

RESOLUTION NO. 2009-31

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT RELATING TO THE TOWN'S PARTICIPATION IN AN E-VERIFY AUDIT SHARING DATABASE.

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

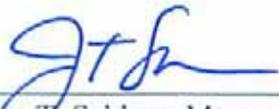
SECTION 1. That the intergovernmental agreement relating to the Town of Fountain Hills's participation in an E-verify audit sharing database (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

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.

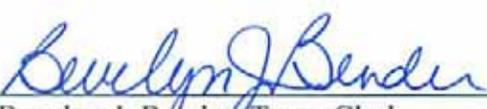
PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, August 20, 2009.

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. 2009-31**

[Intergovernmental Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
FOR SHARING THE RESULTS OF THE E-VERIFY AUDITS**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into by and between the Arizona municipal corporations listed on Exhibit A, attached hereto and incorporated herein by reference (each referred to individually as a "Initial Participating Agency" and collectively identified as the "Initial Participating Agencies"), to create a searchable database for sharing information obtained from the E-verify Audits (as defined in Recital B below). The effective date of this Agreement shall be, with respect to each party hereto, the date of such party's signature below.

RECITALS

A. The Initial Participating Agencies have authority to enter into the Agreement pursuant to ARIZ. REV. STAT. § 11-952.

B. Pursuant to ARIZ. REV. STAT. § 41-4401(B), government entities must establish procedures to conduct random verification of the employment records of government entity contractors and subcontractors to ensure their compliance with (i) all federal immigration laws and regulations that relate to their employees and (ii) employee employment eligibility verification through the E-verify program under ARIZ. REV. STAT. § 23-214(A) (the "E-verify Audits").

C. The Initial Participating Agencies desire to share the information obtained from the E-verify Audits with the other Initial Participating Agencies to (i) prevent wasting taxpayer dollars by eliminating duplicative E-verify Audits amongst the Initial Participating Agencies and (ii) reduce the burden on the contractors and subcontractors complying with the Initial Participating Agencies' E-verify Audits.

D. The Initial Participating Agencies desire to allow other Arizona municipal corporations (each, an "Additional Participating Agency") to become parties to this Agreement upon adoption hereof, unchanged, by each such Additional Participating Agency. The list of Additional Participating Agencies shall be attached hereto as Exhibit B and shall be updated and substituted herein upon the approval of the Council of each new Additional Participating Agency. The Initial Participating Agencies and the Additional Participating Agencies are individually referred to herein as a "Participating Agency" or collectively as "Participating Agencies."

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 Participating Agencies agree as follows:

1. **Term.** The initial term of the Agreement shall begin upon the date of the first Initial Participating Agency's signature hereon and shall continue in full force and effect until June 30, 2012. Thereafter this Agreement will automatically renew for successive terms of three years. This Agreement will remain in full force and effect with respect to all Participating Agencies during any such renewal term, except for any Participating Agency that has terminated its participation in this Agreement pursuant to Section 10 below.

2. **Participating Agency Warranty.** Each Participating Agency agrees and understands that its participation in this Agreement is conditioned upon its compliance with ARIZ. REV. STAT. § 41-4401, as described Section 19 below, at all times during the term of this Agreement. By executing this Agreement, each Participating Agency warrants to the others that it (a) has established an audit procedure in compliance with ARIZ. REV. STAT. § 41-4401 and (b) will perform E-verify Audits on entities from which it seeks to procure services (the "Vendor") on a periodic basis.

3. **Procedure.**

a. **Shared Searchable Database.** Each Participating Agency shall maintain all copies of the documents and records that are audited in accordance with its E-verify Audit. Each Participating Agency shall submit a summary memorandum of its results of each E-verify Audit to the Executive Director of the League of Arizona Cities and Towns (the "League"). The League will maintain a shared searchable database for all of the Participating Agencies to be able to access and view the summary memoranda of the results of the other Participating Agencies' E-verify Audits (the "Shared Database"). The League will retain the E-verify Audit information in the Shared Database for five years from the date of the E-verify Audit. The information transmitted to the League shall include, at a minimum:

- (1) Name of the Vendor.
- (2) Contact name.
- (3) Date of E-verify Audit.
- (4) Outcome of E-verify Audit.
- (5) Types of Records audited (i.e. I-9, visas).
- (6) Specific contract termination information, if any.

b. **Audit Retention Period.** Although the League will retain the E-verify Audit information in the Shared Database for five years, each Participating Agency shall independently determine the length of time for which an E-verify Audit will be valid.

c. **Costs and Expenses.** Each Participating Agency will pay for its own costs and expenses related to establishing an audit process and of performing its E-verify Audits. Each Participating Agency shall be solely responsible for budgeting funds in its annual budget and subsequently appropriating such funds as are necessary to ensure that E-verify Audits are completed and submitted to the League as set forth herein.

d. Additional Audits Permitted. Nothing contained herein shall be construed to prohibit any Participating Agency from conducting its own E-verify Audit for any or all of the Vendors listed in the Shared Database.

4. Applicable Law; Venue. In the performance of the Agreement, all Participating Agencies to the Agreement shall abide by and conform to any and all laws of the United States and State of Arizona including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to the Agreement may be brought only in courts in the State of Arizona.

5. Indemnification. Each Participating Agency and the League (each as an “Indemnitor”) agrees, to the extent permitted by law, to indemnify, defend and hold harmless the other Participating Agencies and the League (each as an “Indemnitee”) for, from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “Claims”) arising from any negligent act or intentional misconduct by any officers, officials, agents, employees or volunteers in connection with work or responsibilities performed pursuant to this Agreement, 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.

6. Insurance.

a. General Insurance Requirements. The Participating Agencies mutually agree to provide for their respective financial responsibilities relating to liability arising out of this Agreement through either the purchase of insurance or the provision of the self-funded insurance program.

b. Workers’ Compensation. All Participating Agencies to the Agreement agree that they are not joint employers for the purpose of workers compensation coverage. To the extent that employees of one Participating Agency performs duties on behalf of another Participating Agency with respect to an E-verify Audit, such employee shall be deemed to be an “employee” of both public agencies while performing such duty 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 Participating Agency 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 the State of Arizona to be employees of both public agencies for the purposes of workers’ compensation.

All Participating Agencies agree and understand that no League employee shall be considered an employee of a Participating Agency while carrying out the duties set forth in this Agreement.

7. Amendment. The Agreement may be modified only by a written amendment signed by all of the Participating Agencies; provided, however, that this Agreement may be amended unilaterally for the sole purpose of allowing an Additional Participating Agency to join in this Agreement. After approval of this Agreement in its entirety, and prior to accessing the Shared Database, each new Additional Participating Agency shall submit a fully executed signature page, in the form attached hereto, to the League for distribution to all Participating Agencies. The League will also distribute an updated Exhibit B (Additional Participating Agencies List) to all Participating Agencies.

8. Relationship of the Participating Agencies; Authority. Each Participating Agency to the Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the others. Each Participating Agency shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.

9. Integration. The Agreement represents the entire agreement of the Participating Agencies with respect to the subject matter hereof, and all agreements entered into prior hereto with respect to the subject matter hereof and revoked and superseded by this Agreement. No representations, warranties, inducements, or oral agreements have been made by any of the Participating Agencies except as expressly set forth herein.

10. Termination of Agreement. A Participating Agency may terminate its participation in this Agreement by providing not less than 30 days written notice of the intent to terminate the Agreement to the League, which shall distribute such notice to all Participating Agencies. All information submitted to the Shared Database prior to such termination shall remain accessible to the Participating Agencies and the League. The League will also distribute an updated Exhibit B (Additional Participating Agencies List) to all Participating Agencies. Following termination of participation by one or more Participating Agencies, this Agreement will remain in full effect with respect to the remaining Participating Agencies.

11. Severability. If any provision of the Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from the Agreement, which shall otherwise remain in full force and effect.

12. No Assignment. None of the Participating Agencies may assign or delegate any of its rights or obligations hereunder.

13. Waiver. Failure of any Participating Agency to exercise any right or option arising out of a breach of the Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

14. Counterparts. The 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.

15. Captions. Captions and section headings used herein are for convenience only and are not a part of the Agreement and shall not be deemed to limit or alter any provisions hereof and shall no be deemed relevant to construing the Agreement.

16. 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 each Participating Agency at the address set forth on Exhibit A or Exhibit B, as applicable, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth on Exhibit A or Exhibit B, as applicable, (c) given to a recognized and reputable overnight delivery service, to the address set forth on Exhibit A or Exhibit B, as applicable or (d) delivered by facsimile transmission to the number set forth on Exhibit A or Exhibit B, as applicable:

If to an Initial Participating Agency: See Exhibit A

If to an Additional Participating Agency: See Exhibit B

If to the League: League of Arizona Cities and Towns
 1820 West Washington Street
 Phoenix, Arizona 85007
 Facsimile: (602) 253-3874
 Attn: Ken Strobeck, Executive Director
 Dale Wiebusch, Legislative Associate

or at such other address, and to the attention of such other person or officer, as any Participating Agency may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (a) when delivered to the Participating Agency, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (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, or (d) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a Participating Agency's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Participating Agency shall mean and refer to the date on which the Participating Agency, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17. Cancellation. The Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. A Participating Agency may cancel the Agreement without penalty or further obligations by that Participating Agency or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that Participating Agency or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Participating Agency to the Agreement in any capacity or a consultant to any other Participating Agency of the Agreement with respect to the subject matter of the Agreement.

18. Continuation Subject to Appropriation. The performance by each Participating Agency to this Agreement of its respective obligations under the Agreement is subject to actual availability of funds appropriated by each Participating Agency for such purposes. Each Participating Agency to the Agreement shall be the sole judge and authority in determining the availability of funds under the Agreement and each Participating Agency shall keep the other Participating Agencies fully informed as to the availability of funds for its obligations. The obligation of each Participating Agency to fund any obligation pursuant to the Agreement is a current expense of such Participating Agency, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Participating Agency. If the Council of a Participating Agency fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate with respect to that Participating Agency at the end of the then-current fiscal year and such Participating Agency shall thereafter be relieved of any subsequent obligation under the Agreement. The Agreement will remain in full effect for the remaining Participating Agencies to the Agreement.

19. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Participating Agencies 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). A Participating Agency's 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 a non-breaching Participating Agency under the terms of this Agreement. Each Participating Agency retains the legal right to inspect the papers of the other Participating Agencies to ensure that the other Participating Agencies and their respective subcontractors are complying with the above-mentioned warranty.

20. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, each Participating Agency certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If it is determined by a court of competent jurisdiction that a Participating Agency submitted a false certification, that Participating Agency's participation in this Agreement shall terminate without any further action by any other Participating Agency. This Agreement will remain in full force and effect with respect to the remaining Participating Agencies.

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement on the dates of their respective signatures written below.

[SIGNATURES ON THE FOLLOWING PAGES]

[Faint, illegible signatures and text]

"Participating Agencies"

TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation



Jay T. Schlum, Mayor

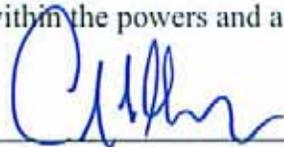
Date: August 20, 2009

ATTEST:



Bevelyn J. Bender, Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the 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

Participating Agency – Sample Signature Page

CITY/TOWN NAME, an Arizona
municipal corporation

_____, Mayor

Date: _____

ATTEST:

_____, City/Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____, City/Town Attorney

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
FOR SHARING THE RESULTS OF THE E-VERIFY AUDITS

(Initial Participating Agencies)

See following pages.

**INTERGOVERNMENTAL AGREEMENT
FOR SHARING THE RESULTS OF THE E-VERIFY AUDITS**

INITIAL PARTICIPATING AGENCIES

1. City of Avondale

Notice to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

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

2. Town of Fountain Hills

Notice to: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Facsimile: (480) 837-3145
Attn: Richard L. Davis, Town Manager

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

**EXHIBIT B
TO
INTERGOVERNMENTAL AGREEMENT
FOR SHARING THE RESULTS OF THE E-VERIFY AUDITS**

(Additional Participating Agencies)

See following pages.

**INTERGOVERNMENTAL AGREEMENT
FOR SHARING THE RESULTS OF THE E-VERIFY AUDITS**

ADDITIONAL PARTICIPATING AGENCIES

1. City/Town Name

Notice to: City/Town Name
Address
Address
Facsimile: _____
Attn: _____, Title

With copy to: Name of Company
Address
Address
Facsimile: _____
Attn: _____

2. City/Town Name

Notice to: City/Town Name
Address
Address
Facsimile: _____
Attn: _____, Title

With copy to: Name of Company
Address
Address
Facsimile: _____
Attn: _____