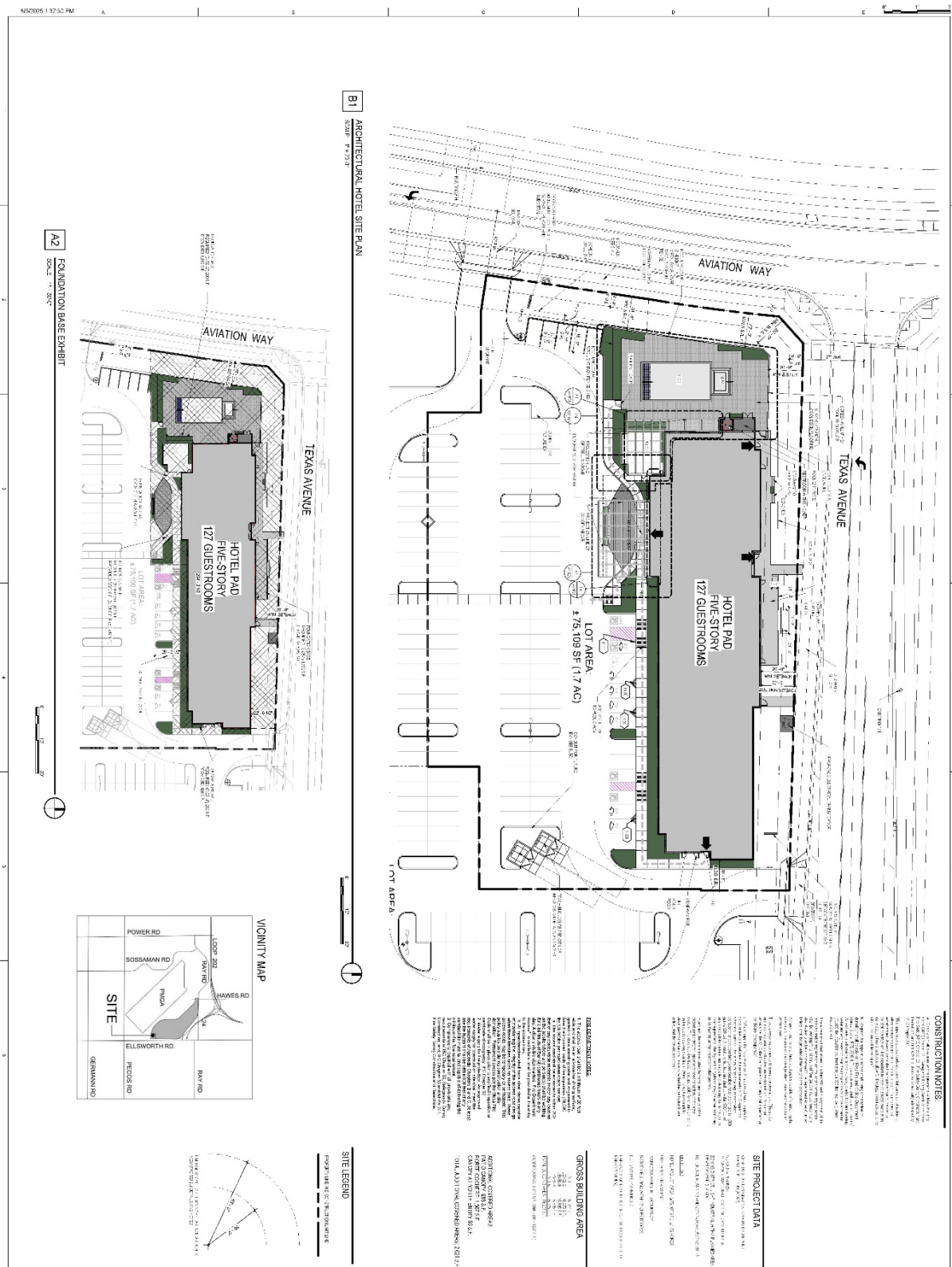
Recording No: 98-0354787  
Re-Recording No: 98-0364178

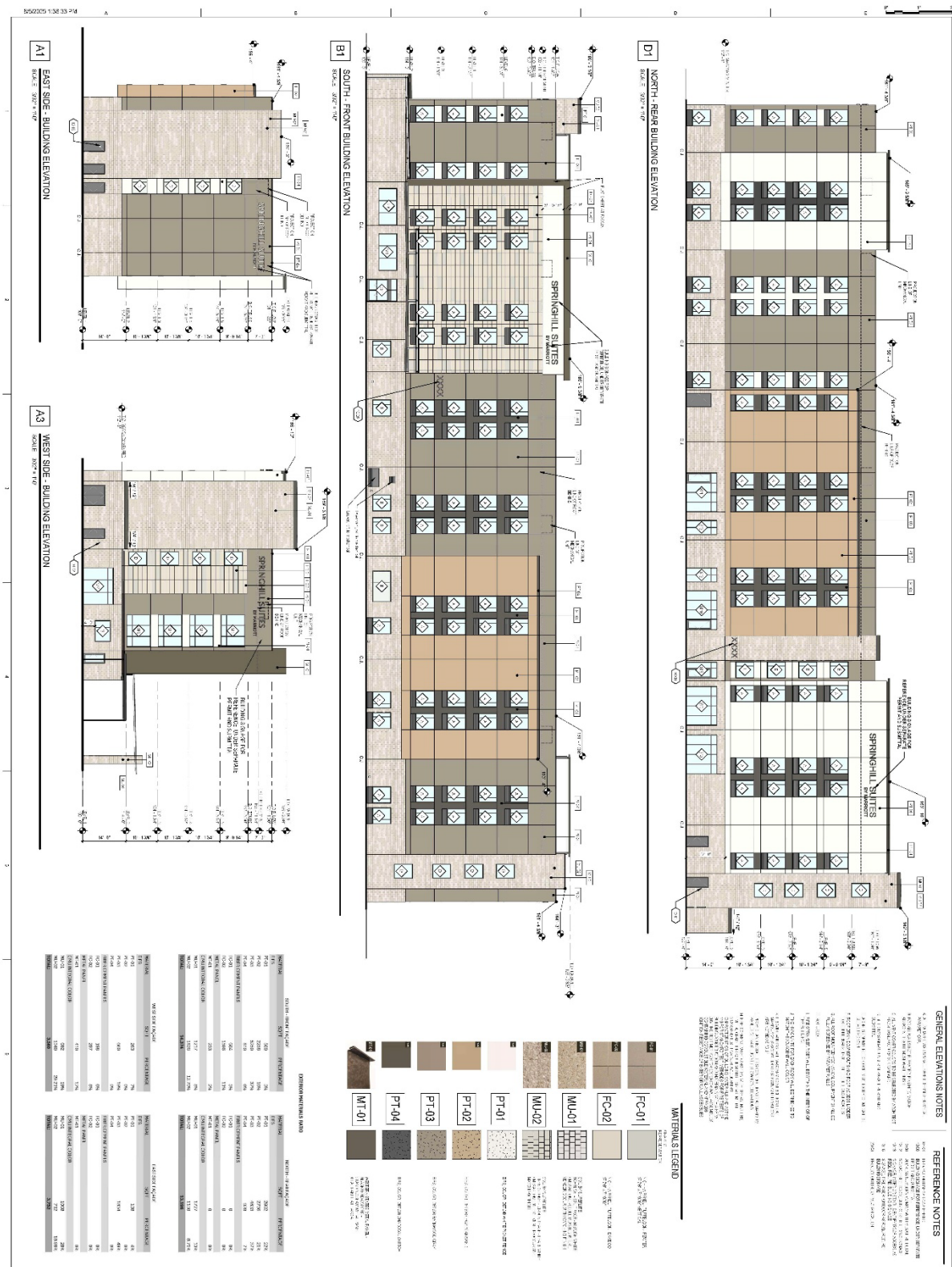
7. Any action that may be taken by the Flood Control District of Maricopa County to acquire property or rights of way for flood control, as disclosed by document recorded August 6, 1999, in Recording No. 99-0746645.
8. Electric Facilities Location Survey for Williams Gateway Airport

- Recording Date: October 13, 1999  
Recording No.: Book 514 of Maps, page 11
9. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:
- Purpose: Overhead and underground power and appurtenant facilities  
Recording Date: April 12, 2000  
Recording No: 20000276837
10. A Notice
- For: Map of Williams Gateway Airport Traffic Pattern Airspace  
Recording Date: August 18, 2000  
Recording No: 2000-0633846; and
- Avigation Notice
- Recording Date: April 27, 2017  
Recording No.: 20170301390
- Reference is hereby made to said documents for full particulars.
11. Matters contained in that certain document
- Entitled: Intergovernmental Agreement Between City of Mesa and Phoenix-Mesa Gateway Airport Authority for the Northeast Area Development and Ground Transportation Plan  
Recording Date: February 24, 2010  
Recording No: 20100151252
- Reference is hereby made to said document for full particulars.
12. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:
- Purpose: Temporary construction  
Recording Date: June 7, 2023  
Recording No: 20230295697
13. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.
14. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.
15. Any claims for construction liens that may be recorded by reason of a recent work of improvement under construction and/or completed at the date hereof.

## EXHIBIT D

## DEPICTION OF PROPOSED IMPROVEMENTS









**EXHIBIT E**MEMORANDUM OF LEASE

WHEN RECORDED,  
RETURN TO:

&lt;Name&gt;

&lt;Company&gt;

&lt;Address&gt;

&lt;City&gt;, &lt;State&gt; &lt;Zip&gt;

**MEMORANDUM OF LEASE**

This MEMORANDUM OF LEASE (“**Memorandum**”), is made and executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), by and between **MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona (“**Lessor**”), whose mailing address is Mesa Gateway Airport Authority, Attn: Business Development Department, 5835 South Sossaman Road, Mesa, Arizona 85212, and \_\_\_\_\_ (“**Lessee**”), whose mailing address is \_\_\_\_\_.

1. Lease and Premises. Lessor and Lessee entered into that certain Development Lease dated \_\_\_\_\_, 20\_\_\_\_ (“**Lease**”), covering that certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the “**Premises**”). Subject to the covenants and conditions contained in the Lease, Lessor has leased to Lessee, and Lessee has leased from Lessor, the Premises.

2. Term. The term of the Lease commenced on \_\_\_\_\_, 20\_\_, and expires on \_\_\_\_\_, unless earlier terminated pursuant to the terms of the Lease.

3. Use. Lessee may use and occupy the Premises for the development, construction and operation of a hotel, including, without limitation, for a Springhill Suites Hotel, and other uses related thereto to the extent approved by Lessor, and for no other use.

4. No Modification. This Memorandum shall not, under any circumstances, be deemed to modify or change any provisions of the Lease, the provisions of which shall in all instances prevail.

5. Counterparts. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document, provided that all parties are furnished a copy thereof reflecting the signature of all parties.

*(Signatures appear on the following page.)*

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the Effective Date set forth above.

**LESSOR:**

**MESA GATEWAY AIRPORT AUTHORITY**, an  
Arizona joint powers airport authority

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

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by J. Brian O'Neill, in his capacity as the Executive Director/CEO of the Mesa Gateway Airport Authority.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**LESSEE:**

**BOYER GATEWAY EAST MESA HOTEL 1, L.C.**, a Utah limited liability company

By: The Boyer Company, L.C., a Utah limited liability company, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its:     Manager

STATE OF UTAH                    )  
  ) ss.  
County of Salt Lake            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ in his capacity as Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of Boyer Gateway East Mesa Hotel 1, L.C., a Utah limited liability company, for and on behalf of said limited liability company.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A TO MEMORANDUM OF LEASE**LEGAL DESCRIPTION

**p** 602.957.1155 | 3020 East Camelback Rd, Suite 201  
**f** 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

**EXHIBIT "A"  
 LEGAL DESCRIPTION  
 FOR  
 GATEWAY EAST RETAIL SITE  
 LOT 201**

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 222.97 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 440.45 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 74.00 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 31.04 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 214.12 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 32.00 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 60.08 FEET;

THENCE NORTH 82 DEGREES 37 MINUTES 17 SECONDS WEST, A DISTANCE OF 23.20 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 98.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE WEST, WHOSE RADIUS BEARS NORTH 81 DEGREES 37 MINUTES 35 SECONDS WEST, A DISTANCE OF 1217.32 FEET;

THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03 DEGREES 45 MINUTES 45 SECONDS, A LENGTH OF 79.94 FEET;

THENCE NORTH 47 DEGREES 13 MINUTES 15 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF TEXAS AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 38 MINUTES 14

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

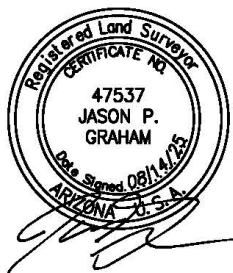
*dibblecorp.com*

SECONDS EAST, A DISTANCE OF 330.72 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 53.37 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 40 SECONDS WEST, A DISTANCE OF 1.00 FEET;

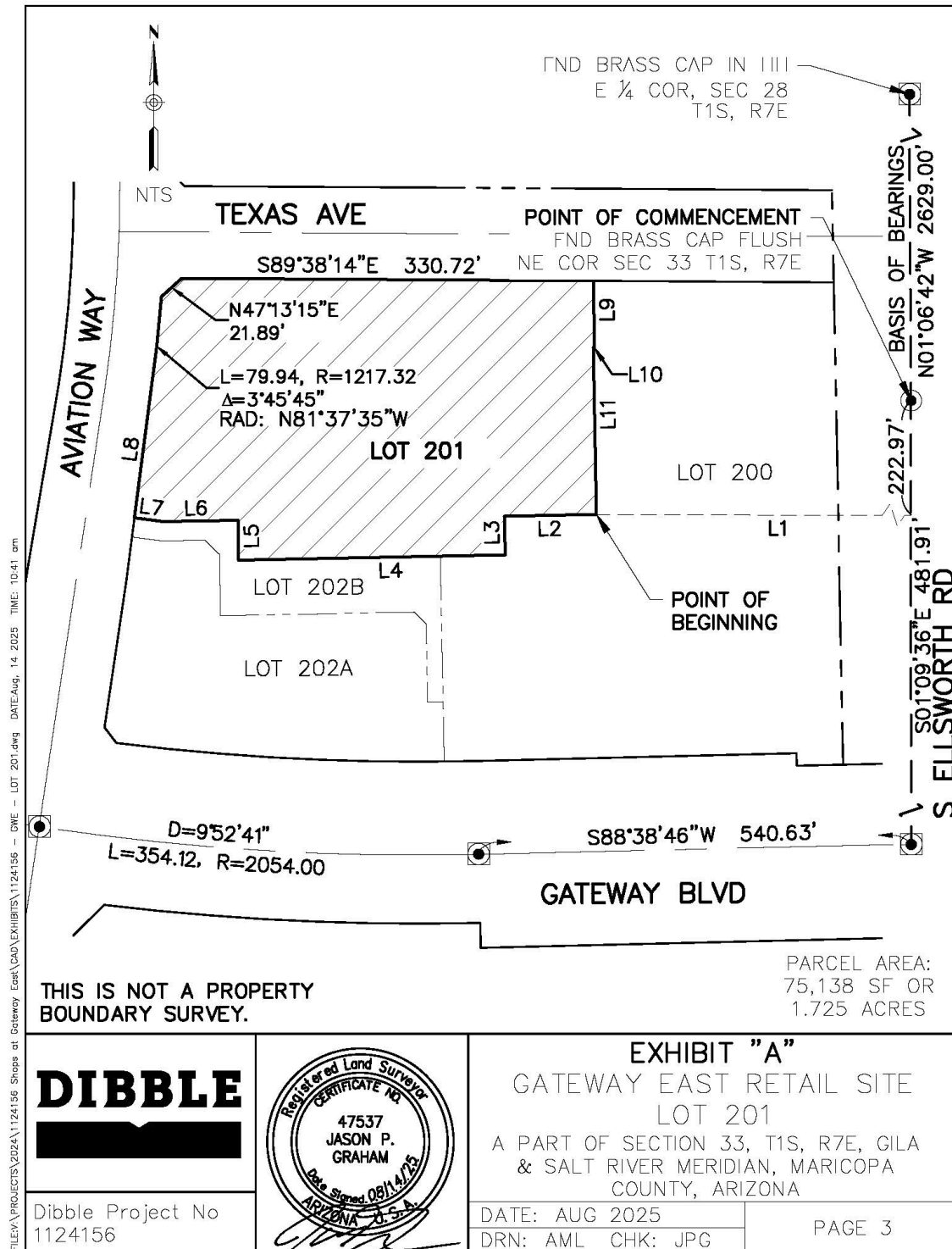
THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 134.19 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 75,138 SQUARE FEET OR 1.725 ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 201

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156

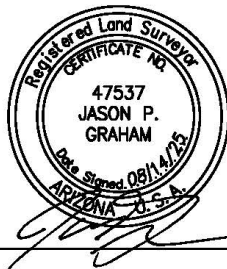


LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°50'58"W	440.45'
L2	S88°53'28"W	74.00'
L3	S01°06'32"E	31.04'
L4	S88°53'28"W	214.12'
L5	N01°06'32"W	32.00'
L6	S88°53'28"W	60.08'
L7	N82°37'17"W	23.20'
L8	N07°22'43"E	98.98'
L9	S01°06'32"E	53.37'
L10	S88°53'40"W	1.00'
L11	S01°06'32"E	134.19'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**

Dibble Project No  
1124156



**EXHIBIT "A"**

GATEWAY EAST RETAIL SITE  
LOT 201

A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025

DRN: AML CHK: JPG

PAGE 4

FILE:\PROJECTS\2024\1124156 Shops at Gateway East\CAD\EXHIBITS\1124156 - GWE - LOT 201.dwg DATE: Aug. 14, 2025 TIME: 10:42 am



**EXHIBIT F****PROHIBITED USES**

1. Outdoor activities or entertainment accessory to a wedding or reception center
2. Any residential development including but not limited to a dwelling unit in conjunction with a primary use intended for occupancy by the proprietor, caretaker or night-watchman of the primary use; a Multiple residence development including apartments, condominiums, and townhouses; and single-family residential development, mobile home parks, and recreational vehicle parks
3. Elementary and secondary schools
4. Crematories
5. Construction yards other than construction yards that are part of a building and screened from public view by walls or other structures
6. Wedding and reception centers
7. Fraternal organizations, service and social clubs, lodges, fraternities and sororities.
8. Nursing and convalescent homes, philanthropic and charitable institutions, residential and out- patient care and rehabilitation centers, hospices
9. Hospitals
10. Mortuaries
11. Self-Storage
12. Outdoor display areas for the sale and rental of items characteristically not enclosed in a building, limited to the following:
  - a. Plant nurseries
  - b. Building materials such as lumber and masonry supplies
13. Amusement enterprises, such as miniature golf courses, water slides, driving ranges. Batting cages, and similar outdoor uses, but indoor facilities for such uses shall be permitted
14. Commercial automobile, recreational vehicle, and similar vehicular parking and storage lots and garages, as a primary use
15. Plasma centers, charity dining services, homeless shelters, day labor hiring centers, substance abuse detoxification and treatment centers, rescue missions, and similar social service uses
16. Pawn shops and tattoo parlors
17. Assisted living facilities
18. Car washes in Development Phase I (as defined in the MDA)
19. Automobile service stations with or without accessory auto repair facilities in Development Phase I

20. Swap meets, farmer's markets, and similar outdoor sales operations
21. Auto towing and impound yards
22. Animal hospitals, clinics, and boarding kennels
23. Churches
24. Marijuana Dispensaries
25. Any sexually oriented business facility or a facility for the sale or display of pornographic or sexually explicit material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Premises is located



## **SECOND AMENDMENT TO MASTER LEASE AGREEMENT**

**THIS SECOND AMENDMENT TO MASTER LEASE AGREEMENT** (“**Amendment 2**”) is made as of the 1st day of October, 2025 by and between **MESA GATEWAY AIRPORT AUTHORITY**, formerly Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized and existing under the laws of the State of Arizona (“**Lessor**”), and **BOYER GATEWAY EAST L.C.**, a Utah limited liability company (“**Lessee**”).

### **RECITALS**

A. Lessor and Lessee are parties to that certain Master Lease Agreement dated June 21, 2022 (as amended, “**Lease**”), which Lease as of the date hereof is amended or affected as shown on **SCHEDULE 1** attached hereto and incorporated herein, and which Lease covers certain property commonly known as Gateway East at the Mesa Gateway Airport, which property is more particularly described in the Lease, and referred to in the Lease and in this Amendment 2 as “**Property**.”

B. The Parties desire to modify the Lease to, among other things, modify the boundaries for Phase I (as defined in the MDA), and therefore the Property, and to remove a Development Lot 201 from the Property in accordance with Section 2.1 of the Lease, as further set forth herein.

**NOW, THEREFORE**, in exchange for the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Recitals. The above recitals are hereby confirmed as true and correct and are reaffirmed herein.

2. Property Adjustment. **EXHIBIT B** to the Lease is deleted in its entirety and the attached **EXHIBIT B** inserted in its place.

3. Declaration/Exhibit F. **EXHIBIT F** to the Lease is hereby deleted in its entirety. Section 42.1 of the Lease is hereby deleted in its entirety and replaced with the following:

42.1 Subordination. The Property shall be subject and subordinate to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Gateway East dated [\_\_\_\_\_, 2025] and recorded on [September \_\_, 2025] in the Official Records of Maricopa County, Arizona as Instrument No. 2025-\_\_\_\_\_ (“**Declaration**”). Lessee hereby agrees to fulfill and comply with its duties and obligations of a “Lessee” and an “Occupant” as defined under the Declaration.

4. Miscellaneous.

(a) Capitalized Terms/Definitions. Each capitalized term used in this Amendment 2 and not defined herein shall be deemed to have the same meaning ascribed to it in the Lease.

(b) Continuing Effect. Except as specifically provided in this Amendment 2, the provisions of the Lease shall remain unchanged and in full force and effect. In the event of a conflict between the Lease and this Amendment 2, this Amendment 2 shall control.

(c) Authority. Each person executing this Amendment 2 on behalf of a Party represents and warrants that it has the full power, authority, and legal right to execute and deliver this Amendment 2 on behalf of such Party and that this Amendment 2 constitutes the legal, valid and binding obligations of such Party, its heirs, representatives, successors and assigns, enforceable against such Party or Parties in accordance with its terms.

(d) Counterparts. To facilitate execution of this Amendment 2, this Amendment 2 may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Amendment 2 delivered electronically by e-mail shall have the effect of an original, executed instrument. All counterparts of this Amendment 2 shall collectively constitute a single instrument; but, in making proof of this Amendment 2 it shall not be necessary to produce or account for more than one such counterpart executed by each Party hereto. It shall not be necessary for the signature of, or on behalf of, each Party hereto, or that the signature of all persons required to bind any such Party appear on each counterpart of this Amendment 2.

**[Remainder of Page Left Intentionally Blank; Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have executed this Amendment 2 as of the day and year first above written.

**LESSOR:**

**MESA GATEWAY AIRPORT AUTHORITY**,  
formerly Phoenix-Mesa Gateway Airport Authority, an  
Arizona joint powers airport authority

By: \_\_\_\_\_

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

**LESSEE:**

**BOYER GATEWAY EAST L.C.**, a Utah limited  
liability company

By: The Boyer Company, L.C., a Utah limited liability  
company, its Manager

By: \_\_\_\_\_  
Brian Gochnour, Manager

**[Remainder of Page Left Intentionally Blank; Exhibit Follows]**

EXHIBIT B

Depiction and Legal Description of Property

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

EXHIBIT "A"  
LEGAL DESCRIPTION  
FOR  
GATEWAY EAST  
BOUNDARY

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 28 AND THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, NORTH 89 DEGREES 38 MINUTES 14 SECONDS WEST, A DISTANCE OF 246.11 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 416.28 FEET;

THENCE NORTH 88 DEGREES 38 MINUTES 46 SECONDS EAST, A DISTANCE OF 181.47 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 3.00 FEET;

THENCE SOUTH 43 DEGREES 44 MINUTES 15 SECONDS WEST, A DISTANCE OF 21.25 FEET;

THENCE SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 01 DEGREES 10 MINUTES 16 SECONDS EAST, A DISTANCE OF 120.00 FEET;

THENCE NORTH 88 DEGREES 38 MINUTES 46 SECONDS EAST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 46 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 14.12 FEET;

THENCE SOUTH 01 DEGREES 10 MINUTES 16 SECONDS EAST, A DISTANCE OF 8.00 FEET;

THENCE SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 470.37 FEET;

THENCE NORTH 01 DEGREES 21 MINUTES 14 SECONDS WEST, A DISTANCE OF 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE NORTH, WHOSE RADIUS BEARS NORTH 01 DEGREES 21 MINUTES 14 SECONDS WEST, WITH A RADIUS OF 2117.00 FEET;

MAY 2024  
GATEWAY EAST — BOUNDARY

PAGE 1  
**DIBBLE**

DIBBLE PROJECT NO  
1123031

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08 DEGREES 06 MINUTES 51 SECONDS, AN ARC LENGTH OF 299.81 FEET;

THENCE SOUTH 45 DEGREES 11 MINUTES 35 SECONDS WEST, A DISTANCE OF 28.75 FEET;

THENCE NORTH 63 DEGREES 08 MINUTES 29 SECONDS WEST, A DISTANCE OF 8.43 FEET;

THENCE NORTH 81 DEGREES 41 MINUTES 35 SECONDS WEST, A DISTANCE OF 80.00 FEET;

THENCE SOUTH 71 DEGREES 00 MINUTES 40 SECONDS WEST, A DISTANCE OF 9.02 FEET;

THENCE NORTH 46 DEGREES 30 MINUTES 07 SECONDS WEST, A DISTANCE OF 7.97 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, WHOSE RADIUS BEARS NORTH 09 DEGREES 59 MINUTES 12 SECONDS EAST, WITH A RADIUS OF 2137.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 13 MINUTES 08 SECONDS, AN ARC LENGTH OF 567.63 FEET;

THENCE NORTH 25 DEGREES 12 MINUTES 20 SECONDS EAST, A DISTANCE OF 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, WHOSE RADIUS BEARS NORTH 25 DEGREES 12 MINUTES 20 SECONDS EAST, WITH A RADIUS OF 2117.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 64 DEGREES 45 MINUTES 35 SECONDS, AN ARC LENGTH OF 2392.78 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 05 SECONDS WEST, A DISTANCE OF 395.69 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE WEST, WITH A RADIUS OF 1787.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05 DEGREES 23 MINUTES 29 SECONDS, AN ARC LENGTH OF 168.15 FEET;

THENCE NORTH 84 DEGREES 34 MINUTES 26 SECONDS EAST, A DISTANCE OF 126.00 FEET;

THENCE SOUTH 48 DEGREES 06 MINUTES 38 SECONDS EAST, A DISTANCE OF 5.39 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 943.05 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 52 SECONDS WEST, A DISTANCE OF 45.00 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 717.87 FEET;

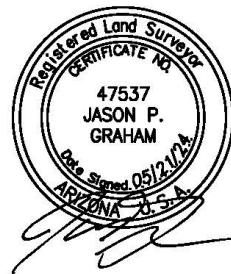
THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 45.00 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 74.00 FEET;

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE NORTH 01 DEGREES 34 MINUTES 46 SECONDS WEST, A DISTANCE OF 55.00 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 327.27 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 52 SECONDS EAST, A DISTANCE OF 45.00 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 206.87 FEET;  
THENCE SOUTH 01 DEGREES 43 MINUTES 56 SECONDS EAST, A DISTANCE OF 130.01 FEET;  
THENCE SOUTH 88 DEGREES 53 MINUTES 08 SECONDS WEST, A DISTANCE OF 245.51 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 52 SECONDS EAST, A DISTANCE OF 45.00 FEET;  
THENCE SOUTH 88 DEGREES 53 MINUTES 08 SECONDS WEST, A DISTANCE OF 280.25 FEET;  
THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 1047.42 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 07 SECONDS EAST, A DISTANCE OF 533.99 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 960.41 FEET TO THE  
POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 5,151,174 SQUARE FEET OR  
118.255 ACRES OF LAND, MORE OR LESS.

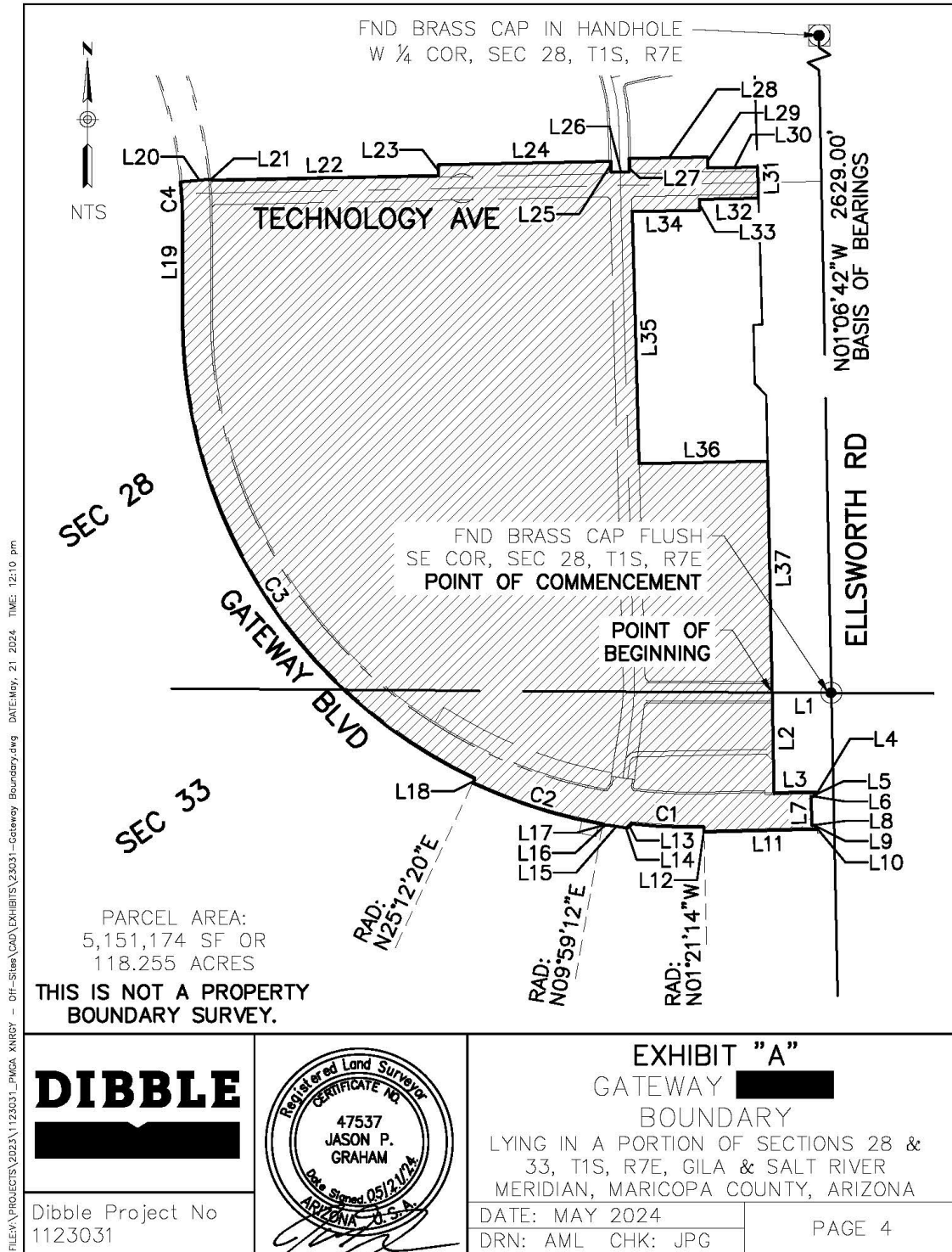


MAY 2024  
GATEWAY EAST — BOUNDARY

PAGE 3  
**DIBBLE**

DIBBLE PROJECT NO  
1123031





LESS AND EXCEPT THE FOLLOWING (LOT 210):

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 28, BEARS SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 2628.85 FEET;

THENCE NORTH 89 DEGREES 35 MINUTES 36 SECONDS WEST, A DISTANCE OF 297.00 FEET TO THE START OF A CURVE;

THENCE UPON AND WITH SAID CURVE, HAVING A RADIUS OF 2000.00 FEET, THROUGH A CENTRAL ANGLE OF 16 DEGREES 23 MINUTES 33 SECONDS, A LENGTH OF 572.20 FEET, TO A POINT ON A NON-TANGENT CURVE, WITH A RADIAL BEARING OF SOUTH 73 DEGREES 59 MINUTES 44 SECONDS WEST;

THENCE UPON AND WITH SAID CURVE, HAVING A RADIUS OF 800.00 FEET, THROUGH A CENTRAL ANGLE OF 14 DEGREES 25 MINUTES 30 SECONDS, A LENGTH OF 201.41 FEET,

THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 286.76 FEET,

THENCE SOUTH 88 DEGREES, 25 MINUTES 14 SECONDS WEST, A DISTANCE OF 52.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 46 DEGREES 20 MINUTES 49 SECONDS EAST, A DISTANCE OF 21.30 FEET,

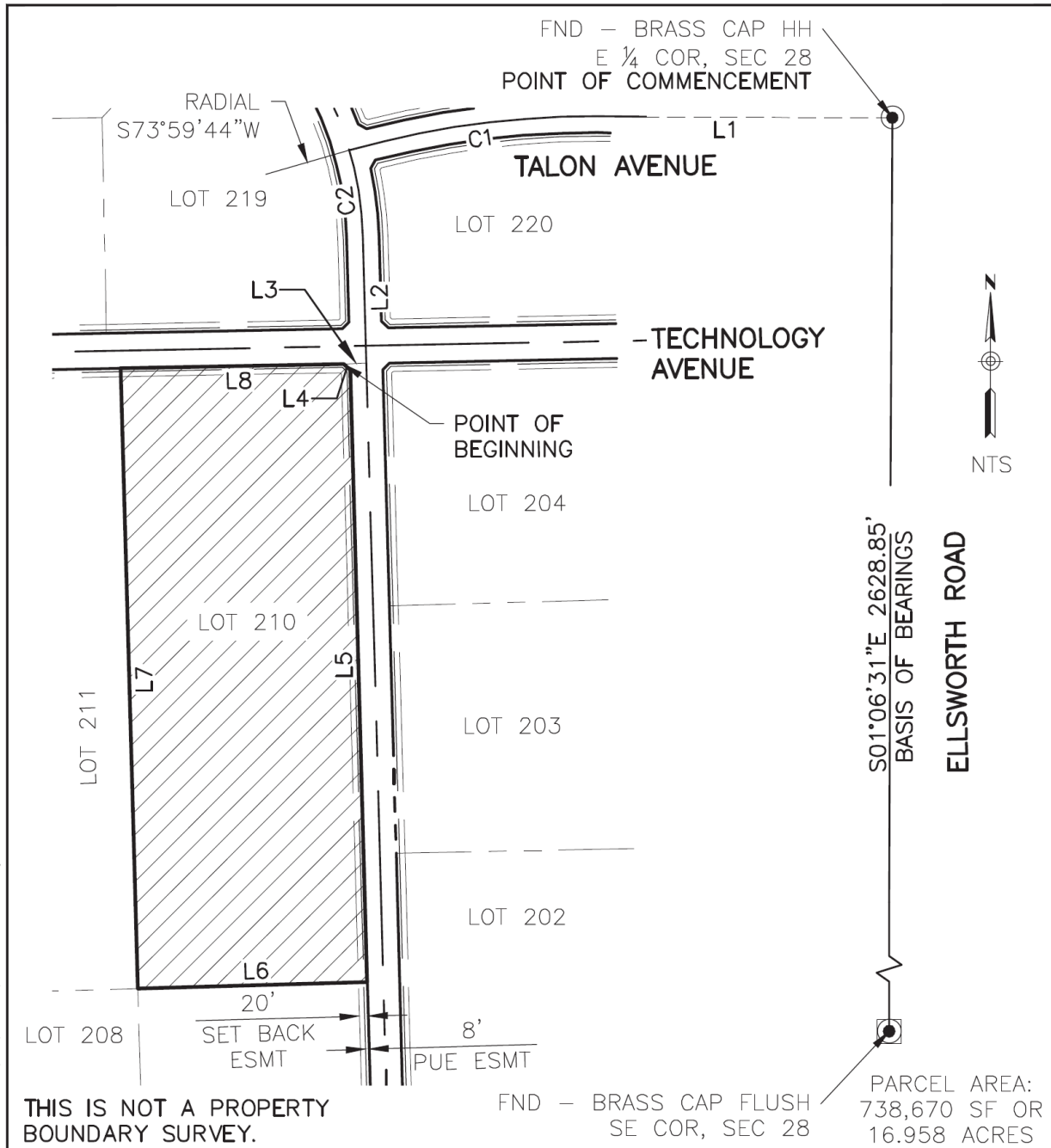
THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 1395.53 FEET,

THENCE SOUTH 88 DEGREES 25 MINUTES 14 SECONDS WEST, A DISTANCE OF 523.00 FEET,

THENCE NORTH 01 DEGREES 34 MINUTES 39 SECONDS WEST, A DISTANCE OF 1414.78 FEET,

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 507.97 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 738,670 SQUARE FEET OR 16.958 ACRES OF LAND, MORE OR LESS.





**DIBBLE**

Dibble Project No  
1123031



DEPICTION OF EXHIBIT "A"  
LOT 210

A PART OF SECTION 28, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: SEP 2023

DRN: AML CHK: JPG

PAGE 2

LESS AND EXCEPT THE FOLLOWING (LOT 201, REMOVED BY THIS AMENDMENT 2):

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

EXHIBIT "A"  
LEGAL DESCRIPTION  
FOR  
GATEWAY EAST RETAIL SITE  
LOT 201

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 222.97 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 440.45 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 74.00 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 31.04 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 214.12 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 32.00 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 60.08 FEET;

THENCE NORTH 82 DEGREES 37 MINUTES 17 SECONDS WEST, A DISTANCE OF 23.20 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 98.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE WEST, WHOSE RADIUS BEARS NORTH 81 DEGREES 37 MINUTES 35 SECONDS WEST, A DISTANCE OF 1217.32 FEET;

THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03 DEGREES 45 MINUTES 45 SECONDS, A LENGTH OF 79.94 FEET;

THENCE NORTH 47 DEGREES 13 MINUTES 15 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF TEXAS AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE LINE, SOUTH 89 DEGREES 38 MINUTES 14

AUG 2025  
GWE - LOT 201

PAGE 1  
**DIBBLE**

DIBBLE PROJECT NO  
1124156

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

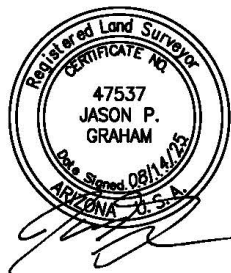
*dibblecorp.com*

SECONDS EAST, A DISTANCE OF 330.72 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 53.37 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 40 SECONDS WEST, A DISTANCE OF 1.00 FEET;

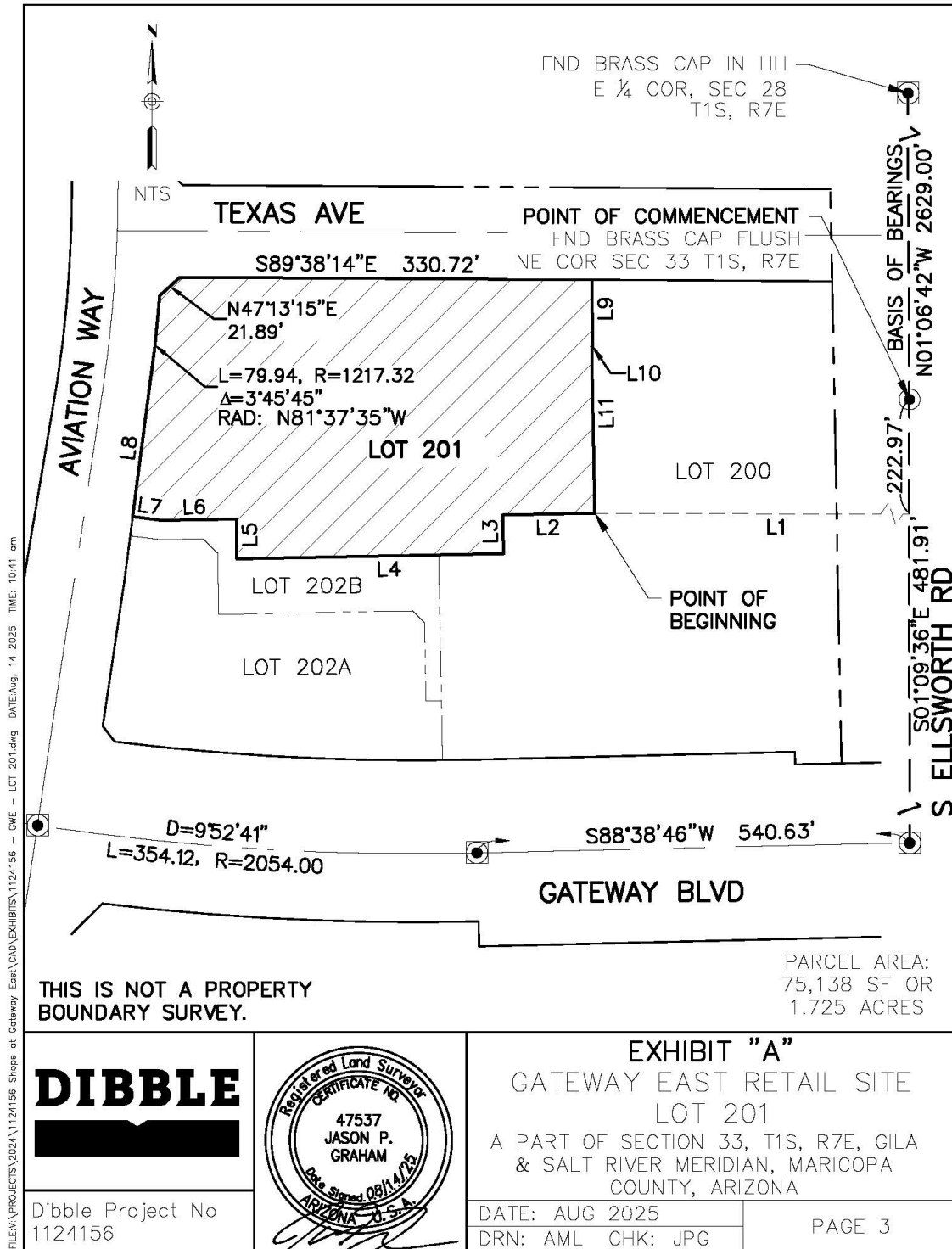
THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 134.19 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 75,138 SQUARE FEET OR 1.725 ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 201

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



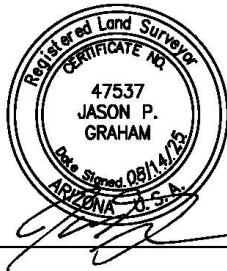
FILE\\PROJECTS\\2024\\1124156 Shops at Gateway East\\CAD\\EXHIBITS\\1124156 - CWE - LOT 201.dwg DATE: Aug. 14, 2025 TIME: 10:42 am

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°50'58"W	440.45'
L2	S88°53'28"W	74.00'
L3	S01°06'32"E	31.04'
L4	S88°53'28"W	214.12'
L5	N01°06'32"W	32.00'
L6	S88°53'28"W	60.08'
L7	N82°37'17"W	23.20'
L8	N07°22'43"E	98.98'
L9	S01°06'32"E	53.37'
L10	S88°53'40"W	1.00'
L11	S01°06'32"E	134.19'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**  


Dibble Project No  
1124156



**EXHIBIT "A"**  
GATEWAY EAST RETAIL SITE  
LOT 201

A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025  
DRN: AML CHK: JPG

PAGE 4

## **SCHEDULE 1**

### **Master Lease Agreement Documents**

1. Master Lease Agreement dated June 21, 2022, by and between the Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized and existing under the laws of the State of Arizona ("PMGAA"), as "Lessor," and Boyer Gateway East L.C., a Utah limited liability company ("Boyer"), as "Lessee."
2. First Adjustment Amendment to Master Lease Agreement dated October 1, 2023, by and between PMGAA, as "Lessor," and Boyer, as "Lessee."



**DECLARATION OF  
RECIPROCAL ACCESS AND PARKING EASEMENTS  
(Lots 201, 202, 203)**

THIS DECLARATION OF RECIPROCAL ACCESS AND PARKING EASEMENTS (this “Declaration”) is made as of the 28th day of August, 2025, by Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (“MGAA”), whose address is 5835 S. Sossaman Road, Mesa, Arizona 85212.

**RECITALS**

A. MGAA is the owner and operator of the Mesa Gateway Airport in Maricopa County, Arizona.

B. MGAA is the fee simple owner of the land located in the City of Mesa, County of Maricopa, Arizona and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

C. MGAA desires to establish and declare hereby a mutual reciprocal easement in favor of the Lots (as defined in Section 1 below), for the purpose of pedestrian and vehicular access, ingress, and egress and vehicular parking in, over, and under a portion of the Lots, in accordance with the terms and conditions set forth herein.

**DECLARATION**

NOW, THEREFORE, MGAA hereby declares as follows:

1. Definitions. As used in this Declaration, each of the following terms have the meaning indicated:

“Land” means land located in the City of Mesa, County of Maricopa, Arizona and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

“Lessee” means any person or entity having a leasehold interest in a Lot pursuant to a lease between such lessee and MGAA.

“Lots” means development lots within the Land and shown on Exhibit B. “Lot” means any of the Lots.

“Vehicular and Pedestrian Areas” means all areas located on the Lots at the time concerned that are designed to be used for the parking of motor vehicles or for vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, and pedestrian access thereto.

2. Creation of Easement. MGAA does hereby reserve, grant and declare a perpetual, nonexclusive reciprocal easement in, over, and under the Vehicular and Pedestrian Areas for the purpose of pedestrian and vehicular ingress and egress and vehicular parking (“Access and Parking Easement”). The Access and Parking Easement is created for the benefit of and may be used by the Lessees and their respective employees, customers, contractors, subtenants, agents, invitees, subtenants, successors and assigns (“Permittees”).

3. Modifications of Vehicular and Pedestrian Areas. Once constructed, no Vehicular and Pedestrian Areas may be reconfigured so as to eliminate or substantially impair Access and Parking Easement in a manner that would cause any of the Lots to have access to (taking into account this Declaration) less than the number parking spaces required under applicable zoning ordinances, development codes or other municipal requirements for all buildings on such Lot.

4. Maintenance. Each Lessee is responsible, at its sole costs and expense, to maintain, inspect, repair and replace (if necessary), or cause to be maintained, inspected, repaired and replaced (if necessary), the Vehicular and Pedestrian Areas on its Lot consistent with a Class A business park in the Phoenix-Metropolitan area. All maintenance must comply with the requirements of this Declaration and the applicable law then in effect, including all applicable procedures regarding safety and minimizing any inconvenience to the public. The foregoing must include keeping all improvements in a neat and clean condition and in good order, condition and repair, including without limitation the patching of pavement, resurfacing, sweeping and removing trash and debris, and maintaining any drainage system.

5. Barriers; Obstructions. Any fence, wall, or other barrier or structure of any kind on the Vehicular and Pedestrian Areas which would prevent, obstruct or impair the passage of pedestrian and vehicular traffic over and across the Vehicular and Pedestrian Areas to and from the Lots is prohibited.

6. Damage or Destruction.

6.1 By Fire or Other Casualty. If all or any part of the Vehicular and Pedestrian Areas is damaged or destroyed through casualty, the Lessee of each Lot must, at its expense, as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned.

6.2 By Act of the Lessees or Permittees. In the event any portion of the Vehicular and Pedestrian Areas, or any improvement located thereon, is damaged or destroyed by a willful or grossly negligent act of a Lessee or its Permittees, such Lessee will be responsible for the entire cost of repairing all damage resulting from such act.

7. No Public Dedication; Running of Benefits and Burdens; No Merger. The provisions of this Declaration are not intended to and do not constitute a dedication for public use of any portion of the Vehicular and Pedestrian Areas. All provisions of this Declaration, including the benefits and burdens, run with the land, and are binding upon and will inure to the benefit of the successors and assigns of MGAA. The common ownership of all or any portion of the Lots will not extinguish or merge the interests created under this Declaration at any time unless the then-current owner(s) of all the Lots, and each Lessee, records an instrument in the records of Maricopa County, Arizona terminating this Declaration.

8. Amendment and Termination. MGAA may amend, modify or revoke this Declaration at any time in its sole discretion, by recording in the office of the Recorder of Maricopa County, Arizona an instrument in writing reciting such revocation or amendment, and executed by MGAA and each Lessee.

9. Attorneys' Fees. In the event of any action to enforce the provisions of this instrument, the prevailing party will be entitled to receive reimbursement for reasonable costs and attorneys' fees, in an amount determined by the court and not by a jury.

10. Release on Transfer. On and after the date a Lessee transfers (other than merely for purposes of security) or is otherwise divested of such Lessee's interest in any Lot, such Lessee will be

relieved of all liabilities and obligations under this Declaration related to such Lot, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

11. Applicable Law. This Declaration must be construed and interpreted under, and governed and enforced according to, the laws of the State of Arizona.

12. Headings and Counterparts. The headings of this Declaration are for purposes of reference only and will not limit or define the meaning of any provision of this Declaration. This Declaration may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

MGAA:

**MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized by the State of Arizona

By: \_\_\_\_\_

Name: J. Brian O'Neill

Title: Executive Director/CEO

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by J. Brian O'Neill, as Executive Director/CEO of Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Exhibit A**  
Legal Description of the Land

**Lots 200, 201, 202A and 202B as described below:**



**p** 602.957.1155 | 3020 East Camelback Rd, Suite 201  
**f** 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**FOR**  
**GATEWAY EAST RETAIL SITE**  
**LOT 200**

**A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;**

**THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 423.38 FEET;**

**THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 246.54 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF GATEWAY BOULEVARD, ALSO BEING THE POINT OF BEGINNING;**

**THENCE UPON AND WITH SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 37.20 FEET;**

**THENCE NORTH 01 DEGREES 21 MINUTES 14 SECONDS WEST, A DISTANCE OF 10.00 FEET;**

**THENCE SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 257.16 FEET TO THE BEGINNING OF A TANGENT CURVE, BEING CONCAVE TO THE NORTH, WITH A RADIUS OF 1979.00 FEET;**

**THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00 DEGREES 44 MINUTES 51 SECONDS, A LENGTH OF 25.82 FEET;**

**THENCE DEPARTING THE AFORESAID NORTHERLY RIGHT OF WAY LINE, NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 164.83 FEET;**

**THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 52.14 FEET;**

**THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 31.04 FEET;**

**THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 74.00 FEET;**

**THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 134.19 FEET;**

**THENCE NORTH 88 DEGREES 53 MINUTES 40 SECONDS EAST, A DISTANCE OF 1.00 FEET;**

AUG 2025  
GWE - LOT 200



PAGE 1

DIBBLE PROJECT NO  
1124156

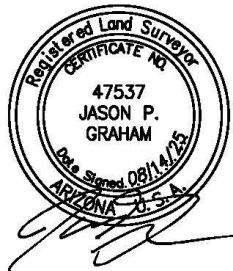
p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 53.37 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF TEXAS AVENUE;

THENCE UPON AND WITH SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 38 MINUTES 14 SECONDS EAST, A DISTANCE OF 193.14 FEET;

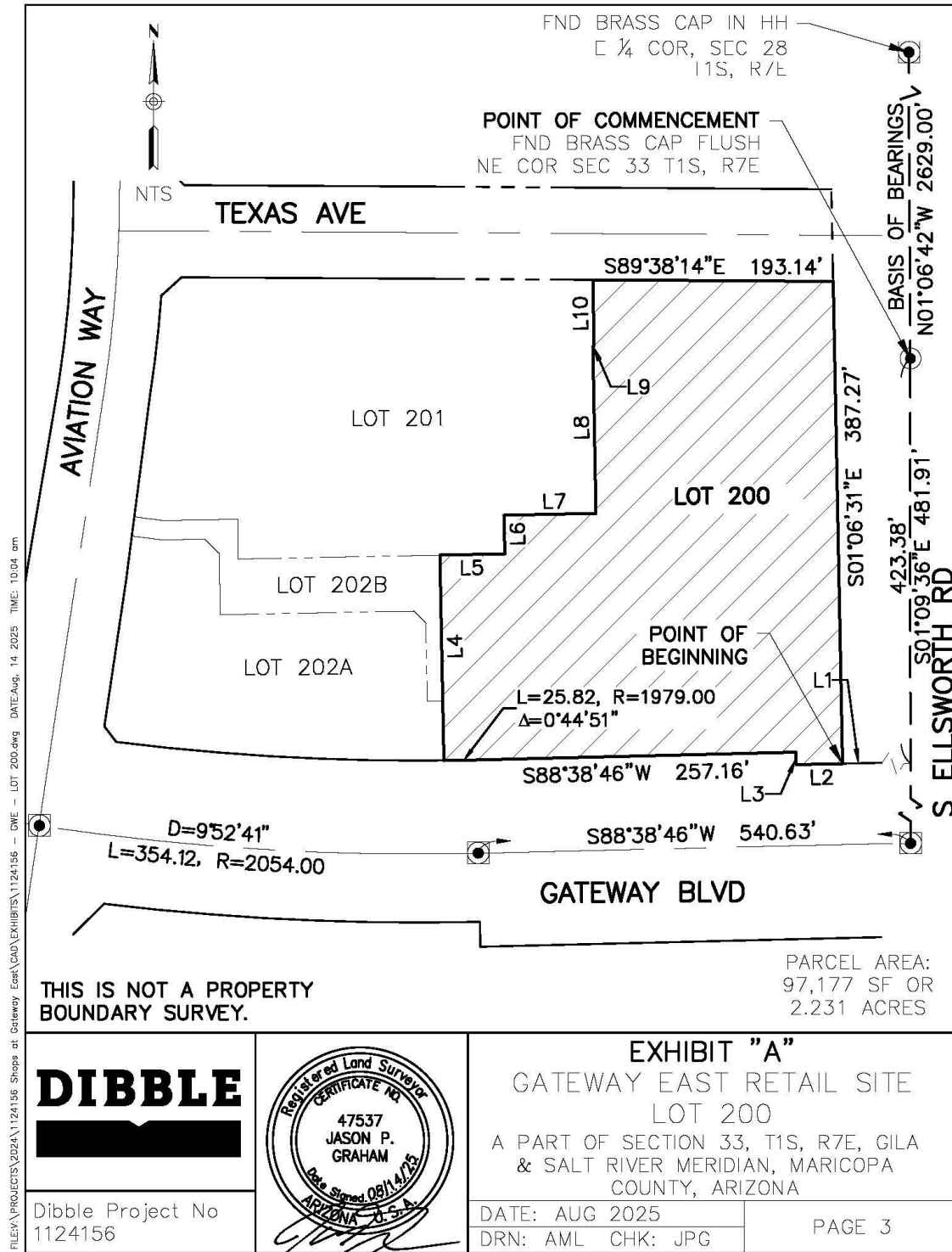
THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 387.27 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 97,177 SQUARE FEET OR 2.231 ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 200

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



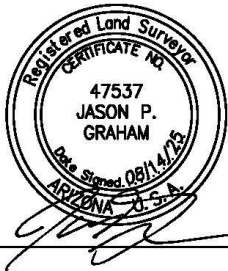
FILE\\PROJECTS\\2024\\1124156 Shops at Gateway East\\CAD\\EXHIBITS\\1124156 - DWE - LOT 200.dwg DATE: Aug, 14 2025 TIME: 10:05 am

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°50'58"W	246.54'
L2	S88°38'46"W	37.20'
L3	N01°21'14"W	10.00'
L4	N01°06'32"W	164.83'
L5	N88°53'28"E	52.14'
L6	N01°06'32"W	31.04'
L7	N88°53'28"E	74.00'
L8	N01°06'32"W	134.19'
L9	N88°53'40"E	1.00'
L10	N01°06'32"W	53.37'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**  
[Redacted]

Dibble Project No  
1124156



**EXHIBIT "A"**  
GATEWAY EAST RETAIL SITE  
LOT 200  
A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025  
DRN: AML CHK: JPG

PAGE 4

EXHIBIT "A"  
LEGAL DESCRIPTION  
FOR  
GATEWAY EAST RETAIL SITE  
LOT 201

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 222.97 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 440.45 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 74.00 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 31.04 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 214.12 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 32.00 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 60.08 FEET;

THENCE NORTH 82 DEGREES 37 MINUTES 17 SECONDS WEST, A DISTANCE OF 23.20 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 98.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE WEST, WHOSE RADIUS BEARS NORTH 81 DEGREES 37 MINUTES 35 SECONDS WEST, A DISTANCE OF 1217.32 FEET;

THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03 DEGREES 45 MINUTES 45 SECONDS, A LENGTH OF 79.94 FEET;

THENCE NORTH 47 DEGREES 13 MINUTES 15 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF TEXAS AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE LINE, SOUTH 89 DEGREES 38 MINUTES 14



p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

SECONDS EAST, A DISTANCE OF 330.72 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 53.37 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 40 SECONDS WEST, A DISTANCE OF 1.00 FEET;

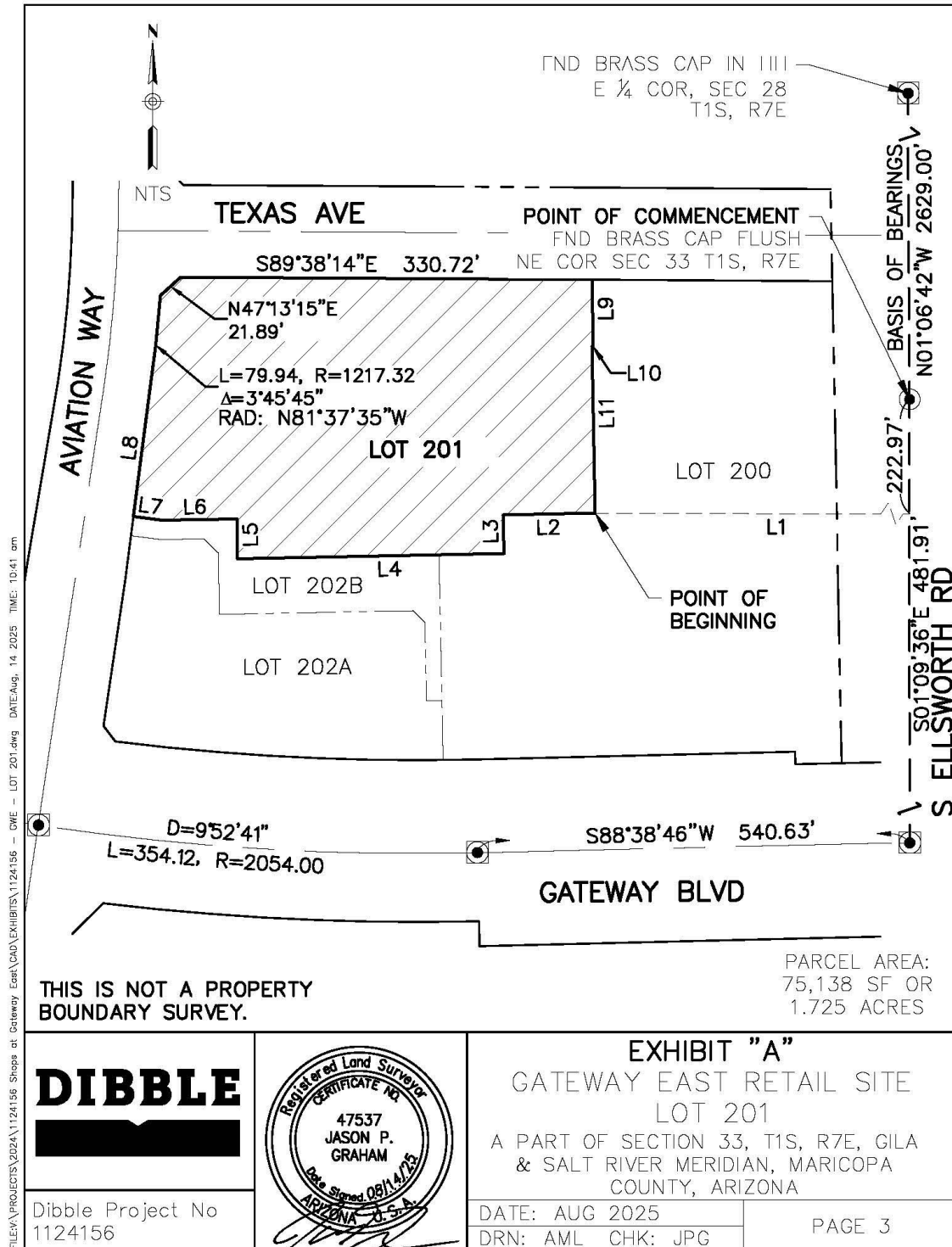
THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 134.19 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 75,138 SQUARE FEET OR 1.725 ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 201

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



FILE\\PROJECTS\\2024\\1124156 Shops at Gateway East\\CAD\\EXHIBITS\\1124156 - DWE - LOT 201.dwg DATE: Aug, 14, 2025 TIME: 10:42 am

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°50'58"W	440.45'
L2	S88°53'28"W	74.00'
L3	S01°06'32"E	31.04'
L4	S88°53'28"W	214.12'
L5	N01°06'32"W	32.00'
L6	S88°53'28"W	60.08'
L7	N82°37'17"W	23.20'
L8	N07°22'43"E	98.98'
L9	S01°06'32"E	53.37'
L10	S88°53'40"W	1.00'
L11	S01°06'32"E	134.19'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**



Dibble Project No  
1124156



**EXHIBIT "A"**

GATEWAY EAST RETAIL SITE  
LOT 201

A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025

DRN: AML CHK: JPG

PAGE 4

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

EXHIBIT "A"  
LEGAL DESCRIPTION  
FOR  
GATEWAY EAST RETAIL SITE  
LOT 202A

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 373.75 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 566.79 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 47.87 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF GATEWAY BOULEVARD, ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE NORTH WHOSE RADIUS BEARS NORTH 00 DEGREES 36 MINUTES 22 SECONDS WEST, A DISTANCE OF 1979.00 FEET;

THENCE UPON AND WITH SAID NORTHERLY RIGHT OF WAY LINE, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07 DEGREES 38 MINUTES 36 SECONDS, A LENGTH OF 264.00 FEET;

THENCE NORTH 37 DEGREES 15 MINUTES 08 SECONDS WEST, A DISTANCE OF 15.86 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 08 DEGREES 31 MINUTES 28 SECONDS EAST, A DISTANCE OF 118.74 FEET;

THENCE NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 35.54 FEET;

THENCE DEPARTING THE AFORESAID EASTERLY RIGHT OF WAY LINE, SOUTH 82 DEGREES 37 MINUTES 17 SECONDS EAST, A DISTANCE OF 24.35 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 34.23 FEET;

THENCE SOUTH 46 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 16.26 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 49.46 FEET;

AUG 2025  
GWE - LOT 202A

PAGE 1  
**DIBBLE**

DIBBLE PROJECT NO  
1124156

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 155.48 FEET;

THENCE SOUTH 46 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 13.44 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 63.00 FEET;

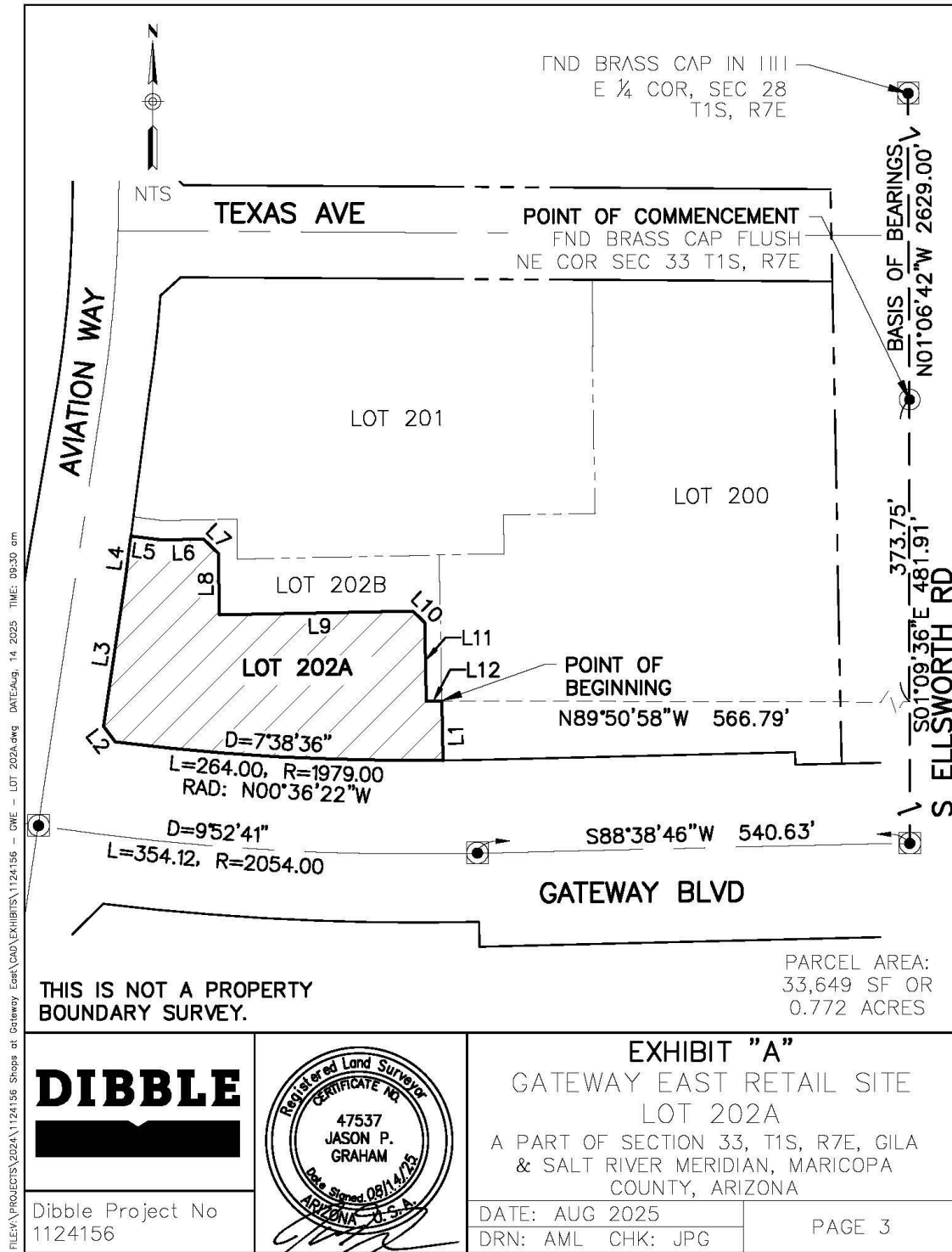
THENCE NORTH 88 DEGREES 53 MINUTES 29 SECONDS EAST, A DISTANCE OF 12.50 FEET TO THE  
POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 33,649 SQUARE FEET OR 0.772  
ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 202A

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



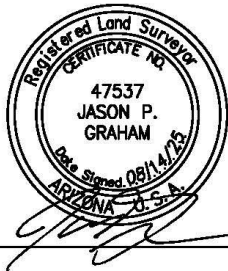
FILE\\PROJECTS\\2024\\1124156 Shops at Gateway East\\CAD\\EXHIBITS\\1124156 - DWE - LOT 202A.dwg DATE: Aug. 14, 2025 TIME: 09:30 am

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	S01°06'32"E	47.87'
L2	N37°15'08"W	15.86'
L3	N08°31'28"E	118.74'
L4	N07°22'43"E	35.54'
L5	S82°37'17"E	24.35'
L6	N88°53'28"E	34.23'
L7	S46°06'32"E	16.26'
L8	S01°06'32"E	49.46'
L9	N88°53'28"E	155.48'
L10	S46°06'32"E	13.44'
L11	S01°06'32"E	63.00'
L12	N88°53'29"E	12.50'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**  


Dibble Project No  
1124156



**EXHIBIT "A"**  
**GATEWAY EAST RETAIL SITE**  
**LOT 202A**

A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025

DRN: AML CHK: JPG

PAGE 4

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

EXHIBIT "A"  
LEGAL DESCRIPTION  
FOR  
GATEWAY EAST RETAIL SITE  
LOT 202B

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, FROM WHICH THE EAST QUARTER CORNER OF SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, ALSO BEING THE CENTERLINE OF SOUTH ELLSWORTH ROAD, SOUTH 01 DEGREES 09 MINUTES 36 SECONDS EAST, A DISTANCE OF 256.79 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89 DEGREES 50 MINUTES 58 SECONDS WEST, A DISTANCE OF 566.66 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 116.96 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 29 SECONDS WEST, A DISTANCE OF 12.50 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 63.00 FEET;

THENCE NORTH 46 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 13.44 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 155.48 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 49.46 FEET;

THENCE NORTH 46 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 16.26 FEET;

THENCE SOUTH 88 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 34.23 FEET;

THENCE NORTH 82 DEGREES 37 MINUTES 17 SECONDS WEST, A DISTANCE OF 24.35 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AVIATION WAY;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY LINE, NORTH 07 DEGREES 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 15.50 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 82 DEGREES 37 MINUTES 17 SECONDS EAST, A DISTANCE OF 23.20 FEET;

AUG 2025  
GWE - LOT 202B

PAGE 1  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 60.08 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 32.00 FEET;

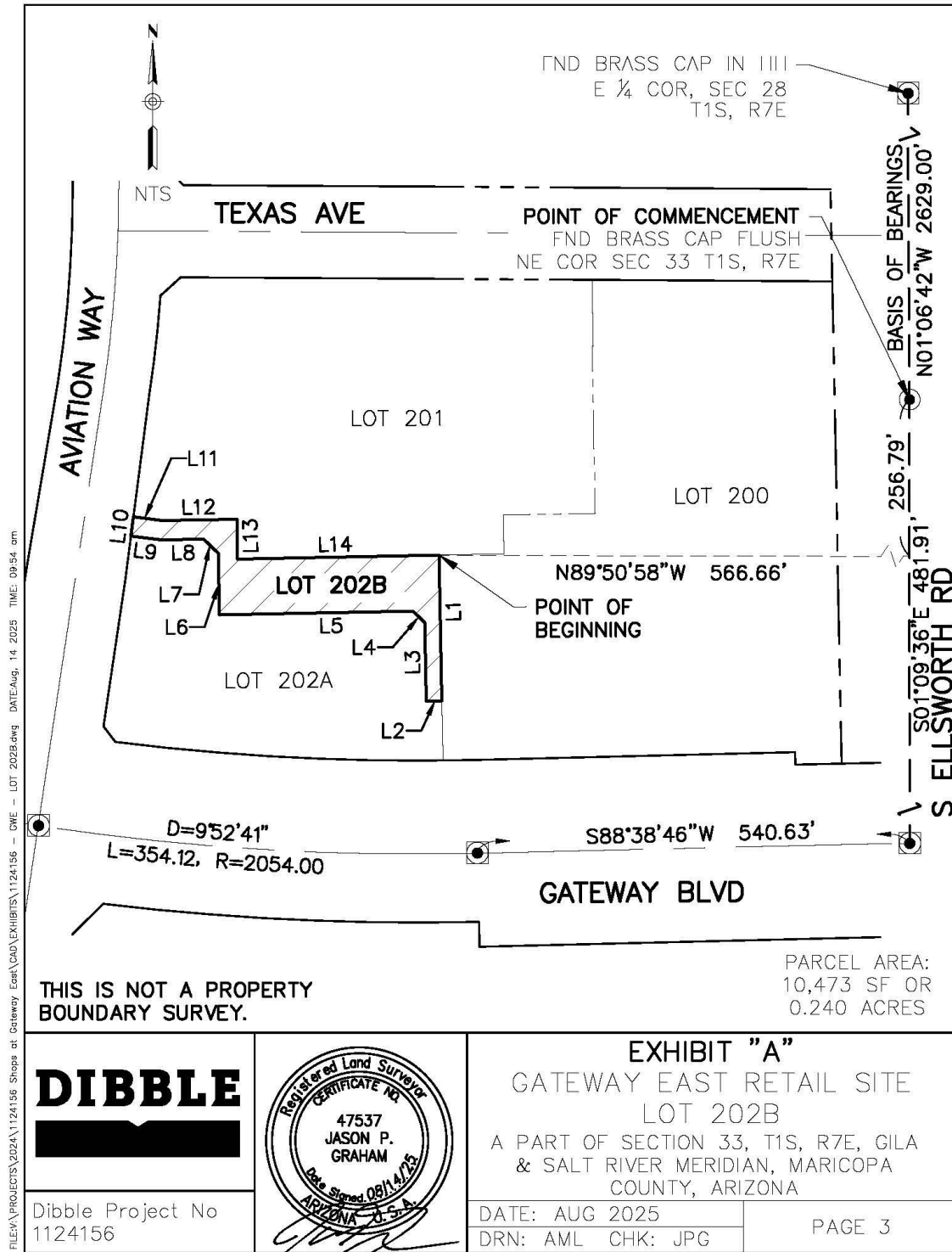
THENCE NORTH 88 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 161.98 FEET TO THE  
POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 10,473 SQUARE FEET OR 0.240  
ACRES OF LAND, MORE OR LESS.



AUG 2025  
GWE - LOT 202B

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1124156



FILE\\PROJECTS\\2024\\1124156 Shops at Gateway East\\CAD\\EXHIBITS\\1124156 - DWE - LOT 202B.dwg DATE: Aug, 14, 2025 TIME: 09:54 am

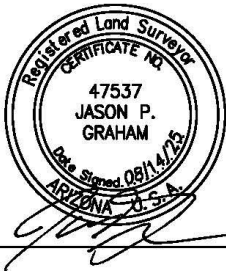
LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	S01°06'32"E	116.96'
L2	S88°53'29"W	12.50'
L3	N01°06'32"W	63.00'
L4	N46°06'32"W	13.44'
L5	S88°53'28"W	155.48'
L6	N01°06'32"W	49.46'
L7	N46°06'32"W	16.26'
L8	S88°53'28"W	34.23'
L9	N82°37'17"W	24.35'
L10	N07°22'43"E	15.50'
L11	S82°37'17"E	23.20'
L12	N88°53'28"E	60.08'
L13	S01°06'32"E	32.00'
L14	N88°53'28"E	161.98'

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.

**DIBBLE**



Dibble Project No  
1124156



**EXHIBIT "A"**

GATEWAY EAST RETAIL SITE  
LOT 202B

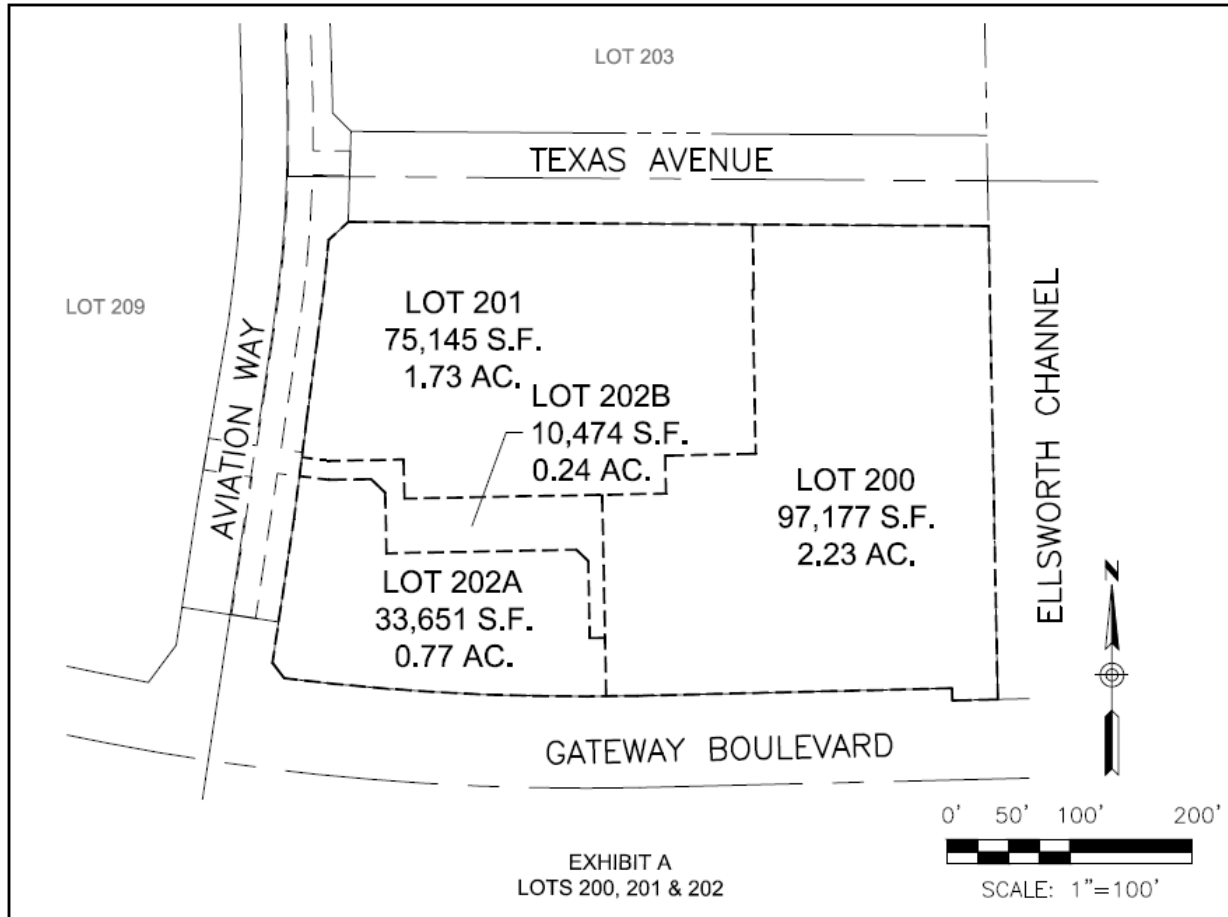
A PART OF SECTION 33, T1S, R7E, GILA  
& SALT RIVER MERIDIAN, MARICOPA  
COUNTY, ARIZONA

DATE: AUG 2025

DRN: AML CHK: JPG

PAGE 4

**Exhibit B**  
Depiction of the Lots



FILE:H:\2024\1124156 PMGA\_Shops at Gateway East\CAD\Exhibit\Boyer Exhibits\EXBT-A Lots.dwg DATE:8/14/2025)

DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

for

GATEWAY EAST

Dated as of August 28, 2025

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
1. DEFINITIONS.....	1
2. PROPERTY BOUND.....	5
2.1 General Declaration .....	5
2.2 Declarant’s Disclaimer of Representations.....	5
3. MANAGER. ....	5
3.1 Appointment of Manager .....	5
3.2 Professional Management Company .....	6
3.3 Indemnification .....	6
4. IMPROVEMENTS.....	6
4.1 Use .....	6
4.2 Improvements .....	7
5. COMMON AREA EASEMENTS.....	7
5.1 Access Easement.....	7
5.2 Utility Easement.....	7
5.3 Common Areas .....	7
5.4 No Obstruction.....	7
6. MANAGER’S DUTIES REGARDING COMMON AREA AND GATEWAY EAST MAINTAINED IMPROVEMENTS. ....	8
6.1 Generally.....	8
6.2 Maintenance of Common Area.....	8
6.3 Maintenance of Gateway East Maintained Improvements .....	8
6.4 Insurance on Common Area .....	8
6.5 Damage of Common Area .....	9
7. COMMON EXPENSES. ....	9
7.1 Obligation to Pay Common Expense Share.....	9
7.2 Collection.....	9
7.3 Default.....	10
7.4 Certain Obligations and Rights.....	10
8. MORTGAGEE PROTECTION. ....	10
8.1 Obligations of Mortgagee .....	10
8.2 Notices; Right to Cure .....	10
8.3 Performance .....	11
8.4 Recognition.....	11

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
9. ANNEXATION AND DE-ANNEXATION. ....	11
9.1 Annexation of Annexable Property .....	11
9.2 De-Annexation of Covered Property .....	11
10. COVENANTS TO RUN WITH LAND .....	12
11. AMENDMENT.....	12
12. ATTORNEYS' FEES .....	12
13. RELEASE ON TRANSFER.....	12
14. NO MERGER .....	12
15. FORCE MAJEURE .....	12
16. EFFECTIVE DATES AND DURATION .....	12
17. NOTICES.....	13
18. GENERAL PROVISIONS .....	13

DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
[Gateway East]

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (**Declaration**) is made as of the 28th day of August, 2025, by Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (**Declarant**), whose address is 5835 S. Sossaman Road, Mesa, Arizona 85212.

**RECITALS**

A. Declarant is the fee simple owner of the Land (as defined below).

B. Declarant desires and intends that the Development (as defined below) be operated as a first-class business park supporting a mix of uses to be called Gateway East and to impose upon the Development and all Lots (as defined below) from time to time created within the Development, mutual and beneficial restrictions, covenants, agreements, easements, conditions and charges as hereinafter set forth, under a general plan for the benefit of all of the Development.

**DECLARATION**

NOW, THEREFORE, the Declarant hereby declares, for and on behalf of itself, and all current and subsequent Lessees (as hereinafter defined), that the Lots and all portions thereof are now held and shall from and after the date hereof be acquired, held, encumbered, leased, used, occupied and improved subject to the following easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards, all of which are declared to be in furtherance of a plan for the mutual and reciprocal benefit, common use and enjoyment, improvement and lease of the Lots and all portions thereof, and which are established for the purpose of enhancing and protecting the value of the Development as a whole, as follows:

1. **Definitions.** As used in this Declaration, each of the following terms shall have the meaning indicated:

“**Annexable Property**” shall mean any real property adjacent to the Development not yet annexed or made a portion of the Development in accordance with the provisions hereof.

“**Boyer**” shall mean Boyer Gateway East, L.C., a Utah limited liability company.

“**Buildings**” means all buildings located in the Development at any time that are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the Lessee or Occupants of such buildings, including, without limitation, drive-through areas, trash enclosures, playgrounds and platforms, ramps, docks and signage affixed to the outside of such buildings. “**Building**” means any of the Buildings.

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



**“Common Area”** means all property within the Development intended for the common use and enjoyment of all of the Lots, including, but not limited to, (a) the Common Landscape and Signage Areas, (b) the Common Vehicular and Pedestrian Areas, (c) the Common Utility Facilities and the Common Utility Easement Area, (d) any amenities which may now or hereafter be established by Declarant for the common use and enjoyment of all Lots, (e) all land or right-of-way easements within the Development which are dedicated to the public or to the City, but which the City or other governmental agency requires the Declarant to maintain; and (f) any other areas with respect to which the Declarant has assumed in writing administrative or maintenance responsibilities. Common Area shall not include public right of way (except to the extent covered by (e) or (f) above), or Lots.

**“Common Expense Percentage”** for any particular Lot is calculated as follows: (a) divide the total gross square footage of the Lot concerned by the total gross square footage of all Lots located in the Development; (b) multiply the resulting quotient by 100 and round to the third (3<sup>rd</sup>) decimal place; and (c) express the resulting product as a percentage. The Common Expense Percentages of the Lots shall be adjusted from time to time by written notice given by the Manager to each Lessee and Declarant as of the date on which one or more Lots are annexed to the Development.

**“Common Expense Share”** means the product obtained by multiplying the Common Expenses for the relevant period by the Common Expense Percentage for the Lot concerned.

**“Common Expenses”** means the following:

(a) reasonable costs, expenses, fees, charges and other amounts (including appropriate reasonable reserves) paid or incurred by the Manager in connection with the improvement (excluding the initial improvement and development), operation, management, maintenance, repair and replacement of the Common Area and the Gateway East Maintained Improvements and the performance of the Manager’s duties and rights under Paragraphs 6 or 7 or any other provision of this Declaration, including, without limitation, all reasonable costs, expenses, fees and other amounts (including, without limitation, those that are properly capitalized under generally accepted accounting principles) relating to utilities, cleaning, sweeping, rubbish removal, landscaping, resurfacing, re-striping, replacing damaged or worn-out Improvements (including lighting and signage) located on the Common Area, taxes imposed on the Common Area, insurance, signage, licenses and permits, supplies, traffic regulation and control, security services, personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by the Manager and used exclusively in connection with such matters;

(b) managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to fifteen percent (15%) of the total of all other Common Expenses; and

(c) Common Expenses due but not paid to the Manager, which are determined by the Manager not to be legally or practicably recoverable after the Manager has exercised its commercially reasonable efforts to collect the same from the Lessee and has

determined that all reasonable remedies for collection have been exhausted, together with all interest on, and costs and attorneys' fees incurred in connection with, such unpaid Common Expenses; provided, however, that if such unpaid Common Expenses are later received by the Manager from or on behalf of the Lessee, any amounts previously paid by any other Lessees pursuant to the preceding portion of this sentence shall be refunded pro rata to such other Lessees.

**“Common Landscape and Signage Areas”** means any Landscaping installed by Declarant or Manager for the general benefit of the Development (and not for the benefit of just one Lot), and any monument or other signage advertising the entire Development (as distinguished from signage advertising particular Building(s) or its Occupant(s) in the Development). The Common Landscape and Signage Areas shall be used for the purposes set forth in Paragraph 5.3 and, subject to reimbursement in accordance with Paragraph 7, shall be maintained by the Manager pursuant to Paragraph 6. Declarant and Manager may, but are not obligated to, designate the Common Landscape and Signage Areas and/or additional or different Common Landscape and Signage Areas from time to time.

**“Common Utility Easement Area”** means the Common Vehicular and Pedestrian Areas together with all Improvements on such land, and any real property defined as an additional part of the Common Utility Easement Area from time to time. The Common Utility Easement Area shall be used for the purposes set forth in Paragraph 5.2 and, subject to reimbursement by the Lessees in accordance with Paragraph 7, shall be maintained by the Manager pursuant to Paragraph 6. Declarant and Manager may, but are not obligated to, designate the Common Utility Easement Areas and/or additional or different Common Utility Easement Areas from time to time.

**“Common Utility Facilities”** means all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Lot. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 5.2 and, subject to reimbursement by the Lessees in accordance with Paragraph 7, shall be maintained by the Manager pursuant to Paragraph 6.

**“Common Vehicular and Pedestrian Areas”** means all Common Areas from time to time designed to be used for pedestrian or vehicular movement, including, without limitation, roads, driveways, walkways, sidewalks, trails and paths that are installed by or at the direction of Manager and serving more than one Lot. The Common Vehicular and Pedestrian Areas shall be used for the purposes set forth in Paragraph 5.1 and, subject to reimbursement by the Lessees in accordance with Paragraph 7, shall be maintained by the Manager pursuant to Paragraph 6. Declarant and Manager may, but are not obligated to, designate Common Vehicular and Pedestrian Areas and/or additional or different Common Vehicular and Pedestrian Areas from time to time.

**“Design Guidelines”** means the standards, requirements and restrictions set forth in Design Guidelines and the Planned Area Development (PAD) for the Development, each approved by the Mesa City Council on June 19, 2023, as may be amended by the City from time to time to the extent approved by Declarant and the Manager.

**“Development”** means the Land, together with all Improvements located on such Land, and any portions of the Annexable Property annexed pursuant to this Declaration, together with all Improvements located on the Lot or Common Area or such additional real property.

**“Gateway East Maintained Improvements”** shall mean the following improvements, landscaping, hardscaping, irrigation, and streetlights which were installed by the City within the Land, within or adjacent to the City’s right-of-way for Gateway Boulevard that are east of the centerline of Gateway Boulevard:

- Trees
- Shrubs, ground cover, accent plants, and other vegetation
- 12v landscape lighting
- Battered stone walls and columns
- Metal screen panels and bridge rails
- Streetlights (6) not conforming to city standards
- Landscape irrigation system
- Steel landscape header
- Rip rap
- Decomposed granite
- Monuments and signage
- Hardscapes other than sidewalk

**“Improvements”** means all Buildings, Common Utility Facilities, Landscaping, hardscaping, irrigation, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails, paths, exterior lighting (including, without limitation, streetlights and lights for traffic control or pedestrian safety), fences, walls, signs, utility systems and facilities, trash enclosures, bike racks, and other improvements located on the realty concerned.

**“Improvement”** means any of the Improvements.

**“Land”** means land located in the City of Mesa, County of Maricopa, Arizona and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, and any real property defined as an additional part of the Land in any amendment to this Declaration executed and recorded pursuant to **Paragraph 11**.

**“Landscaping”** means all outdoor areas in the Development landscaped with lawn, flowers, ground cover, shrubbery, trees, storm water retention areas, ponds, fountains, gardens, berms or similar improvements.

**“Lessee”** means any person or entity (including, without limitation, Manager if applicable) having a leasehold interest in a Lot, excluding any Mortgagee unless and until such Mortgagee is in actual possession of any Lot by foreclosure or otherwise, and including any person or entity taking the leasehold interest from any such Mortgagee.

**“Lots”** means development lots within the Land and shown on that certain Master Plan for the Development approved by Declarant, the current version of which is located at <https://www.gatewayairport.com/documents/documentlibrary/current%20planning%20studies/gatewayeastmasterplan.pdf?Uniqueifier=MwBSPex7v1> as such Master Plan may be amended from

time to time, or as otherwise approved in writing by Declarant and, so long as the Manager is Boyer, the Manager. “Lot” means any of the Lots.

“**Manager**” means a manager designated by the Declarant in accordance with Paragraph 3. As of the date of this Declaration, the Manager is Boyer.

“**Mortgage**” means a mortgage or a deed of trust recorded in the Official Records.

“**Mortgagee**” means the mortgagee or beneficiary under a Mortgage.

“**Occupant**” shall mean anyone occupying or using a Lot under or through a Lessee, including, without limitation, any Lessee, licensee, subtenant, user or their employees, agents, contractors, licensees, customers, guests, or invitees.

“**Official Records**” means the official records of the Maricopa County, Arizona Recorder.

“**Qualified Mortgage**” means a Mortgagee of which Manager and Declarant have been given written notice, including such Mortgagee’s name and address.

## 2. Property Bound.

2.1 General Declaration. Declarant hereby declares that the Development is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time. This Declaration shall run with the Development for all purposes and shall be binding upon and inure to the benefit of Declarant, and all Lessees, and their respective successors in interest and assigns. All of the covenants, conditions, and restrictions provided in this Declaration shall also be binding upon all Occupants of the Development, as well as their respective successors-in-interest and assigns.

2.2 Declarant’s Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development the Development can or will be carried out, or that the Land is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Lessee entering into a lease in reliance on one or more of such restrictive covenants agrees that it will not challenge the validity or enforceability thereof; but such Lessee assumes all risks of the validity and enforceability thereof and by accepting a lease to a Lot agrees that Declarant shall have no liability with respect thereto.

## 3. Manager.

3.1 Appointment of Manager. Declarant shall appoint a Manager from time to time and shall have the right to revoke any designation and designate a different Manager at any

time. Declarant may appoint itself as Manager. Declarant hereby designates Boyer Gateway East, L.C., a Utah limited liability company, as the initial Manager.

3.2 Professional Management Company. The Manager shall have the right, but not the obligation, to enter into a management agreement with a professional property management company to perform the functions of Manager. As used herein, “**professional property management company**” shall mean a person or entity (i) that is considered within the community to be primarily involved in the management of real property similar to the Development (ii) whose primary business consists of the management of real property similar to the Development and (iii) that has had their primary source of income derived from the management of real property similar to the Development for not less than the three (3) years immediately preceding the execution of a property management agreement for the Development. All costs associated with the management agreement and property manager, including without limitation a commercially reasonable property management fee, shall be included in Common Expenses. Any professional property management company employed by the Manager shall be required to maintain with an insurer lawfully authorized to do business in the State of Arizona with a Best Rating of not less than A-VIII commercially reasonable insurance policies covering professional liability and general commercial liability.

3.3 Indemnification. To the fullest extent not prohibited by law, Manager hereby agrees to defend, indemnify and hold harmless the City and Declarant, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as “**Indemnatee**”) from 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 Indemnatee on account of loss or damage to any property or for injuries to or death of a person, to the extent caused in whole or in part by, arising out of or contributed to, by reason of any alleged act, omission, professional error, fault, mistake or negligence of Manager, its employees, officers, directors, agents, representatives or contractors, their employees, agents or representatives in connection with or arising from the failure of Manager to maintain and repair the Gateway East Maintained Improvements as required by this Agreement. Manager’s obligations under this paragraph shall not extend to any Claims to the extent caused by the acts or omissions of an Indemnatee. The obligations under this paragraph shall survive the termination of this Declaration.

#### 4. Improvements.

4.1 Use. No part of the Development may be used or occupied for any use that violates any applicable law, ordinance, rule or regulation or that is inconsistent with this Declaration. Buildings shall be used only for commercial purposes, including, without limitation, retail, hospitality, manufacturing and office uses. All Buildings shall be:

- (a) first-class buildings of the type and quality typically found in first-class, high-quality commercial developments;
- (b) architecturally and aesthetically compatible with all other then-existing Buildings; and

(c) constructed in compliance with all applicable state, county and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulations and the Design Guidelines.

4.2 Improvements. All Improvements in the Development shall be in compliance with the Design Guidelines.

5. Common Area Easements.

5.1 Access Easement. Each Lot shall have appurtenant thereto and be benefited by, and the Common Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress (without charge) on, over and across those areas designed for such use.

5.2 Utility Easement. Each Lot shall have appurtenant thereto and be benefited by, and the Common Utility Easement Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage [including retention ponds] and all types of water) under, through and across the Common Utility Easement Area. Prior to installation, the location of such pipes, lines, wires, conduits and related facilities must be approved by the Manager and Declarant, such approval not to be unreasonably withheld. If the rights provided for in this Paragraph 5.2 are exercised, the Lessee intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Lessee's sole cost, restore to their previous condition any Improvements that may be damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located in the Development shall be located underground to the extent reasonably possible.

5.3 Common Areas. The Common Areas shall be subject to and be burdened by a perpetual, nonexclusive easement for maintenance and repair by the Manager pursuant to Paragraph 6.

5.4 No Obstruction. No Lessee or Occupant shall permit to be constructed or placed on any portion of the Common Area any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Development, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 5.4 shall be done in a manner reasonably calculated to minimize its impact on businesses in the Development.

6. Manager's Duties Regarding Common Area and Gateway East Maintained Improvements.

6.1 Generally. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 6.

6.2 Maintenance of Common Area. After the Common Area is initially improved and developed, the Manager shall keep the Common Area in a clean condition and in good order, condition and repair consistent with a Class A business park in the Phoenix-Metropolitan area (except that as regards the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved or the City). All maintenance required or permitted to be performed by Manager must comply with the requirements of this Declaration and the applicable law then in effect, including all applicable procedures regarding safety and minimizing any inconvenience to the public. The foregoing shall include, without limitation, inspection, servicing, maintenance, repair and replacement, as necessary and appropriate, of all Landscaping and other Improvements located on the Common Area, including, without limitation, maintaining, repairing and replacing asphalt, and keeping the Common Vehicular and Pedestrian Areas free of snow, ice and rubbish.

6.3 Maintenance of Gateway East Maintained Improvements. The Manager shall keep the Gateway East Maintained Improvements in a clean condition and in good order, condition and repair consistent with a Class A business park in the Phoenix-Metropolitan area. All maintenance required or permitted to be performed by Manager must comply with the requirements of this Declaration and the applicable law then in effect, including all applicable procedures regarding safety and minimizing any inconvenience to the public, including the Mesa Temporary Traffic Control Manual. Manager shall also store at least one replacement streetlight pole and luminaire at all times to ensure expeditious repair in case of damage. Permits may be required for maintenance activities, including repair and replacement or use of barricades, occurring within the City's right-of-way for Gateway Boulevard, as outlined in the Mesa Temporary Traffic Control Manual.

The City is an intended third-party beneficiary of this Section 6.3. This Section 6.3 and the definition of Gateway East Maintained Improvements shall not be amended without the City's prior consent and approval.

6.4 Insurance on Common Area. The Manager shall maintain at all times, commercial general liability insurance and/or property insurance insuring Manager and any employees or agents of Manager as Manager may designate against all claims for bodily injury, death or property damage occurring on the Common Area, and such other insurance on the Common Areas as reasonably determined by Manager. Such policy(-ies) shall provide, at minimum, \$3,000,000/\$3,000,000 (per occurrence/aggregate) in general liability coverage from insurance companies authorized to do business in the state of Arizona. Declarant shall be named as an additional insured to any liability insurance policy and as an additional loss payee (to the extent of its interest therein) on any property insurance acquired in accordance with this Paragraph 6.3.

6.5 Damage of Common Area. If all or any part of the Common Area is damaged or destroyed through casualty, the Manager shall, as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned. Prior to such rebuilding and restoration, each Lessee shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Percentage of such Lessee by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons or entities causing such damage actually received by the Manager). Appropriate additional payments by, or refunds to, each Lessee shall be made on completion of such rebuilding or restoration. Alternatively, the Manager may collect the actual or projected cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration.

7. Common Expenses.

7.1 Obligation to Pay Common Expense Share. Each Lessee, by entering into a lease for any Lot, whether or not it shall be so expressed in such lease, agrees and is deemed to covenant and agree to pay to the Manager its Common Expense Share duly imposed pursuant to this Declaration, such Common Expense Share to be established and collected as provided herein.

7.2 Collection. The Manager is expressly authorized to incur all costs, expenses, fees and other amounts included within the definition of “**Common Expenses**” set forth in Paragraph 1, and each Lessee shall contribute such Lessee’s Common Expense Share in the manner described in this Paragraph 7. The Manager shall make reasonable, good faith efforts to collect from each Lessee such Lessee’s Common Expense Share and may, at its option, do either of the following: (a) invoice each Lessee for such Lessee’s Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the Common Expense Share becomes known (in which event the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Lessee in advance based on the Manager’s reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Lessee at least annually. If the Manager adopts the second alternative, each Lessee shall pay such Lessee’s Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Lessee with a reasonably detailed final statement of the actual amount of such Lessee’s Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by a Lessee aggregate less than such Lessee’s Common Expense Share for such calendar year, such Lessee shall pay the amount owing to the Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that a Lessee’s payments aggregate more than such Lessee’s Common Expense Share for such calendar year, the excess amount shall, at the option of the Manager, either be returned to such Lessee or be applied by the Manager to amounts next due from such Lessee under this Paragraph 7. Any amount required to be paid under this Paragraph 7 that is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made on the date when due. Such late charge is payable not as a penalty, but in order to compensate the Manager for the additional expense involved in handling the delinquent payment. The acceptance by the Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the



obligation to pay such entire amount. All records and accounts maintained by the Manager that relate to the Common Expenses shall be open to examination and audit by any Lessee on at least ten (10) days' prior written notice to the Manager.

7.3 Default. If any Lessee fails to perform any obligation under this Declaration (other than the payment of money) and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Lessee by the Manager, or if the performance of such obligation would reasonably require more than thirty (30) days, if such Lessee fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Manager may, on written notice to such Lessee, perform such obligation in the stead of such Lessee, or exercise any other right or remedy existing at law or in equity. The Manager shall be reimbursed by such Lessee on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum. The Manager shall send to Declarant a duplicate copy of any notice given under this Paragraph 7.3.

7.4 Certain Obligations and Rights. The obligations of each Lessee under Paragraph 7.1 and all other provisions of this Declaration are the personal obligations of such Lessee and may be enforced by the Manager or Declarant. No Lessee may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Lessee's interest in its Lot or any Improvements on such Lot or by waiver of any of the services or amenities provided for in this Declaration. All remedies set forth in this Paragraph 7 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

## 8. Mortgagee Protection.

8.1 Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Development shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration.

8.2 Notices; Right to Cure. Manager, on delivering to any Lessee any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such Lessee at the latest address provided to the notifying Manager by such Lessee or such Qualified Mortgagee. Although otherwise effective with respect to the Lessee receiving such notice, no notice delivered to any Lessee shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Lessee plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-

monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Notwithstanding the foregoing, in no event shall the time period for a Qualified Mortgagee to remedy a default exceed ninety (90) days from the commencement of the time period during which such Qualified Mortgagee may cure or remedy a default in accordance with this Paragraph 8.2.

8.3 Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Lessee of the Lot covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Lessee in writing. Manager shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Lessee. Each Qualified Mortgagee shall have the right, to the extent the Lessee of the Lot covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Lessee in connection with such Lot and the obligation under this Declaration.

8.4 Recognition. On request, the Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a “**Qualified Mortgagee**” entitled to the benefits of this Paragraph 8.

## 9. Annexation and De-Annexation.

9.1 Annexation of Annexable Property. Declarant may at any time and from time to time, annex to the Development any Annexable Property (or the applicable portion or portions thereof). To effect such annexation, a Declaration of Annexation covering the Annexable Property (or the applicable portion or portions thereof) to be annexed shall be executed and recorded by Declarant, which instrument may contain additional covenants, conditions, restrictions, or other terms. A Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof) or other property to be annexed. In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration except to the extent specifically permitted hereby. Upon annexation, all of the provisions of this Declaration shall apply to or encumber such Annexable Property (or the applicable portion or portions thereof). So long as Manager is Boyer, the annexation of any Annexable Property shall also require the written consent of Manager.

9.2 De-Annexation of Covered Property. Declarant may at any time and from time to time up to the date which is 30 years after the date this Declaration is recorded, de-annex or withdraw from the Development any portion or portions thereof (subject to the written consent of any Lessee of the portion or portions to be de-annexed or withdrawn). So long as the Manager is Boyer, any de-annexation or withdrawal shall also require the written consent of Manager. To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-Annexation setting forth the legal description of the portion or portions of the Development to be de-annexed or withdrawn, and such Declaration of De-Annexation shall be executed by (a) Declarant, (b) the Lessee, if any, of the land to be withdrawn, and (c) so long as the Manager is Boyer, the Manager. The land to be withdrawn may include any portion of the Development, including Lots and Common Area. Recording such Declaration of De-Annexation shall constitute

and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Development described therein, and such property and the Lessees and Occupants thereof shall no longer be subject to, or benefitted by, this Declaration.

10. Covenants to Run with Land. Each provision of this Declaration shall constitute a covenant running with the land. This Declaration shall be binding on each part of the Development, and all interests in any part of the Development shall be subject to this Declaration. The interests in and rights concerning any portion of the Lots held by or vested in Declarant or any other person or entity on or after the date of this Declaration shall be subject to this Declaration.

11. Amendment. This Declaration may be modified only by the recordation, in the Official Records, of an agreement or document of modification executed by Declarant; provided, however so long as Boyer is Manager, any amendment shall require the written consent of Boyer.

12. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

13. Release on Transfer. On and after the date a Lessee transfers (other than merely for purposes of security) or is otherwise divested of such Lessee's interest in any Lot, such Lessee shall be relieved of all liabilities and obligations under this Declaration related to such Lot, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

14. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Development may be owned by the same person or entity from time to time, it being the intention of Declarant to create a common scheme for the development and operation of the Development that will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 16.

15. Force Majeure. The Manager and any Lessee or other person or entity obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, for so long as (but only for so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, terrorism, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Lessee or other person or entity prevented or delayed.

16. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which they are recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by Declarant. So long as the Manager is Boyer, any termination shall also require the written consent of Manager.

17. Notices. Any notice or demand required or appropriate hereunder shall be given in writing by personal service, fax (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after faxing), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested. All notices sent by mail as aforesaid shall be addressed as follows:

If to Declarant:	Mesa Gateway Airport Authority Attn: Business Development Department 5835 South Sossaman Road Mesa, Arizona 85212
If to any other Lessee or Occupant:	To such address as such Lessee or Occupant shall designate in writing to Declarant and Manager, or to the Lessee's or Occupant's address in the Development, if no other address is designated.
If to Manager (if Boyer is the Manager):	Boyer Gateway East, L.C. c/o The Boyer Company, L.C. 101 South 200 East, Suite 200 Salt Lake City, Utah 84111 Attention: Jake Boyer
If to the Manager (if Boyer is not the Manager):	To the address of the current principal office of the Manager.

Any party may change the address at which it desires to receive notice by written notice of such change to the Manager and Declarant. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice.

18. General Provisions. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Arizona. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of any

person or entity to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

*[Signature Page Follows]*

DECLARANT:

**MESA GATEWAY AIRPORT AUTHORITY**, a  
joint powers airport authority authorized by the  
State of Arizona

By: \_\_\_\_\_

Name: J. Brian O'Neill, A.A.E.

Title: Executive Director/CEO

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by J. Brian O'Neill, A.A.E, as Executive Director/CEO of Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT A

### Legal Description of Land

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

#### EXHIBIT "A" LEGAL DESCRIPTION FOR GATEWAY EAST BOUNDARY

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 28 AND THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 28, BEARS NORTH 01 DEGREES 06 MINUTES 42 SECONDS WEST, A DISTANCE OF 2629.00 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, NORTH 89 DEGREES 38 MINUTES 14 SECONDS WEST, A DISTANCE OF 246.11 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 416.28 FEET;

THENCE NORTH 88 DEGREES 38 MINUTES 46 SECONDS EAST, A DISTANCE OF 181.47 FEET;

THENCE SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 3.00 FEET;

THENCE SOUTH 43 DEGREES 44 MINUTES 15 SECONDS WEST, A DISTANCE OF 21.25 FEET;

THENCE SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 01 DEGREES 10 MINUTES 16 SECONDS EAST, A DISTANCE OF 120.00 FEET;

THENCE NORTH 88 DEGREES 38 MINUTES 46 SECONDS EAST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 46 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 14.12 FEET;

THENCE SOUTH 01 DEGREES 10 MINUTES 16 SECONDS EAST, A DISTANCE OF 8.00 FEET;

THENCE SOUTH 88 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 470.37 FEET;

THENCE NORTH 01 DEGREES 21 MINUTES 14 SECONDS WEST, A DISTANCE OF 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, BEING CONCAVE TO THE NORTH, WHOSE RADIUS BEARS NORTH 01 DEGREES 21 MINUTES 14 SECONDS WEST, WITH A RADIUS OF 2117.00 FEET;

MAY 2024  
GATEWAY EAST — BOUNDARY

PAGE 1  
**DIBBLE**

DIBBLE PROJECT NO  
1123031

## EXHIBIT A

### Legal Description of Land

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08 DEGREES 06 MINUTES 51 SECONDS, AN ARC LENGTH OF 299.81 FEET;

THENCE SOUTH 45 DEGREES 11 MINUTES 35 SECONDS WEST, A DISTANCE OF 28.75 FEET;

THENCE NORTH 63 DEGREES 08 MINUTES 29 SECONDS WEST, A DISTANCE OF 8.43 FEET;

THENCE NORTH 81 DEGREES 41 MINUTES 35 SECONDS WEST, A DISTANCE OF 80.00 FEET;

THENCE SOUTH 71 DEGREES 00 MINUTES 40 SECONDS WEST, A DISTANCE OF 9.02 FEET;

THENCE NORTH 46 DEGREES 30 MINUTES 07 SECONDS WEST, A DISTANCE OF 7.97 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, WHOSE RADIUS BEARS NORTH 09 DEGREES 59 MINUTES 12 SECONDS EAST, WITH A RADIUS OF 2137.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 13 MINUTES 08 SECONDS, AN ARC LENGTH OF 567.63 FEET;

THENCE NORTH 25 DEGREES 12 MINUTES 20 SECONDS EAST, A DISTANCE OF 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, WHOSE RADIUS BEARS NORTH 25 DEGREES 12 MINUTES 20 SECONDS EAST, WITH A RADIUS OF 2117.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 64 DEGREES 45 MINUTES 35 SECONDS, AN ARC LENGTH OF 2392.78 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 05 SECONDS WEST, A DISTANCE OF 395.69 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE WEST, WITH A RADIUS OF 1787.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05 DEGREES 23 MINUTES 29 SECONDS, AN ARC LENGTH OF 168.15 FEET;

THENCE NORTH 84 DEGREES 34 MINUTES 26 SECONDS EAST, A DISTANCE OF 126.00 FEET;

THENCE SOUTH 48 DEGREES 06 MINUTES 38 SECONDS EAST, A DISTANCE OF 5.39 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 943.05 FEET;

THENCE NORTH 01 DEGREES 06 MINUTES 52 SECONDS WEST, A DISTANCE OF 45.00 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 717.87 FEET;

THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 45.00 FEET;

THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 74.00 FEET;

MAY 2024  
GATEWAY EAST — BOUNDARY

PAGE 2  
**DIBBLE**

DIBBLE PROJECT NO  
1123031



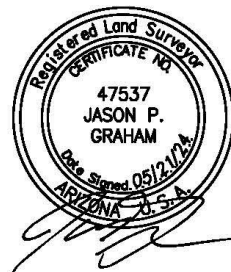
## EXHIBIT A

### Legal Description of Land

p 602.957.1155 | 3020 East Camelback Rd, Suite 201  
f 602.957.2838 | Phoenix, AZ 85016

*dibblecorp.com*

THENCE NORTH 01 DEGREES 34 MINUTES 46 SECONDS WEST, A DISTANCE OF 55.00 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 327.27 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 52 SECONDS EAST, A DISTANCE OF 45.00 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 08 SECONDS EAST, A DISTANCE OF 206.87 FEET;  
THENCE SOUTH 01 DEGREES 43 MINUTES 56 SECONDS EAST, A DISTANCE OF 130.01 FEET;  
THENCE SOUTH 88 DEGREES 53 MINUTES 08 SECONDS WEST, A DISTANCE OF 245.51 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 52 SECONDS EAST, A DISTANCE OF 45.00 FEET;  
THENCE SOUTH 88 DEGREES 53 MINUTES 08 SECONDS WEST, A DISTANCE OF 280.25 FEET;  
THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS EAST, A DISTANCE OF 1047.42 FEET;  
THENCE NORTH 88 DEGREES 53 MINUTES 07 SECONDS EAST, A DISTANCE OF 533.99 FEET;  
THENCE SOUTH 01 DEGREES 06 MINUTES 31 SECONDS EAST, A DISTANCE OF 960.41 FEET TO THE  
POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 5,151,174 SQUARE FEET OR  
118.255 ACRES OF LAND, MORE OR LESS.



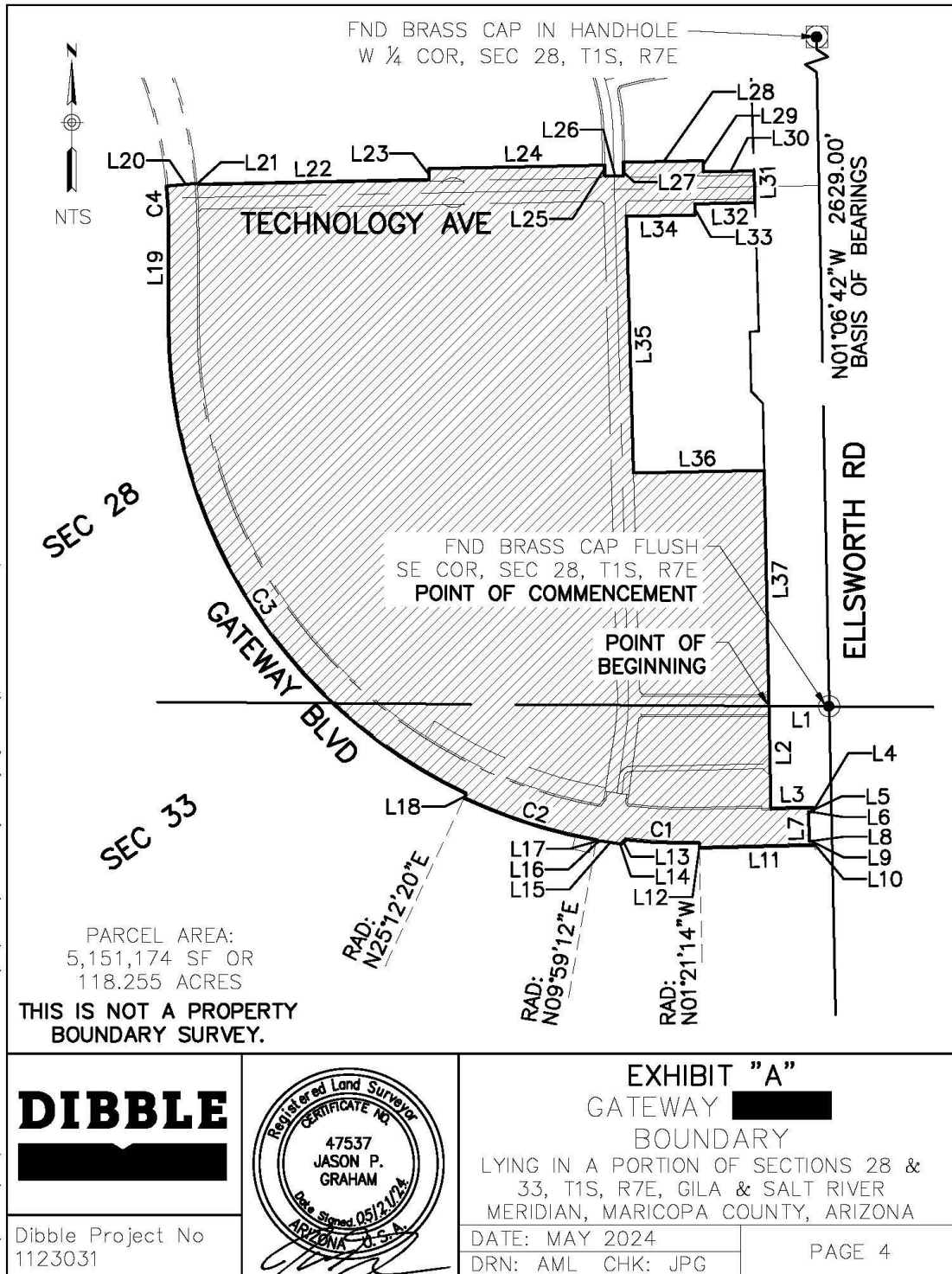
MAY 2024  
GATEWAY EAST — BOUNDARY

PAGE 3  
**DIBBLE**

DIBBLE PROJECT NO  
1123031

# EXHIBIT A

## Legal Description of Land



# EXHIBIT A

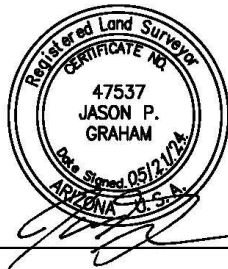
## Legal Description of Land

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°38'14"W	246.11'
L2	S01°06'31"E	416.28'
L3	N88°38'46"E	181.47'
L4	S01°10'27"E	3.00'
L5	S43°44'15"W	21.25'
L6	S88°38'46"W	12.00'
L7	S01°10'16"E	120.00'
L8	N88°38'46"E	12.00'
L9	S46°15'45"E	14.12'
L10	S01°10'16"E	8.00'
L11	S88°38'46"W	470.37'
L12	N01°21'14"W	20.00'
L13	S45°11'35"W	28.75'
L14	N63°08'29"W	8.43'
L15	N81°41'35"W	80.00'
L16	S71°00'40"W	9.02'
L17	N46°30'07"W	7.97'
L18	N25°12'20"E	20.00'
L19	N00°02'05"W	395.69'

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L20	N84°34'26"E	126.00'
L21	S48°06'38"E	5.39'
L22	N88°53'08"E	943.05'
L23	N01°06'52"W	45.00'
L24	N88°53'08"E	717.87'
L25	S01°34'46"E	45.00'
L26	N88°53'08"E	74.00'
L27	N01°34'46"W	55.00'
L28	N88°53'08"E	327.27'
L29	S01°06'52"E	45.00'
L30	N88°53'08"E	206.87'
L31	S01°43'56"E	130.01'
L32	S88°53'08"W	245.51'
L33	S01°06'52"E	45.00'
L34	S88°53'08"W	280.25'
L35	S01°34'46"E	1047.42'
L36	N88°53'07"E	533.99'
L37	S01°06'31"E	960.41'

**DIBBLE**

Dibble Project No  
1123031



### EXHIBIT "A" GATEWAY [REDACTED] BOUNDARY

LYING IN A PORTION OF SECTIONS 28 &  
33, T1S, R7E, GILA & SALT RIVER  
MERIDIAN, MARICOPA COUNTY, ARIZONA

DATE: MAY 2024

DRN: AML CHK: JPG

PAGE 5

FILE\\PROJECTS\\2024\\1123031\_PVCA\_XRGRY - Off-Sites\\CAD\\EXHIBITS\\23031-Gateway\_Boundary.dwg DATE: May, 21 2024 TIME: 12:10 pm

# EXHIBIT A

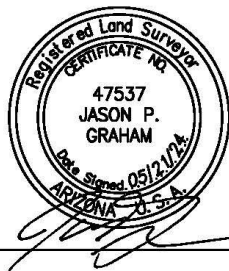
## Legal Description of Land

CURVE DATA TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C1	299.81'	2117.00'	8°06'51"	S87°17'48"E 299.56'
C2	567.63'	2137.00'	15°13'08"	S72°24'14"E 565.96'
C3	2392.78'	2117.00'	64°45'35"	S32°24'53"E 2267.43'
C4	168.15'	1787.00'	5°23'29"	N02°43'50"W 168.09'

FILE:\PROJECTS\2023\123031\_PWGA\_XNRCY - Off-Sites\CAD\EXHIBITS\23031-Gateway\_Boundary.dwg DATE: May, 21 2024 TIME: 11:30 am

**DIBBLE**  
[Redacted]

Dibble Project No  
1123031



### EXHIBIT "A" GATEWAY [Redacted] BOUNDARY

LYING IN A PORTION OF SECTIONS 28 &  
33, T1S, R7E, GILA & SALT RIVER  
MERIDIAN, MARICOPA COUNTY, ARIZONA

DATE: MAY 2024

DRN: AML CHK: JPG

PAGE 6



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Management Information Report

**To:** Board of Directors  
**From:** Chuck Odom, Chief Financial Officer  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Re:** July 2025 Financials  
**Date:** September 16, 2025

---

Attached is the monthly Financials Report for July 2025.

**Mesa Gateway Airport Authority**  
**AIRPORT - All Operations P&L**  
**July, 2025**

	Month of July 2025			
	July FY25 Actual	July FY26 Actual	YOY Variance	B/(W)
Aeronautical Operating Revenues				
Aircraft Parking	34,250	40,613	6,363	19%
Fuel Flowage Fees	57,859	64,208	6,349	11%
Landing Fees	159,423	173,662	14,239	9%
Lease Income Aero	440,264	514,312	74,048	17%
Fuel Sales	712,002	1,247,240	535,238	75%
Services Sold - Aero	545,630	475,550	(70,080)	-13%
Sub-total Aero Operating Revenues	1,949,428	2,515,585	566,157	29%
Non-Aeronautical Operating Revenues				
Concessions	136,579	127,634	(8,945)	-7%
Lease Income Non-Aero	109,574	135,488	25,914	24%
Parking	683,071	681,106	(1,964)	0%
Rental Car Fees	165,420	176,810	11,390	7%
Svcs Sold - Non Aero	6,175	20,205	14,030	227%
Sub-total Non-Aero Operating Revenues	1,100,819	1,141,243	40,424	4%
Total Operating Revenues	<b>3,050,247</b>	<b>3,656,828</b>	<b>606,581</b>	<b>20%</b>
Operating Expenses				
Cost of Goods Sold	445,396	895,235	(449,839)	-101%
Personnel	866,005	872,113	(6,108)	-1%
Comm & Utilities	135,679	140,993	(5,314)	-4%
Contractual Services	589,403	634,480	(45,077)	-8%
Insurance	57,395	47,531	9,864	17%
Other	35,465	40,047	(4,582)	-13%
Repair & Maintenance	34,254	56,177	(21,923)	-64%
Supplies & Materials	75,786	80,725	(4,939)	-7%
Air Service Incentives [2,000,000]	-	-	-	0%
Operating Contingency [3,042,018]	-	-	-	0%
Total Operating Expenses	<b>2,239,383</b>	<b>2,767,301</b>	<b>(527,918)</b>	<b>-24%</b>
Operating Income (Loss) Before Depreciation	<b>810,864</b>	<b>889,527</b>	<b>78,663</b>	<b>10%</b>
	26.6%	24.3%		

	Y-T-D as of July 2025			
	YTD FY25 Actual	YTD FY26 Actual	Y-T-D Variance	B/(W)
Aeronautical Operating Revenues				
Aircraft Parking	34,250	40,613	6,363	19%
Fuel Flowage Fees	57,859	64,208	6,349	11%
Landing Fees	159,423	173,662	14,239	9%
Lease Income Aero	440,264	514,312	74,048	17%
Fuel Sales	712,002	1,247,240	535,238	75%
Services Sold - Aero	545,630	475,550	(70,080)	-13%
Sub-total Aero Operating Revenues	1,949,428	2,515,585	566,157	29%
Non-Aeronautical Operating Revenues				
Concessions	136,579	127,634	(8,945)	-7%
Lease Income Non-Aero	109,574	135,488	25,914	24%
Parking	683,071	681,106	(1,964)	0%
Rental Car Fees	165,420	176,810	11,390	7%
Svcs Sold - Non Aero	6,175	20,205	14,030	227%
Sub-total Non-Aero Operating Revenues	1,100,819	1,141,243	40,424	4%
Total Operating Revenues	<b>3,050,247</b>	<b>3,656,828</b>	<b>606,581</b>	<b>20%</b>
Operating Expenses				
Cost of Goods Sold	445,396	895,235	(449,839)	-101%
Personnel	866,005	872,113	(6,108)	-1%
Comm & Utilities	135,679	140,993	(5,314)	-4%
Contractual Services	589,403	634,480	(45,077)	-8%
Insurance	57,395	47,531	9,864	17%
Other	35,465	40,047	(4,582)	-13%
Repair & Maintenance	34,254	56,177	(21,923)	-64%
Supplies & Materials	75,786	80,725	(4,939)	-7%
Air Service Incentives [2,000,000]	-	-	-	0%
Operating Contingency [3,042,018]	-	-	-	0%
Total Operating Expenses	<b>2,239,383</b>	<b>2,767,301</b>	<b>(527,918)</b>	<b>-24%</b>
Operating Income (Loss) Before Depreciation	<b>810,864</b>	<b>889,527</b>	<b>78,663</b>	<b>10%</b>
	26.6%	24.3%		

Depreciation

1,376,089

1,376,089



Mesa Gateway Airport Authority  
5835 S Sossaman Road  
Mesa, Arizona 85212-6014  
[www.gatewayairport.com](http://www.gatewayairport.com)

## Management Information Report

**To:** Board of Directors  
**From:** Chuck Odom, Chief Financial Officer  
**Through:** J. Brian O'Neill, A.A.E., Executive Director/CEO  
**Re:** Solicitation Notification  
**Date:** September 16, 2025

This report is to provide notification of the active and upcoming solicitations to help ensure compliance with the Mesa Gateway Airport Authority procurement transparency clause. The active activities include the following:

### Active/Pending Solicitations

Type Solicitation	Number	Title	Anticipated Contract Award (Board Action)
Request for Proposals	2025-009-RFP	Fire Test, Inspect, Monitor, and Repair Services	September 2025
Invitation for Bid	2026-001-IFB	Power Washing Services	September 2025
Invitation for Bid	2026-002-IFB	Passenger Boarding Ramps	October 2025
Request for Qualifications	2025-003-RFQ	South Apron Aeronautical Redevelopment	October 2025

### Future Solicitations

Type Solicitation	Number	Title	Scheduled for Release	Anticipated Contract Award (Board Action)
Invitation for Bid	2026-003-IFB	Baggage Tractor	September 2025	November 2025
Request for Qualifications	2026-004-RFQ	Website Redesign Services	October 2025	January 2026

### Equipment Disposals

Fiscal year totals from sales of decommissioned / nonworking equipment total \$4,122.

If you have any questions about the solicitations or the procurement process, please feel free to contact me at 480-988-7613.