

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY, THE TOWN OF QUEEN CREEK AND THE CITY
OF MESA FOR THE DESIGN CONCEPT REPORT FOR THE INTERSECTION OF
GERMANN ROAD AND SOSSAMAN ROAD

(TT# 462)

(C-64-14- _____ -M-00)

This Intergovernmental Agreement ("**Agreement**") is between the County of Maricopa, a political subdivision of the State of Arizona ("**County**"), the Town of Queen Creek, a municipal corporation ("**Town**") and the City of Mesa, a municipal corporation ("**City**"). The County, Town and City are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

STATUTORY AUTHORIZATION

1. A.R.S. Section §11-251 and Sections 28-6701 *et. seq.* authorize each County to lay out, maintain, control and manage public roads within its respective County to acquire and condemn property necessary for such purposes, and to enter into this Agreement.
2. A.R.S. Sections §§11-951 *et. seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize the Town and the City to lay out and establish, regulate and improve streets within the Town and City and to enter into this Agreement.

BACKGROUND

4. The Germann Road and Sossaman Road Intersection Design Concept Report (DCR) is a collaborative effort between the County, the Town and the City.
5. The purpose of the DCR is to evaluate the intersection of Germann Road and Sossaman Road ½ mile in each direction and develop a design concept for the intersection. This will include consideration of an at-grade crossing at the Union Pacific Railroad (UPRR) and traffic impacts that a new intersection would have on adjacent roadways such as Pecos Rd and Rittenhouse. In addition, the DCR will identify limits for right of way preservation and underground utility impacts.
6. The DCR is anticipated to begin in fiscal year 2014 with an estimated cost of \$150,000.

7. Each Party shall contribute one-third (1/3) of the cost of the DCR up to a maximum total DCR cost of \$150,000. The Town shall be responsible for any additional cost over a total DCR cost of \$150,000.
8. All Parties shall participate in the process of selecting a consultant to prepare the DCR. The Parties shall select the consultant by agreement of the Parties. All Parties shall participate in the process of developing and selecting a recommended alternative for any potential future project. The Parties shall select the recommended alternative by consensus of the Parties.
9. If a recommended alternative is presented for design and construction, a new intergovernmental agreement between the Parties shall be negotiated for the design, right-of-way acquisition and construction phases of the intersection improvements. Participation in this Agreement does not commit any Party to future participation in another intergovernmental agreement or any specific cost share relative to design, right-of-way or construction of a future project. Each Party's potential future participation or cost share in design, right-of-way or construction will be determined based on, among other factors, jurisdictional ownership and the characteristics and merits of the future project.

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to identify and define the respective roles and responsibilities of the County, the Town and the City for the DCR.

TERMS OF THE AGREEMENT

11. **Responsibilities of the County:**
 - 11.1 The County shall participate in the development of the DCR including, but not limited to, the consultant selection, fee negotiations, and identification of a recommended alternative.
 - 11.2 The County shall review draft(s) of the DCR received from the Town and shall respond with comments within ten (10) working days of receipt.
 - 11.3 The County shall be responsible for one-third (1/3) of the cost of the DCR up to a total DCR cost of \$150,000. In no case shall the County contribute more than \$50,000 for the development of the DCR.
 - 11.4 The County shall remit payment to the Town within thirty (30) working days of receipt of a proper invoice from the Town.

12. Responsibilities of the Town:

- 12.1 The Town shall act as the lead agency for the development of the DCR.
- 12.2 The Town shall conduct a process to secure the consultant for the DCR.
- 12.3 The Town shall consult and coordinate with the Parties throughout development of the DCR and provide them the opportunity to review the document and submit comments.
- 12.4 The Town shall contribute one-third (1/3) of the cost of the DCR up to a total DCR cost of \$150,000. The Town shall also be responsible for any additional cost over a total DCR cost of \$150,000.
- 12.5 Upon execution of the consultant contract, the Town shall provide the County and City a copy of the executed contract.
- 12.6 The Town will invoice the Parties for their respective cost shares based on the amount of the progress payments that will fulfill the terms of the executed contract.
- 12.7 Upon completion of the DCR and determination of actual final cost of the DCR, the Town shall either invoice the Parties for the balance of their respective cost shares or provide refunds to the Parties, as appropriate, to achieve their respective cost shares pursuant to this Agreement.

13. Responsibilities of the City:

- 13.1 The City shall participate in the development of the DCR including, but not limited to, the consultant selection, fee negotiations, and identification of a recommended alternative.
- 13.2 The City shall review draft(s) of the DCR document received from the Town and shall respond with comments within ten (10) working days of receipt.
- 13.3 The City shall contribute one-third (1/3) of the cost of the DCR up to a total DCR cost of \$150,000. In no case shall the City contribute more than \$50,000.
- 13.4 The City shall remit progress payments to the Town within thirty (30) working days of receipt of a proper invoice from the Town.

GENERAL TERMS AND CONDITIONS

- 14. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is

caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

15. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.
16. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.
17. The Parties warrant that they are in compliance with A.R.S. Section 41-440 and further acknowledge that:
 - 17.1 Any consultant or sub consultant who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.
 - 17.2 Any breach of the warranty, shall be deemed a material breach of the contract contract that is subject to penalties up to and including termination of the contract.
 - 17.3 The Parties retain the legal right to inspect the papers of any consultant or sub consultant employee who works on the Project to ensure that the consultant or sub consultant is complying with the warranty above and that the consultant agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 17.4 Nothing in this Agreement shall make any consultant or sub consultant an agent or employee of the Parties to this Agreement.
18. Each Party to this Agreement warrants that neither it nor any consultant or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
19. Each of the following shall constitute a material breach of this Agreement and an event

of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

20. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Liaison
2901 W. Durango Street
Phoenix, Arizona 85009

Town of Queen Creek
Attn: Troy White
22358 South Ellsworth Road
Queen Creek, Arizona 85142

City of Mesa
Attn: City Engineer
P.O. Box 1466
Mesa, Arizona 85211

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

21. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

22. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
23. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
24. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors, the Queen Creek Town Council, and the City of Mesa Council, in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.
25. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
26. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.
27. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
28. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
29. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
30. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.

31. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term “day” as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.
32. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
33. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.
34. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.
35. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
36. This Agreement shall be governed by the laws of the State of Arizona.
37. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

John B. Hauskins, P.E. Date
Transportation Director

Approved and Accepted by:

Andrew Kunasek, Chairman Date
Board of Supervisors

Attest by:

Fran McCarroll Date

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

Deputy County Attorney Date

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF QUEEN CREEK

Recommended by:

John Kross
Town Manager

Date

Approved and Accepted by:

Gail Barney
Mayor

Date

Attest by:

Town Clerk _____ Date _____

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

Town Attorney _____ Date _____

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF MESA

Approved and Accepted by:

Chris Brady
City Manager

Date

Attest by:

DeeAnn Mickelsen
City Clerk

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

City Attorney _____ Date _____