

SUMMARY OF AGENDA ITEM

DATE: August 29, 2008 (for September 4, 2008 Council Meeting)
TO: Mayor and Council
FROM: Martin A. deMasi, Fire Chief
SUBJECT: Intergovernmental Agreement with Hellsgate Fire District
(Resolution No. 2425)

PURPOSE: This agreement is an update of the original agreement approved in 2000. The agreement provides for the automatic and preplanned sharing of fire service resources between the Town of Payson and the Hellsgate Fire District. This type of agreement is necessary because neither the Town nor the District have all the resources that they require all of the time and those resources may not be deployed in areas that provide for the quickest response to emergencies. This agreement is somewhat unique in that funds are exchanged. This is necessary due to the inequity of the responses of the parties. The PFD responds to the HFD approximately a dozen times a year. Other the other hand the HFD responds to PFD jurisdiction approximately 120 times a year. Generally in automatic aid scenarios there is not this disparity in activity levels. This agreement also provides a "bridge" until the third PFD fire station is constructed, staffed and functional.

PROS: Provides a relatively inexpensive method to provide third engine company response to the east side of Payson and to other emergency incidents.

CONS: Costs increase each year. HFD resources not directly under the control of the PFD.

FUNDING:

Account Number: 101-5-2426-01-07990

Title: Contribution to Other Agencies

Amount: \$130,000

SEP 04 2008 G.15

RESOLUTION NO. 2425

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 HELLSGATE FIRE DISTRICT.

WHEREAS, the Town of Payson and Hellsgate Fire District are each responsible for fire and/or emergency medical services within their respective jurisdictions; and

WHEREAS, automatic emergency responses by the entity closest to the emergency, without regard for geo-political boundaries, will result in shorter response times, thereby potentially increasing the opportunity to save lives and property; and

WHEREAS, it is the desire of the Town of Payson to participate with Hellsgate Fire District in providing joint response to fire and medical emergencies and to reduce the terms of such participation to writing,

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 Hellsgate Fire District and the Town of Payson, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute said Intergovernmental Agreement in substantially the form as set forth upon Exhibit "A".

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as may be necessary or appropriate to implement the terms and intent of said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

APPROVED AS TO FORM:

ATTEST:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

EXHIBIT "A"

to Resolution No. 2425

INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE TOWN OF PAYSON AND HELLSGATE FIRE DISTRICT

This Intergovernmental Agreement ("Agreement") is made as of this ____ day of _____, 2008 by and between the Town of Payson, an Arizona municipal corporation, and Hellsgate Fire District, an Arizona fire district organized pursuant to A.R.S. §§ 48-261 and 48-802 et. seq. (collectively, the "Parties").

WHEREAS, the Parties are authorized to enter into intergovernmental agreements, pursuant to A.R.S. § 11-952, et seq.; and

WHEREAS, the Town of Payson ("Payson") operates the Payson Fire Department ("PFD"), and the Hellsgate Fire District ("the District") operates the Hellsgate Fire Department ("HFD").

WHEREAS, PFD and HFD are both responsible for fire and emergency services within their respective jurisdictions; and

WHEREAS, PFD and HFD are concerned about proper response to fire and other emergency incidents; and

WHEREAS, the use of automatic emergency responses by the Department closest to the emergency, without regard for geo-political boundaries, will result in shorter response times, thereby increasing the opportunity to save lives and property; and;

WHEREAS, this Agreement provides a mechanism for automatic dispatching of personnel and equipment by one Department to respond to areas serviced by the other Department so as to provide first response capabilities by the closest unit to the emergency,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in accordance with the terms and provisions herein, Payson and the District agree as follows:

1. Definitions.

ALS – Advanced Life Support

Assisting Department – The Department providing services outside of its jurisdiction

BLS – Basic Life Support

Boundary Drop Automatic Aid Agreement – The common term used for this Agreement

Department – Either PFD or HFD

Departments – PFD and HFD collectively

Primary Department – The Department providing services within its jurisdiction.

2. This Agreement is entered into pursuant to A.R.S. section 11-952, et seq., and A.R.S. section 48-805 (B)(17).

3. Scope of Services to be Provided.

The purpose of this Agreement is to provide a mechanism by which both Departments shall share the emergency response duties with the other, enabling the closest, and most appropriate Department, to respond to emergency and non-emergency incidents within the respective jurisdictions.

4. Department Duties.

- a. PFD will attempt to provide standard staffing for engine companies responding to emergency incidents in HFD areas of 3 personnel minimum, but shall not drop below 2 personnel at any time. These personnel shall possess at a minimum Arizona Firefighter II, or its equivalent, and Arizona Department of Health Services EMT-Basic certifications. Efforts should be given to provide for (ALS) on all emergency medical responses as a standard level of care. Apparatus other than engine companies may be staffed at differing levels. PFD shall make available resources as needed to carry out this effort, without waiting for permission to respond, and within the provisions of Paragraph 10 of this agreement.
- b. HFD will attempt to provide standard staffing for engine companies responding to emergency incidents in PFD areas of 3 personnel minimum, but shall not drop below 2 personnel at any time. These personnel shall possess at a minimum Arizona Firefighter II, or its equivalent, and Arizona Department of Health Services EMT-Basic certifications. Efforts should be given to provide for (ALS) on all emergency medical responses as a standard level of care. Apparatus other than engine companies may be staffed at differing levels. HFD shall make available resources as needed to carry out this effort, without waiting for permission to respond, and within the provisions of Paragraph 10 of this agreement.
- c. Both Departments may designate specific areas "First Due Areas" for PFD and HFD due to the proximity of fire stations assigned thereof.

5. Mutual Duties.

The Departments will:

- a. Respond into the other's jurisdiction as needed to assure a minimum response of one engine company to Still Alarms, Special Duty assignments, and EMS assignments, and two engine companies to First Alarm assignments. The response shall be governed by the Department's fire station's proximity to the emergency and availability, not geographical boundaries.

- b. Engage in suitable training to provide for a reasonable uniformity of operations. At least once per quarter, personnel from both agencies shall engage in a multi-jurisdictional drill or training. Additionally, personnel from each Department shall routinely conduct area orientation activities to become knowledgeable about each other's response areas.
- c. Maintain a compatible rank/position structure, to minimize any questions pertaining to the chain-of-command. The Incident Command System (ICS) shall be used to manage all emergency incidents and both Departments shall use common staging and personnel accountability procedures. Standardized apparatus definitions and numbering shall be used to minimize confusion on incident scenes. Each Department may use the other Department's assigned radio frequencies as necessary for automatic aid operations.
- d. Allow apparatus staffing to be determined by the responding Department as long as the requirements of Section 4.a & b are met. Both Departments may utilize full-time and paid-on-call (POC) firefighters. Unless circumstances prevent this from happening, ALS engine companies shall be provided for emergency medical responses. If circumstances prevent a ALS engine company from responding, then the other Department shall be notified of the BLS response and the battalion officer shall determine alternative dispatches if necessary.
- e. Operate as one for tactical operations.

6. Incident Command.

The highest ranking on-scene officer of the Primary Department shall be the Incident Commander. All companies and crews shall work under the direction of the highest ranking officer of their respective Department who in turn shall be under the command of the Incident Commander.

7. Term.

- a. The initial term of this Agreement shall be four (4) years starting on July 1, 2008 and ending June 30, 2012.
- b. At the end of the initial term, this Agreement shall automatically renew for an additional five (5) year term upon the Parties agreeing upon fees for those additional years.

8. Termination.

- a. Either Payson or the District may terminate this agreement, with or without cause, upon a ninety (90) day written notice sent by certified letter to the other Party.
- b. In the event either Party elects to terminate this Agreement, all rights and duties set forth in this Agreement shall terminate, ninety (90) days from receipt of the certified letter notifying the other party, and neither Party shall be liable to the other Party for any damages resulting from the termination. In the event the District elects to terminate this Agreement prior to the expiration of

the term or any renewal term, the District shall refund to Payson the pro-rata portion of the amount paid pursuant to Paragraph 14.

9. Additional Compensation. Neither Party shall be entitled to any additional compensation for services rendered pursuant to this Agreement.
10. Primary Responsibilities. Each Department understands and agrees that nothing in this Agreement shall prevent the carrying out of each Department's responsibility within its respective jurisdiction. If such responsibilities prevent such Department from responding under this Agreement, then such failure to respond shall not be a cause for default or a violation of this Agreement.
11. Dispatch. The decision of what assignment or how many units to initially dispatch to any particular incident in either jurisdiction shall be at the discretion of the on-duty dispatcher, pursuant to established PFD dispatching policies. The dispatcher may consult with the respective Battalion Chief of the Primary Department for additional guidance.
12. Relationship. The Parties are independent public entities. Neither Party, nor their employees, shall be deemed to be employees of the other Party.
13. Insurance Policies.
 - a. Each Party shall procure and maintain insurance coverage at a minimum of five million dollars (\$5,000,000) for injury to persons or property or loss of life. Each Party shall also procure and maintain vehicle liability insurance in like amounts. Each Party shall name the other as an "additional insured" on its policies.
 - b. Each Party shall procure and maintain worker's compensation insurance for its own workers. Either Party may request written verification evidencing the procurement of insurance coverage required pursuant this section.
14. Fees.
 - a. Payson agrees to pay fees to the District as follows:
 1. Fiscal Year 2008/2009: \$130,000; paid in four (4) quarterly payments of \$32,500
 2. Fiscal Year 2009/2010: \$160,000; paid in four (4) quarterly payments of \$40,000
 3. Fiscal Year 2010/2011: \$180,000; paid in four (4) quarterly payments of \$45,000
 4. Fiscal Year 2011/2012: \$200,000; paid in four (4) quarterly payments of \$50,000
 - b. Notwithstanding subsection (a) above, each Department shall be responsible for budgeting for and financing its own operations.
 - c. No joint property shall be purchased pursuant to this Agreement and the property of each Department shall remain the property of such Department.

15. Dispute Resolution. Both Parties agree to informally work out any disputes that may arise out of this Agreement. However, any unresolved dispute, controversy, claim, or cause of action arising out of or related to this Agreement shall be governed by Arizona law and may, but in no event need, be settled by submission with the consent of both Parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrators may be entered in the Superior Court of Gila County, or any such dispute, controversy, claim, or cause of action may be litigated in a court. The venue for any such dispute shall be Gila County, Arizona. Each Party waives the right to object to venue in Gila County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other party incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.
16. Entire Agreement. This Agreement contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter. This Agreement may not be rescinded, canceled, terminated, supplemented, amended, or modified in any way whatsoever without the prior written consent of both Parties to this Agreement.
17. Severability. In any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Contract and to this end the provisions of this Contract are severable.
18. Arizona Revised Statutes. All applicable Arizona Revised Statutes, regulations and requirements of the State of Arizona shall supersede all provisions of this Agreement.
19. Conflict of Interest. This Agreement is subject to the terms of A.R.S. §38-511.
20. Modifications. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party.
21. Non-Appropriation. Nothing herein shall be construed as obligating either Party to expend, or as involving either Party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this Agreement.
22. Headings; Gender. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provisions of this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders, and the singular to include the plural if applicable.

23. Construction of Agreement. This Agreement 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 Agreement. 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 Agreement.
24. Recording. This Agreement shall be recorded with the Gila County Recorder pursuant to A.R.S. § 11-952(G).
25. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
26. No Third Party Beneficiaries. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause
27. Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, returned receipt requested, to:

Town of Payson
 303 North Beeline Highway
 Payson, Arizona 85541
 Attention: Fire Chief

Hellsgate Fire District

 Attention: _____

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filing, consents, approvals, and communication given by certified mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above. Notices delivered personally shall be deemed delivered upon delivery.

28. Assignment. Neither Party may assign this Agreement or any part thereof without the written consent of the other Party. Any attempted assignment in violation of this Paragraph shall render this Agreement void and of no effect.
29. The District shall indemnify, defend, and save harmless Town and all of its employees, attorneys, agents, representatives and insurers from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Town and/or its insurers, on account of loss of or damage to any property and for injuries to or death of any person by reason of or arising out of any act or omission by the District, its employees, agents, or representatives.

30. Town shall indemnify, defend, and save harmless the District and all of its employees, attorneys, agents, representatives and insurers from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including attorney's fees and/or litigation expenses, which may be brought or made against or incurred by the District and/or its insurers, on account of loss of or damage to any property and for injuries to or death of any person by reason of or arising out of any act or omission by Town, its employees, agents, or representatives.

IN WITNESS WHEREOF, the Agencies have executed this Agreement or caused their duly authorized official to execute this Agreement.

HELLSGATE FIRE DISTRICT

TOWN OF PAYSON, An Arizona municipal Corporation

By _____
David Massie, Chairperson

By _____
Kenny J. Evans, Mayor

ATTESTED

By _____
Gayle Fitch, Clerk

By _____
Silvia Smith, Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Agreement and approved it as to form. When reviewing an agreement for form, the Legal Department considers whether the following situations have been addressed:

Identification of parties;

Offer and acceptance;

Existence of consideration (we do not review to determine if consideration is adequate);

That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed this Agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the agreement.

Further, this Agreement is found to be in proper form and within the powers and authority granted under the laws of the State of Arizona to the Town of Payson.

Dated this _____ day of _____, 2008.

By _____
Samuel I. Streichman, Town Attorney

APPROVAL AS TO FORM

THE GILA COUNTY ATTORNEY'S OFFICE HAS REVIEWED THIS AGREEMENT AND APPROVED IT AS TO FORM AND HAS DETERMINED THAT SAID AGREEMENT IS IN PROPER FORM AND IS WITHIN THE POWERS AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA. WE HAVE NOT REVIEWED THE AGREEMENT FOR OTHER ISSUES. THEREFORE, APPROVAL AS TO FORM SHOULD NOT BE CONSIDERED AN APPROVAL OF THE APPROPRIATENESS OF THE TERMS OR CONDITIONS OF THE AGREEMENT OR THE UNDERLYING TRANSACTION. IN ADDITION, APPROVAL AS TO THE FORM SHOULD NOT BE CONSIDERED APPROVAL OF THE UNDERLYING POLICY CONSIDERATIONS ADDRESSED BY THE AGREEMENT.

Dated this _____ day of _____, 2008.

By _____
Jeff Dalton, Gila County Attorney's Office



PFD & HFD IGA

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Intergovernmental Agreement between Hellsgate Fire District and the Town of Payson, Arizona, was signed before me this _____ day of _____, 2008, by Kenny J. Evans, Mayor of the Town of Payson, Arizona, on behalf of the Town.

By _____
Kenny J. Evans, Mayor

Notary Public

My commission expires:
