

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF GILBERT AND THE CITY OF MESA
FOR THE INITIAL DESIGN OF A MATERIALS RECOVERY FACILITY AND
TRANSFER STATION**

This Intergovernmental Agreement (“Agreement”) is entered into this ___ day of _____, 2023, by and between the Town of Gilbert, an Arizona municipal corporation, (“Gilbert”) and the City of Mesa, an Arizona municipal corporation (“Mesa”). Gilbert and Mesa are sometimes collectively referred to as the “Parties” and each is referred to as a “Party.”

RECITALS

- 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. Gilbert and Mesa are authorized by A.R.S. §§ 9-240 and 9-511 to provide the planning and design of solid waste facilities required under this Agreement; Mesa is additionally so authorized by A.R.S. § 9-276.
- B.** The Parties each provide collection and removal services for solid waste and recyclable materials within their respective service areas.
- C.** The Parties collect recyclable materials using a single-stream system whereby customers comingle various recyclable materials into a single container. The collected recyclable materials must then be transported to a materials recovery facility (“MRF”) to be sorted and processed by material category before being marketed for reuse or recycling. A percentage of the recyclable materials collected is non-recyclable residue and that residue is moved from the MRF to another facility for final disposal.
- D.** The Parties collect solid waste from their broad geographic service areas. The solid waste is then transferred for disposal to a solid waste facility. A transfer station (“Transfer Station”) can be used as an intermediate stop for the solid waste after it is collected from one or more sections of the service areas but prior to disposal. The solid waste can be consolidated at the Transfer Station and then shipped for final disposal, thereby creating efficiencies for the Parties’ solid waste transportation.
- E.** Neither Party currently owns or operates a MRF or Transfer Station and therefore must contract for such services with third parties.
- F.** The Parties wish to cooperatively investigate the potential for developing either a MRF, Transfer Station, or a combination thereof (“the Project”) for their shared use. To that end, the Parties desire to jointly fund an initial, fifteen percent (15%) design of the Project (“Initial Design”).

- G. The cooperation between Mesa and Gilbert to jointly complete the Initial Design of the Project will serve the best interests of the public through potential cost savings, reduced incidences of landfilling recyclable materials, and decreasing fuel consumption by selecting a geographically favorable site for the Project.

PURPOSE OF THE AGREEMENT

- 1) The purpose of this Agreement is to identify and define the roles and responsibilities of Mesa and Gilbert for the Initial Design and associated costs. Further steps (if any) toward developing the Project beyond the Initial Design must be addressed in future agreements.

TERMS OF THE AGREEMENT

2) Mesa Responsibilities:

- a) Mesa shall be the lead agency and have final decision-making authority regarding the Initial Design, subject to the terms of this Agreement. Mesa shall assume the lead for the procurement, negotiation, and management of design services needed to complete the Initial Design consistent with all applicable laws including Title 34 of the Arizona Revised Statutes and in conformance with the City of Mesa Engineering & Design standards where applicable. Mesa shall cooperate with Gilbert in effecting this subsection.
- b) Upon award of a contract to complete the Initial Design to a contractor (“Contractor”), Mesa shall calculate the total Initial Design costs including the contract costs (plus a contingency of fifteen percent (15%)) and overhead costs of twenty-two thousand dollars (\$22,000.00) for the Initial Design (collectively, the “Initial Design Cost”) and provide Gilbert an invoice for one-half of the Initial Design Cost. Subject to Section 4, Mesa shall invoice Gilbert for one-half the cost of any approved change orders. The estimated Initial Design Costs of the date of this Agreement, which is subject to change and is provided herein solely as an approximation, is \$400,000, and Gilbert’s share of such estimated Initial Design Cost is therefore \$200,000.
- c) After the award of the contract, Mesa will provide, at Gilberts sole discretion, a written or oral monthly progress update on the Initial Design within ten (10) calendar days following the end of each calendar month.
- d) Upon completion of the Initial Design and acceptance by Mesa and Gilbert, Mesa shall provide Gilbert with a certified statement of services performed and, subject to Section 4, an invoice for one-half of any remaining costs related to the Initial Design.
- e) Upon completion of the Initial Design and acceptance by Mesa and Gilbert, Mesa shall provide Gilbert with an electronic copy of the Contractor’s work product.

3) Responsibilities of Gilbert:

- a) Gilbert hereby designates Mesa as the lead agency for procurement, negotiation, and management for the Initial Design.
- b) Except as otherwise provided herein, Gilbert shall return review comments to Mesa on all

proposed plans, schedules, cost estimates, and scopes of work related to the Initial Design within fifteen (15) calendar days of receipt. Gilbert shall respond within ten (10) calendar days to all other requests by Mesa for information regarding the Initial Design.

- c) Gilbert shall remit payment to Mesa for its share of the costs associated with the Initial Design within thirty (30) days of receipt of an invoice issued pursuant to Section 2 above.

4) Change Orders

- a) Following the award of any contract relating to the Initial Design, Mesa shall notify Gilbert of any change order requests related to such contract. Should Gilbert object to any change order, it shall notify Mesa within ten (10) calendar days of receipt of the change order request. Mesa shall give due consideration to any objection from Gilbert but shall retain sole discretion (which shall not be exercised unreasonably) to execute any commercially reasonable change order. In the event Mesa approves any change order request(s) over Gilbert's timely objections, Gilbert shall not be responsible for the costs associated with such change order request(s) to the extent they increase the total cost of the Initial Design more than ten percent (10%) above the Initial Design Costs plus any Gilbert-approved change orders. Notwithstanding the foregoing, in no event shall Gilbert's share of the Initial Design Cost exceed \$250,000 in the aggregate without approval of the Gilbert Town Council.

5) Term

- a) The term of this Agreement shall commence on the date it is fully executed ("Effective Date") and shall end upon the earlier of (i) the completion and acceptance by Mesa of the Initial Design, (ii) three (3) years from the Effective Date, or (iii) upon written agreement of the Parties; provided, however, any termination of this Agreement shall not terminate any then-existing obligation to pay for the Initial Design nor shall it terminate the indemnities specified in Section 6. Notwithstanding the foregoing, any funding provided for in this Agreement, is contingent upon being budgeted and appropriated by the Mesa City Council and the Gilbert Town Council in accordance with A.R.S. § 42-17106 such fiscal year.

6) Indemnity:

- a) Gilbert hereby agrees that, to the extent permitted by law, Gilbert shall defend, indemnify, and hold harmless Mesa, its departments, agencies, officers, employees, elected officials or agents, ("Mesa Indemnitees") from and against all third party losses, damages, claims, and expenses (including court costs, expenses for litigation, and reasonable attorney fees), or other liabilities of any kind ("Liability") resulting from or arising out of Gilbert's acts or omissions under this Agreement (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property), to the extent such Liability is due to the gross negligence or more culpable conduct of Gilbert, its officers, employees, elected officials, agents, or anyone under Gilbert's direction and control. Nothing herein shall require Gilbert to indemnify or hold harmless the Mesa Indemnitees for any Liability to the extent caused by the negligent acts or omissions of the Mesa Indemnitees.

b) Mesa hereby agrees that, to the extent permitted by law, Mesa shall defend, indemnify, and hold harmless Gilbert, its departments, agencies, officers, employees, elected officials or agents, (“Gilbert Indemnitees”) from and against all third party losses, damages, claims, and expenses (including, without limitation, court costs, expenses for litigation, and reasonable attorney fees), or other liabilities of any kind ("Liability") resulting from or arising out of Mesa’s acts or omissions under this Agreement (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property), to the extent such Liability is due to the gross negligence or more culpable conduct of Mesa, its officers, employees, elected officials, agents, or anyone under Mesa's direction and control. Nothing herein shall require Mesa to indemnify or hold harmless the Gilbert Indemnitees for any Liability to the extent caused by the negligent acts or omissions of the Gilbert Indemnitees.

7) General Provisions:

- a) This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- b) This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- c) Nothing in this Agreement shall create a relationship of agency, partnership, or employer-employee between Mesa and Gilbert, 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.
- d) 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 current or former employee of Mesa or Gilbert or any participant or beneficiary in any benefit plan, program, or arrangement.
- e) 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.
- f) 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 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 5610
Adam.Schwartz@mesaaz.gov

If to Town: Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

With a copy to: Town Attorney
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

- g) Attached to this Agreement are copies of appropriate action by ordinance, resolution or otherwise authorizing the respective Parties to enter into this Agreement.
- h) 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 GILBERT

Approved and Accepted By:

Date

Attest:

, Town Clerk

Date

APPROVAL OF GILBERT TOWN ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement, between the Town of Gilbert 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

CITY OF MESA

Approved and Accepted By:

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 Gilbert 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.

Adam J Schwartz, Assistant City Attorney

Date

