

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 – MERIDIAN ROAD - QUEEN CREEK ROAD
TO GERMANN ROAD**

This Intergovernmental Agreement (“Agreement”) is entered into this _____ day of _____, 2021, (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

- A. 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

- B. Queen Creek plans to construct roadway improvements in the vicinity, to be known as CIP Project A1507 – Meridian Road, Queen Creek Road to Germann Road (“Roadway Improvements”). The Roadway Improvements will result in a new roadway that provides a public street along the alignment and differs significantly in both location and elevation from the existing roadway.
- C. The Roadway Improvements will be constructed across property falling under the jurisdiction of Queen Creek. Queen Creek will manage the construction of the Roadway Improvements, including the permitting and relocation of all utilities. Queen Creek will annex all portions of the Roadway Improvements and ensure roadway right-of-way is dedicated to Queen Creek prior to construction.

- D. Mesa owns, operates, and maintains a natural gas line within the project area for the Roadway Improvements (the “Existing Gas Line”). The Existing Gas Line is installed entirely within an easement for the benefit of Mesa. Completion of the Roadway Improvements would require the relocation of the Existing Gas Line, at significant cost to Queen Creek.
- E. Rather than relocate the Existing Gas Line, Mesa proposes the construction of a new natural gas line to be known as the Gas Line Replacement – Meridian Road - Queen Creek Road to Germann Road (“Gas Line Replacement”), the scope of work for which is identified on Exhibit A. The Gas Line Replacement will have a larger capacity than the Existing Gas Line, and would allow the Parties to avoid conflicts within the roadway should the need to expand the Existing Gas Line arise in the future.
- F. In return for the opportunity to avoid the full relocation cost of the Existing Gas Line, the Parties have agreed that Queen Creek will off-set a portion of the cost of the Gas Line Replacement using a fraction of the funds it would have otherwise spent on such relocation (the “Relocation Avoidance Credit”).
- G. The concurrent construction of both the Gas Line Replacement and the Roadway Improvements will serve the best interests of the public. Concurrent construction will allow Queen Creek to avoid the majority of the cost of relocating the Existing Gas Line, resulting in significant cost savings. Additionally, concurrent construction will reduce the overall disruption to the surrounding communities and expedite the alleviation of traffic congestion in the area.

PURPOSE OF THE AGREEMENT

- H. 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

1. Queen Creek shall:

- 1.1 Review Mesa’s plans for the Gas Line Replacement and provide any comments to Mesa within 15-working days of receipt.
- 1.2 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 2 below, for the Gas Line Replacement.

- 1.3 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 review prior to award to the successful Contractor.
- 1.4 Notify in writing Mesa's designated representative of any change order requests related to the Gas Line Replacement. Queen Creek shall not approve any change order related to the Gas Line Replacement unless Mesa approves the change order; provided however, that Mesa shall respond in a timely manner to such request in accordance with Section 2.4, so that the construction of the Gas Line Replacement and Roadway Improvements are not delayed.
- 1.5 Upon awarding the contract to construct the Gas Line Replacement, invoice Mesa for 50% of the projected costs specified in Section 2.5.
- 1.6 Invoice Mesa for all remaining costs for the Gas Line Replacement, less the Relocation Avoidance Credit of \$121,776.71, as those costs accrue.
- 1.7 Coordinate with Mesa during construction to facilitate Mesa's inspection of the Gas Line Replacement for compliance with all Mesa procedures and Federal and State regulations relating to natural gas distribution system installation.
- 1.8 Following final acceptance, transfer to Mesa all the utility facilities constructed as part of the Gas Line Replacement, assign to Mesa all existing warranties related to the Gas Line Replacement, and provide equivalent easement rights for any portion of the Gas Line Replacement falling outside of Mesa's current easement.

2. Mesa shall:

- 2.1 Designate Queen Creek as the lead agency for the bidding, construction, and construction management for the Gas Line Replacement.
- 2.2 Provide Queen Creek with a final set of plans and specifications for the Gas Line Replacement prior to bid release or final GMP.
- 2.3 Review and, upon being satisfied, approve the bid submitted by Queen Creek pursuant to Section 1.3. Such approval shall not be unreasonably withheld.
- 2.4 Respond to change order requests within five working days of submittal of the change order request to Mesa pursuant to Section 1.4.
- 2.5 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, and if necessary, Mesa will pay all costs related to modification of the Gas Line Replacement plans during construction; 2) Construction management and general 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.

- 2.6 Pay all projected costs set forth in Section 2.5 within thirty (30) calendar days of receipt of Queen Creek's invoice pursuant to Sections 1.5 and 1.6.
- 2.7 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.
- 2.8 Except as provided above, accept sole responsibility, including costs, for all inspection and materials testing for the Gas Line Replacement.
- 2.9 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.

3. General Provisions:

- 3.1 This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 3.2 This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 3.3 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 calendar days prior to the

termination date.

- 3.4 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.
- 3.5 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.
- 3.6 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.
- 3.7 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:

Reed Caldwell
Project Manager
Town of Queen Creek
22350 S. Ellsworth Road
Queen Creek, AZ 85142
reed.caldwell@queencreek.org

4. Indemnity

- 4.1 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 third-party 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 not due to the sole and exclusive negligent or willful acts or omissions of Mesa, its officers, employees, elected officials, agents, or anyone under Mesa's direction and control.
- 4.2 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 third-party 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 sole and exclusive negligent or willful acts or omissions of Queen Creek, its officers, employees, elected officials, agents, or anyone under Queen Creek's direction and control.
5. The Parties acknowledge that, due to the accelerated schedule of construction, the permits needed to place the Gas Line Replacement facilities 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.
6. 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 rights or obligations specified in Section 1.7. 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 2.7, 4.1, and 4.2 shall survive termination of the Agreement.

7. Attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective Parties to enter into this Agreement.
8. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

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:

David Barney 6/2/21
Mayor Date

Attest:

M. Gonzalez 6/2/21
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.

Scott A. Holcomb
Scott A. Holcomb (Jun 23, 2021 10:20 PDT)
Town Attorney

Date: Jun 23, 2021

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: _____
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