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INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE TOWN OF QUEEN CREEK TO DEFINE RESPONSIBILITIES FOR THE DESIGN AND CONSTRUCTION OF GERMANN ROAD FROM IRONWOOD ROAD TO KENWORTHY ROAD

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INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE TOWN OF QUEEN CREEK TO DEFINE RESPONSIBILITIES FOR THE DESIGN AND CONSTURCTION OF GERMANN ROAD FROM IRONWOOD ROAD TO KENWORTHY ROAD

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between Pinal County, a political subdivision of the State of Arizona, hereinafter referred to as "Pinal County," and the Town of Queen Creek, a municipal corporation of the State of Arizona, hereinafter referred to as "Queen Creek". Pinal County and Queen Creek are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

I. RECITALS

A. The Parties are empowered by A.R.S. § 11-951 *et seq.* to enter into intergovernmental agreements for joint or cooperative action.

B. Pursuant to A.R.S. § 11-251 and § 28-6707, the Parties have the authority to improve streets and highways and may cooperate with municipalities in the construction and funding of improvements to streets and highways lying within their jurisdictions.

C. For the safety and welfare of the public, the Parties hereto desire to improve Germann Road from Ironwood Road to Kenworthy Road, hereinafter referred to as "Project".

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

II. SCOPE OF WORK

The Project consists of the design and construction of Germann Road from Ironwood Road to Kenworthy Road (approximately 1 mile) as a 5-lane minor arterial roadway and related underground utilities ("Project"). The design of the Project is anticipated to begin immediately with construction to follow in early FY 2025.

III. FUNDING

The total estimated cost for the design and construction of the Project is currently estimated to be $23,800,000. The Parties agree and acknowledge that the final cost for the design and construction of the Project may be less or more than the estimated cost. The Parties agree to share in the total cost of Project as follows:

A. Queen Creek previously has agreed to make certain roadway and utility improvements related to the described portion of Germann Road, the

funding for such design and construction has been budgeted at $14,000,000 (the "Queen Creek Share"), and Queen Creek confirms Queen Creek's commitment to pay the Queen Creek Share in connection with the design and construction of the Project.

B. Pinal County will pay the difference between the total approved cost of the Project and the Queen Creek Share (which difference is currently estimated to be $9,800,000)as set forth in this Agreement.

C. Pinal County will pay additional expenses, based on approved change orders agreed upon in writing with proper justification by the Pinal County Public Works Director or his designee, in completing the Project.

D. The amounts to be paid to Queen Creek by Pinal County under Section III(B) and (C) are collectively referred to as the "Pinal County Share".

IV. AGREEMENT

A. Queen Creek shall:

1. Act as the Project Lead and charge Pinal County for administrative services an amount equal to one percent (1.0%) of the Pinal County Share of the cost of the Project ("Administrative Fee"), to be paid to Queen Creek 50% within thirty (30) calendar days of approval of the design contract for the Project and the remainder to be paid in quarterly installments as set forth in Section IV(A)(5) with final payment to be made upon Project completion. This 1% fee is included in the Pinal County contribution amount of $9,800,000.

2. As Project Lead, be responsible for solicitation, contract management, public outreach coordination, project meetings, right-of-way acquisition, utility relocation and other related duties for the project. Queen Creek shall submit all design and construction contracts, road plans, and change orders to Pinal County for Pinal County's review and approval (not to be unreasonably withheld, conditioned or delayed) in accordance with the terms of this Agreement.

3. Invoice Pinal County for the first installment of Pinal County Share of Project costs as set forth in Section III(B) within thirty (30) calendar days of this execution of this Agreement.

4. Thereafter expend the Queen Creek Share toward payment of the costs of the Project until expended. Queen Creek will not be required to expend more than the Queen Creek Share toward completion of the Project.

5. Starting 1st quarter 2025, invoice Pinal County on a quarterly basis for the costs to complete the Project, including the Administrative Fee ("Quarterly Payments") in four (4) equal amounts of $1,225,000.00.

6. Upon construction completion of the Project, invoice Pinal County for the remaining unpaid Pinal County Share, if any,("Final Payment"). Pinal will have no obligation to pay any additional amounts with respect to the Project after Final Payment has been made to Queen Creek.

7. In the event Queen Creek fails to commence construction of the Project within two years from the date Pinal County has paid its initial Pinal County Share, upon demand from Pinal County, reimburse Pinal for the amount paid.

8. Upon completion of construction and acceptance by Queen Creek of the Project, provide for, at its own cost and as an item in its budget, proper maintenance for the entire Project, including but not limited to signs and markings necessary for the purpose of regulating, warning, and guiding traffic, in accordance with requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways for the Project, but excluding existing Germann Road in its current right of way ("Existing Germann Road"), which obligation will remain with Pinal County. The obligations of this paragraph shall survive the termination of this Agreement.

B. Pinal County shall:

1. Pay Queen Creek for its administrative services as outlined in paragraph (IV)(A)(1) above.

2. Provide comments in writing regarding the design and construction contracts within 10 calendar days of receipt of the contracts from Queen Creek. If Pinal County has not provided comments to Queen Creek within this time, Pinal County will be deemed to have approved the contracts.

3. Provide comments in writing to road plans within 10 calendar days of receipt of the plans from Queen Creek. If Pinal County has not provided comments to Queen Creek within this time, Pinal County will be deemed to have approved the road plans.

4. Provide comments in writing to change orders within 5 calendar days of receipt of the plans from Queen Creek. If Pinal County has not provided comments to Queen Creek within this time, Pinal County will be deemed to have approved the change order.

5. If Pinal County has commented in writing as required under this Section IV(B) but does provide approval, the Parties will promptly meet to resolve such comments; and once resolved, Queen Creek will re-submit the revised plans to Pinal County for comment and approval in accordance with this Section IV(B).

6. Pay Queen Creek 50% of its Pinal County Share within thirty (30) calendar days of this execution of this Agreement.

7. Pay Queen Creek the Quarterly Payments within (30) calendar days of receipt of a properly-documented invoice from Queen Creek.

8. Upon completion of the Project, pay Queen Creek the Final Payment within thirty (30) calendar days of receipt of a properly-documented invoice from Queen Creek.

9. Upon completion of construction and acceptance by Pinal County of the Project, continue to provide for, at its own cost and as an item in its budget, proper maintenance of the Existing Germann Road only, including but not limited to signs and markings necessary for the purpose of regulating, warning, and guiding traffic, in accordance with requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways. The obligations of this paragraph shall survive the termination of this Agreement.

V. GENERAL PROVISIONS

A. The foregoing recitals are hereby incorporated into this Agreement by reference as if more fully stated herein.

B. This Agreement shall become effective upon the approval by both governing bodies of the parties hereto and the execution of this Agreement by the authorized representatives of both parties.

C. To the fullest extent permitted by law, each Party to this Agreement, as Indemnitor, shall indemnify, defend, save, and hold harmless the other Party, its officers, employees, agents, officials, directors and representatives (collectively, “Indemnitees”) from and against any and all liability, claims, losses, suits, actions, damages, and expenses (including but not limited to, court costs, attorneys’ fees, and costs of claim processing, investigation and litigation (collectively **"**Claims**"**) for any personal injury, bodily injury, loss of life, or loss or damage to property, or loses of use thereof, or any violation of any federal, state, or local law or ordinance, or other cause of action related to or arising out of the Indemnifying Party’s performance of its obligations pursuant to the terms of this Agreement, or caused, in whole or in part, by the acts or omissions of the Indemnitor, or anyone for whose acts Indemnitor

is responsible, in the performance of this Agreement. This indemnity includes any claim or amount arising out of or recovered under the Workers Compensation Law or arising out of the failure of Indemnitor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

D. This Agreement may be cancelled for conflict of interest without further obligation or penalty in accordance with A.R.S. § 38-511.

E. All notices or demands required under this Agreement from either Party to the other shall be in writing and shall be deemed to have been received when the notice is delivered in person or three (3) days after deposited in a U.S. Mailbox in a postage prepaid envelope addressed as follows:

Bruce Gardner	Leo Lew
Town Manager	County Manager
Town of Queen Creek	Pinal County
22350 S. Ellsworth Rd.	P. O. Box 827
Queen Creek, AZ 85142	Florence, AZ 85132

F. The failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any right, power or privilege. The acceptance by either Party of sums less than may be due and owing to it at any time shall not be construed as an accord or satisfaction.

G. Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of either Party hereto other than as expressly set forth herein.

H. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and the parties agree that the venue for any claim arising out of or in any way related to this Agreement shall be the Superior Court of Pinal County, Arizona.

I. This Agreement contains the entire agreement between the Parties, and no statements, promises or inducements made by either party, their agents, or employees that are not contained herein shall be valid or binding. This agreement may not be altered except in writing and signed by each party hereto.

J. Pinal County and Queen Creek agree that should any part of this Agreement be held to be invalid or void, the remainder of this Agreement shall remain in full force and effect and shall be binding upon the parties.

K. This Agreement shall remain in force and effect until completion of Project or termination or cancellation as provided within this Agreement. The Indemnification and insurance provisions shall survive the termination of this Agreement.

L. Pursuant to the provisions of A.R.S. § 41-4401, each Party warrants to the other Party: (a) that the warranting Party and its subcontractors, if any, are in compliance with all federal immigration laws and regulations that relate to their employees and are in compliance with A.R.S. § 23-214(A); and (b) that a breach of this warranty is a material breach of this contract [agreement] that is subject to penalties up to and including termination of the contract or any subcontract;

Each Party retains the legal right to inspect the employment records of the other Party and its subcontractors, if any, to ensure compliance with this warranty. Neither Party will consider the other Party or any of its subcontractors in material breach of the foregoing warranty if the other Party and its subcontractors, if any, establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

M. Pinal County and Queen Creek agree that all contracts, if any, awarded to contractors in connection with the work to be performed under this Agreement shall include a provision stating that the contractor understands and acknowledges that contractor must comply with the Americans and Disabilities Act, The Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, A.R.S. § 34-301; A.R.S. § 34-302; A.R.S. § 41-4401 and A.R.S. § 23-214(A) and that the contractor shall include this provision in any contract the contractor enters into with any and all of its subcontractors who provide services under any contract awarded to contractor by Pinal County or Queen Creek for the work to be performed under this Agreement.

N. Pinal County and Queen Creek agree that all contracts, if any, awarded to contractors and/or subcontractors in connection with the work to be performed under this Agreement shall include the following provisions:

1. The contractor, or subcontractor, whichever is applicable, warrants its compliance with all federal immigration laws and regulations relating to its employees and its compliance with A.R.S. § 23-214A.

2. A breach of warranty under paragraph 2 above shall constitute a material breach of the contract and is subject to penalties up to and including termination of the contract.

3. Pursuant to the provisions of A.R.S. § 41-4401, the contractor or subcontractor, whichever is applicable, warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal

immigration laws and regulations related to the immigration status of its employees and A.R.S. § 23-214 which requires verification of each employee's legal employability, after they are employed, using the e-verify program. Contractor and/or subcontractor shall obtain statements from their employees and subcontractors certifying compliance and shall furnish the statements to Pinal County. Pinal County at its sole discretion, conduct random verifications of employment records of the Contractor and any Subcontractors to ensure compliance. The Contractor agrees to assist in performing any such random verifications. These certifications shall remain in effect through the term of the contract. The contractor and subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the contract.

4. ISRAEL BOYCOTT AND UYGHURS CERTIFICATIONS. Each Party to this Agreement certifies to the other that it is not currently engaged in and agrees for the duration of the Agreement not to engage in a boycott of Israel as defined in A.R.S. § 35-393 nor use forced labor of ethnic Uyghurs in the People's Republic of China as defined in A.R.S. § 35-394.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

TOWN OF QUEEN CREEK, a municipal corporation of the State of Arizona

By: _____
Mayor, Julia Wheeler

Dated: _____

ATTEST:

_____
Town Clerk, Maria Gonzalez

Dated: _____

Approved as to form and within the powers and authority granted Queen Creek under the laws of the State of Arizona:

_____
Town Attorney, Scott A. Holcomb

PINAL COUNTY, a political subdivision of the State of Arizona

By: _____
Chairman, Board of Supervisors

Dated: _____

ATTEST:

_____
Clerk/Deputy Clerk of the Board

Dated: _____

Approved as to form and within the powers and authority granted Pinal County under the laws of the State of Arizona:

_____
Deputy County Attorney