

RESOLUTION NO. 2013-28

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE OFFICE OF STATE FIRE MARSHAL RELATING TO FIRE INSPECTION SERVICES.

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

SECTION 1. The Memorandum of Understanding (the "MOU") with the Arizona Department of Building and Fire Safety, Office of State Fire Marshal relating to fire inspection services is hereby adopted in 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 MOU 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 6, 2013.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:


Linda M. Kavanagh, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Kenneth W. Buchanan, Town Manager

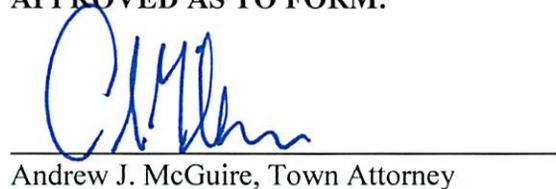

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2013-28

[MOU]

See following pages.

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY
OFFICE OF STATE FIRE MARSHAL**

AND

FOUNTAIN HILLS FIRE DEPARTMENT

This Memorandum of Understanding (“MOU”) is between the Office of State Fire Marshal (“OSFM”) and the Fountain Hills Fire Department (“FHFD”) concerning the review of plans for construction, remodeling, alterations and additions (collectively referred to as “plans”) of state, county and public school buildings and grounds [A.R.S. § 41-2163(C)] and the inspections performed in conjunction therewith; as well as regularly scheduled inspections of state and county owned buildings and all public and private schools [A.R.S. § 41-2163(A)(4)].

I. RECITALS

WHEREAS, pursuant to A.R.S. § 41-2161, the purpose of OSFM is to promote public health and safety and to reduce hazards to life, limb and property by performing inspections and fire investigations, by providing public education and by adopting fire protection codes.

WHEREAS, Arizona has adopted the International Fire Code 2003 edition as modified by A.A.C. R4-36-201 as the Arizona State Fire Code, and all Fire Departments and Fire Districts must comply with the Arizona State Fire Code or a code adopted by the controlling political subdivision which is equivalent to, or more stringent, than the Arizona State Fire Code (collectively referred to as “Fire Code”).

WHEREAS, pursuant to A.R.S. § 41-2163(A)(4), OSFM is charged with conducting regularly scheduled inspections of state and county owned building and public and private schools throughout Arizona, and

WHEREAS, pursuant to A.R.S. § 41-2163(C), OSFM is charged with the review of plans and specifications for new construction, remodeling, alterations and additions and performing inspections in conjunction therewith for state, county and public school buildings and grounds, and

WHEREAS, the State Fire Marshal is empowered under A.R.S. § 41-2162(A)(2) to engage such assistance as deemed necessary, and

WHEREAS, the FHFD confirms that its personnel possesses the necessary proficiency in the understanding, interpretation and application of the applicable fire code, and

WHEREAS, the FHFD and OSFM desire to cooperate in the duties which each is charged to conduct.

II. TERMS

1. Construction Plan Review & Inspection. OSFM agrees to allow the FHFD to conduct review of plans for construction, remodeling, alterations and additions of state, county and public school buildings on behalf of OSFM and complete any inspections required in conjunction therewith.
2. School Life Safety Inspection. OSFM agrees to allow the FHFD to conduct regularly scheduled inspections of state and county owned buildings and all public and private schools on behalf of OSFM.
3. Limitations of MOU. This MOU does not grant the authority to inspect installation or removal of underground fuel storage tanks. That task remains the sole authority and responsibility of OSFM as granted by the Arizona Department of Environmental Quality. OSFM recognizes some jurisdictions have a separate agreement to perform such inspections for Arizona Department of Environmental Quality.
4. Term Limit. The term of this Agreement shall be for five (5) years from the effective date of this MOU.
5. Operational Costs. Any costs incurred by FHFD to implement this MOU shall be borne by the FHFD.
6. Fees. FHFD may collect such fees as permitted by its political subdivision. Any funds collected by the FHFD to implement this MOU are made under the authority granted to that jurisdiction and are not subject to attachment by OSFM.
7. Collaborative Services. Jurisdictions who enter into the MOU with OSFM may contract with local or county building departments for the purposes of:
 1. Conducting review of plans and specifications for new construction, remodeling, alterations and additions.
 2. Permitting for inspection.
 3. Establishing a fee schedule, and collecting fees.
 4. Review of plans by local or county building departments, in conjunction with this MOU, shall be conducted by personnel who have exhibited the necessary proficiency in the understanding, interpretation and application of the Fire Code.

FHFD shall notify OSFM and provide documentation describing shared services, if any.

FHFD and local or county building departments shall be subject to periodic audits, with advance notice.

8. Quarterly Reporting. The FHFD agrees to submit quarterly activity reports to OSFM, on a quarterly basis, but not later than April 30 for the 1st Quarter

(January – March), July 31 for the 2nd Quarter (April – June), October 31 for 3rd Quarter (July – September), and January 31 for 4th Quarter (October – December).

1. Quarterly activity reports shall contain a list of review of plans and specifications for new construction, remodeling, alterations and additions, fees collected, and inspections in conjunction therewith for state, county and public school buildings and grounds.
9. Report Submission Format. In the course of completing its review or inspection, the FHFD shall transmit the information electronically to OSFM. Reporting forms and instructions will be provided by OSFM.
10. Audit. Pursuant to A.R.S. §§ 35-214 and 35-215, all books, accounts, reports, files and other records relating to this MOU shall be subject at all reasonable times to inspection and audit by OSFM for five (5) years after completion of this MOU. Such records shall be provided at OSFM, or such office as the parties hereto may mutually agree within a reasonable time after request.
11. Termination. Either party may terminate this MOU pursuant to the provisions of A.R.S. §38-511.
12. Dispute. In the event of any dispute between the parties under this MOU, the parties agree that they shall submit the dispute to arbitration pursuant to A.R.S. §§ 12-133 (D) and 12-1518. The parties also agree to comply with the Arizona Governor's Executive Order No. 2009-09.
13. Conflict of Interest. The parties acknowledge that this MOU is subject to cancellation by the Governor of Arizona pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.
14. Governing Law and Venue. This MOU shall be governed by and interpreted in accordance with the laws of the State of Arizona. The exclusive venue for any litigation, arbitration, administrative hearing or the like concerning this agreement or any matter arising therefrom shall be in Maricopa County, State of Arizona.
15. Unavailability of Funding. Every payment or financial obligation of the parties under this MOU 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 this MOU, this MOU may be terminated by any party at the end of the period for which funds are available. No liability shall accrue to any party in the event this provision is exercised, and neither, the OSFM or Agency shall be obligated or liable for, any future payments nor for any damages as a result of termination under this paragraph.
16. Prohibited Investments. To the extent applicable, the parties agree to comply with the requirements of A.R.S. §§35-391.06(A) and 35-393.06(B), and certifies that it does not have any prohibited scrutinized business operations.

17. Non-Discrimination. The parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.
18. Legal Arizona Workers Act. OSFM and FHFD are each required to comply with A.R.S. §41-4401, and each hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). Both parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws.

A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the party who breaches may be subject to penalties up to and including termination of the Agreement.

Both parties retain the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other party is complying with the warranties regarding compliance with the state and federal immigration laws.

ARIZONA STATE FIRE MARSHAL

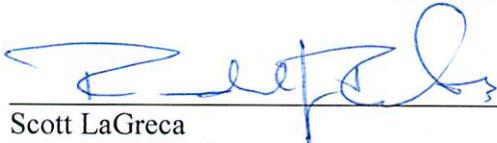


Robert Barger, Arizona State Fire Marshal
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(602) 364-1081
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Effective Date

FOUNTAIN HILLS FIRE DEPARTMENT



FOR

Scott LaGreca
Fountain Hills Fire Department
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268
(480) 837-9820
slagreca@fh.az.gov



Date Signed