

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 DESIGN AND CONSTRUCTION OF ROADWAY IMPROVEMENTS ON
SIGNAL BUTTE AND MERIDAN ROADS**

This Intergovernmental Agreement ("Agreement") is entered into this ___ day of ___, 2019, (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 street planning, design and construction required under this Agreement; Mesa is additionally so authorized by A.R.S. § 9-276.

BACKGROUND

2. The lack of adequate roadway infrastructure to allow proper flow of traffic on the major north-south transportation corridors impacts the citizens and businesses in both Mesa and Queen Creek, as well as those in the entire Southeast Valley Region.
3. Mesa and Queen Creek wish to cooperate in the construction of certain roadway improvements located in Mesa and Queen Creek to improve the north-south transportation corridors as follows:
 - A. Signal Butte Road from the planned SR24 interchange with Signal Butte, south to Pecos Road, as set forth in **Exhibit A** hereto ("North Signal Butte Improvements");
 - B. Signal Butte Road from Pecos Road south to Germann Road, as set forth in **Exhibit B** hereto ("South Signal Butte Improvements"); and
 - C. Meridian Road from Germann Road north to the planned SR24 and Meridian Road interchange, as set forth in **Exhibit C** hereto ("Meridian Improvements").
4. The North Signal Butte Improvements, South Signal Butte Improvements, and Meridian

Improvements are collectively referred to as the "Roadway Improvements."

5. The Roadway Improvements will be constructed across property falling under the jurisdiction of both Mesa and Queen Creek, and their effective design and construction requires the cooperation and participation of both municipalities.
6. Mesa has initiated the design engineering process for improvements to Signal Butte Road from Williams Field Road to Germann Road. The cooperation between Mesa and Queen Creek jointly to plan, design and construct the Roadway Improvements will serve the best interests of the public through significant cost savings and will improve the overall north-south flow of regional traffic.

PURPOSE OF THE AGREEMENT

7. The purpose of this Agreement is to identify and define the responsibilities of Queen Creek and Mesa for the design, construction, ownership, cost and maintenance of the proposed Roadway Improvements.

TERMS OF THE AGREEMENT

8. North Signal Butte Improvements:

- 8.1 Mesa shall administer the design and construction of the North Signal Butte Improvements in cooperation with Queen Creek. Queen Creek shall designate Mesa as the lead agency for design, obtaining any necessary rights-of-way and easements, bidding, construction, and construction management for the North Signal Butte Improvements, but Mesa shall involve Queen Creek in the design, bidding, construction, and construction management at a level agreed to by the Parties.
- 8.2 Mesa will design the North Signal Butte Improvements according to Mesa's design standards. The North Signal Butte Improvements shall consist of four (4) lanes with a center median, as set forth on **Exhibit A**.
- 8.3 Mesa will construct the North Signal Butte Improvements when, and if, funding for the acquisition of land rights and construction becomes available. If such funding is not available to coincide with the completion of SR24, then Queen Creek shall have the option of funding Mesa's construction of the North Signal Butte Improvements section, subject to reimbursement no later than December 31, 2030, and as set forth in Section 11, below.
- 8.4 If Queen Creek elects to fund the North Signal Butte Improvements, then it shall notify Mesa of its decision no later than December 31, 2020, and shall immediately submit payment to the Mesa as set forth in Section 11, below.
- 8.5 Should Queen Creek choose to fund the North Signal Butte Improvements, then prior to the award of any contract relating to the North Signal Butte Improvements, Mesa

shall notify and consult with Queen Creek's Public Works Director and provide a copy of the bid tabulation or Guaranteed Maximum Price proposal ("GMP"), as applicable, and shall consider any reasonable objections thereto. Mesa shall, in its sole discretion, have the authority to enter into a contract with the contractor of its choice, using Mesa's own form of contract; provided however, that if the bid or GMP exceeds the Estimated North Signal Butte Costs (as defined in Section 11.1 below) by more than ten percent (10%) (*i.e.*, \$5,500,000), then prior to contract execution either Party may remove the North Signal Butte Improvements from the scope of this Agreement by providing written notice within ten (10) days of being provided written notice of the contract amount. All other terms of this Agreement would remain in full force and effect.

- 8.6 Should Queen Creek choose to fund the North Signal Butte Improvements, then following the award of any contract relating to the North Signal Butte Improvements, Mesa shall notify in writing the Queen Creek Public Works Director of any change order requests related to such contract. Should Queen Creek object to any change order, it shall respond in respond within five (5) business days of submittal of the change order request. Mesa shall give due consideration to any objection from Queen Creek, but shall have sole discretion (which shall not be exercised unreasonably) to execute any commercially reasonable change order.
- 8.7 After completion of construction, the North Signal Butte Improvements shall be maintained and operated by Mesa.

9. South Signal Butte Improvements:

- 9.1 Mesa shall administer the design and construction of the South Signal Butte Improvements in cooperation with Queen Creek. Queen Creek shall designate Mesa as the lead agency for design, obtaining any necessary rights-of-way and easements, bidding, construction, and construction management for the South Signal Butte Improvements, but Mesa shall involve Queen Creek in the design, bidding, construction, construction management at a level agreed to by the Parties.
- 9.2 Mesa will design the South Signal Butte Improvements according to Mesa's design standards. The South Signal Butte Improvements shall consist of two (2) lanes with a center median from Germann Road to approximately eight-hundred feet (800') south of Pecos Road, and four (4) lanes with a center median from approximately eight-hundred feet (800') south of Pecos Road, as set forth on **Exhibit B**. The design work shall commence as soon as is practicable.
- 9.3 Mesa will construct the South Signal Butte Improvements, and Queen Creek shall initially fund the design, construction, acquisition of land rights, and utility relocations, and all other costs associated with the South Signal Butte Improvements. Mesa shall reimburse Queen Creek for such expenditures no later than December 31, 2030, and set forth in Section 11, below.

- 9.4 Prior to the award of any contract relating to the South Signal Butte Improvements, Mesa shall notify and consult with Queen Creek's Public Works Director and provide a copy of the bid tabulation or Guaranteed Maximum Price proposal ("GMP"), as applicable, and shall consider any reasonable objections thereto. Mesa shall, in its sole discretion, have the authority to enter into a contract with the contractor of its choice, using Mesa's own form of contract; provided however, that if the bid or GMP exceeds the Estimated South Signal Butte Costs (as defined in Section 11.2 below) by more than ten percent (10%) (*i.e.*, \$7,700,000), then prior to contract execution either Party may remove the South Signal Butte Improvements from the scope of this Agreement by providing written notice within ten (10) days of being provided written notice of the contract amount. All other terms of this Agreement would remain in full force and effect.
- 9.5 Following the award of any contract relating to the South Signal Butte Improvements, Mesa shall notify in writing the Queen Creek Public Works Director of any change order requests related to such contract. Should Queen Creek object to any change order, it shall respond in respond within five (5) business days of submittal of the change order request. Mesa shall give due consideration to any objection from Queen Creek, but shall have sole discretion (which shall not be exercised unreasonably) to execute any commercially reasonable change order.
- 9.6 After completion of construction, the South Signal Butte Improvements shall be maintained and operated by Mesa.

10. Meridian Improvements:

- 10.1 At its sole expense, Queen Creek shall fund the design, land acquisition, and construction of the Meridian Improvements, which shall consist of an additional two lanes to Meridian Road, as set forth on **Exhibit C**. The Meridian Improvements shall be designed and constructed in Pinal County adjacent to the Maricopa County boundary line and connect to SR 24 at the Maricopa County/Pinal County boundary line, on an alignment agreed to by both Queen Creek and Mesa.
- 10.2 Construction of the Meridian Improvements shall commence at a date to be determined by Queen Creek, but shall be completed no later than December 31, 2022. Queen Creek will fund the Meridian Improvements up to \$8,000,000. Mesa shall not have any obligation whatsoever to fund the Meridian Improvements.
- 10.3 Queen Creek shall administer the design and construction of the Meridian Improvements in cooperation with Mesa. Queen Creek shall be the lead agency for the bidding, construction, and construction management for the Roadway Improvements, but Queen Creek shall involve Mesa in the design, bidding, construction, construction management at a level agreed to by the Parties.
- 10.4 After completion of construction, the Meridian Improvements shall be maintained and operated by Queen Creek.

11. Payment and Conditions of Reimbursement

- 11.1 Costs for the North Signal Butte Improvements are estimated at \$5,000,000 (the "Estimated North Signal Butte Costs"). Should Queen Creek elect to fund the construction of the North Signal Butte Improvements, then it shall pay to Mesa an amount equal to the Estimated North Signal Butte Costs within sixty (60) days of providing Mesa with notice of its decision to provide such funding. These funds will be held in reserve for the design, construction, and land acquisition (as applicable) related to the North Signal Butte Improvements. Mesa shall invoice Queen Creek for any project costs in excess of the Estimated North Signal Butte Costs, which shall be the sole financial responsibility of Queen Creek, and which Queen Creek shall pay within sixty (60) days of receipt.
- 11.2 Costs for South Signal Butte Improvements are estimated at \$7,000,000 (the "Estimated South Signal Butte Costs"). Queen Creek shall pay to Mesa an amount equal to the Estimated South Signal Butte Costs by December 31, 2020, to be held in reserve for the design, construction, and land acquisition (as applicable) related to the South Signal Butte Improvements. Mesa shall invoice Queen Creek for any project costs in excess of the Estimated South Signal Butte Costs, which shall be the sole financial responsibility of Queen Creek, and which Queen Creek shall pay within sixty (60) days of receipt.
- 11.3 Mesa agrees to reimburse Queen Creek for the Estimated North Signal Butte Costs (if Queen Creek elects to fund such costs) and the Estimated South Signal Butte Costs no later than December 31, 2030. Mesa's obligation to reimburse Queen Creek shall be capped at \$5,000,000 for the North Signal Butte Improvements, and \$7,000,000 for the South Signal Butte Improvements. No interest shall be charged or owed on the amounts to be reimbursed.
- 11.4 To the extent allowed under Mesa Code and applicable law, if a developer plans to develop property adjacent to the planned North Signal Butte Improvements or South Signal Butte Improvements prior to the commencement of construction, then Mesa agrees either, i) to collect cash-in-lieu from such to contribute to the cost the improvements, or ii) to require such developers to construct those portions of the respective Signal Butte Improvements that they would otherwise be required construct. The payment of cash in lieu or developer-funded construction shall be applied towards Estimated North Signal Butte Costs or Estimated South Signal Butte Costs, as applicable.
- 11.5 Mesa's obligation to reimburse Queen Creek shall be contingent upon compliance with all terms and conditions of this Agreement, including, but not limited to, those obligations set forth in Section 12, below.

12. Additional Agreements:

- 12.1 In consideration of Queen Creek's funding commitments set forth herein, Mesa agrees

to withdraw its letter of objection to Queen Creek's 208 Plan Amendment application at the Central Arizona Governments, and will now support that application, so long as that application remains in its current form and scope.

- 12.2 On the property owned by the Arizona State Land Department ("ASLD" and "ASLD Property," respectively) which is the subject of Queen Creek's 208 Plan Amendment application, Queen Creek also agrees to take the following action:
- i. Support Mesa's efforts to work with ASLD to place deed restrictions (e.g. Conditions, Covenants, and Restrictions) on the ASLD Property that would establish a buffer between future development and the Commercial Metals Company "CMC" and other existing and future industrial activity on the west side of Meridian Road. As depicted on **Exhibit D**, hereto, the proposed buffer would take the form of a corridor beginning 805' east of Mesa's eastern boundary and extending between Germann Road on the south, and the future SR 24 alignment on the north. The corridor would extend east for 745', and would restrict uses to allow for non-residential development only (the "Non-Residential Corridor"). If ASLD approves a form of deed restriction for the ASLD Property, then the Parties authorize their respective Manager to append that form as an administrative amendment to this Agreement.
 - ii. If Queen Creek annexes the ASLD Property, then it will pursue planning consistent with an employment area that incorporates the Non-Residential Corridor, and further require that any future developer of the ASLD Property provide a waiver agreement to each initial homeowner stating the following: "This property is located in the proximity of or adjacent to land that has been designated for non-residential uses, which may include development of industrial and commercial uses and may be subject to potential noise intrusion, vibrations, dust and all other effects that may be associated with such uses." Such waiver agreement shall be recorded and shall run with the land.
 - iii. Cooperate with ASLD to create an avigation easement over that portion of the ASLD Property sitting south of the future SR 24 alignment to protect future commercial flight activity to and from Mesa Gateway Airport, and further to provide assurances of such avigation requirements to Boeing Aviation.
 - iv. Should Queen Creek annex property in the area south of Williams Field Road, north of Germann Road, and within 820' (feet) of the right-of-way alignment for Meridian Road, then, to the extent allowed by law, it shall not approve zoning allowing residential uses for that property that are greater in density than those currently allowed under existing zoning.

- 12.3 Queen Creek agrees that the future SR 24 interchange with Meridian Road shall be constructed with an alignment placing at least half of the interchange within Maricopa County.

13. Indemnity:

- 13.1 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.
- 13.2 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.

14. General Provisions:

- 14.1 This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 14.2 This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 14.3 Any funding provided for in this Agreement, is contingent upon being budgeted and appropriated by the Mesa City Council and the Queen Creek Town 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.
- 14.4 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 ventures, joint employers or a relationship of employer or employee.

- 14.5 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.
- 14.6 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.
- 14.7 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: Chris Brady City
Manager City of Mesa
P.O. 1466
Mesa, AZ 85211
Fax: 480 644 3392
Chris.Brady@mesaz.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: John Kross
Town Manager
22358 S. Ellsworth Road
Queen Creek, AZ 85142
(480) 358-3909
John.kross@queencreek.org

With a copy to: Scott A. Holcomb
Dickinson Wright PLLC 1850
N. Central #1400
Phoenix, AZ 85020

(602) 285-5028

Sholcomb@dickinsonwright.com

15. The term of this Agreement shall commence on the Effective Date and shall automatically terminate thirty (30) years from the Effective Date. The Agreement may be terminated earlier by written agreement of the Parties; provided, however, any termination of this Agreement shall not affect or shorten any warranty obligations related to completed work nor the obligation to complete any of the Roadway Improvements which have already been commenced, nor shall it terminate the indemnity specified in Section 13 above, unless otherwise expressly agreed to in writing by the Parties.
16. Attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective Parties to enter into this Agreement.
17. Pursuant to A.R.S. § 38-511, this Agreement may be cancelled.

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:

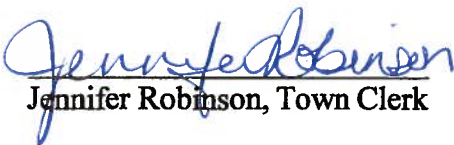


John Kross, Town Manager

5/15/19

Date

Attest:



Jennifer Robinson, Town Clerk

5/15/19

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.

 FOR:

Scott A. Holcomb, Town Attorney

5/15/19

Date

CITY OF MESA

Approved and Accepted By:

Christopher J Brady, Manager

Date

Attest:

City Clerk

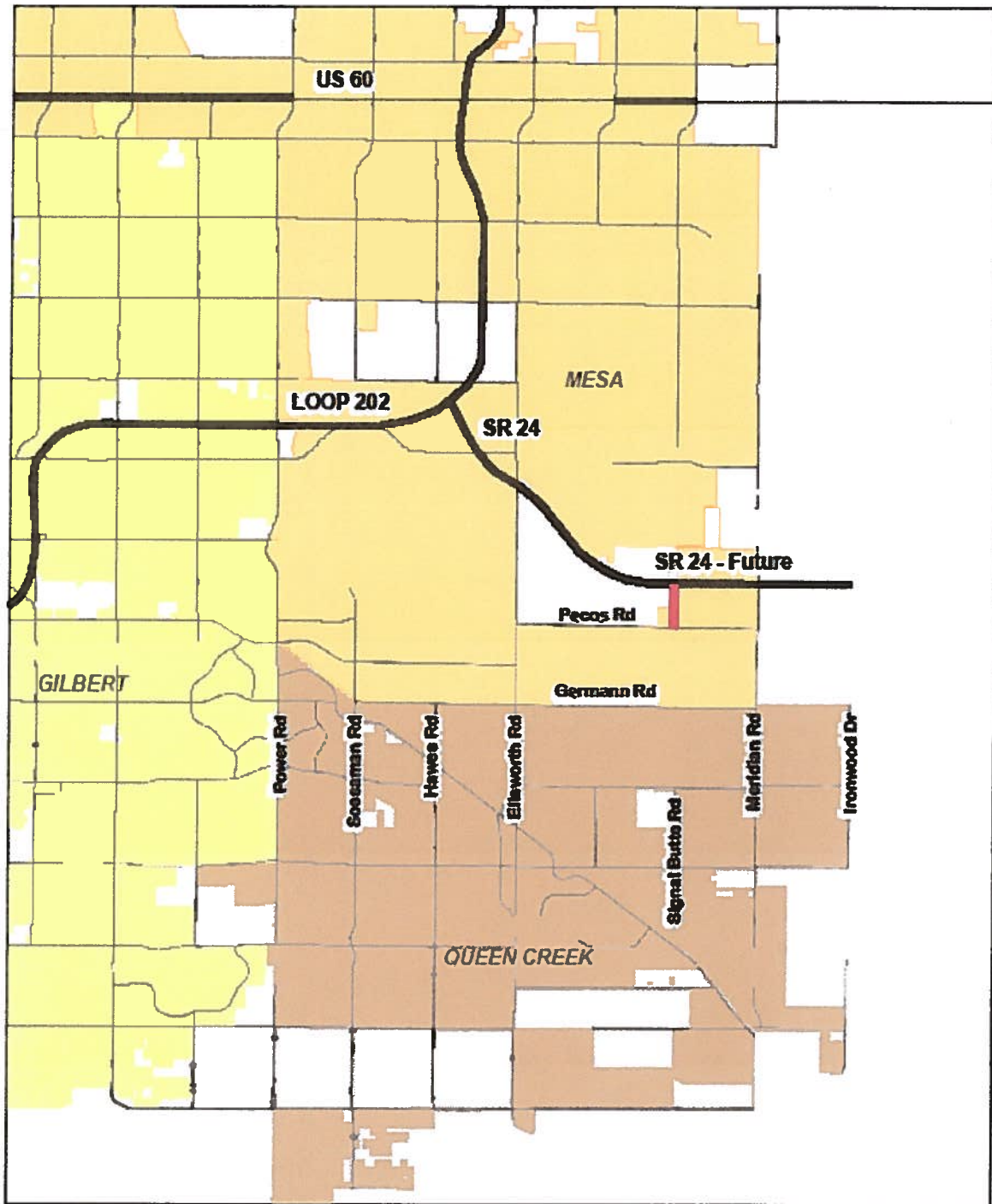
Date

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.

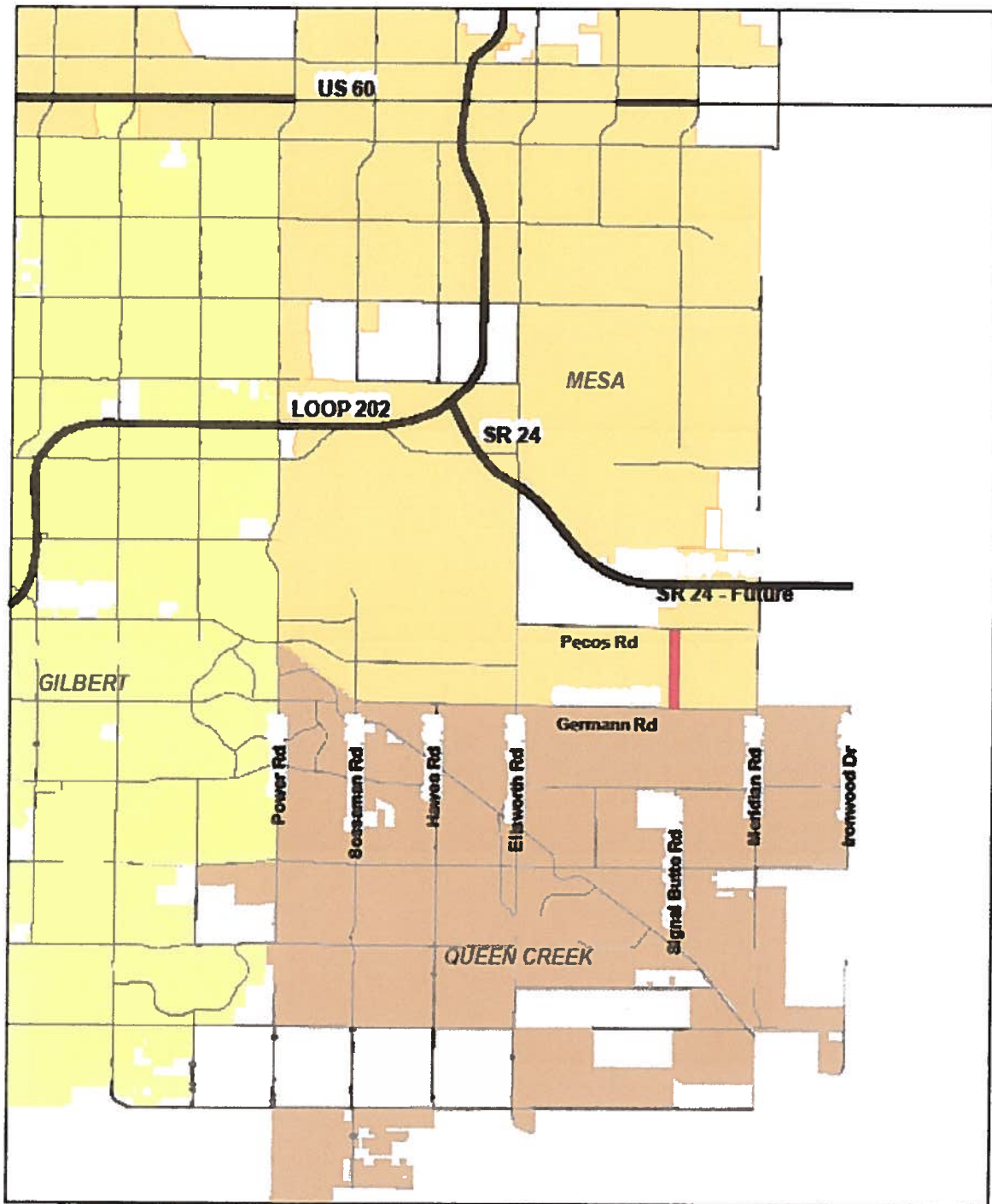
Jim Smith, City Attorney

Date



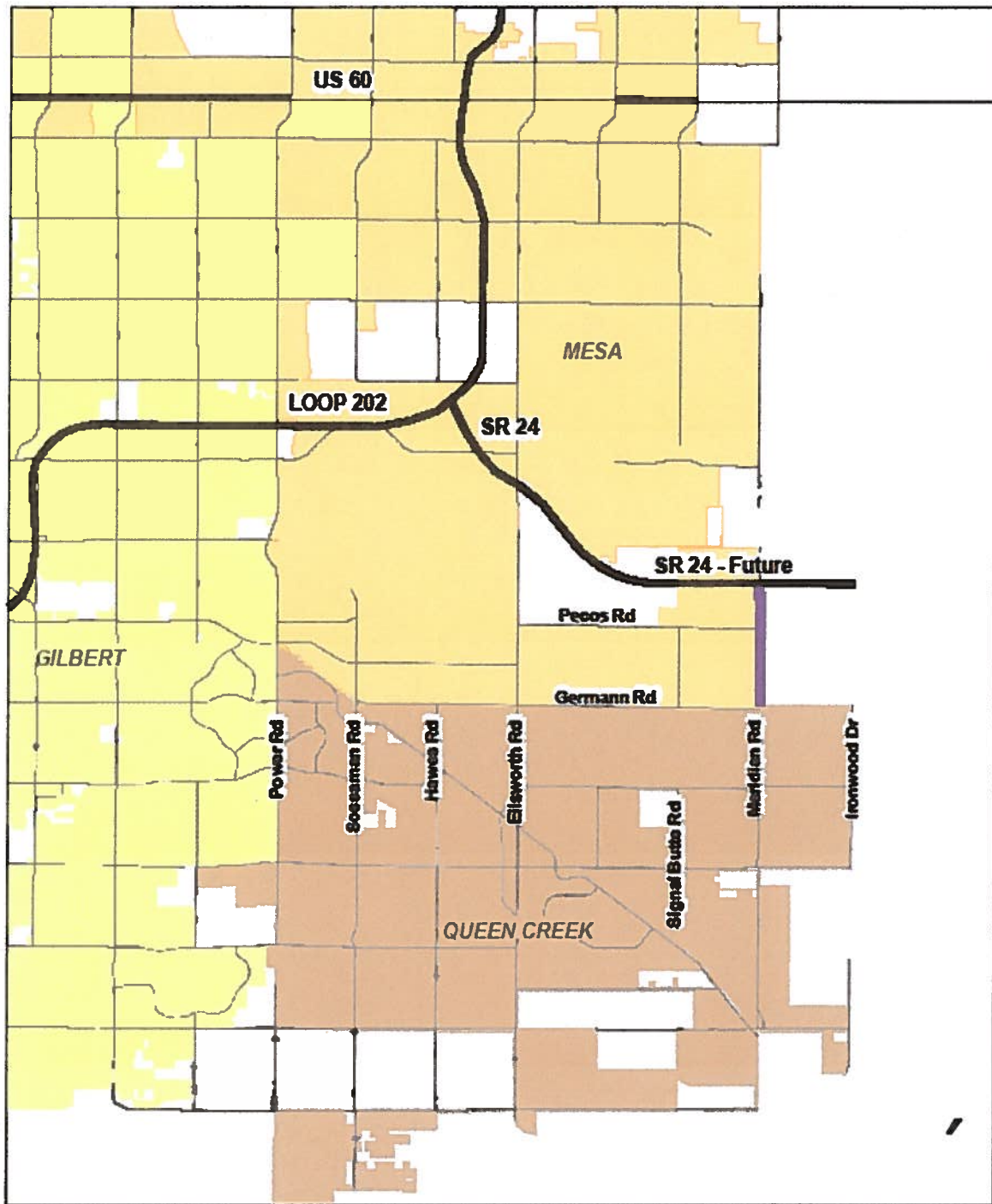
{00296014.1}

Exhibit A - North Signal Butte Rd



{00296014.1}

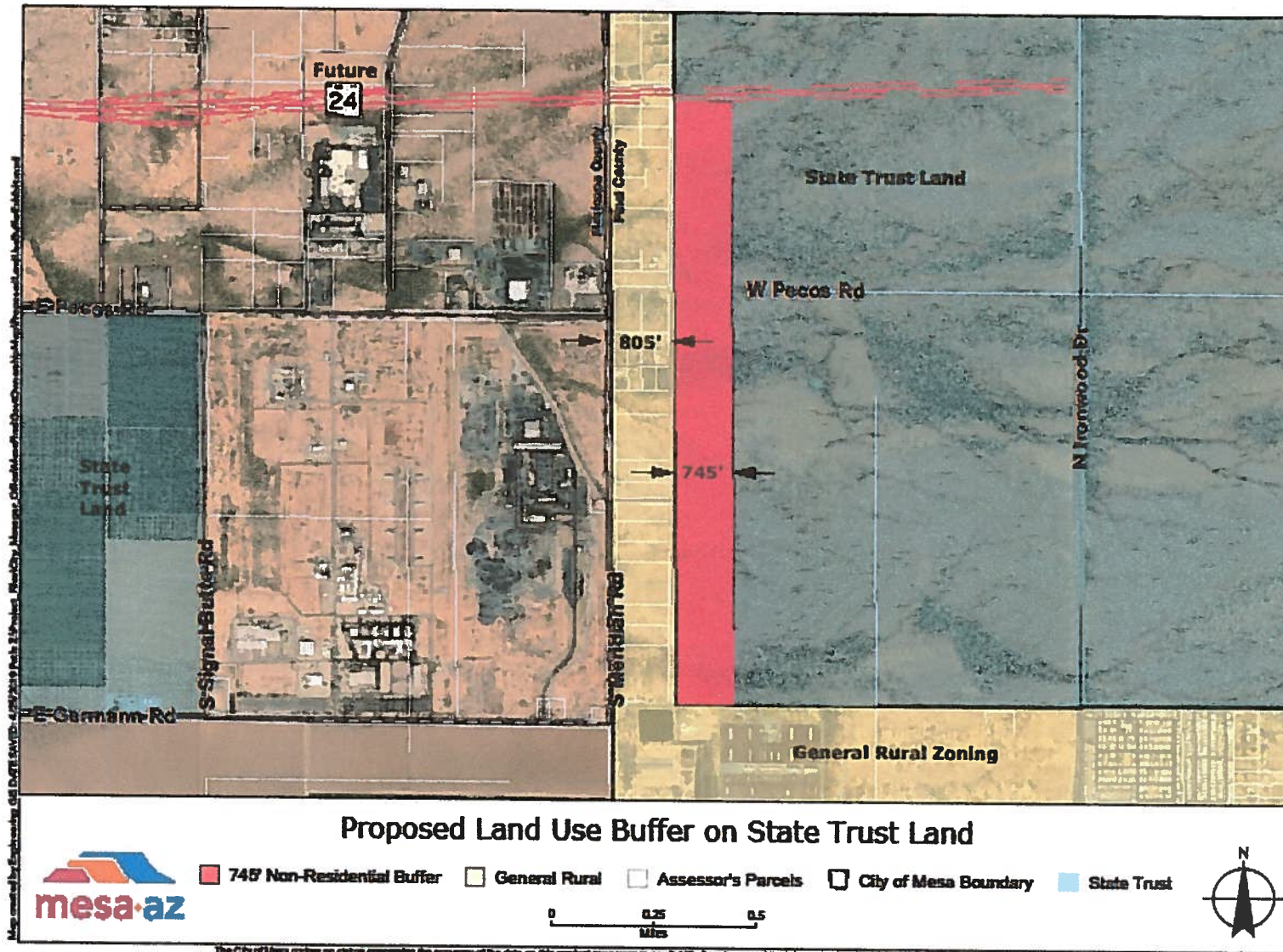
Exhibit B - South Signal Butte Rd



{00296014.1}

Exhibit C - Meridian Rd

Exhibit D



The City of Mesa makes no claim concerning the accuracy of the data on this product nor assumes any liability from the use of the information herein. ©2014, 2015 CITY OF MESA, ARIZONA