

RESOLUTION NO. 2589

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 FOR FIRE/EMS DISPATCH SERVICES.

WHEREAS, Hellsgate Fire District ("the District"), and the Town of Payson ("the Town") desire to enter into an agreement whereby the Town will provide dispatch services to the District; and

WHEREAS, pursuant to A.R.S. 11-952, the District and the Town are permitted to enter into intergovernmental agreements; and

WHEREAS, for such purpose, the parties have negotiated an intergovernmental agreement,

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 District and the Town for dispatch services attached hereto as Exhibit "A" be and is hereby approved in substantially the form attached.

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

Section 3. That the Town be and is hereby authorized to take such other and further actions as may be necessary or appropriate to implement the terms and intent of this Resolution Number 2589 and said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2011, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

EXHIBIT "A"

to Resolution No. 2589

CONTRACT FOR DISPATCH SERVICES BETWEEN HELLSGATE FIRE DISTRICT AND THE TOWN OF PAYSON

1. **Parties.** The parties to this Contract are the Hellsgate Fire District, an Arizona fire district organized pursuant to A.R.S. §§ 48-261 and 48-802 et. seq., hereinafter referred to as "the District," and the Town of Payson, an Arizona municipal corporation, hereinafter referred to as "Town" (collectively, the "Parties"). The Town and the District, in consideration of the mutual covenants and conditions herein contained, hereby agree as follows:
2. **Scope of Services.** The Town will provide dispatch services to the District (as described in Exhibit A attached hereto) during the term of this Contract. Such services shall be provided in a manner substantially consistent with the Town's policies and procedures.
3. **Effective Date and Term.**
 - 3.1 This Contract shall be effective beginning on January 1, 2011 and shall remain in effect for one year from such date, unless it is terminated as provided for in this Contract.
 - 3.2 Upon the expiration of the initial term and any subsequent terms, this Contract shall be automatically renewed for a period of one (1) year thereafter, and from year to year thereafter, unless, 60 days prior to such expiration date, either Party provides written notice to the other Party stating its intent not to renew this Contract upon the expiration of the applicable term.
4. **Compensation and Payment.**
 - 4.1 In consideration of the Town providing the agreed upon dispatch services, each six month period (January 1st through June 30th and July 1st through December 31st) the District agrees to pay the Town the sum of Thirty-five Dollars (\$35.00) for each incident dispatched within the District's response area and Fifteen-hundred dollars (\$1500.00) for the use of the Diamond Point repeater. At the end of billing period, the Town will invoice the District and payment shall be made within 30 days of such invoice.
 - 4.2 Following the initial term, or any extension thereafter, the annual payment shall be adjusted annually to reflect a four percent (4%) increase for the Diamond Point repeater.

5. **Insurance.** Without limiting any liabilities or any other obligations of the District or the Town, the District and the Town shall provide and maintain, in a form and and with an insurer acceptable to each Party until all the obligations under this Contract are satisfied, the minimum insurance coverage as follows:
 - 5.1 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.
 - 5.2 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 to this section.
6. **Reserved.**
7. **Modification.** No provision of this Contract shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Town and the District.
8. **Termination.** Without limiting or waiving any other remedies either Party may terminate this Contract upon providing 60 days written notice to other Party.
9. **Dispute Resolution.** This Contract shall be governed and construed in accordance with the laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Contract may, but in no event need, be settled by submission 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 arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be submitted to mediation or litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys’ fees, costs, or expert witness fees incurred in any dispute, controversy, claim, or cause of action related to this Contract, but each party shall bear its own attorneys’ fees without contribution from the other party, whether the same is resolved through arbitration, mediation, litigation in a court, or otherwise.
10. **Cancellation (A.R.S. §38-511).** This Contract is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of contracts by the Parties for certain conflicts of interest.

11. **Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).**

- 11.1 The Parties and any Subcontractors employed by either of the Parties warrant their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).
- 11.2 A breach of the warranty under Section 11.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.
- 11.3 The Parties retain the legal right to inspect the papers of the each other or any Subcontractors of the each other who work on this Contract to ensure that the Parties and Subcontractors are complying with Section 11.1.

12. **Other Provisions.**

- 12.1 **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 or sent by certified United States mail, postage prepaid, return receipt requested, to:

Town:	Hellsgate Fire District:
Town of Payson Fire Department	Hellsgate Fire Department
400 West Main Street	80 S. Walters Lane
Payson, Arizona 85541	Star Valley, AZ 85541
Attention: Fire Chief	Attention: Fire Chief

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, 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 shall be deemed delivered upon delivery.

- 12.2 **No Partnership.** It is not intended by this Contract to, and nothing contained herein shall, create any employment relationship, partnership, joint venture, or other arrangement between Town and the District.
- 12.3 **No Third Party Beneficiaries.** No term or provision of this Contract 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 of action hereunder.
- 12.4 **Counterparts.** This Contract may be executed in 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.

- 12.5 **No Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town of a breach of any of the covenants of this Contract shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Contract.
- 12.6 **Construction of Contract.** This Contract 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 Contract. 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 Contract.
- 12.7 **Further Documentation.** Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Contract.
- 12.8 **Time of Essence.** Time is of the essence of this Contract and all of its parts.
- 12.9 **Time Periods.** Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Contract expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 12.10 **Severability.** If any portion of this Contract 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.
- 12.11 **Authority.** The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Contract by and through the individual(s) executing hereinafter.
- 12.12 **Entire Contract.** This Contract contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter and all prior or contemporaneous oral or written agreements shall have no effect.
- 12.13 **Scrutinized Business Operations.** Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of this Contract will not have a scrutinized business

operation in either Sudan or Iran.

12.14 To fulfill this contract, each party shall provide funding through general tax revenues and shall make adequate provisions in its annual budget.

12.15 The Parties shall not co-mingle any property.

WHEREFORE, the parties have caused this Contract to be executed by their duly authorized representatives.

HELLSGATE FIRE DISTRICT,
an Arizona Fire District

By Richard Pinkerton its Chairperson

1-12-2011
Dated

ATTEST:

Gayle Fitch
Gayle Fitch, Board Clerk

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
_____, its Town Manager

Dated

ATTEST:

Silvia Smith, Town Clerk

APPROVAL AS TO FORM

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

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract consideration (we do not review to determine if consideration is adequate);
4. 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 the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated: ____ day of _____, _____

By _____
Timothy M. Wright, Town Attorney

Exhibit A

FIRE/EMS DISPATCH SERVICES

The Town Provides:

1. 911 system answering point;
2. Provision of emergency phone number and answering point;
3. Answering point for State and County mutual aid requests;
4. Use of main fire dispatch and tactical operations frequencies as described by the Northern Gila County Fire Chiefs Association;
5. Provision of basic incident information such as requesting party, apparatus/unit times and a basic incident activity log of communications between field units and Alarm fire dispatch.

The District Provides:

1. Current District response area maps and information;
2. Current apparatus/unit information;
3. Current personnel and contact information;
4. Radio system hardware for fire apparatus/units including any necessary programming for radio components;
5. Maintenance for fire apparatus/unit radio system hardware;
6. Training for District personnel on communications procedures.