Resolution No. 2018-08

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND THE ARIZONA DEPARTMENT OF ADMINISTRATION FOR THE OPENBOOKS TRANSPARENCY WEBSITE.

WHEREAS, the Town of Fountain Hills ("Town") wishes to enter into an intergovernmental agreement with the Arizona Department of Administration ("ADOA") for the hosting and publication of certain data on the ADOA's financial transparency website (henceforth "Openbooks"); and

WHEREAS, the ADOA is willing and able to host the Town's data on Openbooks.

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

Section 1. The Intergovernmental Agreement attached hereto as <u>Exhibit A</u> and incorporated herein by this reference is hereby adopted and approved.

Section 2. The Town Manager is authorized to sign the Intergovernmental Agreement, Exhibit A, on behalf of the Town.

PASSED AND ADOPTED by the Mayor and Council of the Fountain Hills, Maricopa County, Arizona, this _____16_____ day of _January_, 2018.

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   Dickinson Wright PLLC
                                                 Interim Town Attorneys

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE ARIZONA DEPARTMENT OF ADMINISTRATION

ARIZONA OPENBOOKS SERVICE AGREEMENT

Douglas A Ducey
Governor

Craig Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
GENERAL ACCOUNTING OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 302
PHOENIX, ARIZONA 85007

ADOA-GAO OPENBOOKS SERVICE AGREEMENT
Number 2018-2025-17

In accordance with Arizona Revised Statutes, Sections (A.R.S. §§) 41-703 and 41-711, this Agreement is entered into by and between **Town of Fountain Hills** , a **Local Governmental** body (hereinafter referred to as "**LOCAL GOVERNMENT**"), and the **Arizona Department of Administration, General Accounting Office** (hereinafter referred to as "**ADOA-GAO**"), governing the hosting and publication of **LOCAL GOVERNMENT** data on **ADOA-GAO**'s website established under A.R.S. § 41-725 and called OpenBooks.az.gov, Arizona's official financial transparency web site hereinafter "**OPENBOOKS'**), and shall be effective as indicated in Section 1 - Term of Agreement.

1.   Term of Agreement

This Agreement shall be effective upon **the date the last party signs this Agreement** through **December 31, 2025.** This Agreement may be terminated in accordance with Section 4.

2.   Scope of Services

The **LOCAL GOVERNMENT** is requesting that **ADOA-GAO** provide **LOCAL GOVERNMENT** data hosting, publication and support services (**SERVICES**) in connection with the **LOCAL GOVERNMENT** having its financial data published on **OPENBOOKS** managed by **ADOA-GAO**.

To effectively provide these SERVICES both **ADOA-GAO** and the **LOCAL GOVERNMENT** agree to perform their respective responsibilities set forth in **SCHEDULE A** attached to this agreement.

3.   Fees

LOCAL GOVERNMENT shall pay **ADOA-GAO** an **INITIAL SETUP FEE** of two thousand dollars ($2,000) in advance of the first calendar year of **SERVICES** and an **ANNUAL FEE FOR OPERATING COSTS** for each calendar year **SERVICES** are to be provided. The **ANNUAL FEE FOR OPERATING COSTS** for the calendar year ending

December 31, 2018, is one thousand dollars ($1,000), payable in advance. Each subsequent year's **ANNUAL FEE FOR OPERATING COSTS**, also payable in advance, shall be in the amount communicated by **ADOA-GAO** to the **LOCAL GOVERNMENT** by way of an Amendment **not later than ninety (90) days before the beginning of the year to which it applies.**

4. Termination

Either party may terminate this Agreement upon sixty (60) calendar days written notice to the other party. If the termination is initiated by **ADOA-GAO**, **ADOA-GAO** shall refund to the **LOCAL GOVERNMENT** any unamortized **ANNUAL FEE FOR OPERATING COSTS** at the time the termination becomes effective. If the termination is initiated by the **LOCAL GOVERNMENT,** no refund shall be forthcoming.

If a termination is initiated by the **LOCAL GOVERNMENT** and, with the prior consent of the **LOCAL GOVERNMENT**, the **ADOA-GAO** has acquired capital equipment or resources necessary to fulfill the **ADOA-GAO's** responsibilities to the **LOCAL GOVERNMENT** as set forth in the Scope of Services, the **LOCAL GOVERNMENT** shall be responsible to reimburse the **ADOA-GAO** for any unamortized or unrecovered costs on or before the date the contract is terminated.

This agreement may be terminated by either party in accordance with A.R.S. § 38-511.

5. Force Majeure

(a) Either party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when and to the extent that such delay or failure is a result of causes beyond the control and without the fault or negligence of the party unable to perform. Such causes include, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, or embargoes.

(b) The party whose performance is so affected shall promptly notify the other party of all pertinent facts and take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof.

(c) It is understood and agreed that settlement of strikes or other labor disputes shall be at the sole discretion of the party encountering the strike or other dispute and that the inability of **ADOA-GAO** or its Subcontractors to meet the requirements of this Agreement as a result of labor strikes or disputes shall not be deemed to be a Force Majeure.

6. Indemnification

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to

as "CLAIMS") arising out of bodily injury of any person (including death) or property damage, 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.

7. **Confidentiality**

    (a) A.R.S. § 41-725, which is incorporated by reference, defines certain information as confidential and not to be released to the public by way of publication on **OPENBOOKS**. By virtue of this Agreement, **ADOA-GAO** and **LOCAL GOVERNMENT**, their employees, and agents may have access to certain confidential and/or proprietary information of the other party, as defined below. **ADOA-GAO** and **LOCAL GOVERNMENT** agree to use Confidential Information received from the other Party only as expressly permitted in the Agreement and in furtherance of the purposes expressed in the Agreement. Neither **ADOA-GAO** nor **LOCAL GOVERNMENT** will disclose to any third party the other party's Confidential Information, in whole or in part, except as otherwise herein provided.

    (b) **LOCAL GOVERNMENT** may provide, intentionally or otherwise, confidential data as described in A.R.S. § 41-725, the Health Insurance Portability and Accountability Act or other relevant federal or state laws or local ordinances, ostensibly for posting on **OPENBOOKS**. **ADOA-GAO** is not responsible for reviewing **LOCAL GOVERNMENT** data for confidentiality purposes and is held harmless by **LOCAL GOVERNMENT** for any damages arising from **ADOA-GAO**'s posting such confidential information on **OPENBOOKS**.

8. **Limitation of Liability**

ADOA-GAO shall under no circumstances be liable for:

    (a) Posting or displaying on **OPENBOOKS** confidential, sensitive, incorrect, inaccurate, misleading, libelous, pejorative information provided by **LOCAL GOVERNMENT**.

    (b) Providing access in response to the **LOCAL GOVERNMENT**'s direction to any Entity Administrator or Entity User.

    (c) Failure to revoke access to any Entity Administrator or Entity User at the request of the **LOCAL GOVERNMENT** provided that the revocation is effected within three (3) business days.

9. **Miscellaneous**

It is mutually agreed by the parties that:

    (a) In the event of a dispute, the parties agree to use arbitration to the extent

required by A.R.S. § 12-1518. The laws of the State of Arizona shall govern any interpretation of this Agreement and venue shall be in Maricopa County, Arizona.

(b) This Agreement shall be governed and interpreted by the laws of the State of Arizona. Purchases made in furtherance of this Agreement are subject to the Arizona Procurement Code (A.R.S. § 41-2501, et seq.) and the administrative rules promulgated thereunder (AAC R2-7-101, et seq.).

(c) Any amendments to this Agreement must be in writing and signed by both parties.

(d) All requests for additional services shall be in writing and signed by both parties and subject to current established **ADOA-GAO** billing rates.

(e) Additional capital equipment or other resources to be acquired by the **ADOA-GOA** to fulfill its responsibilities to the **LOCAL GOVERNMENT** as set forth in the Scope of Services and for which the **LOCAL GOVERNMENT** may be required to reimburse the **ADOA-GAO** shall be agreed to in writing by the **LOCAL GOVERNMENT**.

(f) **ADOA-GAO** reserves the right, at its sole reasonable discretion, to deny access as Entity Administrator or Entity User.

(g) This agreement is subject to the provisions of A.R.S. § 38-511.

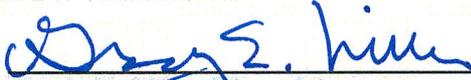(h) All notices pertaining to this Agreement shall be addressed or faxed to the parties respectively as follows:

ADOA-GAO:	
Arizona Department of Administration General Accounting Office (GAO) 100 N. 15th Avenue, Suite 302 Phoenix, AZ 85007	ATTN: OpenBooks Staff Phone Number: 602-542-5601 Email: OpenBooks@azdoa.gov
LOCAL GOVERNMENT:	
Town of Fountain Hills Administration/Finance 16705 E. Avenue of the Fountains Fountain Hills, AZ 85268	ATTN: Craig Rudolphy, Finance Director Phone Number: 480-816-5162 Email: crudolphy@fh.az.gov

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDING BETWEEN THE PARTIES, AND IT SUPERSEDES ALL PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER DOCUMENTS OR COMMUNICATIONS BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREIN COVERED, UNLESS SUCH DOCUMENTS OR COMMUNICATIONS ARE SPECIFICALLY INCLUDED BY REFERENCE.

IN WITNESS WHEREOF, the parties have executed this Agreement:

LOCAL GOVERNMENT: ADOA:

Town of Fountain Hills   Arizona Department of Administration

By: _____   By: _____

    Grady E. Miller, Town Manager   **Craig Brown**, Director

Date: _____January 16, 2018_____   Date: _____
            ~~Dec 19, 2017~~

[Print SA]

Between the Arizona Department of Administration General Accounting Office
And LOCAL GOVERNMENT

SCHEDULE A

Roles and Responsibilities

The respective roles of ADOA-GAO and a LOCAL GOVERNMENT related to that service are outlined in the section below.

ADOA-GAO Responsibilities:

- Provide consultation with the LOCAL GOVERNMENT project team member concerning the requirements of the A.R.S. § 42-725, confidentiality issues, file layout and overall process.
- Provide main point of contact for all communications related to the project.
- Prepare and provide LOCAL GOVERNMENT timely written notice of any SA ADDENDUM.
- Invoice LOCAL GOVERNMENT for initial setup fee and annual fee for operating costs.
- Confirm and communicate schedules.
- Notify the appropriate contacts of issues that require resolution.
- Coordinate the change process.
- Oversee content and maintenance of the OpenBooks.az.gov website (PROD).
- Provide an LOCAL GOVERNMENT User Guide on the use of the Administrative Tool and the Secure Account Service (SAS) Login Utility.
- Define LOCAL GOVERNMENT's system roles (Entity Administrator and Entity User).
- Authorize and maintain LOCAL GOVERNMENT's access to the system via SAS.
- Evaluate and grant or deny LOCAL GOVERNMENT requests for access to or roles in OPENBOOKS; activate and deactivate accounts.
- Provide and maintain technological infrastructure.
- Host and maintain Transparency Application Databases containing the State of Arizona and LOCAL GOVERNMENT data.
- Provide diagnosis of and initialize efforts to correct issues/problems with OPENBOOKS software application, Transparency Application Database, OpenBooks.az.gov website and technology infrastructure within three (3) business days of the discovery of such problems.
- Maintain two Transparency Application databases (PROD and TEST).
- Delete LOCAL GOVERNMENT incorrect postings within three (3) business days of receiving notification by email from LOCAL GOVERNMENT.
- Comply with all laws, statutes, ordinances, rules and regulations applicable to any Arizona State government body or authority;
- Diligently complete SERVICES.

ADOA-GAO Does <u>NOT</u> Have the Responsibility to:

- Defend LOCAL GOVERNMENT's compliance with A.R.S. § 41-725 subsections (C) through (E).
- Respond to the LOCAL GOVERNMENT's constituency about the LOCAL GOVERNMENT's data or the use of OPENBOOKS.

SCHEDULE A (Continued on Next Page)

SCHEDULE A (Continued from Preceding Page)

LOCAL GOVERNMENT Responsibilities:

- Provide ADOA-GAO with required information for posting to OPENBOOKS in accordance with A.R.S. § 41-725 subsections (C) through (E).
- Accept and properly execute the Service Agreement and any annual ADDENDUM or Amendment prepared by ADOA-GAO in a timely manner, but no more than ninety (90) days.
- The LOCAL GOVERNMENT chief executive officer shall designate, using the processes and forms prescribed by ADOA-GAO, one or more Entity Administrators.
- The Entity Administrator shall designate, using the processes and from prescribed by the ADOA-GAO, one or more Entity Users.
- The LOCAL GOVERNMENT Entity Administrator(s) and User(s) shall be authorized to interface and liaise with ADOA-GAO personnel.
- Obtain administrative login access via SAS.
- Request and maintain authorized user roles for Entity Administrator and Entity User.
- Notify ADOA-GAO of any Administrator or User changes within 48 hours of such changes.
- Adhere to the data specification (file layout).
- Adhere to the guidance in the LOCAL GOVERNMENT User Guide.
- Adhere to State of Arizona Security requirements.
- Review data to assure compliance with confidentiality requirements, including those in A.R.S. § 41-725.
- Make payments in accordance to the Service Agreement and any Amendments.
- Upload the LOCAL GOVERNMENT data into the system as directed.
- Update and administer content data.
- Take reasonable measures to maintain the timeliness and accuracy of the LOCAL GOVERNMENT data presented on OpenBooks.az.gov.
- Notify ADOA-GAO of any required file deletions as soon as practicable.
- Cooperate with ADOA-GAO in the identification, diagnosis and resolution of issues/problems with the OPENBOOKS software application, Transparency Application Database, OpenBooks.az.gov website, and technology infrastructure.

SCHEDULE A (Remainder of Page Intentionally Left Blank)