

RESOLUTION 2016-39

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE AMENDMENT ONE TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE MAINTENANCE, IMPROVEMENT AND MANAGEMENT OF OUTDOOR RECREATION OPPORTUNITIES IN THE MCDOWELL MOUNTAIN PRESERVE AND MCDOWELL MOUNTAIN REGIONAL PARK; AND RATIFYING THE TOWN MANAGER'S EXECUTION OF THE AMENDMENT ONE.

WHEREAS, the Town of Fountain Hills (the "Town") and Maricopa County, Arizona (the "County") entered into an Intergovernmental Agreement (the "Agreement") relating to the maintenance, improvement and management of outdoor recreation opportunities at the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park; and

WHEREAS, the term of the Agreement is set to expire on December 15, 2016 and the Town and the County desire to enter into the Amendment One, attached hereto as Exhibit A, and incorporated herein by reference (the "Amendment") to extend the term of the Agreement; and

WHEREAS, due to timing restrictions, the Town Manager executed the Amendment before receiving approval from the Town Council; and

WHEREAS, the Town Council desires to approve the Amendment and ratify the Town Manager's execution of the Amendment.

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

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town Council hereby (i) approves the Amendment and (ii) ratifies the Town Manager's execution of the Amendment.

SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

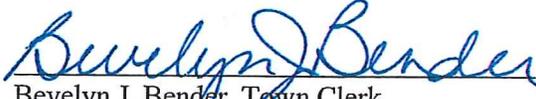
PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills,
Arizona, December 1, 2016.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Linda M. Kavanagh, Mayor



Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady E. Miller, Town Manager



Andrew J. McGuire, Town Attorney

AMENDMENT ONE
INTERGOVERNMENTAL AGREEMENT

Between

MARICOPA COUNTY

And

THE TOWN OF FOUNTAIN HILLS, AZ

C-30-12-014-03-01

THIS AMENDMENT ONE (hereinafter referred to as "Amendment One"), is made and entered into by and between Maricopa County, a political subdivision of the State of Arizona, (hereinafter called "County"), and the Town of Fountain Hills, an Arizona municipal corporation (hereinafter referred to as the "Town"), together hereinafter referred to as "Parties" or individually as a "Party."

RECITALS

WHEREAS, the County and the Town are authorized to enter into this Amendment One pursuant to A.R.S. § 11-952; and

WHEREAS, the Parties entered into an Intergovernmental Agreement on December 15, 2011 (C-30-12-014-3-00), relating to the maintenance, improvement and management of outdoor recreation opportunities in the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park (the "Agreement"). The Agreement terminates on December 15, 2016, but may be extended for two additional five-year terms upon mutual agreement of the Parties; and

WHEREAS, the Parties now desire to enter into this Amendment One to exercise the first five-year extension, commencing upon the expiration of the current term (December 15, 2016) and continuing until December 15, 2021. The Parties further desire to preserve the ability to exercise one additional five-year term extension upon mutual agreement of both parties; and

WHEREAS, the Agreement, as modified by this Amendment One, will require administrative action from time to time to carry out the spirit and intent of the Agreement. Accordingly, the County desires to delegate to its Director for the Parks and Recreation Department the authority and responsibility for proper administration of the Agreement and this Amendment One, whether or not specific authority is granted in any provision of the Agreement and this Amendment One; and

WHEREAS, the County and the Town desire to enter into this Amendment One to the Agreement with the understanding that all other provisions of the Agreement shall remain in full force and effect.

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, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to further amend the Agreement as follows:

I. DURATION

The Parties hereby agree to extend the term of the Agreement until December 15, 2021.

II. NOTICES

Section 14 – Notices and Requests is hereby deleted in its entirety and replaced with the following:

14. 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, registered or 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: Grady E. Miller, Town Manager

- With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

- If to County: Maricopa County Parks and Recreation Department
 234 North Central Avenue, Suite 6400
 Phoenix, Arizona 85004
 Attn: Parks and Recreation Director

- With copy to: Maricopa County Parks and Recreation Department
 41835 North Castle Hot Springs Road
 Morristown, Arizona 85342
 Attn: Contract Administrator

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 subsection. 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.

III. CONFLICT OF INTEREST

The Parties agree that the Agreement, including Amendment One, is subject to A.R.S. § 38-511 and may be cancelled pursuant thereto.

IV. EFFECT OF AMENDMENT

In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

V. NON-DEFAULT

By executing this Amendment One, each Party affirmatively asserts that (i) the other Party is not currently in default, nor has been in default at any time prior to this Amendment One, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

VI. ISRAEL

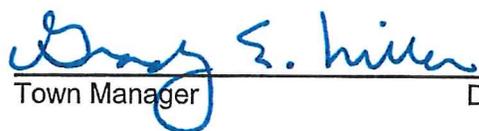
Each Party certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in A.R.S. § 35-393, of Israel.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment One to be executed by its duly authorized representatives on the respective dates entered below.

MARICOPA COUNTY, a political subdivision
of the State of Arizona

Town of Fountain Hills, an Arizona
municipal corporation

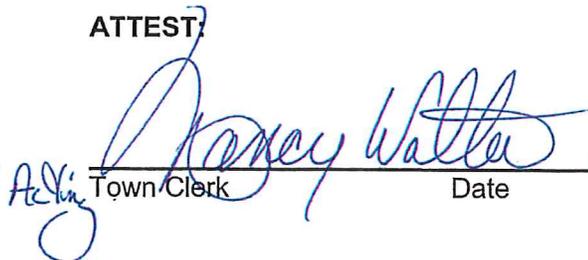

Chairman _____ Date DEC 07 2016


Town Manager _____ Date 11/21/2016

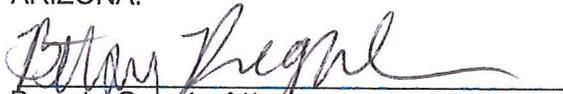
ATTEST:

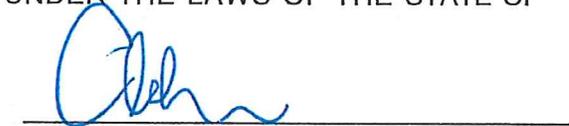
ATTEST:


Clerk of Board _____ Date DEC 07 2016


Town Clerk _____ Date 11-21-16

IN ACCORDANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 11-952(D), THE UNDERSIGNED ATTORNEYS ACKNOWLEDGE THAT (1) THEY HAVE REVIEWED THE ABOVE AGREEMENT ON BEHALF OF THEIR RESPECTIVE CLIENTS, AND (2) AS TO THEIR RESPECTIVE CLIENTS ONLY, EACH ATTORNEY HAS DETERMINED THAT THIS AGREEMENT IS IN PROPER FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA.


Deputy County Attorney


Town Attorney