

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
REGARDING GAS LINE EXTENSION – QUEEN CREEK AND SIGNAL BUTTE
ROADS**

This Intergovernmental Agreement (“Agreement”) is entered into this _____ day of _____, 2020, (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, based in part on Queen Creek’s planned roadway improvement project No A1002 “Queen Creek & Signal Butte Intersection” (the “Roadway Improvements”) and its request for natural gas utility service at a new fire station located at 20155 South Signal Butte Road in Queen Creek, Arizona to be constructed by The Town of Queen Creek on Signal Butte Road, the extension of a natural gas line in Queen Creek Road running from approximately 1,280 feet east of the proposed monument line of Signal Butte Road, to the intersection of Queen Creek and Signal Butte Roads, then crossing the intersection and running west along Queen Creek Road for a distance of approximately 140 feet, and also extending on Signal Butte Road approximately 1,065 feet to the north, and 150 feet to the south, such lines collectively to be known as the “Gas Line Extension”. A depiction of the Gas Line Extension is attached as Exhibit “A”.
3. Queen Creek plans to construct the Roadway Improvements, which will result in a roadway that differs significantly in both location and elevation from the existing roadway.

4. The concurrent construction of both the Gas Line Extension 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 Extension in association with the Roadway Improvements.

TERMS OF THE AGREEMENT

6. Queen Creek shall:

- 6.1 Provide gas line design services by contracting with an engineering consultant to draft a permitted set of plans as part of the design of the Roadway Improvements for the Queen Creek Road and Signal Butte Road Intersection and pay all associated fees and costs. The plans must be provided to Mesa for review and comment prior to finalization.
- 6.2 Review Mesa's redline design comments to the plans for the Gas Line Extension and provide any comments to Mesa within 30 days of receipt.
- 6.3 Provide bidding, construction management and contract administration services, using a gas line contractor from the City of Mesa Approved Gas Line Contractor List (and subject to Mesa's obligations set forth in Section 7 below), and pay all associated fees and costs for the construction of the Gas Line Extension excluding those items identified in sections 7.6 and 7.7. Administration services to include, but not be limited to, coordinating inspections with the Arizona Corporation Commission, satisfying all Plan requirements, coordinating with Mesa for the acquisition of easements and other property rights, and obtaining any required permits.
- 6.4 Prior to the award of any contract relating to the Gas Line Extension, provide Mesa with a copy of the bid tabulation or GMP for informational purposes.
- 6.5 Notify in writing, the designated representative of Mesa of any change order requests related to the Gas Line Extension. No change order related to the Gas Line Extension shall be approved without mutual agreement between Queen Creek and Mesa, 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 Extension and Roadway Improvements is not delayed. Queen Creek shall pay all fees associated with change order work for construction of the gas line as

identified within this agreement and on the approved plans.

- 6.6 Provide engineering inspection services for the Gas Line Extension portion of the Roadway Improvements. Engineering inspection services shall include but not be limited to materials testing quality assurance, trench inspection, compliance with contract requirements, compliance with approved plans, compaction testing requirements and any other compliance with construction of the gas line not related to direct inspection of the gas line and its components.
- 6.7 Following final acceptance, transfer to Mesa all the utility facilities constructed as part of the Gas Line Extension, and thereafter permit the Extension facilities to remain within the roadway to allow for gas distribution service to end-users.
- 6.8 Queen Creek acknowledges that Service to the fire station shall be subject to the City's Terms and Conditions for the Sale of Utilities, and payment of applicable rates, fees and charges for utility service.

7. Mesa shall:

- 7.1 Designate Queen Creek as the lead agency for the bidding, construction, and construction management for the Gas Line Extension.
- 7.2 Furnish all materials and supplies, including 4" PE Pipe, valves, tracer wire and fittings required for the Gas Line Extension.
- 7.3 Provide Queen Creek with gas technical specifications, the City of Mesa Qualified Gas Line Contractor List, and review and comment on the design plans prepared by Queen Creek for the Gas Line Extension.
- 7.4 Respond to change order requests within five days of submittal of the change order request to Mesa pursuant to Section 6.5.
- 7.6 Inspect the Gas Line Extension 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 Extension, unless such costs or claims are due to intentionally wrongful or grossly negligent actions or inactions by Queen Creek. Gas line inspection shall include but not be limited to materials handling, pipe joining inspection, trench inspection, bedding and shading materials inspection, compliance with City of Mesa gas line installation procedures and installation method called out on approved plans, compliance with gas line purging procedures and compliance with the City's Operations, Maintenance, Construction Practice and Emergency Response manual.

- 7.7 Provide the materials and gas line inspection to relocate the existing master meter and regulator serving the Barney Family properties to the west of Signal Butte Road north of Queen Creek Road. City of Mesa crews shall provide the labor and materials to relocate and re-pipe the meter and regulator.
- 7.8 Own and operate the Gas Line Extension after final acceptance of the installation and all punch list items identified by Mesa and Queen Creek have been completed.
- 7.9 Mesa will furnish, install and connect at its cost and expense a new gas meter set for the new Town fire station.

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 85201
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 85201
Fax: 480 644 2498
Jack.Vincent@mesaaz.gov

If to Town: Tom Glow

Project Manager
Town of Queen Creek
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3105
Tom.Glow@queencreek.org

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),

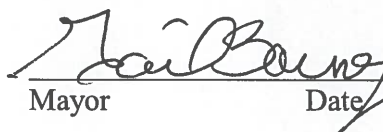
provided such Liability is due to the negligent or willful acts or omissions of Queen Creek, its officers, employees, elected officials, agents, or anyone under Queen Creek's direction and control.

- 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 Extension 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 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 Extension 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 6.8. 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 6.7 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.

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:

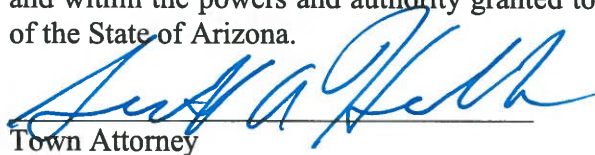
 1/15/2020
Mayor Date

Attest:

 1/15/2020
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.


Town Attorney

Date: 1/15/2020

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: _____