

RESOLUTION NO. 2014-05

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT WITH STATE OF ARIZONA RELATING TO THE LEASE OF OFFICE SPACE FOR LAW ENFORCEMENT ACTIVITIES AND OPERATIONS.

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

SECTION 1. The Amended and Restated Intergovernmental Agreement with the State of Arizona, Department of Public Safety relating to the lease of office space for law enforcement activities and operations (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

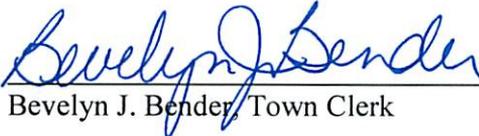
SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, April 3, 2014.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:


Linda M. Kavanagh, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Kenneth W. Buchanan, Town Manager


Andrew J. McGuire, Town Attorney

**EXHIBIT A
TO
RESOLUTION NO. 2014-05**

[Agreement]

See following pages.

AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE ARIZONA DEPARTMENT OF PUBLIC SAFETY

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of March 20, 2014, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and the Arizona Department of Public Safety, a law enforcement agency of the State of Arizona ("DPS"). The Town and DPS are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. The Town and DPS entered into an Intergovernmental Agreement, DPS Contract No. 2005-147, KR5-0558-TRN for DPS to lease office space within Town Hall located at 16705 East Avenue of the Fountains (the "IGA").

B. The Town and DPS desire to amend and restate the IGA to modify the terms and conditions by which the Town will lease office space to DPS.

C. The Town is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952 and DPS is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 41-1713(B)(3) and 11-952.

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 is hereby acknowledged, the Parties agree as follows:

1. Lease of Office Space. The Town agrees to lease to DPS 528 square feet of office space located within Town Hall at 16705 East Avenue of the Fountains (the "Office Space").

2. Rent. DPS shall pay the Town \$578.00 per month as rent (the "Rent") for the Office Space during the term of this Agreement. Rent shall be due on the 1st of each month.

3. Use. DPS shall occupy and use the Office Space for law enforcement related operations and activities.

4. Services; Utilities. The services and utilities shall be provided as follows:

4.1 Town's Obligations. The Town shall provide utilities and custodial services (the "Services") for the Office Space. DPS shall pay the Town \$331.07 per month for

the Services during the term of this Agreement. The Town may adjust the cost of the Services, subject to an annual review of the cost incurred by the Town to provide the Services to the Office Space.

4.2 DPS Obligations. DPS shall pay the Town for the Services on the 1st of each month with the payment of the Rent. DPS shall secure and pay for its own telecommunication services in the Office Space.

4. 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, 2018, unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement.

5. Maintenance; Alterations. Each Party shall be responsible for maintaining its own property and shall reasonably clean, maintain and repair its property at its own expense during the term of this Agreement. DPS shall be responsible for the repair and replacement of any damage to the Office Space that occurs as a result of DPS's use of the Office Space, normal wear and tear excepted. The Town reserves the right to enter the Office Space at all reasonable times to perform the Town's repair and maintenance obligations. DPS shall not be permitted to make any alterations or improvements to the Office Space without the prior, written consent of the Town, which consent may be withheld in the sole discretion of the Town.

6. Indemnification. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party and each board or council member, officer, employee or agent thereof (the Party being indemnified and any such person referred to herein as 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 other Party, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage secured by the indemnifying Party will in no way be construed as limiting the scope of the indemnity in this Section. This Section shall survive the termination or expiration of this Agreement for one year from the date of such termination or expiration.

7. Insurance. The Parties acknowledge that DPS is self-insured for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement. This self-insurance protects DPS only.

8. Termination; Cancellation.

8.1 For Convenience. This Agreement may be terminated by either Party with or without cause upon 30 days' written notice to the other Party.

8.2. If either Party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days.

8.3 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

8.4 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5, ARIZ. REV. STAT. § 42-17106 and ARIZ. REV. STAT. § 15-905(N). The provisions of this Agreement for payment of funds or the incurring of expenses by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each Party shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement and each Party shall keep the other Party fully informed as to the availability of funds for this Agreement. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of such Party. If the governing body of either Party fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and each Party shall be relieved of any subsequent obligation under this Agreement.

9. Miscellaneous.

9.1 Independent Contractor. The Parties acknowledge and agree that the services provided under this Agreement are being provided by each Party as an independent contractor, not as an employee or agent of the other Party. Each Party, its employees and subcontractors are not entitled to workers' compensation benefits from the other Party. The Parties do not have the authority to supervise or control the services provided under this Agreement by the other Party, its employees or subcontractors. Each Party shall determine the time of its performance of the services provided under this Agreement subject to the requirements set forth herein. The Parties do not intend to nor will they combine business operations under this Agreement.

9.2 Applicable Law; Venue. 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.

9.3 Laws and Regulations. Both Parties shall keep fully informed and shall at all times during the performance of their duties under this Agreement ensure that they and any person for whom the Parties are responsible remain in compliance with all rules, regulations, ordinances, statutes or laws affecting the services, including the following: (A) existing and future Town and county ordinances and regulations; and (B) existing and future state and federal laws, including existing and future Occupational Safety and Health Administration standards.

9.4 Amendments. This Agreement may be modified only by a written amendment approved by the Parties' respective governing body and signed by persons duly authorized to enter into contracts on behalf of the Parties. Any attempt at oral modification of this Agreement shall be void and of no effect.

9.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this 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, this Agreement will promptly be physically amended to make such insertion or correction.

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

9.7 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 this 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.

9.8 Assignment; Subletting. No right or interest in this Agreement shall be assigned by DPS without prior, written permission of the Town signed by the Town Manager and no subletting of any portion of the Office Space shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or subletting by DPS in violation of this provision shall be a breach of this Agreement.

9.9 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.10 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 Avondale: 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 DPS: Arizona Department of Public Safety
P.O. Box 6638
Phoenix, Arizona 85323
Attn: Facilities Management, MD 1220

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.

9.11 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

9.12 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

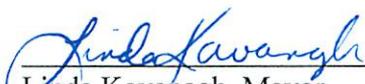
10. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may

result in the termination of this Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

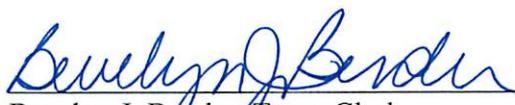
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as set forth below.

"Town"

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

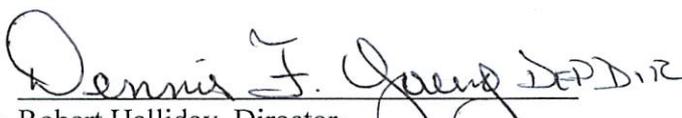

Linda Kavanagh, Mayor

ATTEST:


Bevelyn J. Bender, Town Clerk

"DPS"

ARIZONA DEPARTMENT OF PUBLIC SAFETY, an law enforcement agency of the State of Arizona


For Robert Halliday, Director
3/19/14

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.


Andrew J. McGuire, Town Attorney

 3/18/14
Assistant Attorney General