

RESOLUTION NO. 2018-29

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE EXCHANGE OF SERVICES UNDER A COOPERATIVE HIGHWAY MAINTENANCE PROGRAM

RECITALS:

WHEREAS, the Mayor and Town Council of the Town of Fountain Hills (the "Town") acknowledge the benefit of, and desire to participate in, a cooperative highway maintenance program; and

WHEREAS, pursuant to A.R.S. §§11-951 et seq., the Town is authorized to enter into intergovernmental agreements for the provision of service or for joint or cooperative action. .

ENACTMENTS:

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

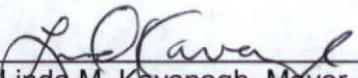
SECTION 1. That the Town, through its Mayor and Council, hereby approves the Intergovernmental Agreement (the "Agreement"), in substantially the form attached hereto as Exhibit A.

SECTION 2. The Town hereby authorizes the expenditure of funds for routine or emergency highway maintenance projects, as more specifically detailed in the Agreement.

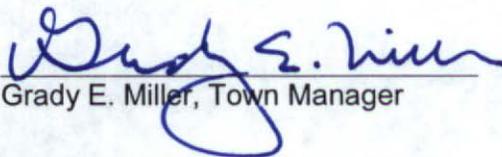
SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Maricopa County, Arizona, this 18<sup>th</sup> day of September, 2018.

FOR THE TOWN OF FOUNTAIN HILLS:

  
Linda M. Kavanagh, Mayor

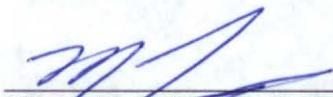
REVIEWED BY:

  
Grady E. Miller, Town Manager

ATTESTED TO:

  
Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

  
Mitesh V. Patel, Interim Town Attorneys  
Dickinson Wright PLLC

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN MARICOPA COUNTY AND THE TOWN**  
**OF FOUNTAIN HILLS FOR THE EXCHANGE OF SERVICES**  
**(ENTENTE)**

**(C-64-19- \_\_\_\_-M-00)**

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State (**County**), and the Town of Fountain Hills, a municipal corporation (**Town**). The County and Town are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

**STATUTORY AUTHORIZATION**

1. A.R.S. §11-251 and §§28-6701 *et seq.* authorize the County to layout, maintain, control and manage public roads within the County.
2. A.R.S. §§11-951 *et seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. A.R.S. §§9-240 *et seq.* authorize the Town to layout and establish, regulate and improve streets within the Town, and to enter into this Agreement.

**DURATION**

4. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect for five (5) years ("Term"). Any Party may terminate this Agreement for any reason upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.

## BACKGROUND

5. The Parties desire to develop and implement a cooperative highway maintenance program whereby routine or emergency highway maintenance will be performed more efficiently (the "Entente Program"). The Entente Program is designed to focus on the maintenance task needed and the availability of resources. The Entente Program is a method of providing goods and services to each Party by entering into temporary Letters of Agreement (the "LOA" or "LOAs"). The Parties desire to authorize the County Transportation Director and the Town Manager, or their designees, to enter into separate LOAs for each routine or emergency highway maintenance project.

## PURPOSE OF THE AGREEMENT

6. The purpose of this Agreement is to establish procedures to authorize the County Transportation Director and the Town Manager, or their designees, to enter into LOAs to exchange goods or services between each Party in order to perform routine or emergency highway maintenance services.

## TERMS OF THE LOA

7. Each LOA will describe the routine or emergency highway maintenance project and the goods or services that are being exchanged between the Parties. If applicable, the LOA will also state the amount of reimbursement owed to the other Party if the value of goods or services exchanged is not of equal value; provided, however, the total aggregate reimbursement that is in excess of the value of the goods or services received for all LOAs entered into pursuant to this Agreement shall not exceed \$200,000 per fiscal year.
8. After the Parties enter into an LOA, if there are unexpected or unforeseen costs that cause the value of the goods or services exchanged to become unequal or add to the amount of reimbursement for that LOA, the Parties shall amend the LOA, in writing; provided, however, that the additional reimbursement shall not cause the total aggregate reimbursement for all LOAs to exceed \$200,000 per fiscal year.
9. All routine or emergency highway maintenance projects shall be performed in accordance with "Uniform Standard Specifications for Public Works Construction," current edition/revisions as of the date of each LOA and the "Uniform Standard Details for Public Works Construction," current edition/revisions as of the date of each LOA which are sponsored and distributed by the Maricopa Association of Governments ("MAG") and any amendments or supplements adopted by the County and Town, as applicable.
10. All routine or emergency highway maintenance projects shall be performed with

existing resources.

11. Nothing in any LOA shall be interpreted to enlarge or expand the Town's or County's authority.

### TERMS OF THE AGREEMENT

#### 12. Responsibilities of the County:

- 12.1 The County Transportation Director or their designee is authorized to select routine or emergency highway maintenance projects suitable for an LOA and to enter into LOAs with the Town; provided however, that if the value of goods or services exchanged with the Town is not of equal value, the total aggregate reimbursement to the Town for all LOAs will not exceed \$200,000 per fiscal year.
- 12.2 Complete each routine or emergency highway maintenance project, such as those generally outlined in Exhibit A, which is attached hereto and incorporated herein by reference, in accordance with the County's procurement code and policies and the "Uniform Standard Specifications for Public Works Construction," current edition/revisions as of the date of each LOA and the "Uniform Standard Details for Public Works Construction," current edition/revisions as of the date of each LOA which are sponsored and distributed by the Maricopa Association of Governments ("MAG") and any amendments or supplements adopted by the County.
- 12.3 Exchange goods or services that will be of similar value or to reimburse the Town for the value of goods or services in excess of the value of goods or services received from the Town; provided however, that the total aggregate reimbursement to the Town for all LOAs will not exceed \$200,000 per fiscal year.
- 12.4 90 days prior to the end of every fiscal year of the County during the Term, the County shall provide the Town a statement of services performed by County pursuant to an executed LOA ("County Statement"). The County Statement shall also include an itemization of any and all costs owed to the County by the Town and an invoice for such costs. The County's fiscal year ends June 30<sup>th</sup>. Within 30 days of receipt of a Town Statement, the County shall remit payment to the Town for the dollar value owed.

- 12.5 Permit the Town to inspect the routine or emergency highway maintenance projects undertaken by the County on behalf of the Town and pursuant to an LOA. If the Town reasonably believes the project is not being conducted by the County in conformance with the LOA, or the Town reasonably believes that that project has not been undertaken and conducted in a good and workmanlike manner, the County shall correct or re-perform it, as necessary, to the reasonable satisfaction of the Town.
- 12.6 Comply with existing law and all County policies, such as planning, budgeting and purchasing.
- 12.7 Perform all obligations agreed to under an LOA.

### 13. Responsibilities of the Town:

- 13.1 The Town Manager or their designee is authorized to select in his sole discretion routine or emergency highway maintenance projects suitable for an LOA and to enter into LOAs with the County; provided however, that if the value of goods or services exchanged with the County is not of equal value, the total aggregate reimbursement to the County for all LOAs will not exceed \$200,000 per fiscal year.
- 13.2 Complete each routine or emergency highway maintenance project, such as those generally outlined in Exhibit A, in accordance with the Town's procurement code and policies and the Uniform Standard Specifications for Public Works Construction," current edition/revisions as of the date of each LOA and the "Uniform Standard Details for Public Works Construction," current edition/revisions as of the date of each LOA which are sponsored and distributed by the Maricopa Association of Governments ("MAG") and any amendments or supplements adopted by the Town.
- 13.3 Exchange goods or services that will be of similar value or to reimburse the County for the value of goods or services in excess of the value of goods or services received from the County; provided however, that the total aggregate reimbursement to the County for all LOAs will not exceed \$200,000 per fiscal year.
- 13.4 90 days prior to the end of every fiscal year of the County during the Term, the Town shall provide the County a statement of services performed by the Town pursuant to an executed LOA ("Town Statement"). The Town Statement shall also include an itemization of any and all costs owed to the Town by the County and an invoice for such costs. The County's fiscal year ends June 30<sup>th</sup>.
- 13.5 Within 30 days of receipt of a County Statement, the Town shall remit payment to the County for the dollar value owed.

- 13.6 Permit the County to inspect the routine or emergency highway maintenance projects undertaken by the Town on behalf of the County and pursuant to an LOA. If the County reasonably believes the project is not being conducted by the Town in conformance with the LOA, or the County reasonably believes that that project has not been undertaken and conducted in a good and workmanlike manner, the Town shall correct or re-perform it, as necessary, to the reasonable satisfaction of the County.
  - 13.7 Comply with existing law and all Town policies, such as planning, budgeting and purchasing.
  - 13.8 Perform all obligations agreed to under an LOA.
14. Each Party will maintain a record of the goods and services exchanged over the life of the Agreement. For the purposes of calculating the \$200,000 fiscal year limit, the total aggregate reimbursement made by one Party to the other Party will not be offset by the value of the goods or services received.

#### **MANNER OF FINANCING**

15. The County and the Town shall budget, finance and bear the expense of each LOA separately. The County Transportation Director and the Town Manager or their designee shall ensure that sufficient financing is available prior to entering into a LOA.

#### **GENERAL TERMS AND CONDITIONS**

16. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will defend, indemnify and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability (including, but not limited to, vicarious liability), losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance of this Agreement by the indemnifying party, except such injury or damage as shall have been occasioned by the gross negligence or willful misconduct of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or

agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

17. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
18. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
  - 18.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.
  - 18.2 Any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
  - 18.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
  - 18.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
19. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
20. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the

Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

21. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation  
Attn: Intergovernmental Liaison  
2901 W. Durango St.  
Phoenix, AZ 85009

Town of Fountain Hills  
Attn: Town Manager  
16705 East Avenue of the Fountains  
Fountains Hills, AZ 85268

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

22. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
23. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

24. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
25. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Fountain Hills Town Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds without any liability to the non-terminating party.
26. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
27. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.
28. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
29. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
30. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

31. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
32. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.
33. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
34. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.
35. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.
36. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
37. This Agreement shall be governed by the laws of the State of Arizona.

***End of Agreement - Signature Page Follows***





## EXHIBIT A

### Maintenance Tasks:

- a. Grading
- b. Sweeping
- c. Surface Treatment/Seal Coats
- d. Signage
- e. Striping
- f. Debris Removal
- g. Material Hauling
- h. Fence Repair
- i. Storm Drain/Culvert Repair
- j. Barricading
- k. Pothole Repair
- l. Signal Maintenance
- m. Equipment Exchange
- n. Concrete Repair
- o. Bridge Repairs
- p. Storm Repairs
- q. Cattle Guards
- r. Guardrails
- s. Training