

**INTERGOVERNMENTAL AGREEMENT
FOR
HIGHWAY AND PUBLIC WORKS PROJECTS**

THIS AGREEMENT is made and entered into by and between Cochise County, a political subdivision (hereinafter called "the COUNTY") and Fairfield Estates Road Maintenance and Improvement District (hereinafter called "the Public Agency"), a special district formed pursuant to A.R.S. § 48-1081 et. seq., for the purpose of exercising their respective joint powers and contracting for services to complete paving and other public works projects.

WHEREAS, the COUNTY has available, on a limited basis, certain employees, equipment and materials through the Highway and Floodplain Division of the Community Development Department, which may be of significant benefit on various paving and public works projects of the Public Agency; and

WHEREAS, the cooperative use of COUNTY staff, equipment and materials for work on the Public Agency projects, when such resources are not scheduled for COUNTY projects, may be in the best interests of all citizens of Cochise County; and

WHEREAS, both the COUNTY and the Public Agency are in favor of maximizing the public benefit that can be derived from the cooperative use of public resources; and

WHEREAS, this AGREEMENT, contracting for certain services between governments, is authorized by A.R.S. § 11-951 et seq.,

IT IS HEREBY AGREED THAT:

1. Upon written request of the Public Agency, and subject to the provisions of this Agreement, the County shall make such COUNTY staff, equipment and materials, not otherwise required or scheduled for COUNTY projects, available to assist the Public Agency on paving or public works projects on Public Agency property. COUNTY staff and equipment shall generally be available only outside of the COUNTY's regularly scheduled workweek, unless special arrangements are made for a particular project of exceptional importance. If, in the sole opinion of the County Engineer, or her designee, the requested COUNTY staff, equipment or materials are not readily available to fulfill

the request, the Public Agency shall be advised of this fact and the COUNTY shall have no further obligation regarding that request. The County Engineer shall consider the following factors in making her determination as to the availability of COUNTY resources:

- a. Type of project. Does the project benefit the County or a significant number of County residents? Generally, projects that involve improvements or maintenance of public roads or flood control/drainage facilities will be preferred over other types of projects.
- b. Construction projects that exceed the statutory limits of A.R.S. § 34-201 or A.R.S. § 48-3603.15 will be rejected. Projects for the routine operation and routine maintenance of existing facilities are not subject to these cost limits, provided that they are consistent with the definitions of these terms. For the purposes of this policy, “construction”, “operation” and “maintenance” shall be defined consistently with the definitions of A.R.S. § 34-101:

Construction: Means the process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. Construction does not include routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

“Operation & Maintenance”: Includes only the routine operation, routine repair, or routine maintenance of existing facilities, structures, buildings or real property or demolition projects. This work will not significantly alter the size or shape of the existing improvement and, for roadways or drainage improvements, will not include any change in the type of existing surfacing.

- c. Availability of adequate and skilled manpower to conduct the project.
- d. Equipment requirements. Does the project involve the efficient use of County-owned equipment?
- e. Mobilization requirements for the project. Does the department have the required equipment close by?
- f. Are projects equitably distributed among entities and throughout the County? The Department will attempt to prevent a small group of

participants from obtaining most of the benefits of this program and will attempt to provide these projects to those entities that may not have the resources to fund the projects by alternative means. The Department will also attempt to provide opportunities for this work to employees throughout the County.

- g. Projects should generally not involve more than 14 crew days of work or cost more than \$50,000.
- h. Potential for liability. In general, the County will not undertake projects with an entity that does not have the capacity to bear the liability associated with it or that may present a significant risk of liability to the County.

2. A request by the Public Agency to include a highway and/or public works project should be submitted to the Highway and Floodplain Department in writing by February 15th of each year for inclusion in the next fiscal year's program. The County Engineer will prepare her recommendations for the coming fiscal year and the Board of Supervisors will approve an annual IGA Work Plan during its budget process. Special or additional projects may be considered on a case by case basis during the year, resources permitting, if the Public Agency demonstrates exceptional circumstances that precluded the submittal of this project prior to this scheduling date. In such instances, the project shall require the recommendation of the County Engineer and prior notification (with right of rejection) to the County Administrator and Board of Supervisors.

3. The County Engineer, through her designated project manager, shall provide the Public Agency with a written estimate of the anticipated costs prior to the start of the project. The Public Agency must submit written approval of this estimate and authorization to proceed before the work will begin. The Public Agency is ultimately responsible for project design and scope of work.

4. During work on any such Public Agency project, COUNTY staff shall maintain their status as COUNTY employees. For the purposes of workers' compensation, an employee of a party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of, another party pursuant to this Agreement, is deemed to be an employee of both the party who is the employee's primary employer and the party under whose jurisdiction or control or within whose jurisdictional boundaries the employee is then working, as provided in A.R.S. § 23-1022(D). The primary employer party of such employee shall be solely liable for the payment of worker's compensation benefits payable as the result of the employee's participation in such activity. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

5. The County Engineer, or her designee, reserves the right to terminate COUNTY work on any particular project immediately if, in her opinion, the work poses any undue risk of harm to persons or property, is not being carried out in conformance with generally accepted standards or is not in compliance with applicable laws or regulations. The designated project supervisor for the County shall retain the authority to take such actions as may be necessary to protect the health and safety of County employees and to maintain and preserve County equipment. The Public Agency shall retain the full responsibility for compliance with all of the laws and regulations that may be applicable to the performance of the subject project on the Public Agency's property, including responsibility for obtaining any necessary permits and complying with its own procurement rules, unless the COUNTY has expressly agreed, in writing, to assume the responsibility for any specific portion of these requirements.

6. The Public Agency shall reimburse the COUNTY for the COUNTY'S performance by the payment of the total cost for the following components of this work:

- a. COUNTY employee labor costs based upon the direct hourly cost to the COUNTY of each employee, at the overtime (time and one half) rate for each such employee. This labor cost shall include benefits and all other related costs actually incurred by the COUNTY for this work, but not overhead costs associated with the COUNTY employee;
- b. Equipment costs, including the full costs for maintenance, repair and depreciation for each item of equipment, as specified in the attached Table 1. The County reserves the right to update this Table on an annual basis to reflect any increases in these costs during the preceding year. Any subsequent Table shall be provided to the Public Agency and shall be deemed to be an amendment to this Agreement upon receipt, provided that no such amendments shall be applicable to a project that has already been initiated;
- c. The actual costs of all fuel and replacement parts for those components consumed by or expended on the work on this project, at the rate the County pays for these materials; and

- d. The cost of all construction materials, to be billed at the rate paid by the COUNTY for such materials.

The COUNTY shall submit an itemized invoice to the Public Agency for these costs, which shall be paid within twenty (20) days of the date of the invoice. Payment shall be made on the basis of this invoice and shall not be limited or increased by the amount of the prior estimate.

7. Each party agrees to assume responsibility for all claims, demands, suits, damages, and loss (“claims”) which result from the negligence or intentional torts of that party or its agents, officers and employees in the performance of this AGREEMENT, but only to the extent that such claims arise from such negligence or intentional torts. The extent of the foregoing liabilities shall be limited to, and determined by, the respective fault of the parties, their agents, subcontractors and employees in comparison with others (including, but not limited to, the other party) who may have contributed to or in part caused any such claim to arise.

8. This AGREEMENT may be terminated by either party upon written notice from either party, with or without cause. Any such termination shall end all further obligations except for the payment for previously performed work and the continuing obligation for any indemnity, as stated above. This AGREEMENT may be canceled pursuant to A.R.S. § 38-511.

9. Pursuant to A.R.S. § 11-952(D), an attorney for the Public Agency and the COUNTY must review this AGREEMENT.

10. This AGREEMENT shall run for a period of one year and shall automatically renew at the end of that period unless either party gives notice to the contrary.

11. This AGREEMENT may be executed and delivered in counterparts, including electronic execution and delivery.

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT this _____ day of _____, 2013.

The Public Agency
Fairfield Estates Road Improvement
and Maintenance District

COUNTY OF COCHISE

By: 
John Langhoffs
Chairperson, Board of Directors

By: _____
Richard Searle
Chairman, Board of Supervisors

ATTEST:

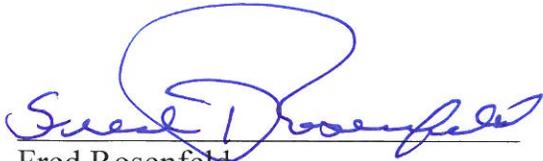
ATTEST:

Clerk

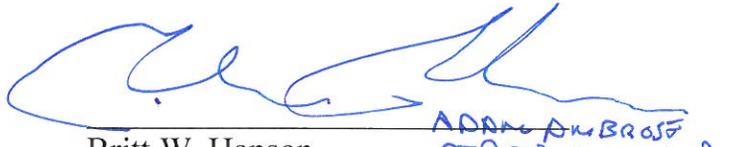
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Fred Rosenfeld
Public Agency Attorney



Britt W. Hanson
Chief Civil Deputy, County Attorney

TABLE 1**Equipment Rates - Highway Dept.**

Class Number	Description	Cost
01	Pick Up Truck	\$0.53 / Mile
02	One-Ton Truck	\$0.53 / Mile
03	Two Axle Truck	\$0.53 / Mile
04	Dump Truck	\$35.00/Hour
05	Transport	\$44.00/Hour
07	Water Truck	\$32.00/Hour
10	Grader	\$42.00/Hour
11	Loader	\$51.00/Hour
16	Backhoe	\$41.00/Hour
21	Broom	\$45.00/Hour
25	Striper S/P	\$109.00/Hour
35	Mower	\$38.00/Hour
51	Small Trailer	\$2.00/Hour
52	Large Trailer	\$9.00/Hour
60	Chip Spreader	\$76.00/Hour
61	Oil Distributor	\$34.00/Hour
68	Roller S/P	\$20.00/Hour
71	Compressor	\$10.25/Hour
73	Welder	\$8.00/Hour
78	Forklift	\$33.33/Hour
89	Bomag	\$118.00/Hour
93	Crack Fill Machine	\$23.06/Hour