

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

This Intergovernmental Agreement (this “Agreement” or “IGA”) is entered into this 15th day of November, 2018 (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”). Town and 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, Town and District agree as follows:

AGREEMENT

- 1. PURPOSE:** To share digital Geographic Information Systems (“GIS”) data between District and Town and to use Town employees, equipment and materials to maintain GIS data and to perform GIS and Computer-aided Design (“CAD”) services to assist District in the upkeep and maintenance of a series of maps that depicts 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, 2019 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 District, Town will provide the following services under this Agreement (collectively “Services”):
 - a.** A GIS Technician/CAD Operator employed by Town shall provide GIS and CAD services to District related to the upkeep and maintenance of the Sewer Atlas.
 - b.** To date, Town has created a CAD model, referred to as the “Sewer Atlas,” which has been used by both District and Town for planning and permitting purposes. Town shall continue to update the CAD model and Sewer Atlas and, to facilitate the update process, District shall continue to provide Town with “redline” drawings showing the requested updates.
 - c.** 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.
 - d.** District will create a GIS dataset of its sanitary sewer facilities (“District GIS Sewer Data”) and shall endeavor to update and maintain the District GIS Sewer Data but is not obligated to do so by this Agreement. Subject to Town securing any necessary permissions from any third party from whom District obtains data files and aerial imagery, District will provide Town a digital copy of the District GIS Sewer Data, once complete, to

Town for use in creating maps and for planning purposes.

e. Subject to District securing any necessary permissions from any third party from whom Town obtains data files and aerial imagery, including Maricopa County, Arizona, Town will provide its GIS datasets, such as parcels, Town and District boundaries, streets, zoning, land use, occupancy, as well as other relevant GIS datasets useful to create maps for the long-term maintenance and planning efforts of District in providing service to its landowners (collectively "Town GIS Data").

f. Town agrees to consider any other related GIS/CAD work request made by District, and such additional work shall be included within the scope of this Agreement by written addendum signed by Town Manager and District Manager.

4. COMPENSATION: District agrees to compensate Town for services rendered by Town under this Agreement (the "Services"), which shall be annually budgeted and allocated by District from its general revenues, as follows:

a. District shall pay Town for the Services at an hourly rate of \$45 for each hour of the Services provided by a Town employee for District; provided, however, 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) days' written notice of the change to District.

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

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

d. Town shall provide District with an invoice for the Services and for materials used in the performance of the Services on a monthly basis, within thirty (30) days following the end of the month in which the work was performed.

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

f. The funds contemplated to perform and pay for services under this Agreement shall be provided by Town and District by separate budget processes, 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. Town agrees that it shall work on District projects in a reasonably expeditious manner, but Town may delay such work for high priority Town projects, as determined in Town's sole discretion. When a District project must be delayed, Town shall notify District.

6. TERMINATION; CANCELLATION: 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, 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. 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 and District will make commercially reasonable efforts to safeguard confidential information (i.e., information, regardless of form, that is known to Town or District 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 C.F.R. Part 681 and ARIZ. REV. STAT. §§ 41-4172, 44-1373, 44-7501 and 44-7601, 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:

a. District is and shall remain the owner of the Sewer Atlas and the District GIS Sewer Data, as well as all items submitted to Town to assist in the upkeep and maintenance of the Sewer Atlas and the District GIS Sewer Data. Except as expressly authorized by this Agreement for its own internal use, Town shall not copy distribute, reproduce or otherwise distribute the Sewer Atlas or the District GIS Sewer Data or the information thereon or supplied by District pursuant to this Agreement 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.

b. Town is and shall remain the owner of GIS and CAD layers prepared by Town, except for the Sewer Atlas and the District GIS Sewer Data, as well as all items Town submits to District to assist in the upkeep and maintenance of District's GIS and CAD layers. Except as expressly authorized by this Agreement for its own internal use, District shall not copy, distribute, reproduce or otherwise distribute the Town GIS Data or the information supplied by Town pursuant to this Agreement that is otherwise not available to District in substantially the same form without the written consent of Town unless otherwise required by law or administrative or court order.

9. AGREEMENT SUBJECT TO APPROPRIATION: Town and District understand that the provisions of this Agreement for payment of funds by District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. District shall be the sole judge and authority in determining the availability of funds under this Agreement and District shall keep Town fully informed as to the availability of funding for the Agreement. The obligation of District to make any payment pursuant to this Agreement is a current expense of District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of District. District shall not request Services be performed for which funds have not been appropriated by 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 agree that existing insurance policies maintained by the Parties shall be presumed to satisfy this requirement. However, each Party 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. The Parties acknowledge and agree that the GIS and CAD layers prepared by Town and the Sewer Atlas and the District GIS Sewer Data prepared by District constitute approximate representation of both the types and location of the information displayed and are to be relied upon by the Parties for planning and permitting purposes only. Location of District facilities must be obtained through the District or the Arizona Blue Stake Center.

12. SHARED EMPLOYEE PROVISIONS: The State of Arizona provides certain rules in situations where public agencies share employees, as 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 that 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: To the extent applicable under ARIZ. REV. STAT. § 41-4401, Town and 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). A Party's or a subcontractor's failure to comply with such a 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. NOTICE 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 Town: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Attn: Grady E. Miller, Town Manager

With copy to: Pierce Coleman PLLC
4711 East Falcon Drive, Suite 111
Mesa, Arizona 85215
Attn: Aaron D. Arnson, Town Attorney

If to District: Fountain Hills Sanitary District
16941 East Pepperwood Circle
Fountain Hills, Arizona 85268
Attn: Dana Trompke, District Manager

With Copy to: William P. Sullivan PLLC
3240 East Union Hills Drive, Suite 117
Phoenix, AZ 85050
Attn: William Sullivan, District Attorney

Addresses and persons for notice and requests may be changed by either party by giving notice to the other party in writing of such changes in the manner set forth herein. Such changes shall be effective five (5) days after notification is sent by the party making the change.

15. ENTIRE AGREEMENT: This Agreement embodies the entire understanding of Town and District and supersedes any other agreement or understanding between the Parties relating to the subject matter of this Agreement, including without limitation that certain

Intergovernmental Agreement between Town and District for GIS Mapping and CAD Services dated January 20, 2011.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

TOWN OF FOUNTAIN HILLS


Grady E. Miller, Town Manger

Date: 11/6/2018

FOUNTAIN HILLS SANITARY DISTRICT


Dana Trompke, District Manager

Date: 11/12/18

ATTEST:


Town Clerk

ATTEST:


Administrative Services Manager

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned 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.



Attorney for the Town of Fountain Hills



Attorney for the Fountain Hills Sanitary District