

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 INSTALLATION – NORTH IRONWOOD DRIVE AND EAST
GERMANN ROAD INTERSECTION**

This Intergovernmental Agreement (“Agreement”) is entered into this _____ day of _____ 2023, (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 provides natural gas utility service in certain locations within the boundaries of Queen Creek. A private party has requested service to a new commercial customer in Queen Creek located north of the Ironwood Drive and Germann Road Intersection (the “Intersection”). In order to serve that customer, new gas lines would need to be installed in the Intersection, running from approximately 260 feet west of the Ironwood Drive monument line to 350 feet east of Ironwood Drive monument line, and extending approximately 130 feet north of the Germann Road monument line on Ironwood Drive (such lines shall be collectively referred to herein as, “the Gas Line Extension”). A depiction of the Gas Line Extension is attached as Exhibit “A”.
3. Mesa desires to construct the Gas Line Extension, but would not be prepared to do so prior to Queen Creek’s commencement of its planned roadway improvement project AR100 ASLD Infrastructure Improvements (the “Roadway Improvements”). Construction on the Roadway Improvements began on March 13, 2023 including the installation of new

pavement, sidewalk, curb and gutter and other items through the Intersection. If Mesa were to construct The Gas Line Extension after the completion of the Roadway Improvements, then that activity would disrupt the new Roadway Improvements, resulting in extra cost to Mesa and increased traffic impacts and inconvenience to the public.

4. For the foregoing reasons, the concurrent construction of both the Gas Line Extension and the Roadway Improvements will serve the best interests of the public.

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 design a permitted set of plans as part of the design of the Roadway Improvements for the Ironwood Drive and Germann 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 7.5 and 7.6. Administration services to include, but not be limited to, satisfying all Plan requirements, and obtaining any required permits.
- 6.4 Prior to the award of any contract or change order relating to the Gas Line Extension, provide Mesa with a copy of the GMP or proposed change order for review prior to approval.
- 6.5 Notify in writing, the designated representative of Mesa of any additional 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 Upon awarding the contract to construct the Gas Line Extension, invoice Mesa for 50% of the projected costs specified in Section 7.5.
- 6.7 Review final design and construction costs with Mesa for concurrence prior to final invoicing for gas line costs.
- 6.8 Following final acceptance, transfer to Mesa all the utility facilities constructed as part of the Gas Line Extension, assign to Mesa all existing warranties related to the Gas Line Extension, provide equivalent easement rights for any portion of the Gas Line Extension falling outside of Mesa's current easement, and thereafter permit the Gas Line Extension facilities to remain within the roadway to allow for gas distribution service to end-users.

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 12" and 8" Steel Pipe, valves, 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.
- 7.5 Pay all costs incurred by Queen Creek related to: 1) Engineering costs, and if necessary, Mesa will pay all costs related to modification of the Gas Line Extension plans during construction; 2) Construction management and general inspection costs related to the Gas Line Extension, at the rate of 4% of the Gas Line Extension construction costs; and 3) Construction costs for the Gas Line Extension.
- 7.6 Pay all projected costs set forth in Section 7.5 within thirty (30) calendar days of receipt of Queen Creek's invoice pursuant to Sections 6.6 and 6.7.
- 7.7 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, for a period of two years following final acceptance of the Gas Line Inspection, hold Queen Creek harmless from all costs and claims to the extent related to or arising from 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.

- 7.8 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.

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:

Beth Huning
City Engineer
City of Mesa
P.O. 1466
Mesa, AZ 85201
Fax: 480 644 3392
Beth.Huning@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:

Dave Lipinski
CIP Director
Town of Queen Creek
19715 South 220th Street
Queen Creek, AZ 85142
Dave.Lipinski@queencreekaz.gov

With a copy to:

Scott A. Holcomb
Town Attorney
1850 N. Central Avenue, #1400
Phoenix, AZ 85004
sholcomb@dickinsonwright.com

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, without limitation, court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") to the extent such Liability results or arises out of this Agreement and 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, however, that such obligation shall not extend to Liability attributable to the negligent or willful acts or omissions of Mesa, its officers, employees, elected officials, agents, or anyone under Mesa'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") to the extent such Liability results or arises out of this Agreement and 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, however, that such obligation shall not extend to Liability attributable 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.
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 6.8, 9.1, and 9.2 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:

Mayor Date

Attest:

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
Town Attorney

Date: _____

CITY OF MESA

Approved and Accepted By:

Christopher J Brady
City 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: _____