

RESOLUTION NO. 2011-06

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 G.I.S. MAPPING AND C.A.D. SERVICES.

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

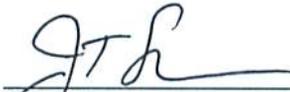
SECTION 1. The Intergovernmental Agreement between the Town of Fountain Hills and the Fountain Hills Sanitary District relating to G.I.S. mapping and C.A.D. services (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

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, January 20, 2011.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Jay T. Schlum, Mayor



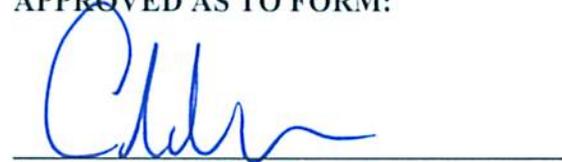
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Richard L. Davis, Town Manager



Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2011-06

[Intergovernmental Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF FOUNTAIN HILLS
AND THE
FOUNTAIN HILLS SANITARY DISTRICT
FOR GIS MAPPING AND CAD SERVICES**

This Intergovernmental Agreement (“Agreement” or “IGA”) is entered into this 20th day of January, 2011 (the “Effective Date”), by and between the Town of Fountain Hills, Arizona, a municipal corporation of the State of Arizona (“Town”) and the Fountain Hills Sanitary District, a political subdivision of the State of Arizona (“District”). The Town and the District shall be referred to herein individually as a “Party” and collectively as the “Parties.”

NOW, THEREFORE, in consideration of the promises and consideration described herein, the Town and District agree as follows:

AGREEMENT

- 1. PURPOSE:** To use Town employees, equipment and materials to perform Geographic Information Systems (“GIS”) and Computer-aided Design (“CAD”) services to assist the District in the upkeep and maintenance of a series of maps that depict the location of the District’s sewerage facilities, including reclamation facilities (the “Sewer Atlas”), which Sewer Atlas includes property addresses and the size of sewer lines in Fountain Hills.
- 2. TERM:** This Agreement shall commence on the Effective Date and its initial term shall terminate on June 30, 2012, and shall thereafter be automatically renewed from year to year, until terminated by either Party by giving no less than thirty (30) days written notice to the other Party or as otherwise permitted by this Agreement.
- 3. SCOPE OF SERVICES:** At the request of the District, the Town will provide the following services under this Agreement (collectively “Services”):
 - a.** A GIS Technician/CAD Operator employed by the Town shall provide GIS and CAD services to the District related to the upkeep and maintenance of the Sewer Atlas;
 - b.** The Town shall create a geospatial data layer that will replicate the District’s Sewer Atlas (the “Data Layer”) that is fully compatible with the Town’s GIS and in a form acceptable to the District;
 - c.** The Town shall update the Data Layer and, to facilitate the update process, the District shall provide the Town with “redline” drawings showing the requested updates;
 - d.** The Town shall print copies of pages of the Sewer Atlas, copies of any updates to same or any other copies of any other maps related to the Sewer Atlas or Data Layer; and
 - e.** The Town agrees to consider any other related GIS/CAD work request made by the District.
- 4. COMPENSATION:** The District agrees to compensate the Town for Services rendered by the Town, which shall be annually budgeted and allocated by the District from its general revenues, as follows:

a. The District shall pay the Town for the Services at an hourly rate of \$40.43 for each hour of the Services provided by a Town employee for the District; provided, however, the Town may in its discretion following the initial term of this Agreement alter the hourly rate from time to time by providing not less than sixty (60) written notice of the change to District;

b. The District shall bear the cost of labor and materials for providing copies to the District;

c. The Town employee performing the Services shall keep track of the time spent on projects for the District and shall bill the District in one-quarter hour increments rounded up or down to the closest half hour;

d. The Town shall provide the District with a bill for Services rendered and for materials used in the performance of the Services on a monthly basis immediately following the end of the month in which the work was performed;

e. The Town will not bill the District for work required to correct errors made by the Town related to Services previously requested by the District according to this Agreement; and

f. The funds contemplated to perform and pay for services under this Agreement shall be provided by the Town and the District by separate budget process, except as otherwise provided herein.

5. PROJECT DELIVERY TIMING: The Services and any work product resulting therefrom will be due as agreed by the Parties. The Town agrees that it shall work on District projects in an expeditious manner, but the Town may delay such work for high priority Town projects, as determined in the Town's sole discretion. When a District project must be delayed, the Town shall notify the District.

6. TERMINATION; CANCELATION: Either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party at the addresses indicated below and, upon such termination:

a. All personal property, assets, equipment and supplies used by the Parties in performance of their responsibilities shall remain with or be returned to the owner of such property; and

b. If requested by District within sixty (60) days following termination, the Town shall make available an electronic version of the Sewer Atlas to District or its designee and assist in installing and establishing a duplicate Sewer Atlas on another GIS/CAD system. The Town shall charge the prevailing time and material rates at the time of termination for these post termination services.

This Agreement may also be canceled by any Party pursuant to the provisions of ARIZ. REV. STAT. § 38-511.

7. CONFIDENTIALITY: Town will make commercially reasonable efforts to safeguard confidential information (i.e., information, regardless of form, that is known to Town solely due to the negotiation or performance of this Agreement or is by law required to be maintained in confidential manner, including without limitation 16 CFR Part 681 and ARIZ. REV. STAT. §§ 41-4172, 44-1373, -7501 and -7601, as applicable) against disclosure by employing the same means to protect such confidential information as that Party uses to protect its own non-public, confidential or proprietary information.

8. OWNERSHIP: District is and shall remain the owner of the Sewer Atlas and the Data Layer, as well as all items submitted to assist in the upkeep and maintenance of the Sewer Atlas and the Data Layer. Town shall not copy distribute, reproduce or otherwise distribute the Sewer Atlas or the Data Layer or the information thereon that is otherwise not available to Town in substantially the same form without the written consent of District unless otherwise required by law or administrative or court order.

9. AGREEMENT SUBJECT TO APPROPRIATION: The Town and the District understand that the provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the Town fully informed as to the availability of funding for the Agreement. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. The District shall not request Services be performed for which funds have not been appropriated by the District Board.

10. INSURANCE: At all times during the term of this Agreement, the Parties shall maintain at their own expense insurance policies, including commercial general liability and property insurance, to cover the risk of loss that may arise out of the terms, obligations, operations and actions as set forth in this Agreement. The Parties, however, agree that existing insurance policies maintained by the Parties shall be presumed to satisfy this requirement. However, each will secure such additional coverage and add the other Party to existing policies as an additional insured if the other Party provides written notification that such action is deemed necessary to provide full and adequate coverage of risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement. The acquisition of insurance or the maintenance and operation of a self- insurance program may fulfill the insurance requirement.

11. INDEMNIFICATION: To the fullest extent permitted by law, each Party shall indemnify, and hold harmless each other, each other's agents, representatives, officers, officials and employees for, from and against all claims, damages, losses and expenses of third parties, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes related to the Services. The Parties' duty to indemnify and hold harmless each other, each other's agents, representatives, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes, related to the Services, excluding those arising from the negligent acts, errors, omissions or mistakes of the Party seeking indemnification or of its agents, representatives, officers, officials and employees.

12. SHARED EMPLOYEE PROVISIONS: The State of Arizona provides certain rules in situations where public agencies share employees, as the Town and District will do under the terms of this Agreement. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party

shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

13. **E-VERIFY:** Under Arizona law, the Town and the District are also obligated to include certain provisions in every contract relating to E-verify, records and audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Town and the District 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 this 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 to keep 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.

14. **SCRUTINIZED BUSINESS OPERATIONS:** In addition, pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Town and the District 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 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 the Agreement.

15. **ENTIRE AGREEMENT:** This Agreement embodies the entire understanding of the Town and the District and supersedes any other agreement or understanding between the Parties relating to the subject matter of this Agreement.

TOWN OF FOUNTAIN HILLS

FOUNTAIN HILLS SANITARY DISTRICT


Richard L. Davis, Town Manager


Ronald D. Huber, District Manager

Date: 1-20-11

Date: 2/4/11

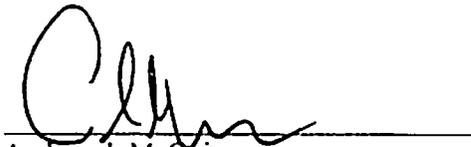
ATTEST:


Town Clerk

ATTEST:


Administrative Services Manager

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Town Attorneys acknowledge that (i) they have received the above Agreement on behalf of their respective clients and (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.


Andrew J. McGuire
Attorney for the Town of Fountain Hills


William P. Sullivan
Attorney for the Fountain Hills Sanitary District

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