

SUMMARY OF AGENDA ITEM

DATE: February 13, 2008 (for February 21 Town Council Meeting)
TO: Mayor and Council
FROM: Mary McMullen, Trails & Outdoor Recreation Coordinator
SUBJECT: RESOLUTION NO. 2357
Intergovernmental Agreement (IGA) between the Town of Payson (TOP) and Gila Community College (GCC) for incorporation of existing College trails into the Payson Area Trails System (PATS)

PURPOSE:

To support the former unanimous vote by Town Council on 10-18-08 to authorize an IGA between TOP and Gila County establishing the incorporation of existing trails on the Payson GCC campus into PATS, but with two changes to the original IGA.

SUMMARY OF CHANGES TO ACCOMPLISH THIS PURPOSE:

The former IGA was made between TOP and the Gila County Board of Supervisors. This IGA, although approved by the Payson Town Council, was not approved in its final form by Gila County. It was referred to the GCC Board of Governors for an official agreement to be made with TOP instead.

In addition, a 25-year public use clause was necessary to be included in the IGA in order for this specific proposed PATS trail to be considered as eligible for Arizona State Trails Heritage funding. This clause was not included in the original IGA with Gila County.

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RESOLUTION NO. 2357

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE GILA COMMUNITY COLLEGE DISTRICT RELATING TO THE PAYSON AREA TRAILS SYSTEM.

WHEREAS, the Town operates and manages a trails system, commonly designated the Payson Area Trails System ("PATS"); and

WHEREAS, Gila Community College District ("College") controls certain real property located on the Gila County Community College campus; and

WHEREAS, the Town and College desire to establish a collaborative relationship to enhance the PATS by connecting the PATS current and future trails on the College campus in Payson,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Intergovernmental Agreement Between the Gila Community College District and the Town of Payson, Arizona, attached hereto as Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form as attached.

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Intergovernmental Agreement in substantially the form attached as Exhibit "A".

Section 3. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2357.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 21st day of February, 2007, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

APPROVED AS TO FORM:

ATTEST:

Samuel I. Streichman, Town Attorney

Silvia Smith, Town Clerk

EXHIBIT "A"

to Resolution No. 2357

INTERGOVERNMENTAL AGREEMENT BETWEEN THE GILA COMMUNITY COLLEGE DISTRICT AND THE TOWN OF PAYSON, ARIZONA

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made effective this _____ day of _____, 2008, by and between the Town of Payson, an Arizona municipal corporation ("Town"), and the Gila Community College District ("College"), a provisional college district of the State of Arizona (collectively, the "Parties").

RECITALS

- A. The Town operates and manages a trails system, commonly designated the Payson Area Trails System ("PATS").
- B. The College controls certain real property located on the Gila County Community College campus, located within the area described on Exhibit "A" ("Property").
- C. The Town and the College desire to establish a collaborative relationship to enhance the PATS by connecting the PATS existing trails on the College campus in Payson, or to parts of the Property that can be developed as trails.
- D. Pursuant to A.R.S. § 11-952, the Town and the College may enter into this IGA to jointly exercise powers common to both and to provide for joint and cooperative action regarding the PATS.

NOW, THEREFORE, the Parties hereby agree as follows:

- 1. Term. This IGA shall be in effect for a term commencing on the date first above written and ending June 30, 2033, and shall automatically be renewed for successive one (1) year periods unless either the Town or the College wishes to modify or renegotiate this IGA, in which case the Party desiring to do so shall notify the other Party in writing no less than thirty (30) days prior to the expiration of the initial term, or any successive term of this IGA.
- 2. Purpose. The purpose of this IGA is to provide for a collaborative enhancement of the PATS by connecting the PATS to existing and future trails on the Gila County Community College campus.

3. Specific Measures. The Parties agree to and shall:
 - a. Designate the College as a trail “Center of Interest” in the PATS and on all PATS publications, media releases, and other public information.
 - b. The Parties shall identify, develop, and enhance already existing trails on the College campus to become part of PATS.
 - c. The Parties will develop and enhance such identified trails on the College campus in accordance with PATS trails specifications.
 - d. The Parties will jointly sign such identified trails on the College campus.
 - e. The Town shall notify potentially affected neighborhoods regarding the identification, development, and enhancement of such trails within the College campus and hold public meetings to solicit public feedback prior to the establishment of specific trails.
 - f. The College shall permit the Town to install and maintain an information kiosk at the Gila County Community College “Center of Interest”.
 - g. The Town shall fund standard PATS signage, maintenance and improvement costs for such trails on the College campus that are included in PATS.
 - h. The Parties agree to report the collaborative relationship between the Town and the College and to refer to or recite the provisions in this IGA in any future grant applications made by either Party to obtain grant funding for PATS.
 - i. If the College decides to construct a building or other structure on the site of any PATS trails on the Property, the College shall have the right to relocate any trail(s) as may be necessary for such construction. The College shall be responsible for all costs associated with such relocation.
4. Entire Agreement. This IGA, including any exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter contained in this IGA. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded by and merged into this IGA. No supplement, modification, or amendment of this IGA shall be binding unless in writing and executed by the Parties.
5. Counterparts. This IGA may be executed in counterpart originals, each having the same effect as the other.

6. Severability. The Parties agree that in the event any provision in this IGA is found by a court of competent jurisdiction to be invalid, the invalidity of such portion(s) shall not affect the remaining portions, which shall remain valid and enforceable according to their terms, unless the purposes of this IGA are frustrated on account of such partial invalidity.
7. Attorneys' Fees. In the event either Party hereto shall employ legal counsel in connection with any dispute under this IGA or proceed against the other Party to enforce any of the terms, covenants, or conditions hereof, the party employing such legal counsel shall be solely responsible for payment therefor, without contribution from the other Party, and attorneys' fees shall not be awarded in any action, arbitration, mediation, litigation under, or for any purpose connected to, this IGA.
8. Indemnification. The College shall, and hereby agrees to, at its own expense, defend, indemnify, save, and hold the Town, its officers, agents, servants, and employees harmless for, from, and against any and all liability, claims, losses, damages, including legal fees and expenses and interest, including but not limited to liability or loss for injuries to death of persons or damages to property and claims for violations of civil or other rights arising in any way out of the performance of, relating to, or made in connection with any act or omission to act committed or alleged not to have been performed by the College, its agents, officers, servants, employees, or volunteers, and the College shall, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses, including interest, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Town in any such action, the College shall, at its own expense, satisfy and discharge the same, but only to the extent that such liability is caused by the negligence, misconduct, or other fault of the College, its agents, officers, servants, employees, or volunteers.

The Town shall, and hereby agrees to, at its own expense, defend, indemnify, save, and hold the College, its officers, agents, servants, and employees harmless for, from, and against any and all liability, claims, losses, damages, including legal fees and expenses and interest, including but not limited to liability or loss for injuries to death of persons or damages to property and claims for violations of civil or other rights arising in any way out of the performance of, relating to, or made in connection with any act or omission to act committed or alleged not to have been performed by the Town, its agents, officers, servants, employees, or volunteers, and the Town shall, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses, including interest, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the College in any such action, the Town shall, at its own expense, satisfy and discharge the same, but only to the extent that such liability is caused by the negligence, misconduct, or other fault of the Town, its agents, officers, servants, employees, or volunteers.
9. Cancellation. The Parties acknowledge that this IGA is subject to cancellation pursuant to A.R.S. § 38-511, the terms of which are incorporated herein.

10. Termination. Either Party may terminate this IGA by providing written notice of such Party's intent to do so at least sixty (60) days prior to such termination. Upon such written notification, all rights and duties set forth in this IGA shall immediately terminate.
11. Time of Essence and Successors. Time is of the essence of this IGA and all of its parts. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
12. Headings, Gender. The headings of this IGA are for purposes of reference only and shall not limit or define the meaning of any provisions of this IGA. Wherever appropriate in this IGA, personal pronouns shall be deemed to include other genders, and the singular to include the plural if applicable.
13. Notices. All notices, requests, and other demands hereunder shall be in writing and shall be deemed given on the date received if personally delivered, or notice may be mailed, certified mail, return receipt requested, or sent by overnight carrier to the following address:

To Town:
 Richard Manchester, Director of Parks
 and Recreation
 Town of Payson
 303 North Beeline Highway
 Payson, Arizona 85541
 (928) 474-5242

To College:
 Pamela Butterfield, Payson Dean
 Gila Community College District
 201 North Mud Springs Road
 Payson, Arizona 85541
 (928) 468-8039

In the event either Party changes its address, telephone number, or contact person, such Party shall immediately notify the other of such change.

14. Assignment. This IGA or any part thereof shall not be assigned by either Party without the prior written consent of the other, and any such attempt to assign this IGA in contravention of this Paragraph 14 shall render this IGA void.
15. Construction of Agreement. This IGA 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 this IGA. 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 IGA.
16. Action of Governing Body. Each Party represents to the other and acknowledges that appropriate action to approve this IGA has been duly taken by its governing body.

IN WITNESS WHEREOF, the Parties have executed this IGA effective the day and year first above written.

TOWN OF PAYSON,
an Arizona municipal corporation

GILA COMMUNITY COLLEGE
DISTRICT, a provisional community
college district of the State of Arizona

By _____
F. Robert Edwards, Mayor

By _____
Robert Ashford, Chair
Gila Community College
Board of Governors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

Daisy Flores, County Attorney

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EXHIBIT “A”

The property is located within Section 2, Township 10 North, Range 11 East, Gila and Salt River Base and Meridian.