

**RESOLUTION NO. 2011-32**

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 TRAFFIC SIGNAL MAINTENANCE, INCLUDING EMERGENCY SERVICES.

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

SECTION 1. The Intergovernmental Agreement between the Town of Fountain Hills (the "Town") and the City of Scottsdale relating to traffic signal maintenance in the Town, including emergency services (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, August 4, 2011.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
\_\_\_\_\_  
Jay T. Schlum, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Julie Ghetti, Acting Town Manager

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2011-32

[Agreement]

See following pages.

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

THIS AGREEMENT is entered into this 28 day of June, 2011, between THE TOWN OF FOUNTAIN HILLS ("Town") and the CITY OF SCOTTSDALE ("City"), both Arizona municipal corporations, collectively referred to herein as the "Parties".

**RECITALS**

Arizona Revised Statutes Sections 11-951, et seq. provide that public agencies may enter into intergovernmental Agreements for the provision of services, or for joint or cooperative action; and

Article 1, Section 3-1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental Agreements with various public agencies, including political subdivisions of the state; and

The Town of Fountain Hills ("Town") desires to obtain certain maintenance services for traffic signals in the Town, including emergency services, and the City of Scottsdale ("City") is willing and able to provide such services; and

The parties desire to enter into an intergovernmental Agreement to set forth their respective rights, duties and obligations in respect to the services to be provided to the Town by the City.

IN CONSIDERATION of the mutual promises contained herein and for other good and valuable consideration, the parties agree as follows.

**1.0 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 TRAFFIC CONTROL EQUIPMENT**

The term "traffic control equipment" means all materials, parts, units, devices, and controls used to equip a device which controls, warns, advises, counts, or detects 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.

**1.2 CONTROLLER**

The term "controller" means the primary unit, device or control which achieves the means to control, warn, advise, count, or detect vehicles or pedestrians, or both.

**1.3 MATERIAL", "PART", "ASSEMBLY**

The term "material", "part", "assembly" means those items of replacement necessary to satisfactorily complete the work specified and described in the contract documents.

**1.4 SPECIALIZED VEHICLE OR EQUIPMENT**

The term "specialized vehicle or equipment" means a vehicle or equipment specializing in the construction or maintenance of traffic signals such as a Derrick/Auger and Trencher/Backhoe.

**2.0 SCOPE OF WORK**

The City agrees to provide maintenance and repair service, including emergency services, to the Town's traffic control system, in accordance with the terms and conditions contained in this Agreement.

The City will provide and maintain 24 hour continuous, one-number telephone answering service. If the telephone number is to be changed, the City must notify The Town at least one week before the date of change.

One traffic signal technician must respond to each call unless the nature of the problem requires more than one traffic signal technician.

The City is to provide 15 days per month of on-call service to The Town.

The City will provide a minimum of 4 to 6 weeks of regular work hours coverage to the Town annually.

**2.1 INTERSECTIONS WITH TRAFFIC CONTROL SIGNALS IN THE TOWN:**

The following intersections are covered by the terms of this Agreement:

- 01) Eagle Mountain Blvd. and Shea
- 02) Palisades Boulevard and Shea
- 03) Fountain Hills Blvd. and Shea
- 04) Technology Drive and Shea
- 05) Center Lane and Shea
- 06) Saguaro Blvd. and Shea
- 07) Saguaro Blvd. and El Lago Blvd.
- 08) Saguaro Blvd. and Palisades
- 09) Saguaro Blvd. and Grande Blvd.
- 10) Palisades Blvd. and Avenue of the Fountains
- 11) Palisades Blvd. and Fountain Hills Blvd.
- 12) Sunridge Drive and Palisades Blvd.
- 13) Fountain Hills Blvd. and El Lago Blvd.

The Town may install future traffic control signals at additional intersections. Installation of these signals will be the responsibility of the Town. This Agreement will apply to any additional traffic signal equipment, after the completion of installation by the Town. The Town will notify the City of newly installed traffic signal equipment within 10 working days of acceptance by the Town.

A permanent log provided by the Town will be maintained by the City for each traffic control equipment location. The log must be signed and dated along with the time of day after each unscheduled emergency repair has been completed.

The Town will provide timing sheets and phasing diagrams for each traffic signal.

## **2.2 SCHEDULE "A" EMERGENCY SERVICES**

### **EMERGENCY REPAIRS OR UNSCHEDULED SERVICES**

All malfunctions and failures of traffic control equipment reported to the City by the Town will be considered an emergency and the City will arrive at the site within 2 hours from the time the call was received by the City. Other unscheduled repair on traffic control equipment will be rendered within 3 working days from the time the call was received by the City. Equipment removed for repairs will have the repairs completed within 14 calendar days, including the days of pickup and delivery.

Emergency repairs and unscheduled services due to malfunctions and failures of traffic control systems include, but are not limited to, the following:

- Unscheduled or emergency repairs to controller or cabinet.
- Repair or replace span wire pole, mast arm pole, pedestal pole, or other similar pole knocked down due to unforeseen causes.
- Make additions or modifications to the traffic control equipment as shown on the information sheets or as found at the location site at the start of the contract award period.
- Perform additional repairs or maintenance requested by the Town, which is reasonably related to the scope of this Agreement.
- Includes street light luminaries mounted on traffic signal poles.

## **2.3 SCHEDULE "B" PREVENTATIVE MAINTENANCE SERVICES**

The City agrees to provide the following services on an as needed basis as requested in writing by the Town. The parties will mutually agree upon the schedule of delivery for these services. These services include:

**Signal "A" Maintenance (Intersections)** - Re-lamp signal indications, clean lens and reflectors, check head alignment, paint and service poles, mast arms and control cabinets.

**Signal "D" Maintenance (Inspections)** - Check signals for proper operation of detector loops, pedestrian pushbuttons, luminaries, head alignment, etc.

**Major Equipment Repair** - Follow up to trouble calls, signal head replacements, pole wire runs and old foundation removal.

**Minor Equipment Repair** - Repair Walk/Don't walk units, pedestrian pushbuttons, visors, backplates, pole and signal hardware, pull boxes, etc.

**Underground Rewiring Projects** - Underground wire replacement, pull-box replacement and conduit repair.

**Loop Installations** - Replace damaged detector loops, install new vehicle counter loops.

**Cabinet "C" Maintenance** - Test conflict monitor with ATSI tester for proper operation, dust and vacuum clean cabinet, change air filter, exterminate cabinet if needed. Check timing in controller with timing sheet; check operation of detection types; loops, video, wireless; caulk cabinet if necessary; check setting at thermostat/and operation of exhaust fan. Lubricate cabinet locks and doors if needed; check operation of stop time switch; check incoming voltage to cabinet, check incoming current to cabinet with amp-probe; check voltage at 24-volt power supply. Change or repair malfunctioning devices as required. Field check/repair pedestrian push buttons for proper operation; test pre-emption selector switch at input rack for proper operation. Visually inspect wire and termination for proper torque at all terminals. Test GFCI receptacle for proper operation; visually inspect all indication for alignment and outages; visually inspect loops for exposed wire; inspect for proper sealant coverage.

**Flood Flasher Maintenance** - Program each flood flasher location with proper timing; check all locations for proper operation. Change or repair malfunctioning devices in cabinet and indications as needed. At solar power flood flasher locations, check solar output for proper charging voltage; check voltage regulator for proper charging voltage to battery. Check physical condition of battery; check proper load capacity of battery and voltage output. Clean solar panel and cabinet as needed. Check wireless radio communication for proper configuration and operation. Check flood sensor level switch for obstructions and proper operations.

**Pre-Emption Maintenance** - Physical test optical detector inputs for every approach with strobe generator. Change or repair malfunctioning devices in cabinet as required. Change or repair malfunctioning optical receivers on signal mast arms at a later date with maintenance crew.

**School Flasher Configuration/Maintenance** - Program each school flasher location with proper timing as provided by Scottsdale Unified School District each year. Check school flashers at all locations for proper operation. Change or repair malfunctioning devices in cabinet and indications as needed. At solar power school locations, check solar output for proper charging voltage; check voltage regulator for proper charging voltage to battery. Check physical condition of battery; check proper load capacity of battery and voltage output. Clean solar panel and cabinet as needed.

**Uninterrupted Power Supply** - Check alarm/events on UPS unit; verify AC input and incoming current to unit; inspect batteries for any anomalies, such as bulges, leakage and other damages. Visually inspect for burned wires and loose terminals on battery lugs. Verify proper operation of exhaust fan and thermostat setting; vacuum and clean, replace air filter as needed. Test each battery for

proper VDC and load test each battery to verify proper charge. Turn off AC power at main disconnect to test full operation of UPS. Allow test to run 30+ minutes. While on battery pack; technician test for proper voltage output to traffic cabinet. Restore commercial power after all tests complete.

## **2.4 EQUIPMENT AND MATERIAL REQUIREMENTS**

The City will maintain a fleet of service trucks, which are capable of providing accessibility to, safety of, and rapid maintenance or repair as necessary to controller cabinets, poles, detector loops and accessories. Service trucks will be equipped with the necessary test equipment, harnesses and tools to provide on-site repair or maintenance for immediate correction of any hazardous condition or malfunction.

## **2.5 MATERIAL, PARTS AND UNITS REQUIRED TO BE USED**

Only materials, parts and units supplied or recommended by the manufacturers of the traffic control equipment will be used in the repair and maintenance of all traffic control equipment. Where no specific material, part or item is recommended by the manufacturer, or where the material, part or unit cannot be located locally, the material, part or unit used will be as prescribed by either the Institute of Transportation Engineers, the International Municipal Signal Association, the Town or by all three. In all instances of conflict, the Town will make a determination as to what material, part or unit will be used.

Classifications of traffic control equipment used, required, or maintained will be by use of the part numbers supplied by the manufacturer of the equipment or by commonly known terms used by the Institute of Transportation Engineers, or both. No other classifications of material, parts, or units will be used.

## **3.0 BILLING RECORDS AND PAYEMENT APPROVAL**

Between the 1<sup>st</sup> and 15<sup>th</sup> day of each month (but not more than once a month), the City will submit to the Town's Street Superintendent an invoice for payment of work completed during the previous month. The invoice will include a listing of each work order completed by number and the costs of each. The Street Superintendent will, within 30 days after receipt of each invoice, either indicate in writing his approval of payment and forward for processing or return the invoice to the City indicating in writing his reasons for refusing to approve the invoice. In the latter case, the City may make the necessary corrections and resubmit the invoice. The Town will forward the payment for processing within 30 days of approval of the invoice.

All invoices and correspondence will reference this Agreement or include the work order number designated by the Town.

All Notices or demands upon any party to this Agreement must be in writing and will be delivered in person or sent by mail, addressed as follows:

Town of Fountain Hills  
Attn: Ken Kurth  
Street Superintendent  
16705 E. Avenue of the Fountains  
Fountain Hills, Az. 85268  
Phone: 480-816-5150

City of Scottsdale  
Attn: Reginald Fitzpatrick  
Traffic Signal Manager  
9191 E. San Salvador Drive  
Scottsdale, AZ 85258  
Phone: 480-312-5637

#### 4.0 **FEE SCHEDULE**

##### 4.1 **Annual Fee**

- A. The Town will pay a lump sum amount (of \$15,000.00 dollars) per year for 15 days per month of on call service, inclusive of administrative costs per year or 12 monthly installments of \$1250.00 each. Payment will begin within 30 days after the signing of this Agreement.
- B. The monthly fee for full time on call services shall be \$2250.00 when requested by the Town.

##### 4.2 **THE HOURLY RATE FOR EMERGENCY REPAIRS OR UNSCHEDULED SERVICES WILL APPLY AS FOLLOWS:**

Each call-out is subject to a 2 hour minimum charge.

**Monday thru Thursday from 6:00 am to 4:30 pm.**

- A. **One (1) traffic signal technician and one (1) aerial bucket truck**  
\$60.00 per hour
- B. **One (1) traffic signal technician and one (1) specialized vehicle or piece equipment**  
\$80.00 per hour

**Monday from 12:00 am to 6:00 am, Monday thru Thursday from 4:30 pm to 6:00 am and including all day Friday, Saturday, Sunday and Holidays.**

- A. **One (1) traffic signal technician and one (1) aerial bucket truck**  
\$75.00 per hour
- B. **One (1) traffic signal technician and one (1) specialized vehicle or piece equipment**  
\$95.00 per hour

##### 4.3 **SCHEDULE "B" PREVENTATIVE MAINTENANCE RATES**

- A. **Signal "A" Maintenance (Intersections)**  
\$750.00 per intersection plus cost of materials
- B. **Signal "D" Maintenance (Inspections)**

\$120.00 per intersection

- C. Major and/or Minor Equipment Repair**  
Hourly Rate applies plus cost of materials
- D. Underground Rewiring**  
\$1200.00 plus cost of materials
- E. Loop Installations**  
\$800.00 per loop plus cost of materials
- F. Cabinet "C" Maintenance**  
\$120.00 per intersection plus cost of materials
- G. Flood Flasher Maintenance**  
\$120.00 per location plus cost of materials
- H. Pre-Emption Maintenance**  
\$120.00 per intersection plus cost of materials
- I. School Flasher Configuration/Maintenance**  
\$120.00 per location plus cost of materials
- J. Uninterrupted Power Supply**  
\$80.00 per location plus cost of materials

**5.0 PRICE ESCALATION**

Price increases may only be requested by the City, 30 days before the annual anniversary date of the Agreement. Failure to make a timely request may result in the denial of any increase.

Price increases only become effective after the approval by the Town's Streets Superintendent.

Approved price increases will be applied to the unit pricing as a percentage increase or apply only to selected services as requested by the City.

The increased rate will be based upon mutual consent of the Town and the City. The City will provide necessary documentation to support any increase requested.

The percentage increase in the unit pricing may not exceed 5%.

**6.0 UNPREDICTABLE MARKET CHANGE**

In the event of any unpredictable change in the market which affects the then current Agreement price, the City of Scottsdale may submit justification for a price increase. The Town's Streets Superintendent will review the justification and determine the applicable price adjustment. Upon return of normal market conditions, the price will be adjusted to the price established by the original Agreement terms.

The Town's Streets Superintendent is the final authority for any price adjustment due to unpredictable market change.

## 7.0 TERMS AND EXTENSION

The terms of this Agreement is for 1 year, beginning on <sup>28<sup>th</sup></sup> day of June, 2011, and ending on <sup>28<sup>th</sup></sup> day of June, 2012, ("Initial Term"). Upon the expiration of the Initial Term, this Agreement may be extended, upon the mutual agreement of the parties, for 4 additional 1 year periods, if not sooner terminated as provided in this Agreement.

## 8.0 TERMINATION

Termination for Convenience: The Town reserves the right to terminate this Contract or any part of this Contract for its sole convenience after first giving 30 days written notice. In the event of any termination, the City must immediately stop all work. As compensation in full for services performed to the date of any termination, the City will receive a fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by the City and the Town, based on the agreed Scope of Work. If there is no mutual agreement, the Town Street Superintendent will determine the percentage of completion of each task detailed in the Scope of Work and the City's compensation will be based upon this determination. The Town will make final payment within 60 days after the City has delivered the last of the partially completed items. City will not be paid for any work done after receipt of the notice of termination.

Cancellation for Cause: The Town may also cancel this Contract or any part of this Contract with 7 days notice for cause in the event of any default by the City, or if the City fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as judged by the Town Street Superintendent and failure to provide Town, upon request, with adequate assurances of future performance are all causes allowing the Town to cancel this Contract for cause. In the event of cancellation for cause, the Town will not be liable to City for any amount, and City will be liable to Town for any and all damages sustained by reason of the default which gave rise to the cancellation.

In the event the City is in violation of any Federal, State, County or City law, regulation or ordinance, the Town may terminate this Contract immediately upon giving notice to the City.

Refund of Annual Fee: A prorated portion of the Annual Fee may be subject to refund to the Town in the event this Agreement is terminated before an annual anniversary. The refund to the Town will not exceed \$1250 per month for half time on call or \$2250.00 per month for full time on call for each remaining whole month between the date of termination and the anniversary date of the Contract. The City may reduce the refund to the Town by any outstanding approved monthly invoice amounts.

## 9.0 INDEMNIFICATION

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.

**10.0 CONFLICT OF INTEREST**

This Agreement is subject to cancellation pursuant to Arizona Revised Statutes Section 38-511.

**11.0 GENERAL PROVISIONS**

a. Successors and Assigns. This Agreement will be binding upon the parties and upon their successors. Neither party may assign its rights or obligations under this Agreement.

b. Amendments. Any amendment or modification of this Agreement must be in writing and effective only after the authorized signature of both parties.

c. Compliance with the E-Verify Program.

Under the provisions of A.R.S. §41-4401, both parties warrant to the other that the City and the Town will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

Both Parties retain the legal right to inspect the papers of any employee who works on this Contract or subcontract to ensure compliance with the warranty given above.

Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.

A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

The provisions of this Section must be included in any contract either party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

d. Contracts with Sudan and Iran. In accordance with A.R.S. §35-391.06 and 35-393.06, the City certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

e. Non-Availability of Funds. Every payment obligation of each party under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, the non-appropriated party may terminate this Agreement at the end of the period for which funds are available. No liability will accrue to the terminating party in the event this provision is exercised, and the terminating party is not obligated or

liable for any future payments or for any damages as a result of termination under this Section.

f. Limitations on Liability. Despite any other provision of this Agreement to the contrary, in any action or proceeding by a Party (or any other person claiming by, through or as a result of its relationship to that Party) against the other Party which arises from or relates to this Agreement or any alleged breach of this Agreement, the claiming Party will not be entitled to recover consequential, punitive or multiple damages of any kind or nature against the breaching Party (or any other person for whom the breaching Party is vicariously liable) and any right to recovery of damages in the absence of this provision is expressly waived.

g. Time of Essence. Time is of the essence of each and every provision of this Agreement.

h. Nonliability of City and Town Officials. No official, representative, agent, attorney or employee of the City or the Town is personally liable to the other Party or to any successor-in-interest to the other Party in the event of any breach by the City or the Town, as applicable, or for any amount which may become due to the other Party or the other Party's successors, or with respect to any obligation of the City or the Town, as applicable, under the terms of this Agreement; provided.

i. Limited Severability. If 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 constitutional provision, law, regulation, municipal code or municipal charter), in whole or in part, that provision is considered severed from this Agreement and this Agreement otherwise remains in full force and effect; provided, however, that this Agreement will retroactively be considered reformed to the extent reasonably possible so that the reformed Agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if severance and reformation were not required. The Parties further agree, in these circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

j. Attorneys' Fee. In the event any action, suit or proceeding is brought in a court of law or forum of arbitration by any Party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement, or to declare the rights of the Parties to this Agreement, the non-prevailing Party will pay to the prevailing Party all costs and expenses of the action, arbitration, suit or proceeding, together with any sum as the court or arbitrators (and not the jury), as applicable, may adjudge reasonable as attorneys' or arbitrators' fees to be allowed in the suit, action or proceeding.

k. No Third Party Beneficiaries. No person or entity is a third party beneficiary to this Agreement.

l. Recitals; Legal Requirements. All of the Recitals stated above and all of the Legal Requirements are incorporated into and made an integral part of this Agreement for all purposes by this reference.

m. Integration/Relationship to Existing Agreement. This Agreement constitutes the entire agreement between the Parties with respect to, and supersedes any previous

agreement, understanding, negotiation or representation regarding, the subject matter of this Agreement.

n. Further Assurances. Each Party agrees to perform any further acts and to execute and deliver any additional agreements, documents, acknowledgements and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out this Agreement.

o. Construction; Section Headings. Whenever the context of this Agreement requires, the singular includes the plural, and the masculine, neutral or feminine includes each of the other. This Agreement is the result of negotiations between the Parties and their respective counsel and will not be construed for or against any Party as a consequence of its role or the role of its counsel in the preparation or drafting of this Agreement or of any Exhibit to this Agreement. The Section headings are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

p. Choice of Law. This Agreement is made and is to be performed in the State of Arizona and governed by the internal, substantive laws of the State of Arizona without regard to conflict of law principles. Any action brought to interpret, enforce or construe any provision of this Agreement or to declare the rights of the Parties under this Agreement will be commenced in the Maricopa County Superior Court (or, as may be appropriate, in the Justice Courts of Maricopa County, or in the United States District Court for the District of Arizona, if, but only if, the Justice or Superior Courts lack or decline jurisdiction over the action). The Parties irrevocably consent to jurisdiction and venue in these courts for these purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

q. Business Days. Where any action in this Agreement is required on a date that is not a Business Day, the party obligated to take the action is entitled to delay the action until the next succeeding Business Day.

r. Relationship of Parties. No partnership, joint venture or other business relationship is established among the Parties to this Agreement. Except as expressly provided in this Agreement, no Party is liable for any acts, omissions or negligence on the part of any other Party or the other Party's employees, agents, independent contractors, or successors-in-interest resulting in either personal injury, economic loss, or property damage to any individual or entity.

s. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, or other matter, the consent or approval may be given or denied by that Party, in its reasonable discretion, unless this Agreement expressly provides otherwise.

t. Inurement; Assignment. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions of this Agreement are binding upon, and inure to the benefit of, each Party and the successors and assigns of that Party. The rights, duties and obligations of the City under this Agreement are non-assignable and non-transferable, in whole or in part, without first obtaining the express, written consent of the Town, which consent may be withheld or conditioned by the Town in its sole and absolute discretion. Any purported transfer or assignment in violation of this provision is void and vests no rights, duties and obligations in the purported transferee or assignee.

u. Amendment. The terms, conditions and representations of the Parties contained in this Agreement may not be orally amended, modified or altered. This Agreement may be modified only if done in writing, signed by the Parties, approved by their respective municipal Councils, and further approved in writing by their respective legal counsel.

v. Effectiveness of Agreement. This Agreement is effective upon its signing by both parties.

w. Waiver. Waiver by any Party of any Event of Default or exercise of any rights under this Agreement is not considered to be a waiver of similar or other Events of Default or rights or of a future Event of Default with respect to the same duty. The failure of a Party to take any action by reason of any Event of Default or to exercise any right does not deprive any Party of the right to take any action at any time while the Event of Default or condition giving rise to the right continues.

x. Counterparts. This Agreement may be executed in several counterparts, each of which are considered an original, but all of which constitute one and the same instrument.

THE PARTIES subscribe their names on this 28 day of June, 2011.

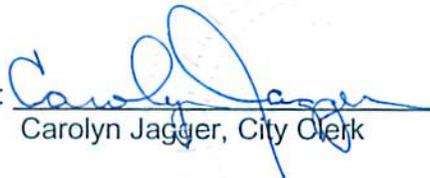
Town of Fountain Hills, an  
Arizona municipal corporation

By:   
Jay Schlum, Mayor

City of Scottsdale, an  
Arizona municipal corporation

By:   
W. J. "Jim" Lane, Mayor

ATTEST:

By:   
Carolyn Jagger, City Clerk

Reviewed By:

  
Pauline Hecker, Risk Management Director

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and within the powers and authority of the respective Parties.

TOWN OF FOUNTAIN HILLS



Andrew McGuire, City Attorney

Date: AUGUST 4, 2011

CITY OF SCOTTSDALE



Bruce Washburn, City Attorney

By: Clifford J. Frey  
Senior Assistant City Attorney

Date: June 14, \_\_\_\_\_, 2011