

When recorded return to:  
City of Mesa  
Real Estate Services  
P.O. Box 1466  
Mesa, AZ 85211-1466

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE TOWN OF QUEEN CREEK AND THE CITY OF MESA  
FOR THE GAS LINE REPLACEMENT – COMBS AND MERIDIAN ROADS**

This Intergovernmental Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, (the “Effective Date”) by and between the Town of Queen Creek, an Arizona municipal corporation, (“Queen Creek”) and the City of Mesa, an Arizona municipal corporation (“Mesa”). Queen Creek and Mesa are sometimes collectively referred to as the “Parties” and each is referred to as a “Party.”

**STATUTORY AUTHORIZATION**

1. Arizona Revised Statutes (“A.R.S.”) §§ 11-951 et seq., provide that public agencies may enter into Intergovernmental Agreements for joint or cooperative action. Queen Creek and Mesa are authorized by A.R.S. § 9-240 to provide the services required under this Agreement; Mesa is additionally so authorized by A.R.S. § 9-276.

**BACKGROUND**

2. Mesa proposes the construction of a natural gas line, to be known as the Gas Line Replacement – Combs and Meridian Roads (“Gas Line Replacement”), the scope of work for which is identified on Exhibit A.
3. Queen Creek plans to construct roadway improvements in the vicinity, to be known as Project TT538 – Riggs Road, Crismon Road to Meridian Road (“Roadway Improvements”). The Roadway Improvements will result in a roadway that differs significantly in both location and elevation from the existing roadway.
4. The Roadway Improvements will be constructed across property falling under the jurisdiction of both Queen Creek and Maricopa County. Pursuant to an intergovernmental agreement dated July 20, 2016, Maricopa County granted Queen Creek authority to manage the construction of the Roadway Improvements, including the permitting and relocation of all utilities. Pursuant to that same agreement, Queen Creek will annex all portions of the Roadway Improvements upon the completion of construction.

5. The concurrent construction of both the Gas Line Replacement and the Roadway Improvements will serve the best interests of the public because doing so will result in significant cost savings and will reduce the overall disruption to the surrounding communities.

#### **PURPOSE OF THE AGREEMENT**

5. The purpose of this Agreement is to identify and define the responsibilities of Queen Creek and Mesa for the design, construction, ownership and cost of the proposed Gas Line Replacement.

#### **TERMS OF THE AGREEMENT**

6. **Queen Creek shall:**

- 6.1 Review the Mesa's plans for the Gas Line Replacement and provide any comments to Mesa within 30 days of receipt.
- 6.2 Provide construction administration and engineering inspection services for the Roadway Improvements and bidding, construction, and construction management services, subject to Mesa's obligations set forth in Section 7 below, for the Gas Line Replacement.
- 6.3 Prior to the award of any contract relating to the Gas Line Replacement, provide Mesa a copy of the bid tabulation or GMP with costs broken out separately for the Gas Line Replacement for approval prior to award to the successful Contractor.
- 6.4 Notify in writing the designated representative of Mesa of any change order requests related to the Gas Line Replacement. No change order related to the Gas Line Replacement shall be approved by Queen Creek unless Mesa approves the change order; provided however, that Mesa shall respond in a timely manner to such request in accordance with Section 7.4, so that the construction of the Gas Line Replacement and Roadway Improvements is not delayed.
- 6.5 Upon awarding the contract to construct the Gas Line Replacement, invoice Mesa for 50% of the projected costs specified in Section 7.5.
- 6.6 Invoice Mesa for all remaining costs for the Gas Line Replacement as those costs accrue.
- 6.7 Following final acceptance, transfer to Mesa all the utility facilities constructed as part of the Gas Line Replacement, permit the facilities to remain within the roadway to allow for gas distribution service to end-users.

**7. Mesa shall:**

- 7.1 Designate Queen Creek as the lead agency for the bidding, construction, and construction management for the Gas Line Replacement.
- 7.2 Provide Queen Creek with a final set of plans for the Gas Line Replacement prior to bid release or final GMP.
- 7.3 Review and, upon being satisfied, approve the bid submitted by Queen Creek pursuant to Section 6.3. Such approval shall not be unreasonably withheld.
- 7.4 Respond to change order requests within five days of submittal of the change order request to Mesa pursuant to Section 6.4.
- 7.5 Pay all costs incurred by Queen Creek related to: 1) Engineering costs, acknowledging that Mesa has contracted separately with an engineering consultant to complete design of the Gas Line Replacement and will supply Queen Creek a final permitted set of plans to include in the bid package for the Roadway Improvements. If necessary, Mesa will pay all costs related to modification of the Gas Line Replacement plans during construction; 2) Construction administration and inspection costs related to the Gas Line Replacement, at the rate of 4% of the Gas Line Replacement construction costs; and 3) Construction costs for the Gas Line Replacement.
- 7.6 Pay 50% of the projected costs specified in Section 6.5 to Queen Creek within thirty (30) days of receipt of Queen Creek's invoice pursuant to Section 7.6 and pay all remaining costs specified in Section 7.6 to Queen Creek within thirty (30) days of receipt of Queen Creek's invoice pursuant to Section 6.6.
- 7.7 Inspect the Gas Line Replacement for compliance with all Mesa procedures and Federal and State regulations relating to natural gas distribution system installation during construction and hold Queen Creek harmless from all costs and claims that arise out of Mesa's inspection and approval of the Gas Line Replacement, unless such costs or claims are due to intentionally wrongful or grossly negligent actions or inactions by Queen Creek.
- 7.8 Except as provided above, accept sole responsibility for all inspection and materials testing for the Gas Line Replacement.
- 7.9 Own and operate the Gas Line Replacement after final acceptance of the installation and all punch list items identified by Mesa and Queen Creek have been completed.

**8. General Provisions:**

- 8.1 This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 8.2 This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 8.3 The Parties are governmental agencies which rely upon the appropriation of funds by their respective governing bodies to satisfy their obligations. If a party reasonably determines that it does not have funds to meet its obligations under this Agreement, such party shall have the right to terminate this Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such a termination, such terminating party agrees to provide written notice of its intent to terminate 30 days prior to the termination date.
- 8.4 Nothing in this Agreement shall create a relationship of agency, partnership, or employer/employee between Mesa and Queen Creek, and it is the intent and desire of the parties that the relationship be and be construed as that of independent contracting parties and not as agents, partners, joint venturers, joint employers or a relationship of employer or employee.
- 8.5 This Agreement is solely for the benefit of the parties hereto and, except as aforesaid, no provision of this Agreement shall be deemed to convert any remedy, claim or right upon any third party, including any Assigned Employee or former employee of City or any participant or beneficiary in any benefit plan, program or arrangement.
- 8.6 If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.
- 8.7 All notices, requests, instructions or other documents to be given hereunder to either party shall be in writing and shall be deemed to have been duly given when delivered in person or upon confirmation of receipt when transmitted by facsimile or electronic mail or on receipt after dispatch by registered or certified mail, postage prepaid, addressed as follows:

If to City:  
Scot Sherwood  
Project Manager  
City of Mesa

P.O. 1466  
Mesa, AZ 85211  
Fax: 480 644 3392  
Scot.Sherwood@mesaaz.gov

With a copy to:  
Mesa City Attorney's Office  
City of Mesa  
20 E. Main Street  
Mesa, AZ 85211  
Fax: 480 644 2498  
Jack.Vincent@mesaaz.gov

If to Town:  
Charlene Montgomery  
Project Manager  
Town of Queen Creek  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142

## **9. Indemnity**

- 9.1 Queen Creek hereby agrees that, to the extent permitted by law, Queen Creek shall defend, indemnify, and hold harmless Mesa, its departments, agencies, officers, employees, elected officials or agents, from and against all losses and expenses (including court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or Queen Creek's performance hereunder (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property), provided such Liability is due to the negligent or willful acts or omissions of Queen Creek, its officers, employees, elected officials, agents, or anyone under Queen Creek's direction and control.
- 9.2 Mesa hereby agrees that, to the extent permitted by law, Mesa shall defend, indemnify, and hold harmless Queen Creek, its departments, agencies, officers, employees, elected officials or agents, from and against all losses and expenses (including, without limitation, court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or Mesa's performance hereunder (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property), provided such Liability is due to the negligent or willful acts or omissions of Mesa, its officers, employees, elected officials, agents, or anyone under Mesa's direction and control.

10. The Parties acknowledge that, due to the accelerated schedule of construction, the permits needed to place the Gas Line Replacement facilities beneath the railroad crossings have yet to be finalized. While Mesa does not anticipate an unreasonable delay in the issuance of these permits, Queen Creek agrees that any stoppage of work due to delayed railroad permits will not require a change order or result in additional costs to be invoiced to Mesa.
11. The term of this Agreement shall commence on the Effective Date and shall automatically terminate upon the issuance of a Letter of Acceptance for the Gas Line Replacement from Mesa; provided, however, termination of this Agreement shall not affect or shorten any warranty obligations related to completed work, nor shall it terminate the permissions specified in Section 6.7. The Agreement may be terminated earlier by agreement of the Parties. If this Agreement terminates by other than expiration of its term or agreement of the Parties, Sections 6.6 and 7.6 shall survive termination of the Agreement.
12. Attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective Parties to enter into this Agreement.
13. Pursuant to A.R.S. § 38-511, this Agreement may be cancelled.

**CITY OF MESA**

Approved and Accepted By:

\_\_\_\_\_  
Christopher J Brady                      Date  
City Manager

Attest:

\_\_\_\_\_  
City Clerk                                      Date

**APPROVAL OF MESA CITY ATTORNEY**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the Town of Queen Creek and the City of Mesa, and declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

\_\_\_\_\_  
Jim Smith  
City Attorney

Date: \_\_\_\_\_  
PHOENIX 53749-1 444757v2

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective the date first written above.

**TOWN OF QUEEN CREEK**

Approved and Accepted By:

Neil Baum 4/4/18  
Mayor Date

Attest:

Jennifer Robinson 4/4/18  
Town Clerk Date

**APPROVAL OF QUEEN CREEK TOWN ATTORNEY**

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the Town of Queen Creek and the City of Mesa, and declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the laws of the State of Arizona.

[Signature]  
Town Attorney

Date: 4/4/18