

# INTERGOVERNMENTAL AGREEMENT

## BETWEEN THE CITY OF MESA AND THE TOWN OF QUEEN CREEK

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 11-951 et seq., between the CITY OF MESA, an Arizona municipal corporation ("Mesa" or "the City"), and the TOWN OF QUEEN CREEK, an Arizona municipal corporation ("Queen Creek" or "the Town"). The City and the Town are referred to collectively as "Parties" and each is referred to as a "Party."

### I. RECITALS

1. Arizona Revised Statutes ("A.R.S."), §§ 11-951 et seq., authorizes Mesa and Queen Creek to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions.
2. A.R.S. § 48-572 also empowers the Mesa and Queen Creek to enter into this Agreement, and they have by resolution (copies of which is attached and made a part of) resolved to enter into this Agreement and authorized the undersigned to execute this Agreement on behalf of the Parties.
3. The intersection of Germann Road and Sossaman Road is bound to the north by Mesa and to the south by Queen Creek ("Intersection"). The Intersection is not owned or maintained by Queen Creek or Mesa, nor do either of the Parties currently intend to assume ownership or responsibility for maintaining the Intersection, and nothing in this Agreement, nor performance hereunder, shall constitute an assumption of or admission by either Party that they are in any way responsible for the maintenance of the Intersection or have an ownership interest in the Intersection.
4. Queen Creek plans to perform pavement preservation activities at the intersection of Germann Road and Sossaman Road ("the Project").
5. Queen Creek has provided a cost estimate for the Project of \$62,000 and dated March 2, 2020 (Exhibit A).
6. Mesa has agreed to pay for one-third (1/3) of the Project cost estimate and will reimburse Queen Creek approximately \$22,666 for the Project. Maricopa County will reimburse Queen Creek for an equal share of the cost, but Maricopa County is not party to this IGA and has entered into a separate agreement with the Town.
7. This Agreement is intended to set forth the roles and responsibilities of the Parties with respect to the Project, including contracting consultant engineering design services, design review, construction administration, construction permitting and inspection of the completed work.

**THEREFORE**, in consideration of the mutual terms expressed in this Agreement, it is agreed that the foregoing Recitals are incorporated into this Agreement and in addition the Parties agree as follows:

## **II. SCOPE**

### **1. Responsibilities of Queen Creek:**

- 1.1. Queen Creek, shall arrange for the Project to be completed either by Queen Creek staff or through a Queen Creek contract, but in any event in full compliance with Title 34 of the Arizona Revised Statutes.
- 1.2. Queen Creek shall provide Mesa with a proposed scope and schedule for Project completion.
- 1.3. Queen Creek shall provide Mesa with an updated cost estimate prior to commencement of the Project, and shall immediately notify Mesa prior to incurring any costs in excess of that estimate. Upon completion of the Project, Queen Creek shall provide Mesa with a certified statement of services performed and will provide an invoice for actual costs incurred.
- 1.4. Queen Creek shall obtain all permits and provide all notifications necessary for performing work related to the Project.
- 1.5. Queen Creek warrants compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Queen Creek will require any Contractor, and all subcontractors, to provide the same warranty. Failure by Queen Creek, Queen Creek's Contractor, or subcontractors, to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement.

### **2. Responsibilities of Mesa:**

- 2.1. Mesa shall remit payment to Queen Creek for actual costs incurred on the Project as set forth in Recital 6 above within 30 days of receipt of an invoice issued pursuant to Section 1.3 above.
- 2.2. Mesa shall provide Queen Creek with no-fee permits for Project-related work performed within Mesa's right-of-way.

### **3. Term:**

- 3.1. The term of this Agreement shall commence on the Effective Date and shall automatically terminate upon the City's reimbursement to Queen Creek.

### **4. General Provisions:**

- 4.1. Each Party reserves all rights that it may have to cancel this Agreement for conflicts of interest under A.R.S. § 38-511.
- 4.2. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, the Parties certify that they do not have scrutinized business operations in Sudan or Iran as set forth in A.R.S §§ 35-391 or 35-393, as

applicable.

- 4.3. This Agreement contains the entire understanding between the Parties with respect to the subjects addressed and supersedes all prior negotiations and agreements.
- 4.4. This Agreement may be amended only by an instrument in writing signed by authorized representatives of the Parties.
- 4.5. Each Party shall (as "Indemnitor") indemnify, defend, and hold harmless the other Party, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as "Indemnitee") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the Indemnitee on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused in whole or in part by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of Indemnitor, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. Indemnitor's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the Indemnitee. The obligations under this paragraph shall survive the termination of this Agreement.
- 4.6. 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.
- 4.7. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on or as of the day and year first written above

**Town of Queen Creek**, an Arizona Municipal Corporation

**City of Mesa**, an Arizona Municipal Corporation

By: \_\_\_\_\_  
John Kross  
Town Manager

By: \_\_\_\_\_  
Christopher J. Brady  
City Manager

Date: \_\_\_\_\_

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

### **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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