

RESOLUTION NO. 2009-03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF PARADISE VALLEY RELATING TO ON-CALL TRAFFIC SIGNAL SERVICES.

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

SECTION 1. That the Intergovernmental Agreement between the Town of Fountain Hills and Town of Paradise Valley relating to on-call traffic signal services (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. That 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 4, 2009.

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. 2009-03

[Intergovernmental Agreement]

See following pages.



**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE TOWN OF PARADISE VALLEY**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made as of June 4, 2009, by and between the Town of Fountain Hills, an Arizona municipal corporation ("Fountain Hills"), and the Town of Paradise Valley, an Arizona municipal corporation ("Paradise Valley") (hereinafter, individually as a "Party" or collectively as the "Parties").

RECITALS

A. ARIZ. REV. STAT. §§ 11-951 and 11-952 authorize intergovernmental agreements by and between political subdivisions such as the Paradise Valley and the Town.

B. Fountain Hills and Paradise Valley mutually desire to provide each other with "emergency" traffic signal repair services for traffic signals located within the corporate boundaries of Fountain Hills or Paradise Valley, as applicable (the "Emergency Services").

C. The Parties desire to enter into an intergovernmental agreement to set out each Party's obligations with respect to the Emergency Services.

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 hereby agree as follows:

1. Definitions. The following words, terms and phrases, when used in this Agreement, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

1.1 "Controller" means the primary unit, device or control that controls, warns, indicates, counts, or detects vehicles or pedestrians, or both by means of electrical, electronic, mechanical or other similar method to regulate changes in phase, split, offset, legend or other timed or non-timed functions of traffic signals and which is generally housed in a local or master cabinet, or both.

1.2 "Emergency" means any situation, condition or status of any traffic control equipment located within the corporate boundaries of either Party, as applicable, which requires Emergency Services as mutually agreed by the Parties in accordance with the terms of this Agreement. In the case that the Parties do not agree on the existence of an "Emergency" or the necessity for the Emergency Services, the Requesting Party, as defined below, shall make the

final determination as to the existence of an “Emergency” or the necessity for the Emergency Services. “Emergency” shall not include routine traffic signal maintenance.

1.3 “Material,” “part,” “assembly” and “unit” mean those items that must be replaced in order to satisfactorily complete the Emergency Services pursuant to the terms of this Agreement.

1.4 “Providing Party” means the Party providing the Emergency Services.

1.5 “Regular Business Hours” mean those hours respectively during which the Fountain Hills Streets Department or the Paradise Valley Traffic Signal Division are operational. Regular Business Hours shall exclude all weekends and legal holidays.

1.7 “Requesting Party” means the Party requesting the Emergency Services.

1.8 “Traffic control equipment” means all materials, parts and assemblies, including any cabinet, circuit breaker box, controller or any other unit, device or control used to control, warn, advise, count or detect vehicular or pedestrian traffic, or both, by means of an electrical, electro-mechanical, electronic, or other similar means and includes all individual parts, units assemblies and controls to achieve the means to control, warn, advise, count or detect a vehicular or pedestrian movement, or both.

2. Term. This Agreement is effective upon Town Council approval by both Parties, and shall remain in effect from July 1, 2009 until June 30, 2010 (the “Initial Term”). Upon expiration of the Initial Term, the Agreement may be extended, upon written agreement of the Parties, for two additional one-year periods (the “Renewal Terms”). The Initial Term and the Renewal Terms are collectively referred to as the “Term.”

3. Parties’ Obligations.

3.1 Mutual Provision of Emergency Services; Procedures. Fountain Hills and Paradise Valley shall provide the Emergency Services to each other upon request in an Emergency during and after Regular Business Hours, weekends and holidays in accordance with the terms of this Agreement. Further,

a. Eligibility. All Fountain Hills and Paradise Valley traffic signal technicians holding a current Level II or III International Municipal Signal Association (“IMSA”) certification shall be eligible to provide the Emergency Services (the “Eligible Technicians”).

b. No Routine Maintenance. The Parties shall not request the Emergency Services for routine maintenance of any traffic control equipment.

c. Request for Emergency Services As Last Resort. The Parties shall not request the Emergency Services unless an Eligible Technician is absent from work, as

described in subsection 3.7, and such absence leaves the Requesting Party with no other Eligible Technicians available to perform the Emergency Services on behalf of the Requesting Party.

d. Designated Contact Method or Device. Fountain Hills' and Paradise Valley's Eligible Technicians shall be issued, or shall maintain, and must carry a designated cell phone, radio or other paging device during and after Regular Business Hours, during weekends, holidays and other agreed-upon times. Eligible Technicians must ensure that the designated cell phone, radio or other paging device is operational.

e. Service Area. Eligible Technicians must stay within a 60 mile radius (the "Service Area") of the Fountain Hills or Paradise Valley Town Halls. Eligible Technicians that need to leave the Service Area must notify a supervisor, Paradise Valley Police Department dispatch, the Fountain Hills Superintendent of Streets and the next Eligible Technician to replace the Eligible Technician leaving the Service Area.

f. Prohibited Substances. Responding Technicians, as defined in subsection 3.6 below, shall not consume alcoholic beverages or any other substance that might impair the technician's ability to operate automobiles, tools, any other equipment or to otherwise perform the Emergency Services.

g. Procedures. Fountain Hills adopted that certain Administrative Policy C-1, entitled "On-Call Policy, Traffic Signal Technician, Level II & III," effective April 20, 2009, as amended, and any Fountain Hills Responding Technician, as defined in subsection 3.6 below, shall adhere to same, which shall, in accordance with this Agreement, govern the procedures to be followed by Fountain Hills' Responding Technician when responding to a request for Emergency Services from Paradise Valley. Additionally, Paradise Valley adopted that certain policy entitled "Public Works Department, Standard Operating Procedure #1, On-Call Procedures," effective February 1, 2003, as amended, and any Paradise Valley Responding Technician, as defined in subsection 3.6 below, shall adhere to same, which shall, in accordance with this Agreement, govern the procedures to be followed by Paradise Valley's Responding Technician when responding to a request for Emergency Services from Fountain Hills.

3.2 Contact Telephone Numbers. Fountain Hills and Paradise Valley shall designate and maintain a 24-hour, continuous, one-number telephone answering service or provide each other with at least two current telephone numbers for its Eligible Technicians. If the telephone numbers are to be changed, the Party changing its designated telephone number shall notify the other at least one month before the date of change.

3.3 No Responsibility for Street Lights. Neither Party shall be responsible for repairs or maintenance of the other Party's non-signal street lights that are or are not mounted on traffic signal poles.

3.4 Response Time. The Providing Party shall arrive at the location for which the Emergency Services are requested within four hours from the time a request is received by the Providing Party. The 4-hour time period shall apply whether the Emergency Services are requested during or after Regular Business Hours. However, if the Emergency Services are

requested during Regular Business Hours, and if the Providing Party, at the time the request is received, has its technicians performing traffic signal maintenance and repair within its own corporate boundaries, then the Providing Party shall arrive at the location for which the Emergency Services are requested within four hours from the time the technician completes the pre-occupying work within its own corporate boundaries.

3.5 Return of Equipment. All traffic control equipment that is removed and replaced in connection with the Emergency Services shall be returned to the Requesting Party within a reasonable time and at a reasonable location designated by the Requesting Party.

3.6 Responding Technician. One technician shall respond to each call for Emergency Services (the "Responding Technician"), unless the Requesting Party has indicated that the nature of the problem requires more than one person. The Responding Technician shall hold a current Level II or III IMSA certification. The Requesting Party shall provide additional personnel if needed.

3.7 Absence of Technician. Fountain Hills and Paradise Valley shall each notify the other upon discovering, learning of or being notified of a technician's absence from work and such absence leaves the notifying Party with no other Eligible Technicians available to perform the Emergency Services on behalf of that notifying Party. A Party's technician shall be considered absent only if such technician is not working or not available for work during Regular Business Hours because of illness, vacation or other unscheduled obligation. A Party's technician shall not be considered absent if working at another location within the Requesting or Providing Party's corporate boundaries.

3.8 Service Trucks. Fountain Hills and Paradise Valley shall each maintain their respective service truck for responding to requests for Emergency Services. Service trucks shall be equipped with all necessary equipment and tools for safely accessing and repairing traffic control equipment.

3.9 Required Materials, Parts, Assemblies and Units; Identification. Materials, parts, assemblies and units will be provided by the Providing Party. The Providing Party shall make a determination as to what material, part or assembly shall be used. The Providing Party shall identify the traffic control equipment used, required, or maintained and such identification shall be made in writing on any invoice, log, work order, purchase order or other record required by the provisions of this Agreement. Identification shall be made by part numbers supplied by the equipment manufacturer, by serial number or by commonly known terms used by the Institute of Transportation Engineers, or any combination thereof. No other identification or classification of traffic control equipment shall be made.

3.10 Cost of Materials; Manner of Replacement. The cost of any materials, parts or units used shall be borne by the Requesting Party, and the Providing Party shall not increase such cost by any amount, percentage, or fee other than the fees set forth in this Agreement.

3.11 Timing Changes. The Providing Party shall not make any timing changes on the controller.

3.12 Notification. An authorized representative of the Requesting Party shall request the Emergency Services by calling the telephone number as provided by the Providing Party.

3.13 Work Undertaken. Paradise Valley and Fountain Hills each warrant that the Emergency Services rendered shall be performed in a workmanlike manner.

3.14 Locks and Keys. Fountain Hills and Paradise Valley shall provide locks or other security devices for all traffic control equipment located within each respective Party's corporate boundaries. Fountain Hills and Paradise Valley shall provide each other keys for any locks or other security devices securing any traffic control equipment located within each respective Party's corporate boundaries.

3.15 Maintenance Records. Fountain Hills and Paradise Valley shall provide permanent maintenance logs, which logs shall be maintained at each traffic control equipment location. Each maintenance log shall include timing sheets and phasing diagrams for the traffic control equipment location at which such maintenance log is located. After performing the Emergency Services at any traffic control equipment location, the Responding Technician shall sign and date the log maintained at such location. The Responding Technician shall also indicate on the log the time the Emergency Services were completed and identify the materials as required by subsection 3.9, above.

3.16 Time of Completion; Delay. The Emergency Services shall be undertaken immediately upon request and completed as soon as possible, unless otherwise agreed in writing by the Parties. If the requested Emergency Services are not or cannot be completed by or before Regular Business Hours begin on the next business day following the request for Emergency Services, the Providing Party shall, as soon as possible, notify the Requesting Party's authorized representative. Upon notification by the Providing Party, the Requesting Party shall take all steps necessary to complete the Emergency Services or otherwise arrange for the completion of the Emergency Services requested and to document in writing the steps taken. The Providing Party shall immediately provide the Requesting Party with written notice of any delay due to Acts of God, acts of war, acts of the Requesting Party, acts of another contractor in the performance of a contract with the Requesting Party, unavailability of parts or other materials required for the work in question, fires, flood, epidemics, quarantine restriction, strikes, freight embargoes, abnormal or unforeseeable weather or to any preference, priority or allocation duly issued by the Requesting Party.

4. Compensation. If a Responding Technician is called out to perform the Emergency Services, the Requesting Party shall pay to the Providing Party \$75.00 per hour for labor and \$75.00 per hour for a lift truck, when used to perform the Emergency Services plus the cost of materials. The prices may be changed (i) after the beginning of any fiscal year during the Term of this Agreement in accordance with the provisions for modification of this Agreement or (ii) on July 1 of each year in conjunction with the annual renewal of this Agreement.

5. Payment. The Requesting Party shall pay the Providing Party monthly, 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. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

6. Termination; Disposition of Property. Either Party may terminate this Agreement upon 90 days' written notice to the other Party at the addresses indicated below, and, upon such termination, all personal property, assets, equipment and supplies used by the Parties in performance of their responsibilities shall remain with or be returned to the owner of such property.

7. Insurance. The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insurance program may fulfill the insurance requirement.

8. Indemnification. To the fullest extent permitted by law, each Party shall indemnify, and hold harmless each other, each other's agents, representatives, officers, officials and employees for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes in conducting the Emergency Services. The Party's duty to indemnify and hold harmless each other, each other's agents, representatives, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes, related to the Emergency Services.

9. 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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to Fountain Hills: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Attn: Richard L. Davis, Town Manager
Facsimile: 480-816-5100

With copy to: Gust Rosenfeld, PLC
201 East Washington Street, Suite 800
Phoenix Arizona 85004-2327
Attn: Andrew J. McGuire, Esq.
Facsimile: 602-340-1538

If to Paradise Valley: Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, Arizona 85253-4399
Attn: James C. Bacon, Jr., Town Manager
Facsimile: 480-951-3715

With a copy to: Town of Paradise Valley
6401 East Lincoln Drive, Suite 800
Paradise Valley, Arizona 85253-4399
Attn: Andrew Miller, Esq.
Facsimile: 480-596-3790

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 Section. Notices shall be deemed received (i) when delivered to the Party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) 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, or (iv) when received by facsimile transmission or e-mail during the normal business hours of the recipient, with proof of delivery. 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.

10. Miscellaneous.

10.1 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.

10.2 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.

10.3 Assignment and Delegation. Neither Party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any

termination shall not relieve either Party from liabilities or costs already incurred under this Agreement.

10.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

10.5 Workers' Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 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 worker's compensation."

10.6 Conflict of Interest. This Agreement may be canceled by any Party pursuant to the provisions of ARIZ. REV. STAT. § 38-511.

10.7 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 the Agreement and may result in the termination of the 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.

10.8 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Parties each certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If either Party determines that the other Party submitted a false certification, the Party making such determination may impose remedies as provided by law including terminating this Agreement.

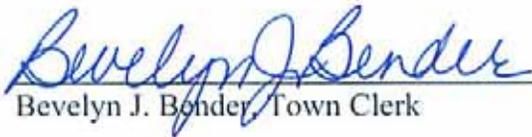
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

"Fountain Hills"

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation


Jay T. Schlum, Mayor

ATTEST:

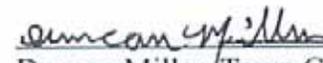

Bevelyn J. Bender, Town Clerk

"Paradise Valley"

TOWN OF PARADISE VALLEY, an Arizona municipal corporation


Vernon B. Parker, Mayor

ATTEST:


Duncan Miller, Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Town Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (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
Fountain Hills Town Attorney


Steven Zraick 
Paradise Valley Deputy Town Attorney

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RESOLUTION NUMBER 1190

**A RESOLUTION OF THE TOWN OF PARADISE VALLEY,
ARIZONA, APPROVING AN INTERGOVERNMENTAL
AGREEMENT WITH THE TOWN OF FOUNTAIN HILLS
FOR THE PURPOSE OF PROVIDING ON-CALL
EMERGENCY TRAFFIC SIGNAL REPAIR SERVICES**

WHEREAS, Arizona Revised Statutes, 11-951 et seq., provides that public agencies, including cities and towns, may enter into intergovernmental agreements for joint or cooperative action; and

WHEREAS, the Town of Paradise Valley (Town) and the Town of Fountain Hills (Fountain Hills) desire to enter into an Intergovernmental Agreement (Agreement, attached hereto as Exhibit "A") where each municipality will, pursuant to the terms specified in the Agreement, provide on-call emergency traffic signal repair services for the other municipality.

THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise Valley that the Town Manager is hereby authorized to execute the Agreement on behalf of the Town and record the Agreement as required by law.

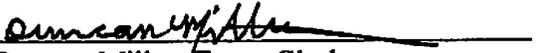
PASSED AND ADOPTED by the Town Council this 11th day of June, 2009.



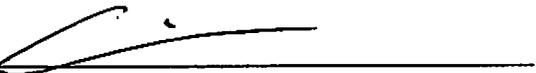
Vernon B. Parker, Mayor

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ATTEST:


Duncan Miller, Town Clerk

APPROVED AS TO FORM


Andrew M. Miller, Town Attorney