

**RESOLUTION NO. 2009-07**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF SCOTTSDALE RELATING TO FINGERPRINTING 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 City of Scottsdale relating to fingerprinting services (the "Agreement") is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

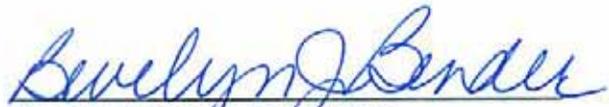
SECTION 2. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, April 2, 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. 2009-07**

**[Intergovernmental Agreement]**

**See following pages.**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
THE CITY OF SCOTTSDALE  
FOR  
FINGERPRINTING SERVICES**

**THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of April 21, 2009, between the Town of Fountain Hills, an Arizona municipal corporation ("Fountain Hills") and the City of Scottsdale, Arizona, an Arizona municipal corporation ("Scottsdale"). Fountain Hills and Scottsdale are sometimes collectively referred to in this Agreement as the "Parties" and each individually as a "Party."**

**RECITALS**

**A. Fountain Hills and Scottsdale have authority to enter into the Agreement pursuant to ARIZ. REV. STAT. § 11-952.**

**B. Pursuant to Fountain Hills Ordinance 05-08, Fountain Hills has determined that it is in the best interest of Fountain Hills to inquire into the character and past criminal conduct of (i) all prospective Fountain Hills employees and (ii) all Fountain Hills employees, temporary agency employees and volunteers who are anticipated to be in contact with minors, disabled or homebound persons, for the purpose of obtaining criminal history record information from the Arizona Department of Public Safety ("DPS") and the Federal Bureau of Investigation ("FBI").**

**C. DPS is authorized pursuant to ARIZ. REV. STAT. § 41-1750 to provide criminal history record information to Fountain Hills to evaluate the fitness of (i) all prospective Fountain Hills employees and (ii) all Fountain Hills employees, temporary agency employees and volunteers who are anticipated to be in contact with minors, disabled or homebound persons.**

**D. The FBI is authorized pursuant to Public Law 92-544 to exchange identification records with officials of state and local governments for the purpose of employment.**

**E. Fountain Hills desires to utilize Scottsdale's fingerprinting services (the "Services") in order to obtain usable fingerprinting cards to be submitted to DPS and the FBI for criminal background checks for Fountain Hills' potential new employees and all Fountain Hills employees, temporary agency employees and volunteers who are anticipated to be in contact with minors, disabled or homebound persons (the "Candidates").**

**F. Fountain Hills and Scottsdale desire to enter into this Agreement to set forth their respective rights and obligations with respect to the implementation of the Services.**

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the promises and covenants set forth below, the Parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the duties and responsibilities of the Parties with respect to the Services.

2. **Term.** This Agreement shall commence on the date it is fully executed by the Parties and shall terminate on June 30, 2010. This Agreement shall thereafter be automatically renewed for successive additional one-year periods until terminated by either Party for any reason upon delivery of 60 days' written notice prior to the actual date of termination.

3. **Fountain Hills' Responsibilities.** Fountain Hills will send the Candidate to Scottsdale with a fingerprint card and a pre-paid return envelope for the Services. Scottsdale will mail the completed fingerprint card back to Fountain Hills in the pre-paid return envelope. Fountain Hills will forward the fingerprint card, with the appropriate fee, to the FBI to obtain a federal criminal background check and the DPS to obtain a State criminal background check. Information gained from any of the above criminal background checks will be held in confidence and shared with management individuals only on a need-to-know basis, unless otherwise required by law.

4. **Scottsdale's Responsibilities.** Scottsdale, through its Human Resources Department, will provide the Services to Fountain Hills for the sum of one dollar per year, which along with mutual promises contained herein, the Parties agree constitute sufficient consideration. Scottsdale will mail the completed fingerprint card back to Fountain Hills in the pre-paid return envelope. Information gained from the Services will be held in confidence, unless otherwise required by law.

5. **Contract Administrators.** The contract administrators ("Contract Administrators") for each Party to this Agreement shall be the Human Resource Administrator, or designee, for Fountain Hills, and the Human Resources General Manager, or designee, for Scottsdale. The Contract Administrators for the Parties will discuss and determine when the Services will be provided, including any necessary scheduling requirements and will otherwise coordinate to ensure that the Services are provided efficiently.

6. **Indemnification.** To the extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

7. **Appropriation of Funds.** The provisions of this Agreement for implementation of the Services by both Parties shall be effective when funds are appropriated for purposes of this

Agreement and are actually available to each Party. Each Party shall be the sole judge and authority in determining the availability of funds under this Agreement and shall keep the other Party fully informed as to the availability of funds for the Services. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of each Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either Party.

8. **Termination.** This Agreement may be terminated by either Party at-will upon 60 days' written notice.

9. **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. **Amendment.** The Parties understand and specifically agree that the terms of this Agreement may be amended from time to time only upon written agreement by each Party.

11. **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.

12. **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, 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 Fountain Hills: Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Facsimile: (480) 837-6362  
Attn: Joan E. McIntosh, Human Resources Administrator

With copy to: GUST ROSENFELD, P.L.C.  
201 East Washington, Suite 800  
Phoenix, Arizona 85004-2327  
Facsimile: (602) 340-1538  
Attn: Andrew J. McGuire, Esq.

If to Scottsdale: City of Scottsdale  
7575 East Main Street  
Scottsdale, Arizona 85251  
Facsimile: (480) 312-9148  
Attn: Human Resources General Manager

With copy to: City of Scottsdale  
3939 North Drinkwater Boulevard  
Scottsdale, Arizona 85251  
Facsimile: (480) 312-2738  
Attn: Deborah W. Robberson, City Attorney

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 (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.

13. 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.

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

15. Conflict of Interest. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

16. Nondiscrimination. Each Party shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations regarding nondiscrimination, including the Americans with Disabilities Act.

17. 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.

18. 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 the 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 instrument as of the date and year first set forth above.

**"Fountain Hills"**

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

  
Jay T. Schlum, Mayor

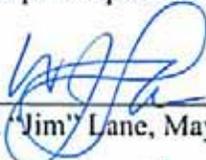
Date: 4-7-09

ATTEST:

  
Bevelyn J. Bender, Fountain Hills Town Clerk

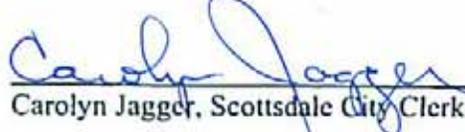
**"Scottsdale"**

CITY OF SCOTTSDALE, an Arizona municipal corporation

  
W. J. "Jim" Lane, Mayor

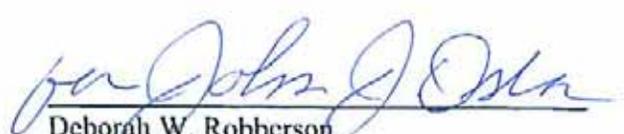
Date: 4/22/09

ATTEST:

  
Carolyn Jagger, Scottsdale City Clerk

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  
Fountain Hills Town Attorney

  
Deborah W. Robberson  
Scottsdale City Attorney