

**RESOLUTION NO. 2013-03**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE FOUNTAIN HILLS SANITARY DISTRICT RELATING TO VARIOUS SERVICES.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Intergovernmental Agreement with the Fountain Hills Sanitary District relating to various services (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, February 21, 2013.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Kenneth W. Buchanan, Town Manager

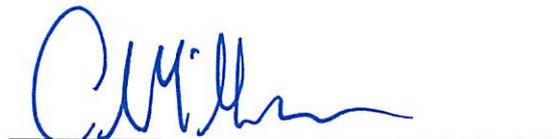
  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2013-03

[Agreement]

See following pages.

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
THE FOUNTAIN HILLS SANITARY DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of Feb. 21, 2013 (the "Effective Date"), between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and the Fountain Hills Sanitary District, an Arizona sanitary district (the "District"). The Town and the District are sometimes collectively referred to in this Agreement as the "Parties" and each individually as a "Party."

RECITALS

A. The Town and the District have authority to enter into the Agreement pursuant to ARIZ. REV. STAT. § 11-952.

B. The District provides sanitary sewer and reclaimed water services to most areas within the corporate limits of the Town (the "Sewer Services").

C. As a necessary part of providing the Sewer Services, the District requires access through certain streets, roadways, other rights-of-way and vacant real property owned or controlled by the Town and for which the District already has legal access (the "Town Property"). Currently, the District is required to obtain encroachment permits from the Town prior to initiating work related to the Sewer Services upon Town Property; District access to Town Property is currently subject to permits and fees. The Town and the District desire to streamline the process by which the District will be permitted to access Town Property for work related to the Sewer Services.

D. In addition to access over Town Property, the District also utilizes easements and other interests in real property (the "District Property") in connection with the Sewer Services. The Town and the District intend that the provisions of the Agreement shall apply to the Sewer Services on the District Property.

E. The Town and the District presently cooperate informally with a number of matters for which the Town and the District desire to more formally set forth their respective rights and obligations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the promises and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the duties and responsibilities of the Parties with respect to the various matters set forth below.

2. Term. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until June 30, 2014. This Agreement shall thereafter be automatically renewed for successive additional one-year periods until terminated by either Party for any reason upon delivery of 60 days' written notice prior to the actual date of termination.

3. Town's Responsibilities.

3.1 Town Property Encroachments; District Property Use. Subject to the limitations set forth below, and so long as the District complies with the provisions in Subsection 3.1(A)-(E) below, the Town shall permit the District to (i) utilize Town Property for the purpose of providing the Sewer Services without the need for the District to acquire an encroachment permit or to pay a permit fee and (ii) utilize District Property without the need to pay a permit fee.

A. Plan Review and Inspection. The District shall submit its plans to the Town for review (for compliance with applicable Town codes, ordinances and policies) not later than 30 days prior to the date upon which the District intends to initiate the project on Town Property. The Town shall not be required to inspect the work performed by the District related to Sewer Services, but the Town shall be entitled to perform such inspections as it deems necessary, at its sole expense, relating to other infrastructure impacted by the District's work, including, but not limited to, trench backfill, compaction and pavement restoration.

B. Schedule Coordination. Not less than once each month, the Contract Administrators (as defined in Section 5 below) shall meet to coordinate schedules for any Town or District projects occurring upon Town Property within the succeeding month.

C. Prior Notices; Barricading. Not less than 72 hours prior to commencing work upon Town Property (except for emergency work), the District shall notify the Town's Streets Superintendent or authorized designee as to the location of such work and the street closure/barricading anticipated by the District in connection with the work. The Town shall thereafter review the barricade plan to ensure compliance with the Manual on Uniform Traffic Control Devices and the City of Phoenix Barricade Manual (the "Barricade Standards"). The District shall be responsible for any changes necessary to bring the barricade plan into conformance with the Barricade Standards. The District shall be responsible for securing and implementing all necessary barricading; provided, however, that the Town may, at its sole discretion, provide Town-owned barricading materials to the District for use on Town Property.

D. Restoration of Disturbed Area. Upon completion of Sewer Services work on Town Property, the District shall restore the surface under which the work was completed to as nearly the same condition as existed prior to District's work; provided, however, that nothing herein shall be interpreted as reducing, eliminating or

altering the District's obligations to pay the Town any "in lieu" amounts related to future improvements to the Town Property, excavation fees or any other obligations required pursuant to Subsection 16-1-18 of the Town Code or Maricopa Association of Governments Specification 336, as amended.

E. Exceptions for Emergencies and Routine Sewer Taps. The requirements set forth in Subsections 3.1(A) – (C) above shall not be applicable to routine sewer taps or emergency repairs by the District; provided, however, that the District shall provide the Town with notice of such routine or emergency work by electronic correspondence and telephone as far in advance as is practicable under the circumstances.

3.2 District Facilities. The Town shall not charge the District for the cost of building permits related to new District facilities. The District shall be required to pay any applicable development impact fees related to such new District facilities. If the Town chooses to perform inspections of District facilities, it shall do so at its own expense, except for such inspections as are required by Federal or State law or by building and safety codes adopted by the Town, the cost of which inspections shall be the responsibility of the District. Notwithstanding the foregoing, the Town shall not charge the District a fee for the annual fire inspections performed at District facilities.

3.3 Street Sweeping. For so long as the Town conducts street sweeping operations with Town staff, the Town shall, on a frequency comparable to Town facilities, provide street sweeping to the District at its offices and plants.

#### 4. District's Responsibilities.

4.1 Sewer Charges. The District shall not charge the Town connection or sewer user fees for Town facilities, both those existing on the Effective Date of this Agreement or later constructed or acquired.

4.2 CCTV Inspection Assistance. The District shall assist the Town with the use of the District's CCTV equipment necessary to examine the Town's storm sewer system (the "Sewer Camera"), subject to the limitations of the equipment and availability. The Town and the District shall coordinate the use of the Sewer Camera through the Contract Administrators, which request by the Town shall be given to the District with as much advance notice as is practicable under the circumstances.

4.3 Combination Sewer Cleaner Assistance. Subject to availability and a case-by-case determination by the District that such use will not damage the District's combination sewer cleaning equipment, the District shall assist the Town with the use of District's combination sewer cleaning equipment to empty the Town's decant basin at its Streets Yard and other Town facilities.

5. Contract Administrators. The contract administrators ("Contract Administrators") for each Party to this Agreement shall be the Town Manager, or authorized designee, for the Town, and the District Manager, or authorized designee, for the District. Upon execution of this

Agreement, the Contract Administrators shall provide each other with electronic mail and telephone contact information to allow for routine notifications as required by this Agreement.

6. Indemnification. To the extent permitted by law, 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 attorney’s 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 act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers related to performance of obligations under this Agreement.

7. Appropriation of Funds. The provisions of this Agreement for implementation of the Services by both Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available to each Party. Each Party shall be the sole judge and authority in determining the availability of funds under this Agreement and shall keep the other Party fully informed as to the availability of funds for the Services. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of each Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either Party.

8. Termination; Cancellation.

8.1 At-Will. This Agreement may be terminated by either Party at-will upon 60 days’ written notice to the other Party.

8.2 Conflict of Interest. This Agreement may be cancelled by either Party pursuant to ARIZ. REV. STAT. § 38-511.

9. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

10. Amendment. The Parties understand and specifically agree that the terms of this Agreement may be amended from time to time only upon written agreement by both Parties.

11. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

12. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the Party at the address set forth below, (ii) deposited in the U.S. Mail, certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:           Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Kenneth W. Buchanan, Town Manager

With copy to:           GUST ROSENFELD, P.L.C.  
One East Washington, Suite 1600  
Phoenix, Arizona 85004-2327  
Attn: Andrew J. McGuire

If to the District:       Fountain Hills Sanitary District  
16941 East Pepperwood Circle  
Fountain Hills, Arizona 85268  
Attn: Ronald D. Huber, District Manager

With copy to:           Curtis, Goodwin, Sullivan, Udall & Schwab  
501 East Thomas Road  
Phoenix, Arizona 85012  
Attn: William P. Sullivan

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the Party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13. Assignment and Delegation. Neither Party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any termination shall not relieve either Party from liabilities or costs already incurred under this Agreement.

14. Applicable Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

15. Nondiscrimination. Each Party shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations regarding nondiscrimination, including the Americans with Disabilities Act.

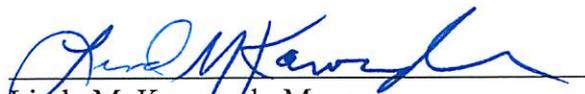
16. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant keeping their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

17. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Parties each certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the either Party determines that the other Party submitted a false certification, the Party making such determination may impose remedies as provided by law including terminating this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the date and year first set forth above.

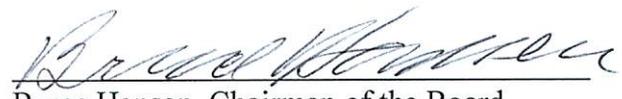
**"Town"**

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

  
Linda M. Kavanagh, Mayor

**"District"**

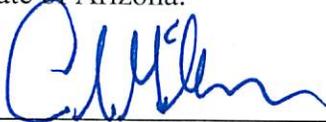
FOUNTAIN HILLS SANITARY DISTRICT, an Arizona sanitary district

  
Bruce Hansen, Chairman of the Board

ATTEST:

  
Bevelyn J. Bender, Fountain Hills Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.



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Andrew J. McGuire  
Fountain Hills Town Attorney



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William P. Sullivan  
District General Counsel