

WHEN RECORDED RETURN TO:

Town Clerk  
Town of Queen Creek  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142

**INTERGOVERNMENTAL AGREEMENT FOR  
THE PROVISION OF FIRE PROTECTION SERVICES WITHIN THE QUEEN CREEK  
COUNTY ISLAND FIRE DISTRICT BY THE TOWN OF QUEEN CREEK, MARICOPA  
COUNTY, ARIZONA**

THIS AGREEMENT (“Agreement”) is entered into by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation (“Queen Creek”) and the Queen Creek County Island Fire District, a political subdivision of the State of Arizona (“Fire District”), collectively referred to in this Agreement as the “Parties” or individually as “Party”.

**RECITALS**

- A. The Fire District was formed pursuant to Arizona Revised Statutes, Title 48, Article 3 to provide fire protection services to county lands within the District’s boundaries.
- B. A.R.S. §11-952 et seq. authorize the Parties to enter into intergovernmental agreements for the provision of joint action or services, including fire protection services.
- C. A.R.S. §48-853(A)(9)(a) authorizes the Fire District to enter into an intergovernmental agreement with Queen Creek for the provision of fire protection services within its boundaries.
- D. A.R.S. § 48-854 authorizes Queen Creek to provide fire protection services outside its corporate limits to non-contiguous county islands formed into a non-contiguous county island fire district.
- E. Queen Creek is willing to provide fire protection services within the Fire District pursuant to the terms of this Agreement, including but not limited to, payment to Queen Creek for the cost of providing these services.
- F. The Parties desire to enter into this Agreement to provide fire protection services within the boundaries of the Fire District.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises and obligations set forth herein, and for other valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Definitions:**

**1.1** “Automatic Aid” means the fire and medical response system, operated by the Mesa Regional Dispatch System.

**1.3** “Contract Administrator” for the Fire District means John Flynn, or another person named by the District Board to serve as the Contract Administrator.

**1.4** “Contract Administrator” for Queen Creek means the Queen Creek Fire Chief.

**1.5** “Catastrophic Event” means an extraordinary event involving significant and extensive unanticipated demand on emergency services.

**1.6** “Coverage Area” means the area within the boundaries of the Fire District as approved by the Maricopa County Board of Supervisors, as such boundaries may be altered pursuant to A.R.S. §48-813 or other applicable law.

**1.7** “Day” means a calendar day, without regard to whether it is a Saturday, Sunday or holiday.

**1.8** “Emergency” means an incident that poses an immediate threat to life, property, and/or public safety.

**1.9** “Emergency Medical Services” means emergency medical services performed by Fire Department Personnel as a first responder. It does not include ambulance services as regulated by Title 36 of the Arizona Revised Statutes.

**1.10** “Fire Department Personnel” means the Fire Department personnel of Queen Creek.

**1.11** “Fire Protection Services” means such services as are regularly provided by the Queen Creek Fire Department and includes, but is not limited to, (i) fire suppression, (ii) Emergency Medical Services, (iii) inspection of commercial or industrial property where an alleged code violation exists, and (iv) Special Operations.

**1.12** “Monthly Report” means a report provided by Queen Creek to the Fire District on or before the sixth of each month for the preceding month that includes the information specifically referenced in Paragraphs 8 and 9 of this Agreement.

**1.13** “Queen Creek Fire Department” means the Fire Department of Queen Creek.

**1.14** “Special Operations” means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and

equipment. Special operations include, but are not limited to, water rescue, extrication, hazardous materials, confined space entry, high –angle rescue, aircraft rescue and firefighting and other operations that require specialized training.

## **2. Term of Agreement; Renewal.**

**2.1 Term.** Unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement will be for a period of five (5) years, beginning on \_\_\_\_\_, 2013.

**2.2 Renewal.** This Agreement may be renewed for additional periods of not more than five (5) years each by mutual agreement of the Parties after first giving not less than 365 days, and not more than 425 days, written notice of their intention to renew.

**2.3 Survival of Terms.** The obligations set forth in Paragraph 6 and Paragraph 13 will survive the termination or expiration of this Agreement.

## **3. Annexations.**

If any part but not all of the Coverage Area is proposed to be annexed into Queen Creek, Queen Creek shall provide written notice to the Fire District, and other agencies as required by law, at least thirty (30) days prior to the date the annexation is final and effective.

## **4. Performance Criteria.**

**4.1 Level of Fire Protection Service.** Queen Creek has established a standard for Fire Protection Services which is consistent with generally accepted standards within the municipal fire services industry and the region. Queen Creek shall provide an equivalent level of Fire Protection Services within the Coverage Area, subject to the limitations imposed by the Safety and Infrastructure Issues (as hereinafter defined) discussed in this Agreement. Queen Creek may install fire hydrants at strategic locations as determined by Queen Creek within the Coverage Area that allow for timely access to a permanently sustainable water supply in the event of a fire. The installation of the fire hydrants will be at the sole discretion of and on a timetable determined by Queen Creek. Pending installation of any fire hydrants Queen Creek determines necessary for the provision of fire protection services under this agreement, Queen Creek will provide Fire Protection Services in the Coverage Area using Queen Creek's existing infrastructure and equipment. The fire hydrants and other infrastructure in support thereof shall be and shall remain the property of Queen Creek. Queen Creek will bear all costs associated with the installation of fire hydrants and water infrastructure in the Coverage Area.

**4.2 Response Issues.** It is expressly acknowledged that Queen Creek's response within the Coverage Area may be impacted by certain safety and/or infrastructure related issues described in Paragraph 7 certain response related issues described in Paragraph 11 and by the improper storage of hazardous materials (collectively, "Safety and Infrastructure Issues") and that any service delivery limitations or problems arising out of resulting from the Safety and Infrastructure Issues shall not be deemed to be the fault of Queen Creek.

**4.3 No Additional Duties.** Except as is stated otherwise in this Agreement, Queen Creek specifically represents that it is not undertaking any additional duty to act, guaranteeing any response times or agreeing to obtain any additional fire protection services capacity or infrastructure by virtue of its obligations under this Agreement. Further, Queen Creek is not holding itself out to be the provider of Fire Protection Services in the Coverage Area except pursuant to the terms of this Agreement, and upon termination or expiration of this Agreement. Queen Creek shall have no obligation to provide Fire Protection Services in the Coverage Area.

**5. Cost of Service.**

The cost of the Fire Protection Services for the first year of this agreement is set forth on Exhibit A, which is incorporated herein and made a part hereof as though set forth in full. The cost of Fire Protection Services shall be established for each subsequent fiscal year beginning July 1, 2013 and each year thereafter, on or before June 30 of the prior fiscal year. The cost of Fire Protection Services shall be determined based upon an assessed value methodology. The Fire District cost for operations and maintenance will be the amount of secondary property tax revenues generated from a tax on property in the Fire District, the rate of which is equivalent to the tax rate necessary to generate the Queen Creek Fire Department maintenance and operating budget amount from the assessed value of all taxable property located within the Town of Queen Creek.

**6. Payment for Fire Protection Service.**

**6.1 Payments Due.** The first payment in the amount of \$\_\_\_\_\_ will be made on or before ninety (90) days after the effective date of this Agreement. Subsequent payments shall be made on or before the first day of August, November, February, and May during the term of this Agreement.

**6.2 Notification to Maricopa County Board of Supervisors.** Pursuant to A.R.S. §48-853(A)(8), the Fire District shall notify the Maricopa County Board of Supervisors of the cost of providing Fire Protection Services for each household or other structure in the Coverage Area, pursuant to the cost of service as provided in this Agreement. Such notice shall be timely given in order for the Maricopa County Board of Supervisors to levy taxes sufficient for the District to pay Queen Creek for the cost of providing Fire Protection Services. In addition to the cost of service for Fire Protection Services, such notice shall include all administrative and other costs of the Fire District.

**6.3 Failure to Pay.** Queen Creek may, after giving thirty (30) days' written notice, terminate this Agreement if the Fire District fails to make the required payments as required by this Paragraph 6.

## **7. Safety Issues.**

**7.1 General.** While Queen Creek has agreed to provide Fire Protection Services within the Coverage Area, it is understood and agreed by the Parties that Queen Creek must protect the safety of its Fire Department Personnel and equipment and that certain Safety and Infrastructure Issues which would not be permitted within Queen Creek, may currently exist within the Coverage Area, increasing the risk to the Fire Department Personnel. Where these Safety and Infrastructure Issues are implicated, they may limit the scope and effectiveness of the services that Queen Creek will provide within the Coverage Area. The conditions that may give rise to these limitations include but are not limited to the following:

**7.1.1 Bridges, Culverts, and Other Crossings.** Queen Creek may not be able to respond to an emergency, or may need to alter its typical or preferred response methodology, where access to property within the Coverage Area requires the crossing of a bridge, culvert, or other crossing that has not been demonstrated to satisfy the requirements of Section 103.2 of the 2006 edition of the International Fire Code or any fire code subsequently adopted by Queen Creek. Queen Creek shall, within ninety (90) days of the effective date of this agreement, provide notice to the Fire District of any bridges, culverts, or other crossings Queen Creek identifies which may alter typical or preferred response or access. The Fire District at its sole discretion may employ any testing methodology it deems prudent to determine the structural integrity and or capacity to withstand loads associated with emergency response and convey the results of such testing to Queen Creek. Queen Creek shall determine in its sole discretion whether the test results demonstrate compliance with the Fire Code standards.

**7.1.2 Site Access.** Queen Creek may not be able to respond to an emergency or may need to alter its preferred response methodology, where the access leading to the property within the Coverage Area is not adequately designed or maintained to support large or heavy emergency response vehicles or where access to the site is otherwise limited by structural issues. Queen Creek shall, within ninety (90) days of the effective date of this agreement, provide notice to the Fire District of any property Queen Creek identifies which may alter typical or preferred response or access.

**7.1.3 Water Supply.** Queen Creek will be severely limited in its ability to provide effective Fire Protection Service to property within the Coverage Area without proximately located fire hydrants or where any proximately located hydrants have inadequate water pressure. It is also acknowledged that Queen Creek's ability to haul water to property within the Coverage Area is limited. Queen Creek may, at its sole discretion, install fire hydrants and water infrastructure deemed necessary for the provision of fire protection services under this agreement. Queen Creek will bear all costs associated with the installation of fire hydrants and water infrastructure in the Coverage Area.

**7.1.4 Hazardous Substances.** Queen Creek will be limited in its ability to provide effective Fire Protection Services to property within the Coverage Area that may store or use hazardous materials where the quantities, location and handling practices for these hazardous materials are not documented and provided to Queen Creek before an emergency response and where the location and handling practices are not in compliance with Section 2701.5.3 of the

2006 edition of the International Fire Code or the relevant section of any fire code subsequently adopted by Queen Creek. Queen Creek shall, within ninety (90) days of the effective date of this agreement, provide notice to the Fire District of any property they identify which may store or use hazardous materials not in compliance with Section 2701.5.3 of the 2006 edition of the International Fire Code or any fire code subsequently adopted by Queen Creek, which may limit Queen Creek's ability to provide effective Fire Protection Services.

**7.1.5 Structural Integrity.** Queen Creek will be limited in its ability to provide effective Fire Protection Services for structures located on property with the Fire District, particularly commercial and industrial structures, without documentation as to the composition, room location and structural integrity of those structures before an emergency response and where the structure does not comply with the provisions of Section 110.1 of the 2006 edition of the International Fire Code relating to structural integrity or the relevant section of any fire code subsequently adopted by Queen Creek. Queen Creek shall, within ninety (90) days of the effective date of this agreement, provide notice to the Fire District of any property they identify whose structural integrity may not comply with the provisions of Section 110.1 of the 2006 edition of the International Fire Code or any fire code subsequently adopted by Queen Creek, and which may limit Queen Creek's ability to provide effective Fire Protection Services.

**7.1.6 Knowledge of Hazards.**

**(a) Commercial and Industrial Facilities.** Queen Creek will generally not enter commercial and industrial structures where hazardous materials may be stored unless (1) Queen Creek has previously been given access to the property to become familiar with the operations, contents and physical characteristics of the structure, and (2) the operations and physical characteristics of the structure generally conform to standards stated in the 2006 edition of the International Fire Code or any fire code subsequently adopted by Queen Creek. The decision as to whether to enter any facility, even where previous access has been provided, will rest solely with the incident commander in charge of providing the Fire Protection Services response, based on risk management profiles.

**(b) Hazards on Notice.** Sections 7.1.1, 7.1.2., 7.1.4 and 7.1.5 above provide that Queen Creek is to provide notice to the Fire District of various hazardous conditions. Within seven (7) days of receipt of such a notice the Fire District will provide a copy of the notice to the property owner. The notice from the Fire District to the property owner shall inform the property owner that, unless the hazard is remediated, any emergency response to the property owner will be limited. The notice will also direct the property owner to inform the Fire District of its remediation, if any, and include a request for reinspection. The Fire District will, within seven (7) days of receipt, provide Queen Creek with copies of any remediation notices, together with the request for reinspection. Notwithstanding any notice of hazard, notice of remediation or reinspection, any and all decisions regarding the scope and extent of any emergency response will rest solely with the incident commander in charge of providing the Fire Protection Services, based on risk management profiles.

**7.1.7 Other Issues and Universal Precautions.** All Fire Protection Services will be provided within the Coverage Area consistent with the geography of the Coverage Area, access, signage, addressing information, and location of fire stations, current infrastructure, water access, streets and building codes applicable to property in the Coverage Area. It is agreed that the description of some Safety and Infrastructure Issues in this Paragraph 7 is not meant to be all-inclusive, and that there may be other Safety and Infrastructure Issues that limit Queen Creek's ability to provide Fire Protection Services in the coverage area. It is also agreed that Queen Creek's obligation under this Agreement to provide notice to the Fire District of certain Safety and Infrastructure Issues does not limit Queen Creek's ability to identify additional Safety and Infrastructure Issues in the future, and provide notice of the same to the Fire District. It is agreed further that Queen Creek will generally use "universal precautions," meaning it assumes the worst, when dealing with unknown conditions while providing Fire Protection Services in compliance with the terms of this Agreement.

## **8. Notice Regarding Safety Issues.**

**8.1 Notification of Safety Issues.** Queen Creek shall use all reasonable means to identify and provide notice to the Fire District of Safety Issues and Infrastructure Issues described in Paragraph 7 that may exist on a property within the Coverage Area. Queen Creek shall provide the Fire District with a recommendation for the remedy of the identified Safety or Infrastructure Issue. The Fire District shall, upon receipt of such notice by Queen Creek provide written notice to the property owner and/or resident of the safety issue which has been identified and the remedy recommended by Queen Creek. Either Party is free at any time to notify the other of safety issues that it discovers. The Parties acknowledge and agree that pursuant to state law Queen Creek is liable for losses or damages only if it is found to be grossly negligent in providing fire or emergency medical services to the Fire District.

## **8.2 Code Enforcement.**

**8.2.1 Adoption of Fire Code.** Pursuant to A.R.S. §48-853(A)(6), the Fire District shall adopt Queen Creek's Fire Code within one-hundred and twenty (120) days of the effective date of this Agreement and keep 3 copies on file with the Fire District. Queen Creek, pursuant to Paragraph 8.2.2, shall enforce the provisions of the Fire Code within the Coverage Area.

**8.2.2 Inspections.** The Fire District and Queen Creek's authority to conduct inspections pursuant to the Fire Code is applicable only to commercial and industrial properties, and does not apply to residential properties. Subject to the above limitations, either Party may inspect commercial and industrial properties and review structural and operational issues with the owners of property located within the Fire District, make recommendations based on these reviews, and, at its sole election, report compliance issues that either Party may discover to the State Fire Marshal, the other Party or other applicable regulatory agencies. Where Queen Creek knows of a Code violation, it may seek enforcement of the Code for these known violations. Queen Creek shall include in the Annual Report all fire inspections conducted within the Coverage Area and any and all compliance actions taken on said inspections.

**9. Management of Fire Protection Services.**

Queen Creek will be responsible for managing the day to day operations necessary for the provision of Fire Protection Services within the Coverage Area in conjunction with services provided within Queen Creek. Queen Creek shall provide a written report to the Fire District detailing all fire protection services rendered within the Coverage Area, which shall include all emergency responses. The Annual Report shall detail date, time, location and or address, complete response time data and general outcome for each emergency event.

**10. Termination.**

Either Party has the right to terminate this Agreement after giving 365 days written notice to the non-terminating Party.

**11. Fire and Emergency Medical Dispatch Services.**

Queen Creek's fire and emergency medical dispatch services are currently provided through Mesa Regional Dispatch Center. Queen Creek will provide all necessary radio transmitting and/or receiving equipment that may be reasonably necessary to provide standard radio coverage to most areas of the Coverage Area. It is acknowledged that Queen Creek may be limited in its ability to provide effective fire and emergency medical dispatch and communication services for structures located on property within the Coverage Area, particularly commercial and industrial structures.

**12. Mutual Aid and Automatic Aid Consortium.**

The Fire District will not enter into any mutual aid agreements. As a Party to this Agreement, during the term of this Agreement, the Fire District shall receive the benefits of the Regional Automatic Aid Consortium.

**13. Indemnification.**

**13.1 Indemnification of Queen Creek.** To the fullest extent permitted by law, the Fire District, its successors, guarantors, and assigns as Indemnitors shall defend, indemnify and hold harmless Queen Creek, its officers, directors, officials, employees, agents and representatives, (collectively "Indemnitees") from and against and all liability, claims, losses, suits, actions, damages, and expenses (including, but not limited to, court costs, attorney's 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 loss of use thereof, or any violation of any state, or local law or ordinance, or other cause of action, related to or arising out of Indemnitees' performance of obligations pursuant to the terms of this Agreement, or caused, in whole or in part, by the omissions of Indemnitee, it's office's, elected officials, directors, employees, subcontractors, or agents, whether or not the Claim is caused, in whole or in part, by the active or passive negligence of any or all of the Indemnitees. This indemnity includes any claim or amount arising out or arising out of the failure of Indemnitors to conform to any federal, state or local law, statue, ordinance, rule, regulation or court decree. It is the specific intention of

the parties that the Indemnitees shall, in all instances Except for Claims arising solely from the gross negligence of the Indemnitees, be indemnified by Indemnitor from and against any and all Claims. It is agreed that Indemnitors will be responsible for primary loss investigation defense and judgment costs where this indemnification is applicable. This indemnification specifically includes any claim or expense associated with Queen Creek limiting the scope of the Fire Protection Services provided for a particular property within the Coverage Area in the manner specified in this Agreement.

Indemnitor will, in addition, indemnify and hold harmless Indemnitees from and against all claims to which they or any of them may be subjected to by reason of injury to or death of any person, or loss or damage to property, or loss of use thereof, directly or indirectly related to or arising out of Indemnitees provision of Fire Protection Services to any person or property located within the Coverage Area. This indemnification includes any and all claims related to or arising out of Safety and Infrastructure Issues described in Section 7 of this agreement, whether or not such Safety and Infrastructure Issues have been identified by Queen Creek, or limitations to Dispatch Services described in Section 12, except claims arising solely from the gross negligence of Indemnitees.

**13.3 Indemnity's Effect on Insurance Provisions.** The insurance provisions in Section 15 of this Agreement are separate and independent from the indemnity provisions of this Paragraph 13 and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Paragraph 14 will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

#### **14. Clean Up.**

Queen Creek will provide for clean-up or response relating to debris, residue or waste generated by providing Fire Protection Services under the terms of this Agreement. Any costs for said clean-up or response shall be charged to the Fire District, which shall pay such costs within 30 days of the date of the invoice for said services. If any costs for cleanup are estimated to exceed twenty five hundred dollars (\$2,500.00), Queen Creek shall notify the Fire District contract administrator and obtain authorization from the Fire District before proceeding with the cleanup.

#### **15. Insurance Representations and Requirements.**

**15.1 Coverage Required.** The Fire District will secure insurance sufficient to cover its liability exposure in an amount and under the coverage term set forth in Exhibit B, attached and by reference made a part of this Agreement. Queen Creek will meet its statutory obligation to maintain workers' compensation insurance for all of its employees.

**15.2 Additional Insured.** Queen Creek will be an additional insured to the full limits of liability purchased by the Fire District and Fire District insurance coverage must be primary and non-contributory with respect to all other available sources.

## **16. Annual Reports.**

Queen Creek will include the services provided within the Coverage Area as part of its annual report, a copy of which will be filed with the Fire District within 15 days after the report is published each year. This requirement will continue for the life of this Agreement in a format mutually agreed to by the Parties which will provide information specific to Fire Protection Services within the Coverage Area.

## **17. Default and Remedies.**

**17.1 Notice and Opportunity to Cure.** In the event that a Party is in default of its obligations under this Agreement (other than a failure to make payments), the defaulting Party shall, upon receipt of written notice of the default, proceed immediately to cure the default, and in any event such Default shall be cured within 30 days of receipt of the notice or if such Default is of a nature not capable of being cured within 30 days, the cure shall be commenced within 30 days and diligently pursued to completion. A default in the obligation to make payments must be cured within 10 days of receipt of written notice. If the default results in an imminent threat to the public health, safety, or welfare, the default must be cured immediately upon notice, or the non-defaulting Party may take the steps necessary to sure the default, and charge the cost to the defaulting Party.

**17.2 Remedies on Default.** When a default occurs and is not remedied pursuant to Section 17.1, the non-determining Party has all the remedies available to it at law or equity, provides however that Queen Creek will not terminate this Agreement or less term \_\_\_\_\_ days written notice.

**17.3 Rights and Remedies Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

**17.4 Dispute Resolution.** Before conducting any litigation relating to this Agreement, Queen Creek and the Fire District will negotiate in good faith and attempt to resolve any dispute, controversy, claim or default arising out of this Agreement.

## **18. Miscellaneous Provisions.**

**18.1 Governing Law.** This Agreement will be governed, construed and controlled according to the laws of the State of Arizona.

**18.2 Waiver.** No delay or failure to exercise any right or remedy will constitute a waiver of the right or remedy, and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any other provision.

**18.3 Severability.** The terms and conditions of this Agreement are severable. If for any reason, any court of law or administrative agency should consider any provision of this

Agreement invalid or inoperative, the remaining provisions of this Agreement will remain valid and in full force and effect.

**18.4 Legal Fees, Costs and Expenses.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing Party will be entitled to reasonable attorney's fees, costs and expenses, as determined by the court, and which will be considered to have accrued on the commencement of the action. This provision will be enforceable whether or not any action is prosecuted to judgment.

**18.5 No Partnership.** It is not intended by this Agreement that anything contained in it will create any legally recognized partnership, legally recognized joint venture or legally recognized agency relationship between Queen Creek and the Fire District.

**18.6 No Third Party Beneficiaries.** No term or provision of this Agreement will benefit any third person, or any other firm, organization, or corporation not a Party to this Agreement, and no person, firm, organization, or corporation will have any right or cause of action under this Agreement.

**18.7 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. No representations, agreements or understandings, oral or written, other than those stated in this Agreement will vary its terms.

**18.8 Counterparts.** This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement will be considered to possess the full force and effect of the original.

**18.9 Captions.** The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

**18.10 Conflict of Interest.** Pursuant to the provisions of A.R.S. Section 38-511, Queen Creek may cancel this Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Queen Creek is at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Party to the Agreement in any capacity, or a consultant to any other Party to the Agreement with respect to the subject matter of the Agreement.

**18.11 Authority.** Each Party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to sign this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

**18.12 Assignment.** Neither Party may assign or delegate the rights or obligations of this Agreement except with the written consent of the other Party.

**18.13 Regulatory Compliance.** The Parties agree to comply with all applicable state and federal laws and regulations.

**18.14 Interpretation and Definitions.** The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in the interpretation of this Agreement.

**18.15 Force Majeure.** Either Party will be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond its control and without fault. Nevertheless, each Party will use its best efforts to avoid or remove those causes and to continue performance whenever the causes are removed, and will notify the other Party of the problem.

**18.16 Amendment.** The terms contained in this Agreement may only be amended by mutual written agreement of the Parties.

**18.17 Notice.** Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively, "Notices") required, by this Agreement will be given by certified U.S. Mail, postage prepaid, return receipt requested, or personally delivered, against receipted copy, at the address stated below or at any other address as either party will, from time to time, designate in writing to the other given in the same manner specified in this paragraph. Notices will be considered received upon receipt, will be evidenced by a receipted copy (in the case of notices that are personally delivered), or as evidenced by the postal service receipt. Notice by facsimile or electronic mail will not be considered adequate notice.

If to the Fire District:

Chair  
Queen Creek County Island Fire District

With a copy to:

Lee Miller  
Law Office of Lee Miller  
1702 E. Highland  
Suite 204  
Phoenix, AZ 85016

If to Queen Creek:

Town of Queen Creek  
Attn: Fire Chief  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142

With a copy to:

Dickinson Wright Mariscal Weeks  
2901 North Central Avenue  
Suite 200  
Phoenix, AZ 85012  
Attn: Fredda J. Bisman, Esq.

**19.18 Non-appropriation of Funds.** If funds are not appropriated by Queen Creek Council or the Fire District Board to continue this Agreement, the non-appropriating Party may terminate this Agreement, at the end of the current fiscal year, as required by A.R.S. §42-17106.

**19.19 Compliance with Immigration Laws and Regulations.** Pursuant to the provisions of A.R.S. §41-4401, the each Party warrants to the other that such Party in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subcontractors (if any) is a material breach of this Contract subject to penalties up to and including termination of this Agreement or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Party or any subcontractor of the other Party to ensure compliance with this warranty.

A Party may conduct random verification of the employment records of the other Party and any of its subcontractors to ensure compliance with this warranty.

A Party will not consider the other Party or any of its subcontractors in material breach of the foregoing warranty if the Party and its subcontractors 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).

The provisions of this Article must be included in any contract the other Party enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. As used in this Section 19.19 "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**19.20 Prohibition of Doing Business with Sudan and Iran.** Pursuant to A.R.S. §§35-391.06 and 35-393-06, each Party hereby certifies to the other that the certifying Party does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. The certifying Party acknowledges that, in the event either of the certifications the contained in this paragraph is determined by the other Party to be false, the Party may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

**THE PARTIES** have executed this Intergovernmental Agreement by signing their names on the day and year stated below.

QUEEN CREEK

FIRE DISTRICT

By: \_\_\_\_\_  
Gail Barney, Mayor

By: \_\_\_\_\_  
Marion Memmott, Board Chair

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

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

ATTEST:

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

\_\_\_\_\_  
Rebecca Montgomery, Board Clerk

ATTORNEY CERTIFICATION

The undersigned attorney for Queen Creek certifies that the attorney has reviewed this Agreement and finds that it is in proper form and within the power and authority granted to Queen Creek under the laws of the State of Arizona.

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Queen Creek Town Attorney

The undersigned attorney for the Fire District certifies that the attorney has reviewed this Agreement and finds that it is in proper form and within the power and authority granted to Queen Creek under the laws of the State of Arizona.

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Fire District Attorney

**CERTIFICATION BY COUNTY ATTORNEY**

Pursuant to A.R.S. §48-853(A) (8) (c), the Maricopa County Attorney's Office has reviewed the negotiations and proposal as set forth in this Agreement and has determined they are based on commercially reasonable assumptions.

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT A**  
**COST OF FIRE PROTECTION SERVICES**

## EXHIBIT B

### DISTRICT INSURANCE

1. General. Without limiting any obligations or liabilities of Fire District, Fire District shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to Queen Creek. Failure to maintain insurance as specified may result in termination of this Agreement at Queen Creek's option.

1.1 Additional Insured. All insurance coverage, except Professional Liability insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, Queen Creek, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

1.2 Coverage Term. All insurance required herein shall be maintained in full force and effect during the term of this Agreement.

1.3 Primary Insurance. Fire District's insurance shall be primary insurance as respects performance of subject contract and in the protection of the Queen Creek as an Additional Insured.

1.4 Waiver. All policies shall contain a waiver of rights of recovery (subrogation) against Queen Creek, its agents, representative, officials, directors, officers, and employees for any claims arising out of this Agreement. Fire District shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

1.5 Policy Deductibles. The policies set forth in these requirements may provide coverage, which contain deductibles. Such deductibles shall not be applicable with respect to the policy limits provided to Queen Creek. Fire District shall be solely responsible for any such deductible.

1.6 Evidence of Insurance. Prior to the effective date of this Agreement, Fire District shall furnish Queen Creek with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Fire District's Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Acceptance and reliance by Queen Creek on a Certificate of Insurance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to the Queen Creek Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be Fire District's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1.6.1 Queen Creek, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

- a. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent.
- b. Auto Liability-Under ISO Form CA 20 48 or equivalent.
- c. Excess Liability-Follow Form to underlying insurance.

1.6.2 Fire District's insurance shall be primary insurance as respects performance of this Agreement.

1.6.3 All policies waive rights of recovery (subrogation) against Queen Creek, its agents, representatives, officers, directors, officials and employees for any claims arising out of this Agreement.

1.6.4 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

## 2. Required Coverage:

2.1 Commercial General Liability: Fire District shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate, and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Fire Districts, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Queen Creek, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

2.2 Vehicle Liability: Fire District shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on Fire District's owned, hired, and non-owned vehicles assigned to or used by Fire District. Coverage will be at least as broad as Insurance Services Office, Inc., coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, Queen Creek, its agents, representative, officers, directors, officials and

employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

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