

**RESOLUTION NO. 2011-25**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY LIBRARY DISTRICT RELATING TO THE OPERATION OF THE TOWN OF FOUNTAIN HILLS BRANCH LIBRARY.

**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 (the "Town") and the Maricopa County Library District relating to the operation of the Town Branch Library (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, 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. 2011-25

[Agreement]

See following pages.

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

Agenda # C-65-12-010-M-00

This Intergovernmental Agreement (Agreement) is made between the Maricopa County Library District, a political subdivision of the State of Arizona ("LIBRARY DISTRICT") and the Town of Fountain Hills, Arizona, a municipal corporation ("TOWN").

**RECITALS:**

The parties have the legal capacity to enter into this Intergovernmental Agreement pursuant to A.R.S. § 11-951, et seq.

A.R.S. § 48-390I provides for the establishment of a library district within Maricopa County and further provides that cities and towns within the County may elect to become a part of or to participate in said library district; and

The TOWN is a member of the Maricopa County Library District and desires to continue to make library services available to its residents.

Participation by TOWN with LIBRARY DISTRICT in this project provides expanded benefits to TOWN and its residents such as public library service, specialized library programs, and other services which are not otherwise available to TOWN residents.

LIBRARY DISTRICT benefits from the Agreement by providing library services to Maricopa County residents in the north eastern region of Maricopa County and by the use of space which is provided by TOWN.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREINAFTER SET FORTH, the parties agree as follows:

**1. General:**

- 1.1. Term of Agreement. The term of this Agreement shall be for five (5) years commencing on the date the Agreement is signed and subject to annual appropriations by each party to fund the Agreement. After the initial five (5) year term, this Agreement may be renewed by the parties for additional five (5) year

terms by mutual consent of the parties, on the same terms and conditions as set forth in this Agreement or as modified, in writing, and subject to annual appropriations to fund the Agreement.

- 1.2. Authorized Representatives. Within thirty (30) days after the effective date of this Agreement, TOWN and LIBRARY DISTRICT shall each appoint an authorized representative to carry out the duties set forth in this Agreement delegated to such authorized representatives. Either party may change the designation of its authorized representative by giving notice the other party pursuant to Paragraph 8.1 herein.

## 2. DEFINITIONS.

- 2.1. "Library" means 15,000 square-foot area of the approximately 20,000 square-foot building located at 12901 N. La Montana Drive, Fountain Hills, and owned by TOWN which houses the library materials collection for use by the public.
- 2.2. "Capital Improvements" means the permanent improvements to the library and any fixtures attached thereto.
- 2.3. "Library materials collection" means the books, magazines, audiovisual items and other materials which are used by the patrons.
- 2.4. "Contents of the library" means the furniture, shelving, equipment, library materials collection, computers, and like items.

## 3. The TOWN shall:

- 3.1. Cooperate with the LIBRARY DISTRICT at all times in good faith in order to facilitate the provision of library services.
- 3.2. Provide to the LIBRARY DISTRICT, the library facilities located at 12901 N. La Montana Dr., Fountain Hills, Arizona under the following terms:
- 3.3. TOWN shall be responsible for the payment of utility services, to include gas, water, and electric, and ancillary services provided to the premises.
- 3.4. TOWN shall, at its own expense, insure the premises for all perils and risk coverage on the structure(s) including, but not limited to fire, wind, burglaries and other casualties. TOWN understands and acknowledges that LIBRARY DISTRICT is self-insured for loss or damage to property and will provide TOWN with a certificate to this effect.
- 3.5. TOWN shall maintain the structure of the premises in good repair and shall correct any hazardous conditions existing as the result of any structural defect or

unsoundness. The term "structure" as used herein includes walls, roofs, floors, foundations, stairways, exterior sidewalks and all electrical, plumbing, heating and air-conditioning systems and equipment. It is understood that the structure and premises are currently in a state of good repair.

- 3.6. TOWN shall, at its own expense, conform to all applicable standards contained in the "Uniform Building Code for Life Safety" (U.B.C.), and also to all provisions and standards in "Arizona Revised Statutes for Handicapped Accessibility" in Title 9-499.02 and Title 34-401 through 34-439. This will include, but not be limited to, Handicapped Accommodations such as restrooms, drinking fountains, pedestrian ramps, etc. TOWN shall also, at its own expense, conform to all Americans with Disabilities Act requirements for Public Accommodations that are "readily achievable unless an undue burden would result."
  - 3.7. Routine maintenance shall be the responsibility of TOWN, which shall include: electrical and plumbing repairs, painting the interior walls, replacement of all broken glass of the premises resulting from all perils including, but not limited to fire, wind, burglaries and other casualties. TOWN shall perform all repair/replacement maintenance of installed building utility systems and maintain all installed floor covering in a state of good repair. Equipment (including water heaters, furnaces, air conditioners and fire extinguishers) of the library shall be maintained by TOWN in a safe operating condition.
  - 3.8. Janitorial and landscape services shall be provided and TOWN shall pay cost of said services.
4. The LIBRARY DISTRICT shall:
- 4.1. Provide and pay for, from revenues received pursuant to the County LIBRARY DISTRICT Tax levied pursuant to A.R.S. 48-3903, all salaries and employee benefits; office supplies, automation, audiovisual materials, books and other similar materials, office equipment, telephone, telefacsimile, electronic mail, catalogues, automated circulation system and public access catalogue, and other equipment and services and for supplies necessary to provide full library services to the TOWN;
  - 4.2. Provide centralized acquisitions, cataloging, processing and graphic arts services;
  - 4.3. Provide centralized personnel, fiscal, procurement, supply any other necessary administrative services;
  - 4.4. Provide coordinating and consulting services;
  - 4.5. Provide access to all library programs and materials within the LIBRARY

DISTRICT'S system;

- 4.6. Provide policies, procedures and operations manuals and support network;
- 4.7. Coordinate with local schools to offer assistance in developing literacy improvement;
- 4.8. Provide advice and assistance to all library staff in programming, advanced reference research, online reference searches, microforms and reference collection development;
- 4.9. Provide coordinated children's programs and services which may include summer reading, year-round reading, film programs, book-week programs, storytelling, school visits, crafts, read-aloud programs, performances and special events;
- 4.10. Encourage input from citizens in the selection of library materials and programs;
- 4.11. Operation of Library.
  - 4.11.1. Library District shall be solely responsible for the operation of the Library under terms set forth in this agreement and shall hold TOWN harmless from any acts by Library personnel that result in personal injury or property damage.
5. Future Improvements to Library. If TOWN and LIBRARY DISTRICT mutually agree the Library should be expanded, TOWN and LIBRARY DISTRICT will analyze the number of library users associated with TOWN and other communities and unincorporated areas of Maricopa County. TOWN will use good faith efforts to fund expansion of the Library if the majority of Library users are TOWN residents and if TOWN and LIBRARY DISTRICT agree expansion is appropriate at that time.
6. Termination, Expiration or Non-renewal. This Agreement shall terminate under the following circumstances:
  - 6.1. Upon non-appropriation by either party for continued funding of the Agreement;
  - 6.2. Upon 365 days written notice by a party;
  - 6.3. By mutual written agreement of the parties on an agreed upon date.
7. Upon termination, expiration or non-renewal of this Agreement, the parties will dispose of property related to the Library pursuant to the following:
  - 7.1. TOWN shall:

7.1.1. Purchase the Library Materials collection of the Library from the LIBRARY DISTRICT after valuation of said collection, subject to appropriation of funds by TOWN for that purpose.

7.1.2. Purchase any computers and related equipment, software; network equipment and related items that the LIBRARY DISTRICT has purchased. This excludes any items still in use that was purchased by the TOWN.

7.2. LIBRARY DISTRICT shall:

7.2.1. Value the then current Library Materials Collection of the Library for purchase by TOWN pursuant to Paragraphs 7.1.1. and 7.1.2 above

7.2.2. Transfer to TOWN bibliographic and patron data in MARC format; provided however, the TOWN shall pay the costs of such transfer. LIBRARY DISTRICT shall provide technical assistance on the design and transfer of such computer files to TOWN at no cost to the TOWN.

7.3. Failure of TOWN and LIBRARY DISTRICT to Agree on Valuation of Contents of Library. Should TOWN not agree with the valuation of the contents of the Library pursuant to Paragraph 7.2.1 above, TOWN and LIBRARY DISTRICT will agree on an independent evaluation and share the cost of the evaluation equally. The result of that independent evaluation shall be final and binding on the parties.

7.4. Failure of TOWN to Purchase Contents of Library. Failure of TOWN to purchase the contents of the Library pursuant to Paragraphs 7.1.1 and 7.1.2 above will release LIBRARY DISTRICT to dispose of the contents of the Library as it deems appropriate with no further financial obligation to TOWN.

8. Miscellaneous.

8.1. Notices. Notices required pursuant to this Intergovernmental Agreement shall be given by first class mail, postage prepaid, to the following:

For the LIBRARY DISTRICT:

Director  
Maricopa County Library District  
2700 N. Central Avenue, #700  
Phoenix, AZ 850004

For the TOWN:

Town Manager  
Town of Fountain Hills  
16836 East Palisades  
Fountain Hills, AZ 85269

- 8.2. This Agreement comprises the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. This Agreement may only be amended in writing by mutual agreement of the parties.
- 8.3. LIBRARY DISTRICT will indemnify, defend and hold harmless TOWN and its agents, officials and employees from liability for damages resulting from injury, death, property damage and economic loss suffered by a third person as a result of the negligent or wrongful act or omission of the LIBRARY DISTRICT or the LIBRARY DISTRICT'S agent, official or employee which arises out of the LIBRARY DISTRICT'S performance of, or the failure to perform, its obligations under this Agreement. The damages which are subject of this indemnity shall include, but not be limited to attorney fees, court costs, settlement expenses and litigation expenses related to liability described in this paragraph and/or related to any claim or action asserting such liability against TOWN or any of its agents, officials and employees.
- 8.4. TOWN will indemnify, defend and hold harmless the LIBRARY DISTRICT and its agents, officials and employees from liability for damages resulting from injury, death, property damage and economic loss suffered by a third person as a result of the negligent or wrongful act or omission of TOWN or TOWN's agent, official or employee which arises out of TOWN's performance of, or the failure to perform, its obligations under this Agreement. The damages, which are subject of this indemnity shall include, but not be limited to, attorney fees, court costs, settlement expenses and litigation expenses related to liability described in this paragraph and/or related to any claim or action asserting such liability against the LIBRARY DISTRICT or any of its agents, officials and employees.
- 8.5. The LIBRARY DISTRICT's responsibility, whether by insurance coverage or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its employees through the provision of its obligations under this Agreement.
- 8.6. TOWN's responsibility, whether by insurance coverage or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its employees through the provision of its obligations under this Agreement.
- 8.7. This Agreement shall be governed by Arizona law without regard to its conflict of interest provisions.
- 8.8. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement, since it is the intent of the parties to have this Agreement enforced to the fullest extent possible.
- 8.9. This Agreement has been approved by the respective governing bodies of



the parties at a duly noticed public meeting.

9. Dispute Resolution.

9.1. The Authorized Representatives shall meet and attempt to resolve any dispute arising under this agreement within five business days after notice is given of the nature of the dispute, unless both parties agree to a longer period of time.

9.2. In the event a dispute arises which cannot be resolved by the Authorized Representatives within a reasonable time, the dispute may be submitted to mediation or non-binding arbitration upon mutual consent of the parties.

10. Future Transfer

10.1. Town Operation: The parties recognize that the Town of Fountain Hills may grow in the future to a degree that warrants full ownership and operation of the Library by the Town. If the parties agree that this condition has occurred, they will negotiate in good faith as to ways and means to effect such a transfer as efficiently as possible, including assistance and cooperation by the District in making available to the Town appropriate data bases and other technical support.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first written above.

FOR THE LIBRARY DISTRICT:

FOR THE TOWN:

  
Title: CHAIRMAN BOARD OF DIRECTORS

  
Title: JAY Schlum, Mayor

ATTEST:

ATTEST:

  
Clerk of the Board

  
Town Clerk


Date: AUG 17 2011

Date: June 16, 2011

ATTORNEY DETERMINATION

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned counsel who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

  
Library District Attorney

  
Town Attorney

Date: Aug 2 2011

Date: 6.16.11