

**INTERGOVERNMENTAL AGREEMENT
FOR RENOVATIONS TO THE FIRE FIGHTER MEMORIAL PARK
BY AND BETWEEN
MARICOPA COUNTY
AND
CITY OF MESA
Maricopa County C-**

This Intergovernmental Agreement ("IGA" or "Agreement") is entered into by and between MARICOPA COUNTY, a political subdivision of the state of Arizona ("County") and CITY OF MESA, a political subdivision of the state of Arizona ("Mesa"). The County and Mesa may be referred to herein collectively as "Parties" and individually as a "Party."

RECITALS

WHEREAS, A.R.S. §11-951, *et seq.* authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action; and

WHEREAS, Mesa is renovating the Fire Fighter Memorial Park ("Park") which commemorates the city's fallen fire fighters. The renovations include replacing brick pavers, upgrading lighting, and installation of seat walls, flag poles, a Maltese Cross, bronze memorial plaques and a new monolith pilaster ("Improvements"); and

WHEREAS, pursuant to Maricopa County Policy A1125, Community Solutions Funding ("CSF"), each member of the Board of Supervisors will receive an equal share of General Fund contingency appropriated for CSF to conduct activities within their district; and

WHEREAS, CSF is primarily intended to cover the cost of initiatives that carry the potential of advancing Maricopa County's Strategic Goals and provide a clear public benefit for Maricopa County residents; and

WHEREAS, the Park is in need of repairs and no longer meets the needs of Mesa residents and the surrounding community; and

WHEREAS, the total estimated cost of needed Improvements to the Park is \$480,000; and

WHEREAS, Mesa has \$380,000 available to fund Improvements to the Park so that it may be useful to and enjoyed by the public; and

WHEREAS, Maricopa County desires to use CSF to cover the remaining cost of Improvements to the Park, as defined below, in accordance with the specifications of Maricopa County Policy A1125; and

WHEREAS, each Party has determined that Improvements to the Park as provided in this Agreement will serve the public good; and

WHEREAS, the Parties desire to enter into this Agreement to set forth each Party's understandings, agreements and responsibilities related to the Improvements.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

TERMS OF AGREEMENT

1. County shall:

- 1.1. Use CSF funds to pay for a portion of the cost of Improvements to the Park in an amount not to exceed \$100,000.
- 1.2. Coordinate with the City to transfer the CSF funds to the City in a manner and at a time mutually acceptable to the Parties.

2. Mesa shall:

- 2.1. Develop the Park in general accordance with the design plans presented to the Mesa City Council on November 9, 2023, and depicted on Exhibit A, attached hereto and incorporated herein by this reference.
- 2.2. Commence construction of the Improvements to the Park by September 22, 2024 and complete construction by December 31, 2024.
- 2.3. Provide ongoing maintenance and repairs of the Park after expiration of this Agreement.
- 2.4. Establish and maintain a budget, including for the CSF received from the County, for the Improvements.
- 2.5. Reimburse Maricopa County its full contribution of CSF funds in the event the Park is not completed by December 31, 2024, in accordance with the design plans depicted on Exhibit A.
- 2.6. Provide quarterly updates to Maricopa County on the status of the project and expenditure of funds until the completion of the Improvements.

GENERAL TERMS AND CONDITIONS

- 3. The Recitals, by this reference, shall be incorporated herein and are made a part of this Agreement.
- 4. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage,

but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the willful misconduct or gross negligence of the indemnitor, its officers, officials, agents, employees, or volunteers.

5. This Agreement shall become effective as of the date it is fully executed and shall expire 90 days following the completion of construction of the project. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.
6. This Agreement may only be amended or modified by written agreement signed by both Parties. This Agreement is subject to the provisions of A.R.S. § 38-511.
8. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 8.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Improvements shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214(A) and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer.
 - 8.2 Any breach of the warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.
 - 8.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Improvements to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of such employee available during normal working hours in order to facilitate such an inspection.
 - 8.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
9. The Parties warrant that neither they nor any contractor or vendor under contract to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used on the Improvements as described in the Agreement.
10. County and Mesa acknowledge and agree that the Parties to this Agreement are each self-insured. The Parties acknowledge that Mesa, at its sole expense, insures the Park. During the entire time that this Agreement is in force, each Party, at its sole cost and expense, shall carry and maintain levels of insurance coverages that are considered standard for the Park, Improvements, and the related work.
11. Any non-performance shall be a default ("Default") under this Agreement. The non-defaulting Party may seek appropriate remedy for Default if the event causing the Default continues for a period of thirty (30) days after the defaulting Party receives written notice of such failure without the Default having been cured; provided however if the defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter

is diligently pursuing such cure to completion, no recourse shall be available to the non-defaulting Party. The total aggregate cure period shall not exceed ninety (90) days unless the non-defaulting Party agrees in writing that additional time is reasonably necessary under all of the circumstances to cure such Default. In the event of a Default that is not cured as provided for herein, the non-defaulting Party, at its option, may exercise any remedies now or hereafter available to it at law or in equity, including the right to terminate this Agreement.

12. All notices herein required under this Agreement shall be given in writing and sent to:

County:

**Maricopa County
Attn: Jen Pokorski
301 W. Jefferson St.
Phoenix, AZ 85003**

Mesa:

**City of Mesa
Attn: Candace Cannistraro
20 E. Main Street, 7th Floor
Mesa, AZ 85201**

All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand or by courier) or may be sent by first class, certified mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this section. The addresses specified in this section shall be that Party's address for delivery or mailing of notices. Any Party may, by written notice to the others, specify a different address for notice.

Any notice sent by certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by first class mail, the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier.

13. The proper venue for any proceeding at law or in equity relating to this Agreement shall be Maricopa County, Arizona. This Agreement shall be construed in accordance with and be governed by the laws of the State of Arizona.
14. This Agreement, together with any exhibits attached hereto and any agreements executed contemporaneously herewith, constitutes the entire agreement between the Parties and sets forth all the covenants, promises, agreements, conditions and understandings among the Parties, and there are no covenants promises, agreements, conditions, or understandings, either oral or written, among the Parties other than as set forth herein. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party drafting this Agreement.

15. Waiver of any breach of any term, condition or covenant herein contained shall not be deemed to be a waiver of any other term, condition, or covenant herein, or of a subsequent breach of any term, covenant, or condition herein. Any Party's consent to, or approval of, any subsequent or similar act shall not be deemed to render unnecessary the obtaining of that Party's consent to, or approval of, any subsequent or similar act by another Party, nor be construed as the basis of estoppel to enforce the provision or provisions of this Agreement requiring such consent.
16. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
17. Each Party warrants that the person signing this Agreement has the authority to do so.
18. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
19. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by the Parties pursuant to this Agreement.
20. The Assistant County Manager for Maricopa County and/or Director of Parks and Recreation for Maricopa County and Deputy City Manager for the City of Mesa shall administer this Agreement.
21. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures shall have the same force and effect as original signatures.

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IN WITNESS WHEREOF the Parties have fully executed this Agreement as of the dates written below.

MARICOPA COUNTY:

Thomas Galvin Date
Vice Chairman, Board of Supervisors

ATTEST:

Clerk of the Board Date

APPROVAL OF DEPUTY COUNTY ATTORNEY:

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

Deputy County Attorney Date

CITY OF MESA

Candace Cannistraro
Deputy City Manager

Date

APPROVAL OF CITY ATTORNEY FOR MESA:

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

Assistant City Attorney

Date

Exhibit A

Park