

RESOLUTION NO. 2013-34

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY RELATING TO MEDICAL COUNTERMEASURES.

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

SECTION 1. The Memorandum of Understanding (the "MOU") with the Maricopa County Department of Public Health relating to medical countermeasures is hereby adopted 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 MOU 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, June 20, 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. 2013-34

[MOU]

See following pages.

AGREEMENT TO PROVIDE STRATEGIC NATIONAL STOCKPILE ASSETS

This Agreement is entered into by and between Maricopa County, through the Maricopa County Department of Public Health (MCDPH) and Town of Fountain Hills (“Town of Fountain Hills”) for the purpose of distributing medications, other medical materials and information to Town of Fountain Hills for dispensing to Town of Fountain Hills employees and their families (the “Authorized Recipients”) in the event of a public health emergency. MCDPH or Town of Fountain Hills may individually be referred to in this Agreement as a “Party” or the entities collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to A.R.S. §36-787, when there is a state of emergency or state of war emergency in which there is an occurrence or imminent threat of an illness or health condition that threatens the public health, the Arizona Department of Health Services (“ADHS”) has the responsibility for planning and executing public health emergency assessment, mitigation, preparedness response and recovery for the state, and coordinating public health emergency response among state, local and tribal authorities; and in furtherance of its responsibility ADHS has entered into an agreement with Maricopa County through MCDPH to develop and enhance the state’s emergency response capabilities; and

WHEREAS, pursuant to A.R.S. §26-308, Maricopa County and each incorporated city and town has the responsibility for establishing and providing for emergency management within its jurisdiction in accordance with state emergency plans and programs; and

WHEREAS, by resolution adopted by the Maricopa County Board of Supervisors, the Maricopa County Department of Emergency Management defines authorities and duties regarding emergency plans and programs related to emergency services, and the Maricopa County Department of Emergency Management has acknowledged the MCDPH as the Lead County Agency for the Health and Medical Emergency Support Function, and the SNS Points of Dispensing (“POD”) are integral to a Public Health Emergency Response; and

WHEREAS, the MCDPH has created the Office of Preparedness and Response (“OPR”) to coordinate and prepare a Health and Medical plan to support the Maricopa County Emergency Operations Plan, and to respond to a Public Health Emergency in which there is an occurrence or imminent threat of an illness or health condition caused by a natural event, bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin that poses a substantial risk to public health; and

WHEREAS, OPR has been asked by Town of Fountain Hills to provide Town of Fountain Hills with SNS assets at its location, 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268, as may be necessary to respond to a public health emergency; and

WHEREAS, MCDPH and OPR wish to cooperate with Town of Fountain Hills by providing Town of Fountain Hills with SNS assets for distribution to the Authorized Recipients in the event of such a public health emergency;

NOW, THEREFORE, the Parties agree as follows:

1. Delivery of SNS assets

1.1. In the event of a public health emergency, MCDPH through OPR will deliver to Town of Fountain Hills medications, vaccinations, dispensing information or such other SNS materials as available and may be necessary to respond to a public health emergency, under the conditions

specified in this Agreement. Town of Fountain Hills understands that such SNS assets cannot be provided by MCDPH until said assets are released by the Arizona Department of Health Services and the Division of Strategic National Stockpile Program to OPR. Town of Fountain Hills' responsibilities under this Agreement are to take custody of the assets for the purpose of dispensing to the Authorized Recipients, and to cooperate with MCDPH to ensure the accessibility of the Town of Fountain Hills delivery site at 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268, as a delivery point.

- 1.2 MCDPH will provide Town of Fountain Hills with notice as soon as possible when an event triggers the activities under this Agreement. The Town of Fountain Hills contact for MCDPH is:

Scott LaGreca	Ken Buchanan
Fire Chief	Town Manager
Town of Fountain Hills	Town of Fountain Hills
P. O. Box 17958	16705 East Avenue of the Fountains
Fountain Hills, AZ 85269	Fountain Hills, Arizona 85268
480-837-9820 (office)	(480) 816-5130 (office)
602-739-9919 (cell)	(602) 577- 1136 (cell)
slagreca@fh.az.gov	kbuchanan@fh.az.gov
480-837-3145 (fax)	(480) 837-3145 (fax)

The MCDPH contact will promptly advise the Town of Fountain Hills of MCDPH's intent to deliver SNS assets to that location. MCDPH may also contact the delivery site directly if need be. The Town of Fountain Hills contact will be responsible for coordinating MCDPH's access to the delivery site, for offloading the SNS assets, and for security and appropriate storage of the SNS assets once delivered. The Parties agree to exchange whatever information is necessary to facilitate planning and coordination in preparation for delivery of SNS assets to Town of Fountain Hills.

- 1.3. MCDPH will deliver sufficient SNS assets to Town of Fountain Hills to serve an estimated targeted population of 1,400 Authorized Recipients provided appropriate and secure storage facilities for materials or antibiotics are available. Depending upon the supply, MCDPH may provide more medical countermeasures, if requested and needed. If SNS assets received by MCDPH are limited and MCDPH is unable to supply the entire amount required for Town of Fountain Hills, MCDPH will determine an allocation for Town of Fountain Hills based on an analysis of the current situation. Personnel, supplies, and equipment needed to dispense to the service population, such as copy machines and paper, furniture such as tables and chairs, and other items, will be supplied by Town of Fountain Hills.
- 1.4. Town of Fountain Hills agrees to dispense SNS assets using Town of Fountain Hills personnel or volunteers who have the appropriate licensure, training, and/or certification to dispense SNS assets, to dispense SNS assets only to the Authorized Recipients as specified under OPR guidelines, to distribute product information sheets provided by OPR, to return to OPR any excess SNS assets inventory, to provide OPR approved documentation of all dispensing, and to reconcile SNS assets received with those dispensed and those returned to OPR. Town of Fountain Hills agrees not to charge for SNS assets or for any of the services provided as part of the administration or dispensing of SNS assets unless agreed upon separately in writing.
- 1.5. As a condition of this Agreement and prior to the distribution of any SNS assets to Town of Fountain Hills, Town of Fountain Hills agrees to arrange sufficient time for the personnel who would be involved in SNS asset distribution at Town of Fountain Hills to participate in an OPR-provided training on the procedures for dispensing of SNS assets. The minimum number of people to attend the training for Town of Fountain Hills will be mutually agreed upon.

- 1.6 During transfer of custody of SNS assets to Town of Fountain Hills at 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268, Town of Fountain Hills will be responsible for offloading and moving the assets to the storage area Town of Fountain Hills plans to utilize, and for sufficient security to maintain order and safeguard persons against bodily injury. The Maricopa County Sheriff's Office is the lead agency for security during transport and delivery of assets to the Town of Fountain Hills delivery site.
- 1.7 Town of Fountain Hills agrees to utilize dispensing information, including prophylaxis or treatment dispensing algorithms, guidelines, and patient information forms, provided by OPR and to provide OPR with a completed patient information form within 48 hours for each person to whom SNS assets were dispensed. Town of Fountain Hills agrees to have trained employees (Section 1.5) oversee the dispensing of SNS assets to the Authorized Recipients.
2. **Indemnification.** To the fullest extent permitted by law, MCDPH shall defend, indemnify, and hold harmless Town of Fountain Hills, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees and court costs) arising from the acts, errors, mistakes, omissions, work or service of MCDPH, its agents, employees, or volunteers or any tier of its contractors in the performance of this Agreement. The amount and type of insurance coverage requirements of the Agreement will in no way be construed as limiting the scope of indemnification in this Paragraph. The terms of this section survive the termination, expiration, non-renewal, or rescission of this Agreement.

To the fullest extent permitted by law, Town of Fountain Hills shall defend, indemnify and hold harmless MCDPH, its agents, officers and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees and court costs) arising from the acts, errors, mistakes, omissions, work or service of Town of Fountain Hills, its agents, employees, or volunteers or any tier of its contractors in the performance of this Agreement. The amount and type of insurance coverage requirements of the Agreement will in no way be construed as limiting the scope of the indemnification in this Paragraph. The terms of this section survive the termination, expiration nonrenewal, or rescission of this Agreement.

3. **Insurance.** MCDPH shall maintain a self-insurance program under the *Revised Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Risk Trust Fund* during the term of this Agreement. At the signing of this Agreement, MCDPH shall furnish Town of Fountain Hills with certificates of self-insurance evidencing the coverages and limits listed below at the following address:

Scott LaGreca	Ken Buchanan
Fire Chief	Town Manager
Town of Fountain Hills	Town of Fountain Hills
P.O. Box 17958	16705 East Avenue of the Fountains
Fountain Hills, AZ 85269	Fountain Hills, Arizona 85268
480-837-9820 (office)	(480) 816-5130 (office)
602-739-9919 (cell)	(602) 577-1136 (cell)
slagreca@fh.az.gov	<u>kbuchanan@fh.az.gov</u>
480-837-3145 (fax)	(480) 837-3145 (fax)

MCDPH's insurance must be primary, and any insurance or self-insurance maintained by Town of Fountain Hills shall not contribute to it. If any part of this Agreement is contracted, these insurance requirements also apply to all contractors.

Insurance coverage required under this Agreement is as set forth below (or the equivalent coverage with respect to Maricopa County or any other self-insured entity):

Maricopa County:

- 3.1. **Commercial General Liability** insurance with a limit of not less than \$2,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement;
- 3.2. **Automobile Liability** insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to MCDPH's owned, hired, and non-owned vehicles;
- 3.3. **Workers' Compensation** insurance with limits statutorily required by any Federal or state law and **Employer's Liability** insurance of not less than \$2,000,000 for each accident, \$2,000,000 disease for each employee, and \$2,000,000 disease policy limit; and
- 3.4. **Professional Liability** insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by MCDPH, or any person employed by MCDPH, with a limit of not less than \$2,000,000 each claim.

Receiving Agency:

Town of Fountain Hills shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in the State of Arizona with a current AM Best, Inc. rating of A- VII or better. In the alternative, Town of Fountain Hills may submit required coverage under a self-insured program. At the signing of this Agreement, Town of Fountain Hills shall furnish MCDPH with Certificates of Insurance or Self-Insurance evidencing the required coverages, conditions and limits required by this Agreement.

- 3.5. **Commercial General Liability** insurance with a limit of not less than \$2,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement;
- 3.6. **Automobile Liability** insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to Town of Fountain Hills' owned, hired, and non-owned vehicles;
- 3.7. **Workers' Compensation** insurance with limits statutorily required by any Federal or state law and **Employer's Liability** insurance of not less than \$2,000,000 for each accident, \$2,000,000 disease for each employee, and \$2,000,000 disease policy limit; and
- 3.8. **Professional Liability** insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by Town of Fountain Hills, or any person employed by Town of Fountain Hills, with a limit of not less than \$2,000,000 each claim.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two years past expiration of the Agreement and must be evidenced by annual Certificates of Insurance upon request from MCDPH.

4. **Verification Regarding Compliance with Arizona Revised Statutes §§35-391.06 and 35-393.06 Business Relations with Sudan and Iran:**

- 4.1 By entering into the Agreement, Town of Fountain Hills certifies it does not have scrutinized business operations in Sudan or Iran. Town of Fountain Hills shall obtain statements from its subcontractors performing work under this Agreement, if any, certifying compliance with the foregoing and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement.
- 4.2 Maricopa County may request verification of compliance for Town of Fountain Hills or subcontractor performing work under the Agreement. Should Maricopa County suspect or find that Town of Fountain Hills or any of its subcontractors performing work under the Agreement are not in compliance, Maricopa County may pursue any and all remedies allowed by law, including, but not limited to: suspension of partnership and termination of the Agreement. All reasonable costs necessary to verify compliance are the responsibility of Maricopa County.

5. **E-verification of employees:**

Town of Fountain Hills warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges:

- 5.1 That Town of Fountain Hills and its subcontractors, if any, performing work under this Agreement warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A;
 - 5.2 That a breach of a warranty under subsection 5.1 above, shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement;
 - 5.3 That MCDPH retains the legal right to inspect the papers of Town of Fountain Hills or subcontractor employee who performs work under this Agreement to ensure that Town of Fountain Hills or subcontractor performing work under this Agreement is complying with the warranty provided under subsection 5.1 above and that Town of Fountain Hills agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection.
6. Nothing herein shall make Town of Fountain Hills or any subcontractor an agent or employee of MCDPH.
7. **Termination.** Either party may terminate this Agreement at any time by giving 90 days written notice to the other party, but in no case after the declaration of a Public Health Emergency, until it has been determined and declared to be ended.
8. **Cancellation.** This Agreement is subject to cancellation pursuant to the terms of A.R.S. §38-511.
9. **Notices.** Any notices hereunder shall be written notices, personally delivered to the other party, except that in the event of a Public Health Emergency, notice may be given by any means, to be followed by written, personally delivered notice, as soon as is reasonably practicable. Such personally delivered notice shall be at the following addresses:

For MCDPH/OPR:

Program Manager
Maricopa County Department of Public Health
Office of Preparedness and Response
4041 N. Central Avenue, Suite 600
Phoenix, AZ 85012
Tel: 602 506-2650
Cell: 602 723-6966

For Town of Fountain Hills:

~~Scott LaGreca
Fire Chief
Town of Fountain Hills
P. O. Box 17958
Fountain Hills, AZ 85269
480-837-9820 (office)
602-739-9919 (cell)
slagreca@fh.az.gov
480-837-3145 (fax)~~

Ken Buchanan
Town Manager
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
(480) 816-5130 (office)
(602) 577-1136 (cell)
kbuchanan@fh.az.gov
(480) 837-3145 (fax)

10. **Use of Name.** MCDPH/OPR shall not use the names or trademarks of Town of Fountain Hills or of any of Town of Fountain Hills' affiliated entities in any advertising, publicity, endorsement, or promotion unless Town of Fountain Hills has provided prior written consent for the particular use contemplated. All requests for approval pursuant to this Section must be submitted to the Town of Fountain Hills at least 5 business days prior to the date on which a response is needed. The terms of this Section survive the termination, expiration, non-renewal, or rescission of this Agreement.
11. **Amendments.** This Agreement may not be amended or modified except in writing signed by both parties and identified as an amendment to this Agreement.
12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
13. **Waiver.** The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. The waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the parties.
14. **Entire Agreement.** This Agreement together with the Attachments hereto constitutes the entire agreement between the parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written, between the parties.
15. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party. Any purported assignment in violation of this clause is void. Such written consent, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignees.
16. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision has never been a part of the Agreement.

- 17. **Independent Contractor Status.** It is mutually understood and agreed that the relationship between the parties is that of independent contractors. Neither party is the agent, employee, or servant of the other. Except as specifically set forth herein, neither party shall have nor exercise any control or direction over the methods by which the other party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease or equity relationship, expressly or by implication, between the parties.
- 18. **Counterparts.** This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.
- 19. **Representation on Authority of Parties/Signatories.** Any individual executing this Agreement on behalf of a Party represents and warrants to the other Party that they are duly authorized to execute this Agreement on behalf of such Party, and that upon their signature this Agreement shall be binding upon the Parties.

MCDPH:
 MARICOPA COUNTY
 DEPARTMENT OF PUBLIC HEALTH
 MARICOPA COUNTY BOARD OF SUPERVISORS

TOWN OF FOUNTAIN HILLS:

By: _____
 Title: Chairman of the Board

By: *[Signature]*
 Title: _____

Date: _____

Date: June 20, 2013

ATTEST:

By: _____
 Clerk of the Board

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
 Attorney for Maricopa County

By: *[Signature]*
 TOWN ATTORNEY

Date: _____

Date: 6/20/2013