

RESOLUTION NO. 2011-35

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF MARICOPA 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.

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, a municipal corporation, (the "Town") and the County of Maricopa, a political subdivision of the State of Arizona (the "County"), 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") 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, October 6, 2011.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Jay T. Schlum, Mayor



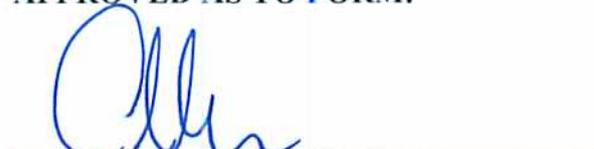
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Julie Ghetti, Interim Town Manager

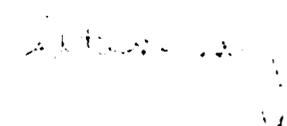
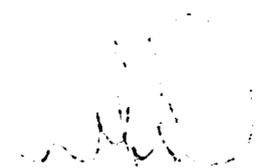


Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2011-35

[Agreement]

See following pages.



**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY AND
THE TOWN OF FOUNTAIN HILLS, ARIZONA**

C.30.12.014.3.00

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of Dec. 15, 2011 between the County of Maricopa, a political subdivision of the State of Arizona (the "County") and the Town of Fountain Hills, a municipal corporation (the "Town") (hereinafter, individually as a "Party" or collectively as the "Parties").

WITNESSETH

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

WHEREAS, the County, through its Parks and Recreation Department provides recreational opportunities and educational programs to the public; and

WHEREAS, the Town through its McDowell Mountain Preservation Commission provides programs, hiking and mountain biking opportunities in the Fountain Hills McDowell Mountain Preserve (the "Preserve") to the public; and

WHEREAS, the County desires to provide access to the Preserve through McDowell Mountain Regional Park (the "County Park"); and

WHEREAS, the Town provides bicyclists, and hikers with a link through County Park to the Preserve; and

WHEREAS, the County and Town would like to maintain a mutually beneficial relationship by which they may in the future work together to accomplish common objectives related to the Preserve and the County Park without duplicating efforts and expense; and

WHEREAS, the Parties desire to enter into this Agreement to set forth each Party's respective rights and obligations with respect to the means of access and use of the County Park and the Preserve.

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. PURPOSE OF AGREEMENT

- 1.1 The County and the Town desire to work in harmony for the common purpose of maintaining, improving, and managing outdoor recreation opportunities in the County Park and the Preserve and educating the public regarding the same. The County Park and the Preserve are depicted upon the Map attached hereto as Exhibit A and incorporated herein by reference.
- 1.2 To jointly plan and develop trails mutually beneficial to the County and the Town. To provide legal access for the multi-use Sonoran Trail that connects the County Park and the Preserve.
- 1.3 To jointly plan, coordinate, and implement, special events, recreational and educational programs, mutually beneficial to the County and the Town.
- 1.4 To share facilities, personnel, electronic resources and equipment when in the best interest of the Parties to include training, resource management and development, task forces and public meetings and events.

2. SEPARATE RESPONSIBILITIES

- 2.1 It is agreed that the County will provide the following:
 - A. Seasonal maintenance of the Sonoran Trail, as depicted on the Map attached hereto, from its intersection with the Dixie Mine Trail within the County Park to the FH-MMP Preserve North Entry, as depicted on the Map attached hereto, to ensure that it meets the trails standards set by the Maricopa County Parks and Recreation Department for trails within the regional park system.
 - B. Seasonal maintenance of the Dixie Mine Trail, as depicted on the Map attached hereto, from its trailhead at the southern boundary of the County Park to its intersection with the Sonoran Trail within the County Park to ensure that the public seeking access to the Preserve can do so using trails within the County Park.
 - C. Establish and maintain a budget for performance of any obligations arising under this Agreement by annual appropriations or by separate resolution as deemed necessary and proper by the County's Board of Supervisors.
- 2.2 It is agreed that the Town will provide the following:
 - A. Information to the public intending to access the Preserve using the trail system within County Park that the County Park is a fee-based recreation area and that all members of the public entering the County Park are

subject to paying the current applicable entrance fee for hikers, bikers or equestrians. Nothing in this subsection shall obligate the Town to enforce or guarantee payment of any fees described herein from any source of funds whatsoever.

- B. Seasonal maintenance of the Sonoran Trail, as depicted on the Map attached hereto, from the FH-MMP Preserve North Entry, also as depicted on the Map attached hereto, to its intersection with the Promenade Trail, also as depicted on the Map attached hereto; provided, however, that such portions of the Sonoran Trail located within the City of Scottsdale, as depicted on the Map attached hereto, shall not be maintained pursuant to this Agreement. Such seasonal maintenance described in this subsection shall be performed by the Town as needed and as so determined in the Town's sole discretion.
- C. Establish and maintain a budget for performance of any obligations arising under this Agreement by annual appropriations or by separate resolution as deemed necessary and proper by the County's Board of Supervisors by the Town Council.

2.3 Neither Party is required to provide funding, labor or perform maintenance of any portion of the Sonoran Trail located upon or across the real property of the other Party.

3. JOINT RESPONSIBILITIES

It is further agreed that each Party shall jointly bear the following responsibilities as deemed appropriate and properly approved by the governing bodies of each Party and as documented by such other and further agreements as are necessary:

- 3.1 To meet at least annually to discuss matters relating to trails, maintenance, special events, wildlife viewing, and outdoor education programs in or affecting County Park and/or the Preserve and to provide other meetings at various administrative levels as necessary.
- 3.2 To cooperate in the conservation, restoration, and general management of the natural and cultural resources within County Park and the Preserve with proper land use programs.
- 3.3 To cooperate in the development or construction of wildlife habitat improvements.
- 3.4 To cooperate in the development or construction of wildlife viewing and education enhancements to include viewing blinds, signage, kiosks and exhibits.
- 3.5 To cooperate in surveys of park users.

- 3.6 To jointly plan and develop facilities mutually beneficial to the Parties .
- 3.7 To jointly plan and implement recreation and education programs mutually beneficial to the Parties.
- 3.8 To share facilities, personnel, electronic resources and equipment when in the best interest of the parties to include training, resource management and development, task forces and public meetings and events.
- 3.9 To cooperate in joint marketing, social media and promotion campaigns when in the best interest of the parties
- 3.10 When specific projects have been identified, the Parties will develop a written action plan, master plan, memorandum of understanding or similar document that outlines a timeline, procedures and budget for project completion.

4. INDEMNIFICATION

By entering into this Agreement, each Party (as “Indemnitor”) agrees that to the extent permitted by law, to indemnify and save the other Party (as “Indemnitee”) 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 (“Claims”), but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

5. APPROPRIATION OF FUNDS

The provisions of this Agreement for implementation of the Services by both Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available to each Party. Each Party shall be the sole judge and authority in determining the availability of funds under this Agreement and shall keep the other Party fully informed as to the availability of funds for the Services. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of each Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either Party.

6. DURATION

This Agreement shall become effective as of the date it is executed by all the Parties. The term of this Agreement is five (5) years and may be renewed on agreement of the Parties for two (2) additional five year terms.

7. **TERMINATION; DISPOSITION OF PROPERTY**

- 7.1 Any Party may terminate this Agreement upon furnishing the other Party with 30 days' written notice. Upon termination, the Parties shall incur no further obligation or liability under this Agreement other than for payment of services rendered prior to the expiration of the Agreement. Any unexpended and unobligated funds shall be returned to the Party providing the funds.
- 7.2 Upon termination, any equipment or other personal property used in performance of this Agreement shall be returned to the Party holding title thereto.

8. **ASSIGNMENT AND DELEGATION**

Neither party may assign any rights hereunder without the express, written, prior consent of both parties.

9. **DISPUTES**

This Agreement shall be subject to arbitration as may be required by A.R.S. 12-1518.

10. **CONFLICT OF INTEREST**

The parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. 38-511, the provisions of which are incorporated herein and made a part hereof.

11. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein. This Agreement shall not be amended or modified, in any manner, except by an instrument in writing, signed by the Parties hereto.

12. **INVALIDITY OF PART OF THIS AGREEMENT**

The parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the parties.

13. **GOVERNING LAW**

This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference, all laws governing the interagency agreements and mandatory contract provisions of state agencies required by statute or executive order.

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, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to the Town: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Facsimile: 480-837-3145
Attn: Kathleen M. Zanon, Interim Town Manager

With copy to: GUST ROSENFELD, P.L.C.
1 East Washington, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: 602-254-4878
Attn: Andrew J. McGuire, Esq.

If to County: Maricopa County Parks and Recreation Department
234 North Central Avenue, Suite 6400
Phoenix, Arizona 85004
Facsimile: (602) 506-4692
Attn: R.J. Cardin, Director

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 Section. 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, (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, or (iv) when received by facsimile transmission during the normal business hours of the recipient. 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.

15. RECORDS AND AUDITS

All books, accounts, reports, files and other records of any Party relating to the Agreement or the work done under this Agreement shall be subject at all reasonable times to inspection and audit by the other Party until five years after the Project is completed. Such records shall be available for inspection upon five business days' notice at the

offices of the Party in possession of the records, per Arizona Revised Statutes § 35-214. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

16. E-VERIFY

To the extent applicable under Arizona Revised Statutes § 41-4401, each Party and its contractors and subcontractors warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes § 23-214(A). A breach of the above-mentioned warranty by any Party or its contractors or subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Party. Each Party retains the legal right to randomly inspect the papers and records of the other Party's or its contractors' or subcontractors' employees who work on the Project to ensure that the other Party and its contractors and subcontractors are complying with the above-mentioned warranty.

17. SCRUTINIZED BUSINESS OPERATIONS

Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, County certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this section the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the Town determines that County submitted a false certification, the Town may impose remedies as provided by law including terminating this agreement.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

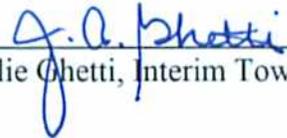
“County”

“Town”

MARICOPA COUNTY, a political subdivision of the State of Arizona

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

By: 
Chairman, Board of Supervisors

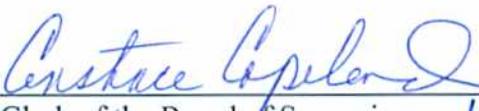
By: 
Julie Ghetti, Interim Town Manager

Date: DEC 15 2011

Date: _____

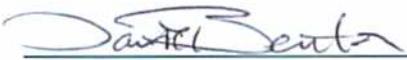
ATTEST:

ATTEST:


DEPUTY Clerk of the Board of Supervisors 113011


Bevelyn J. Bender, Town Clerk

IN ACCORDANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 11-952(D), 11-201 AND 11-251, 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


Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
MARICOPA COUNTY
AND
THE TOWN OF FOUNTAIN HILLS

[Map]

See following pages.

Thompson Peak
Maricopa County Property
3910'

Coachwhip Trail

Obie Mine Trail

Coachwhip Trail

MCDOWELL MOUNTAIN REGIONAL PARK

Thompson Peak Road

Thompson Peak Road

Obie Mine Trail

FH-MMP
Preserve
North Entry

Sonoran Trail

Existing McDowell Mtn
Park Access Trailhead
Entry - Gated

CITY OF SCOTTSDALE

PRESERVE BOUNDARY

GOLDEN EAGLE BLVD

Proposed Connection
To The Scottsdale
Trail System

Western Loop Trail

Promenade Trail

Easy Access Trail

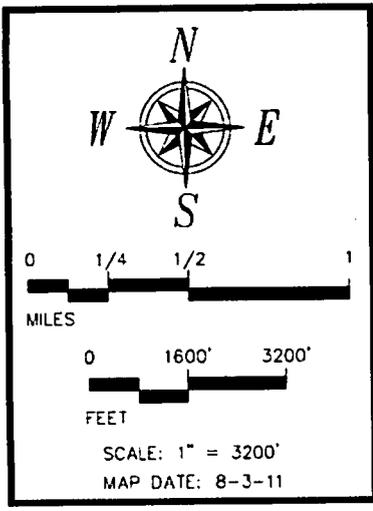
FH-MMP
Preserve
South Entry

Overlook Trail

TOWN OF FOUNTAIN HILLS

Old Jeep Trail

EAGLE RIDGE DR



124th ST

128th ST

136th ST

SHEA BLVD

SHEA BLVD

