

RESOLUTION NO. 2011-28

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY RELATING TO THE ON-DEMAND SHARED RIDE TRANSPORTATION SERVICES FOR FISCAL YEAR 2011.

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

SECTION 1. The Amendment to the Intergovernmental Agreement between the Town of Fountain Hills (the "Town") and the Regional Public Transportation Authority relating to the on-demand shared ride transportation services for fiscal year 2011 (the "Amendment") 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 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, Arizona, June 16, 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. 2011-28**

[Amendment]

See following pages.

AGREEMENT NO. 124-48-2010-01
124-48-2010
INTERGOVERNMENTAL AGREEMENT AMENDMENT #1
BETWEEN
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
AND
THE TOWN OF FOUNTAIN HILLS

(Funding Agreement – On-Demand Shared Ride Transportation Services FY-11)

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (this “First Amendment”) is made and entered into June __, 2011, by and between the Regional Public Transportation Authority, a public agency duly organized and existing under the laws of the State of Arizona (hereinafter referred to as the “RPTA”) and the Town of Fountain Hills, a municipal corporation duly organized and existing under the laws of the State of Arizona (hereinafter referred to as the “TOWN”).

RECITALS

A. The Town and RPTA entered into that certain intergovernmental agreement for funding special transportation services dated August 20, 2009, Agreement No. 124-48-2010-01 (the “Agreement”), the initial term of which ended on June 30, 2010, and which was able to be extended for additional one-year periods.

B. The Town and RPTA continued under the terms of the Agreement into one renewal term commencing on July 1, 2010, which renewal term ends on June 30, 2011.

C. The Town and RPTA desire to amend the Agreement to memorialize the conditions under which the parties have operated since July 2, 2010 and to provide for termination of the Agreement (as amended by this First Amendment) on June 30, 2011.

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, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Town’s Obligations. Section 1, Subsection A, Paragraph 4 of the Agreement is hereby amended to read as follows:

SECTION 1: UNDERTAKINGS OF THE PARTIES

A. TOWN’s Obligations

4. In exchange for the Services, the TOWN shall pay RPTA monthly for any Services provided at the costs as set forth in the Cost Schedule,

attached hereto as Schedule A and incorporated herein by reference. The Town and RPTA expressly agree and understand that the total cost for the Services shall not exceed a total aggregate amount of \$104,000.00 over the term of this Agreement, and that the Town's total obligations to fund such costs is limited to (a) payment of the "Community Contribution" indicated on Schedule A and (b) permitting the use of the "PTF – ADA (3)" amounts shown on Schedule A. RPTA is solely responsible for the amounts on Schedule A shown as "New Freedom Grants." There is a 5% administrative fee that is billable to the TOWN on a per invoice basis. The 5% is included in the total aggregate amount of \$104,000.00.

2. Civil Rights. Section 3, of the Agreement is amended by adding a new Subsection K to read as follows:

SECTION 3: GENERAL PROVISIONS

K. Civil Rights. The parties agree that as a condition of this Agreement they will each comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal government determines otherwise in writing. These include, but are not limited to, those civil rights laws and regulations set forth on Exhibit B, as such civil rights laws and regulations may be amended from time to time.

3. Attachments. Schedule A of the Agreement is hereby deleted and replaced with a new Schedule A in the form attached hereto as Exhibit 1 and incorporated herein by reference. The Agreement is further amended by adding a new Exhibit B in the form attached hereto as Exhibit 2 and incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

"Town"

TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation



Richard L. Davis, Town Manager

ATTEST:



Bevelyn J. Bender, Town Clerk

"Contractor"

REGIONAL PUBLIC,
TRANSPORTATION AUTHORITY, an
Arizona public agency



David A. Boggs, Executive Director

REVIEWED BY:



Jon Medwin, Contracts and Procurement
Manager

REVIEWED BY:



Michael Taylor, Acting Deputy Executive
Director Finance

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of §11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, 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,
Fountain Hills Town Attorney

William J. Sims, Esq.
RPTA

EXHIBIT 1
TO
AGREEMENT NO. 124-48-2010-01
124-48-2010
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(Funding Agreement – On-Demand Shared Ride Transportation Services FY-11)

[Cost Schedule]

See following page.

SCHEDULE A

Maricopa County Demand Response Transportation Service (MCDRTS) FY2011

Revenue:	El Mirage	Fountain Hills	Maricopa County (1)	Maricopa County (2)	Peoria	Total
Community Contribution	\$31,458	\$16,000	\$47,727	\$49,150	\$0	\$144,335
PTF - ADA (3)	\$20,542	\$36,000	\$47,727	\$9,830	\$12,000	\$126,099
New Freedom Grants	\$0	\$52,000	\$0	\$39,320	\$0	\$91,320
Total Revenues	\$52,000	\$104,000	\$95,454	\$98,300	\$12,000	\$361,754

Expenses:

Contractor Expenses	\$49,500	\$99,000	\$90,908	\$93,600	\$11,400	\$344,408
RPTA Administrative Costs - 5%	\$2,500	\$5,000	\$4,545	\$4,700	\$600	\$17,345
Total Expenses	\$52,000	\$104,000	\$95,454	\$98,300	\$12,000	\$361,754

(1) First six month of FY 2011 actual expenditures.

(2) Second six months of FY 2011 estimated expenditures.

(3) - ADA funds will be directly administered by RPTA and may only be utilized by ADA certified passengers

The trip is not required to be an ADA - certified trip to access ADA - PTF funding.

EXHIBIT 2
TO
AGREEMENT NO. 124-48-2010-01
124-48-2010
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(Funding Agreement – On-Demand Shared Ride Transportation Services FY-11)

[Federal Requirements]

See following pages.

EXHIBIT B

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to

follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.