

RESOLUTION NO. 2601

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AFFIRMING THE TOWN'S DESIRE TO PARTICIPATE IN THE CREATION OF A HIGHER EDUCATION SEPARATE LEGAL ENTITY, APPROVING THE CONCEPTUAL FRAMEWORK SET FORTH IN THE DRAFT INTERGOVERNMENTAL AGREEMENT (CREATING SUCH HIGHER EDUCATION SEPARATE LEGAL ENTITY), AND AUTHORIZING THE MAYOR TO NEGOTIATE THE REMAINING DETAILS OF SUCH INTERGOVERNMENTAL AGREEMENT FOR APPROVAL BY COUNCIL.

WHEREAS, the Town of Payson may enter into agreements with other governmental entities to form separate legal entities pursuant to A.R.S. §§11-951 and 11-952; and

WHEREAS, a separate legal entity has the powers specified by statute and the agreement creating such separate legal entity; and

WHEREAS, a separate legal entity is a political subdivision of the State of Arizona and in its own name has powers, rights, and immunities as set forth in A.R.S. §11-952.02; and

WHEREAS, a separate legal entity is legally separate and distinct from its members, and its members are not liable for the actions and/or debts of the separate legal entity except as set forth in the documents creating such separate legal entity; and

WHEREAS, a conceptual framework for a Higher Education Separate Legal Entity involving Gila County, the Town of Payson, and the Town of Star Valley has been created; and

WHEREAS, pursuant to such conceptual framework, an Intergovernmental Agreement for the creation of a Higher Education Separate Legal Entity has been drafted,

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

- Section 1. That the Town of Payson desires to participate in the creation of a Higher Education Separate Legal Entity, pursuant to A.R.S. §11-952.02.
- Section 2. That the conceptual framework creating such Higher Education Separate Legal Entity among Gila County, the Town of Payson, and the Town of Star Valley as set forth in the draft Intergovernmental Agreement, attached as Exhibit A, is hereby approved.
- Section 3. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to negotiate the remaining details of such Intergovernmental Agreement with Gila County and the Town of Star Valley; and to bring back to the Council a final version of the Intergovernmental Agreement for approval.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON 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 2601**

INTERGOVERNMENTAL AGREEMENT  
FOR THE CREATION OF THE  
HIGHER EDUCATION  
SEPARATE LEGAL ENTITY

This Intergovernmental Agreement (“IGA”) is entered into pursuant to A.R.S. §11-952 by and between Gila County, a body politic and corporate of the State of Arizona, (the “County”), the Town of Payson, a political subdivision of the State of Arizona, (“Payson”), and the Town of Star Valley, a political subdivision of the State of Arizona, (“Star Valley”) (collectively the “Parties”) for the purpose of creating the Higher Education Separate Legal Entity (“the Entity”).

**Recitals**

- A. The Parties may enter into agreements with each other to form a separate legal entity pursuant to A.R.S. §11-951, *et seq.*
- B. A separate legal entity created pursuant to A.R.S. §11-952 has the powers specified in the agreement creating it and may exercise such powers in a manner or according to the method provided in the agreement. A.R.S. §11-952.02(A).
- C. A separate legal entity is a political subdivision of the State of Arizona and in its own name has powers, rights, and immunities as set forth in A.R.S. §11-952.02.
- D. The Parties wish to enter into this IGA in order to create a separate legal entity pursuant to A.R.S. §11-952.02 and approve a Governance Agreement for such entity.
- E. The Parties each have the authority to appropriate and expend resources in connection with economic development activities pursuant to A.R.S. §§9-500.11 and 11-254.04, that each Party’s governing body has determined will assist in the creation or retention of jobs or will otherwise improve or enhance such Party’s inhabitants’ economic welfare.
- F. The Parties desire that the Entity operate within the perimeters of the Governance Agreement as a political subdivision separate and distinct from each of the Parties.
- G. A.R.S. §§11-201, 11-254.04, 11-951, 11-952, and 11-952.02 and Resolution \_\_\_\_\_ approved by the Gila County Board of Supervisors on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 enables the County to enter into this IGA for the purposes stated herein.
- H. A.R.S. §§9-240, 9-500.11, 11-951, 11-952, and 11-952.02 and Resolution \_\_\_\_\_ approved by the Payson Town Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 enables the Town to enter into this IGA for the purposes stated herein.

- I. A.R.S. §§9-240, 9-500.11, 11-951, 11-952, and 11-952.02 and Resolution \_\_\_\_\_ approved by the Star Valley Town Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 enables the Town to enter into this IGA for the purposes stated herein.
- J. The implementation of this IGA will substantially further the public health, safety, and welfare for Gila County and will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the Parties' inhabitants;

***NOW THEREFORE***, the Parties pursuant to the above and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. DURATION

1.1 This IGA shall be effective upon the date of the last signature of the Parties.

1.2 This IGA shall expire fifty (50) years from its effective date.

1.3 Notwithstanding subsection 1.2, the Parties may extend this IGA for additional periods of 10 years upon approval of a Resolution by each of the Governing Bodies of the Parties prior to expiration of the prior term.

2. PURPOSES

***2.1 take language from the SLE Governance Agreement***

3. MANNER OF FINANCING AND OF ESTABLISHING AND MAINTAINING A BUDGET –

3.1 The financing of the Entity and the establishing and maintaining of a budget pursuant to this IGA and the Entity created herein shall be in accordance with the Governance Agreement.

4. METHOD OF TERMINATION AND DISPOSAL OF PROPERTY UPON TERMINATION –

4.1 This IGA and the Entity created herein may be terminated by the mutual consent of the Parties.

4.2 Upon termination of this IGA and the Entity created herein, whether by mutual consent or by expiration, the disposal of the Entity's property shall be as set forth in the Governance Agreement.

5. ORGANIZATION, COMPOSITION, TITLE, AND NATURE OF ENTITY

5.1 The separate legal entity created herein shall be called the Higher Education Separate Legal Entity.

5.2 The Entity is a political subdivision of the State of Arizona

5.3 The Entity is authorized to exercise powers to the fullest extent allowed under A.R.S. §11-952.02 as may be amended from time to time and as are set forth in the Governance Agreement.

5.4 The organization, composition and nature of the Entity, except as explicitly set forth in this IGA, shall be as set forth in the Governance Agreement.

5.5 Each Party agrees to appoint initial Directors to the Entity, as required in the Governance Agreement, within 30 days of the approval of this IGA.

6. DEFINITIONS

6.1 Governance Agreement means the Governance Agreement attached hereto as Exhibit A.

6.2 Parties or Members of the Entity means the County, the Town of Payson, and the Town of Star Valley, Arizona. Parties or Members of the Entity also includes any other Members who are added pursuant to the terms of the Governance Agreement.

6.3 Higher Education Separate Legal Entity, or "Entity" means the separate legal entity created by this IGA.

7. OTHER PROVISIONS

7.1 Modification. No provision of this IGA shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the governing bodies of the Parties.

7.2 Dispute Resolution. This IGA shall be governed and construed in accordance with the laws of the State of Arizona. With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this IGA 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. No Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, 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.

7.3 Cancellation. This IGA 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.

7.4 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, return receipt requested, to:

Payson:  
Town of Payson  
Attention Town Manager  
303 North Beeline Highway  
Payson, AZ 85541

County:  
Gila County  
Attention County Manager  
1400 E. Ash Street  
Globe, AZ 85501

Star Valley:  
Town of Star Valley  
Attention Town Manager  
3632 East Highway 260  
Star Valley, AZ 85541

or to such other addresses as each 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 personally shall be deemed delivered upon delivery.

7.5 No Third Party Beneficiaries. No term or provision of this IGA 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.

7.6 Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating any Party to expend, or as involving any Party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated. Nor shall anything herein be construed as obligating the Parties to expend, or as involving the Parties in any contract or other obligation for the future

payment of money if such Party does not have sufficient revenues for this expenditure.

7.7 Entire Agreement. This IGA 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.

7.8 Severability. If any portion of this IGA is found to be invalid, such finding will not affect the validity of the remainder of this IGA and to this end the provisions of this IGA are severable.

**GILA COUNTY, ARIZONA**

**TOWN OF PAYSON**

By: \_\_\_\_\_  
Chairman, Board of Supervisors

By: \_\_\_\_\_  
Kenny J. Evans, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Silvia Smith, Town Clerk

**TOWN OF STAR VALLEY**

By: \_\_\_\_\_  
William Rappaport, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

Pursuant to A.R.S. §§11-952(D), the attorneys for the Parties hereto have determined that the foregoing Intergovernmental Agreement is in proper form, and is within the powers and authority granted under the laws of this State.

\_\_\_\_\_  
Timothy M. Wright  
Town Attorney, Payson

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attorney for Gila County

Date: \_\_\_\_\_

\_\_\_\_\_  
Timothy Grier  
Town Attorney, Star Valley

Date: \_\_\_\_\_

