

RESOLUTION NO. 17-30

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AUTHORIZING THE CITY OF APACHE JUNCTION, ARIZONA TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH PINAL COUNTY ARIZONA FOR THE LEASE OF EQUIPMENT/VEHICLES.

WHEREAS, the City of Apache Junction ("City") and Pinal County ("County") desire to enter into an intergovernmental agreement ("IGA") allowing the sharing of equipment/vehicles; and

WHEREAS, the Pinal County Board of Supervisors and Apache Junction City Council both look to limit capital and infrastructure maintenance costs through intergovernmental operation; and

WHEREAS, pursuant to A.R.S. § 11-952(A), public entities may enter into intergovernmental agreements with other municipalities and governmental entities (the "Parties") for joint or cooperative activities; and

WHEREAS, the Parties have crafted the attached written agreement in the form of an intergovernmental agreement which formalizes the arrangement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION ARIZONA, AS FOLLOWS:

- 1) The mayor and city council hereby approve the intergovernmental agreement for the sharing of equipment/vehicles as set forth in Attachment A; and the Mayor is hereby authorized to sign the agreement on behalf of the City.
- 2) The city manager and/or his designee is authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution and to fulfill all the duties required under the IGA.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 2017.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2017.

JEFF SERDY
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN PINAL COUNTY AND
CITY OF APACHE JUNCTION FOR
LEASE OF EQUIPMENT/VEHICLES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") dated the ____ day of _____, 2017, is made by and between PINAL COUNTY, a political subdivision of the State of Arizona ("Pinal") and CITY OF APACHE JUNCTION, an Arizona municipal corporation ("Apache Junction"). Both collectively referred to as the "Parties" or individually as a "Party".

RECITALS

A. Pinal and Apache Junction are in possession of equipment/vehicles ("Equipment") that each Party has expressed interest in sharing in the use thereof.

B. The Pinal Board of Supervisors and Apache Junction City Council both look to limit capital and infrastructure maintenance costs through intergovernmental operation.

C. Both Parties have the desire and ability to assist each other.

D. There is also a need for mutual cooperation between the Parties on street maintenance issues.

E. This Agreement will promote efficiency in the use of public funds and will encourage future cooperation between the parties.

F. Pursuant to Arizona Revised Statutes ("A.R.S.") § 11-951, *et seq.*, the Parties are authorized to enter into intergovernmental agreements for the purposes of exchanging property and taking joint or cooperative action.

AGREEMENT

IN CONSIDERATION of the mutual covenants contained in this Agreement the Parties agree as follows:

1. RECITALS. The Recitals set forth above are incorporated into this Agreement as if set forth in their entirety hereinbelow.

2. LEASE OF EQUIPMENT. Both Pinal and Apache Junction shall lease its equipment to the other, and provide experienced operators for said equipment when needed. No request for equipment use shall be unreasonably withheld; however, either Party may, at its discretion, refuse a request for use of its equipment when their equipment is necessary for their own use.

3. RENT. Each Party hereto shall pay rent to the other for leased equipment and experienced operator at the current Federal Emergency Management Agency Schedule of Equipment Rates published on the World Wide Web at <http://www.fema.gov/government/grant/pa/eqrates.shtm>.

4. **MILEAGE.** Mileage at the current Internal Revenue Service Regulated Mileage Rate shall be paid for the transportation of equipment by one Party to the other Party's job site.

5. **TERM.** This Agreement shall commence upon execution by both parties hereto, and shall terminate exactly one (1) year thereafter unless terminated sooner as provided in section 18 below. This Agreement shall automatically renew for successive one (1) year periods unless either Party gives written notice to the other of that Party's intention NOT to renew this Agreement at least thirty (30) calendar days prior to termination.

6. **ADVANCE NOTICE.** A request to use equipment pursuant to this Agreement shall be made no less than one (1) week in advance. A timely request shall not be unreasonably refused or withdrawn. In the event of an emergency, the requirement for a request to be made no less than one (1) week in advance is waived.

7. **USE OF LEASED EQUIPMENT.** Each Party shall only use leased equipment on roads within the party's jurisdiction.

8. **TRAFFIC CONTROL.** Each Party shall provide their own necessary traffic control while utilizing the equipment and manpower of the other, including but not limited to placement of warning signs, road closures, detours, public notification, flagmen and pilot vehicle.

9. **FUEL, MAINTENANCE, REPAIRS.** Each Party shall be responsible for and shall pay for fueling and preventive maintenance when utilizing the equipment of the other Party and shall pay for repair costs, caused by negligence or abuse by its employees, agents or anyone acting on its behalf.

10. **RECORDS.** Each Party shall maintain daily records of equipment utilized pursuant to this Agreement for hours of use, operator's hours, fuel usage, and preventive maintenance and shall make said records available for review upon request of the Party that owns this equipment.

11. **SUPERVISORY CONTROL.** The Party utilizing the equipment of the other shall have supervisory control of the operator and shall direct the actions and activities of the operator. The Party utilizing the equipment shall be responsible for the operator's actions; however, the operator does not become an employee of the Party utilizing the equipment.

12. **INDEMNIFICATION AND INSURANCE.** To the extent permitted by law, each Party covenants and agrees to fully indemnify, defend and hold harmless the other Party, its special districts, elected and appointed officers, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement, including attorney and expert witness fees, which, are the result of any act or omission of the Party, its officers, employees, contractees, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. If any action or claim shall be brought or asserted against either Party or its directors, officers, agents, servants or employees for which indemnity may be sought from the other Party, the Parties shall promptly notify one another in writing. The noticed Party shall, within ten (10) working days of receiving such notice, assume the defense thereof, and the payment of all

expenses, including any attorney fees and all court costs which shall be paid as incurred. It is understood and agreed that both Parties may elect to self-insure or obtain insurance through their pooling agreement with other governmental entities against any or all of the risks related to this Agreement. This section shall survive the expiration or early termination of this Agreement.

13. **WORKERS COMPENSATION.** Each Party hereto shall be responsible for its own employees' workers' compensation claim, if any arises under the performance of this Agreement.

14. **ASSIGNMENT.** This Agreement is non-assignable in whole or in part by either party hereto.

15. **BILLING.** Invoices must be received within thirty (30) calendar days of the use of the equipment. Invoices must be paid within thirty (30) calendar days of receipt.

16. **NOTICE.** All notices and other communications connected with this Agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited in a U.S. mail box, in a postage, prepaid envelope addressed to the other party to the address provided herein:

Clerk, Pinal County Board of Supervisors
Post Office Box 827
Florence, AZ 85132

City of Apache Junction
Public Works Department
Attn: Public Works Director
575 East Baseline Avenue
Apache Junction, Arizona 85119

17. **CANCELLATION.** This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

18. **TERMINATION.** This Agreement may be terminated at any time and for any reason by either Party giving the other party at least thirty (30) calendar days prior written notice of such termination.

19. **DEFAULT.** In the event of a default in the performance of any of the terms and conditions under this Agreement herein agreed to, each Party shall have all remedies as provided by law and the prevailing Party shall be entitled to recover attorneys' fees and costs as the court or arbitrator may determine in any legal action brought forth.

20. **APPLICABLE LAW AND VENUE.** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term

of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

21. **ENTIRE AGREEMENT.** This Agreement and any attachments represent the entire agreement between Apache Junction and Pinal and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

22. **PARAGRAPH HEADINGS.** The titles of the paragraphs in this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

23. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all Parties hereto or their respective successors in interest.

24. **SEVERABILITY.** Apache Junction and Pinal County each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring either Party to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

25. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate, each of which shall be an original when executed by all parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, these presents are hereby signed and agreed to by the parties hereto.

CITY OF APACHE JUNCTION, an
Arizona municipal corporation

PINAL COUNTY, a political subdivision
of the State of Arizona

By: _____
Jeff Serdy, Mayor

By: _____
Chairman

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Kathy Connelly, City Clerk

By: _____
Clerk/Deputy Clerk of the Board

COUNSEL APPROVAL AS TO FORM:

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

Deputy County Attorney

Date

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

Richard J. Stern, Apache Junction City Attorney

Date