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RESOLUTION NUMBER 2018-02

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AUTHORIZING AND DIRECTING THE FILING OF A COURT ACTION TO AMEND CERTAIN SECTIONS OF THE MUMMY MOUNTAIN PRESERVE TRUST INSTRUMENT

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA THAT:

WHEREAS, the Town of Paradise Valley (“Town”) formed the Mummy Mountain Preserve Trust (the “Trust”) by the adoption of Resolution Number 923 by the Town Council of Paradise Valley (the “Council”) on November 6, 1997; and

WHEREAS, the Council formed the Trust as an irrevocable trust so that mountain areas within the Town that are of significant scenic and environmental value could be preserved as open space and native habitat in perpetuity; and

WHEREAS, A.R.S. §14-10412 permits the court, upon petition of a trustee or a beneficiary, to modify the administrative or dispositive terms of a trust, if, because of circumstances not anticipated by the settlor, modification will further the purpose of the Trust; and

WHEREAS, because of circumstances not anticipated at the time of the formation of the Trust, the Council desires to make modifications to the Trust instrument that are consistent with the original intent of the Council in forming the Trust and that will help further the purposes of the Trust to preserve the scenic beauty of mountain areas within the Town; and

1 WHEREAS, the Council has requested that the Trustees consider certain changes
2 to the Trust instrument that are consistent with the original intent and will further the
3 purposes of the Trust; and the Trustees have considered and approved some of the said
4 changes to the Trust instrument and will soon consider some of the additional proposed
5 changes; and

6 WHEREAS, the contemplated changes to the Trust instrument and the manner that
7 each helps further the original intent and purposes for the Trust are as follows:

8 1. That the name of the Trust be changed to the “Paradise Valley Mountain
9 Preserve Trust” (see Article 1.1) because doing such will provide better notice to the
10 public that the lands desired to be preserved by the Trust as “Mountain Lands” will
11 include areas on Camelback Mountain and in areas adjacent to the Phoenix Mountain
12 Preserve and not just on Mummy Mountain itself, thus furthering the original intent of
13 the Trust as the original map of land areas identified on the Schedule B “Mountain
14 Preserve Area” map adopted by the Council in 1997 and attached to the instrument
15 included land areas both on Camelback Mountain and adjacent to the Phoenix Mountain
16 Preserve; and

17 2. That the number of Trustees appointed by the Town Council to the office of the
18 Trustee of the Trust should be increased from five (5) to seven (7) (see Article 8) because
19 the donation of lands to the Trust has dwindled in recent years and adding more
20 individuals to the office of the Trustee of the Trust to help in seeking out new donors and
21 additional ways to obtain more land for the Trust would further the original intent of
22 having an adequate number of individuals serving in the office of the Trustee to carry
23 forward the purposes of the Trust; and

1 3. That the end of each trustee’s individual’s term in the office of the Trustee of
2 the Trust end on April 1 of each year instead of October 1 (Article 8) because the
3 original intent for having the terms in the office of the Trustee terminate on October 1
4 was to allow for the appointments to coincide with a four month recruitment and
5 selection cycle that was tied to a Spring Council election cycle (the recruitment would
6 typically run from July to the end of September) and the legislature recently changed the
7 Council election cycle by the adoption of ARS §16-204 so that the Town Council
8 elections must occur in the Fall, thus suggesting that an orderly appointment cycle
9 should change to a recruitment period that occurs from January to March and for the
10 term of office of each of the Trustees to the Trust to start around April 1, all of which is
11 consistent with the original intent of the Trustee terms of office; and

12 4. That an article should be added to the Trust instrument appointing the Town
13 Council as “Trust Protector” for the Trust in order to provide flexibility in the
14 administration of the Trust in a manner consistent with the original intent of the Trust
15 because the Arizona statutes have changed since the Trust was formed so that it is now
16 permissible under A.R.S. §14-10818 for the Trust to have a Trust Protector whose
17 powers can include removing and appointing a trustee and modifying or amending the
18 Trust instrument for any valid purpose or reason and the original Trust Instrument had a
19 large role for the Town Council, including a requirement in Section 1.2 that any
20 amendments to the Trust Instrument must first be ratified by the Town Council; and

21 5. That an article should be added so that the Trust may take full advantage of any
22 and all legal protections it may have from potential claims related to environmental
23 liability because the environmental liability laws have changed so that charitable trusts

1 are now permitted to have a greater protection from certain environmental liability
2 claims and the Trust along with the Trustees should be sheltered from environmental
3 liability claims to the greatest extent possible, which is consistent with the original intent
4 that the Trust; and

5 6. That the Trust Instrument should be amended to permit Mountain Trust Lands
6 to be used for the development of cell site infrastructure because the Trust Instrument
7 provides that the “Mountain Trust Lands” can be used “as may be required for police and
8 public utility functions that benefit the Town of Paradise Valley” and the addition of cell
9 site infrastructure on Mountain Trust Lands would assist the “police functions” in the
10 Town by providing improved cell phone reception for residents who need to contact
11 police and fire (911 calls) and for better police phone reception and service as well (in
12 addition to radios the Paradise Valley police officers utilize cellphones and have mobile
13 data terminals linked through cellphone carriers in all police vehicles), thus making cell
14 site infrastructure on Mountain Lands consistent with the original intent of the Trust.

15 NOW, THEREFORE, BE IT RESOLVED, that the Council:

16 1. Finds that the six changes to the Trust articles specified above are consistent
17 with the original intent of the purposes for the Trust and should be made so as to further
18 those purposes; and

19 2. Authorizes the Town Manager and the Town Attorney to assist one or more of
20 the individual’s serving in the office of the Trustee of the Trust who is willing to do so to
21 file a petition to ask the court to modify the Trust instrument consistent with the six
22 changes to the Trust instrument listed above and to take all actions necessary to

1 effectuate such changes, including acceptance of the office of the Trust Protector of the
2 Trust; and

3 3. Requests that the individuals serving in the office of the Trustee of the Trust
4 meet to review and approve the proposed modifications to the Trust instrument and
5 authorize the Town Attorney, as counsel for the Trust, to file a petition with the court for
6 modification of the Trust Instrument on behalf of the Trust.

7 PASSED AND ADOPTED by the Town Council this 22nd day of February,
8 2018.

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Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM

Andrew M. Miller, Town Attorney

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CERTIFICATION

I, Duncan Miller, Town Clerk hereby certify that the foregoing is a full, true and correct copy of Resolution Number 2018-02 duly and regularly passed and adopted by vote of the Town Council of Paradise Valley at a meeting thereof duly called and held on the 22nd day of February, 2018. That said Resolution appears in the minutes of said meeting, and that the same has not been rescinded or modified and is now in full force and effect.

I further certify that said municipal corporation is duly organized and existing, and has the power to take the action called for by the foregoing Resolution.

Duncan Miller, Town Clerk