

**FUNDING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
FOUNTAIN HILLS SHERIFF'S POSSE**

THIS FUNDING AGREEMENT (this "Agreement") is entered into as of July 1, 2012, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and the Fountain Hills Sheriff's Posse, an Arizona nonprofit corporation (the "Posse").

RECITALS

- A. The Posse actively assists the Maricopa County Sheriff's office with the Town's public safety needs, including assisting the Maricopa County Sheriff's office deputies, making local neighborhood and commercial patrols, vacation watches, and search and rescue operations.
- B. The Town has agreed to provide up to \$15,000.00 (the "Funds") to the Posse to fund the maintenance of the Posse patrol vehicles (the "Vehicles").
- C. The Town's sole responsibility shall be to provide the Funds to the Posse.
- D. The Town and the Posse desire to enter into this Agreement to set forth their respective rights and obligations with respect to receipt and use of the Funds.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Posse hereby agree as follows:

- 1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2013, unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement.
- 2. Disbursement of Funds. The Town's sole responsibility under this Agreement shall be to provide the Funds to the Posse. The Posse shall be solely responsible for maintaining the Vehicles. The Town shall reimburse the Posse an amount not to exceed \$15,000.00 for the maintenance of the Posse vehicles as identified in Exhibit A attached hereto and incorporated herein by reference. Any unused Funds at the end of the term of this Agreement shall remain in the Town's general fund.
- 3. Conditions of Reimbursement. The Posse shall comply with all of the following:
 - 3.1 The Posse shall provide the Town with a list of vehicles and either (i) motor vehicle identification numbers or (ii) identification numbers for vehicles without a vehicle identification number that are to be maintained under this Agreement.

3.2 The Posse shall hold title to the Vehicles covered under this Agreement.

3.3 The Posse shall utilize businesses within the corporate limits of this Town for all maintenance of the Vehicles covered under this Agreement, except when the service requested is specialized and not available from a business in the Town.

3.4 The maintenance costs covered by this Agreement are costs for tires, brakes, batteries, wiper blades, electrical components, cages, emergency lighting, radios, transmission and engine fluid changes, interior sanitizing and washes.

4. Payments. The Town shall issue checks payable to the Posse each quarter, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a date of service, vendor name, worked performed and either (i) a motor vehicle identification number or (ii) an identification number for vehicles without a vehicle identification number. Additionally, each invoice must be signed by two (2) officers of the Posse.

5. Documents. All documents prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town.

6. Licenses; Materials. The Posse shall maintain in current status all federal, state and local licenses and permits required for maintenance of the Posse vehicles. The Town has no obligation to provide the Posse, its employees or subcontractors any business registrations or licenses required to maintain the Vehicles set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to the Posse.

7. Performance Warranty. The Posse warrants that the maintenance of Vehicles will be operated and managed in a professional manner consistent with industry standards.

8. Indemnification. To the fullest extent permitted by law, the Posse shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Posse, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

9. Insurance. The Posse's Vehicles are insured through the Maricopa County's self-insurance program. The Posse specifically agrees and acknowledges that (i) the Town is not responsible for insuring the Vehicles and (ii) the Town has no liability for such Vehicles or for the Posse services.

10. Termination; Cancellation.

10.1 Termination. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. At the request of the Posse, the Town shall provide in writing to the Posse a final accounting of all funds provided by the Town under this Agreement, documenting the Town's disbursement of such funds, and correspondingly at the request of the Town, the Posse shall provide in writing to the Town a final accounting of all funds received by the Town under this Agreement, documenting the Posse's use of such funds.

10.2 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a the Posse to any other party of the Agreement with respect to the subject matter of the Agreement.

11. Miscellaneous.

11.1 Independent Contractor. The Posse acknowledges and agrees that the Town is solely providing funds to the Posse to maintain the Vehicles. The Posse, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of the Posse, its employees or subcontractors. The Posse, and not the Town, shall determine the time of the maintenance of the Vehicles covered under this Agreement. Town and the Posse do not intend to nor will they combine business operations under this Agreement.

11.2 Applicable Law; Venue. The Posse shall abide by and conform to any and all laws of the United States, the State of Arizona and the Town of Fountain Hills, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, Occupation Safety and Health Administration and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

11.3 Laws and Regulations. The Posse shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Posse is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting this Agreement, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

11.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Posse.

11.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

11.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

11.7 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Posse is advised that taxes will not be withheld from any Town payments issued hereunder and the Posse agrees to be fully and solely responsible for the payment of any applicable taxes.

11.8 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

11.9 Assignment-Delegation. No right or interest in this Agreement shall be assigned by the Posse without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of the Posse shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by the Posse in violation of this provision shall be a breach of this Agreement by the Posse.

11.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Posse from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

11.11 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 (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Kenneth W. Buchanan, Town Manager

With copy to: GUST ROSENFELD, P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire, Esq.

If to the Posse: Fountain Hills Sheriff's Posse
 P.O. Box 17114
 Fountain Hills, Arizona 85269
 Attn: Jeff Halmekangas, Commander

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 subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) 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. 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.

11.12 Confidentiality of Records. The Posse shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Posse's duties under this Agreement. Persons requesting such information should be referred to the Town. The Posse also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Posse as needed for the performance of duties under this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

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

“Town”

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

Kenneth W. Buchanan
Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on November 1, 2012, by Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



(affix notary seal here)

Catherine E. Whynot
Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

EXHIBIT A
TO
AGENCY AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
FOUNTAIN HILLS SHERIFF'S POSSE

[List of Vehicles]

Fountain Hills Sheriff's Posse - List of Vehicles

Year/Make/Model	Vehicle Identification Number/Identification Number
2009 Ford Expedition	1FMF715549EA97403
2007 Ford Expedition 4x4	1FMF716547LA63176
2006 Ford Crown Victoria	2FAFP71W66X117017
2006 Ford Crown Victoria	2FAFP71W86X117018
1995 EZ-GO Cart	911451

"The Posse"

FOUNTAIN HILLS SHERIFF'S POSSE, an Arizona
nonprofit corporation

By: 

Name: Jeffrey S. HALMEKANGAS

Title: POSSE COMMANDER

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on November 5, 2012,
by Jeffrey S. Halmekangas, Posse Commander of FOUNTAIN HILLS SHERIFF'S POSSE, an
Arizona nonprofit corporation, on behalf of the corporation.

Paula L. Woodward
Notary Public in and for the State of Arizona

(affix notary seal here)

