

May 26, 2022

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Ms. Sonia Blain, City Attorney  
City of Tempe  
21 E. Sixth Street, Suite 201  
Tempe, AZ 85281

**Re: Future of Phoenix and Tempe's 1994 Intergovernmental Agreement**

Dear Sonia:

Along with our colleagues from the City of Phoenix Law Department, my firm represents the City of Phoenix with regard to its concerns about City of Tempe [RFP 22-030](#) (for a “mixed-use Sports and Entertainment District” that would include 1000 residential units). Assistant Chief Counsel Carolina Potts raised some of our client’s concerns to you in a letter dated March 17, 2022.

I write today to amplify the concerns Ms. Potts discussed and to reiterate Phoenix’s position on the RFP in its present form: the RFP, and specifically its call for 1000 residential units, is a violation of the promises Tempe made in our 1994 Intergovernmental Agreement (the “IGA”). The terms of the IGA, among other things, require Tempe to “take all actions necessary...to implement the land use management strategies recommended in the F.A.R. Part 150 [Plan].” IGA at ¶3. New residential development along the Salt River riverbed is entirely contrary to the “land use management strategies” in the Part 150 Plan. Simply by including a call for residential development in the RFP, Tempe has breached the IGA. *Id.*; *see also id.* at ¶6.10 (prohibiting parties from encouraging third parties, like developers, from taking action in contravention of the IGA). Inviting formal negotiations with the developer on the RFP, an option Tempe has recently suggested it might pursue at a June 2, 2022 city council meeting, would compound Tempe’s breach.

Phoenix remains committed to honoring the promises it made to Tempe in the IGA. And Phoenix is willing to overlook Tempe’s existing violations of the IGA if the RFP proceeds no further. Phoenix hopes that Tempe, too, will keep its past promises and abandon the RFP (or at least the RFP’s plans for incompatible residential development).

My purpose today is not to debate the incompatibility of the residential development proposed in the RFP; both Phoenix and the FAA, including through its letter of April 1, 2022 to Tempe Procurement Officer Lisa Goodman, have already explained why placing new high rise

residential housing within two miles of Sky Harbor International Airport and directly under the flight path within the Airport's 65 Day-Night Sound Level ("DNL") contour violates the Part 150 Plan and the IGA.

As Tempe well knows, Phoenix has gone, and continues to go, to great effort and expense to implement the noise mitigation measures that both our cities agreed upon in the IGA. But Phoenix will not continue to do business as usual if Tempe insists on violating the IGA's prohibition on new residential development within the 65 DNL contour.

Therefore, consistent with the long history of friendship and collaboration among our cities and their leaders, Phoenix has thought seriously about how to resolve the present and increasingly urgent impasse. We see the following three options:

1. **Tempe Withdraws the RFP or Amends the RFP to Remove Residential Units.** The FAA's concerns about the proposed incompatible use and Phoenix's concerns under the Part 150 and the IGA would be satisfied if residential units are eliminated from the planned Sports and Entertainment District.
2. **The Cities Agree to Sunset the IGA.** If Tempe wants to be relieved of the prior commitments that would prevent it from placing residential units as part of the RFP, the parties to the IGA could simply agree to end the IGA. Phoenix is willing to sunset the IGA in the event that Tempe insists on going forward with the RFP in its present form.
3. **Tempe Continues the RFP as Planned, Breaching the IGA.** A unilateral choice by Tempe in violation of our past promises to one another and at odds with the warm relationship our two cities have long enjoyed is the least desirable option in our view. And we hope Tempe will reject this as an option. But, in order to eliminate any doubt about the consequences of this option, we want to state unambiguously that should Tempe choose to continue the RFP process and choose a proposal including residential development, Phoenix will follow the provisions set forth in IGA ¶ 6.1 by "filing an action for specific performance of the terms of this Agreement."<sup>1</sup>

Phoenix is eager to reach a resolution of the present situation that is acceptable to both cities and that obviates the need for judicial dispute resolution. We would welcome the opportunity to discuss these, and any other options that might exist, with you and your colleagues at the earliest opportunity.

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<sup>1</sup> The IGA's plain terms allow for such action to be commenced and provide for Tempe to pay Phoenix's attorneys' fees once successful. IGA at ¶¶ 6.1, 6.2.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Jean-Jacques Cabou', written in a cursive style.

Jean-Jacques Cabou

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