

RESOLUTION NO. 2864

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE MANAGEMENT SERVICES AGREEMENT (“AGREEMENT”) BETWEEN THE HOUSTON MESA FIRE DISTRICT (“HMFD DISTRICT”) AND THE TOWN OF PAYSON, THE PAYSON FIRE DEPARTMENT, (“TOWN PFD”) TO PROVIDE MANAGEMENT AND OVERSIGHT SERVICES.

WHEREAS, the Town of Payson, a municipal corporation and a political subdivision of the State of Arizona, is located entirely in Gila County and incorporated and organized under A.R.S. §§ 9-101 and 9-231; and

WHEREAS, the Houston Mesa Fire District (“HMFD DISTRICT”), a political subdivision of the State of Arizona, is located entirely in Gila County and organized under A.R.S. § 48-802 *et seq.*; and

WHEREAS, the TOWN PFD has been requested to enter into a Management Services Agreement with the HMFD DISTRICT, pursuant to A.R.S. § 11-952 *et seq.* and § 48-805 *et seq.*; and

WHEREAS, the Parties desire to approve and to execute the Agreement for the period beginning July 23, 2015 and ending June 30, 2016 through an Emergency Clause; and

WHEREAS, the Parties acknowledge that the services performed have a value to the TOWN PFD and to HMFD DISTRICT and in consideration of that value, the HMFD District agrees to fund the Town in the total amount of \$2,000.00 per month for fiscal year 2015/2016; and

WHEREAS, this Agreement may be renewed from year to year by mutual agreement of the parties involved; and

WHEREAS, Mayor and Council deem this measure one necessary for the preservation of the public peace, health or safety, in which the emergency requires immediate adoption of the Agreement to provide immediate Management Services for Firefighters and EMTs.

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

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Prepared by Town of Payson Legal Department

TMW:dhs July 16, 2015 (10:53AM)

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JUL 23 2015

Section 1: That the Agreement between the Houston Mesa Fire Department District and the Town of Payson Fire Department, attached hereto marked Exhibit A is approved in substantially the form attached.

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said Intergovernmental Agreement in substantially the form attached.

Section 3: That the Town of Payson is authorized to take such other and further actions as may be necessary or appropriate to carrying out the intent of this Resolution.

Section 4: That it is necessary for the preservation of peace, health and safety of the HMFD DISTRICT fire services to continue without interruption, an emergency is declared to exist and this Resolution shall become immediately operative and in full force and effect from and after the date of its enactment.

PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of July, 2015, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Hector M. Figueroa, Town Attorney

EXHIBIT "A"
INTERGOVERNMENTAL AGREEMENT FOR
MANAGEMENT SERVICES

PREAMBLE

This Intergovernmental Agreement for Management Services is made and entered into this **23rd** day of **July, 2015**, by and between the HOUSTON MESA FIRE DISTRICT ("HMFD DISTRICT") and the TOWN OF PAYSON on behalf of PAYSON FIRE DEPARTMENT ("TOWN PFD"), which are both political subdivisions of the State of Arizona, located entirely in Gila County, and are organized or incorporated under ARS §§ 48-802 et seq.; 9-101 and 9-231 *et seq.* HMFD DISTRICT and TOWN PFD shall be referred to collectively herein as the "Parties"; and individually as "District", "Party", or "Town", respectively.

RECITALS

WHEREAS, both Parties are authorized pursuant to A.R.S. §§ 11-951; 11-952 et seq. and A.R.S. §48-805 et seq. to enter into Agreements with other Fire Districts or other political subdivisions; and

WHEREAS, the HMFD DISTRICT through its Board shall have the authority under A.R.S. §48-805(B)(7) to enter into an agreement procuring the services of a fire department of a neighboring town without impairing the fire district's powers; and

WHEREAS, the HMFD DISTRICT through its Board shall have the authority under A.R.S. §48-805(B)(16)(a) to enter into an agreement or a contract with another political subdivision for technical or administrative services; and

WHEREAS, the Parties have established the need to contract for management services, including Administrative, Financial, Personnel and Apparatus/Equipment Services as enumerated in the attached Exhibit "I" and incorporated by reference as if set forth in full herein to provide Fire Services in a more efficient and cost effective manner; and

WHEREAS, the TOWN PFD does employ David Staub (the "Fire Chief") on a full-time basis, the Fire Chief has the required professional qualifications, expertise, and experience in leading, managing, and administering a professional, full-service Fire District consistent with the terms of his employment with the Town of Payson; and

WHEREAS, the Parties desire to enter into a contractual relationship for Management Services in exchange for the consideration as set forth herein; and

WHEREAS, the Parties desire to implement a framework for the efficient and cost effective services related to various operations and administrative District functions.

NOW THEREFORE, in consideration of mutual promises and covenants set forth herein, the Fire Districts agree as follows:

COVENANTS

SECTION 1 - PURPOSE

The purpose of this Intergovernmental Agreement (“IGA”) is to establish the means and terms by which HMFD DISTRICT shall receive Management Services, including Administrative, Financial, Budgeting, Personnel, Training and Apparatus/Equipment Services as enumerated in Exhibit “I” and incorporated by reference as if set forth in full herein to provide Fire Services in a more efficient and cost effective manner

SECTION 2 - SCOPE

HMFD DISTRICT’s Responsibilities and Obligations:

DISTRICT through its Board shall:

- (a) Conduct and perform its statutory duties and functions related to meetings, budgets, compensation payable to district personnel, procurement and acquisition of equipment, financing including issuance of bonds, enforce the fire code and cooperate with the state fire marshal, retain a certified public accountant to perform annual audit of district books and retain private legal counsel where required by statute or legal claims.
- (b) Appropriate and expend annually monies as are necessary for the purpose of fire districts belonging to and paying dues in any state or professional affiliations or entities.
- (c) Adopt resolutions establishing fee schedules both within and outside of the jurisdictional boundaries of the District as may be required by A.R.S. §48-805 et seq.
- (d) Conduct and perform any other statutory duties and functions as required by A.R.S. §48-805 et seq. and not enumerated herein.
- (e) Provide the Fire Chief authority, guidance and cooperation in establishing the framework to carry out the terms and conditions contained in the Agreement subject to the Board By-Laws, Policies and Budgetary considerations.
- (f) Formally communicate with TOWN PFD any challenges or concerns regarding this IGA, and/or any concerns related to the performance of the Fire Chief under this IGA, with the intent of resolving such issues and to preserve the intent and purpose of this IGA for the ongoing benefit of both Parties.

- (g) Notify TOWN PFD of any intent to terminate this IGA as outlined within the terms set forth herein.

TOWN PFD's Responsibilities and Obligations:

TOWN PFD by and through the Fire Chief shall:

- (a) Co-operate and develop a strategic plan in the allocation of equipment, personnel and resources as needed to allow for the efficient and effective operation and administration of the Districts' needs.
- (b) Formally communicate with HMFD DISTRICT any challenges or concerns regarding this IGA, and/or any concerns related to the performance of the Fire District Board under this IGA, with the intent of resolving such issues and to preserve the intent and purpose of this IGA for the ongoing benefit of both Parties.
- (c) Notify HMFD DISTRICT of any intent to terminate this IGA as outlined within the terms of this IGA.

SECTION 3 - CONSIDERATION

In exchange for providing the contemplated services to HMFD DISTRICT as outlined in Exhibit "I" and herein, HMFD DISTRICT agrees to compensate TOWN PFD in the sum of \$2,000 monthly for expenses related to providing these services, payable on the 1st of each month, thereafter, in quarterly installments, starting October 1, 2015, and every three months thereafter. For the purposes of budgetary ease, this payment plan shall correspond with the fiscal year, except that upon the initial execution of this IGA.

SECTION 4 – GENERAL PROVISIONS

1. The Parties will establish appropriate policies, procedures, and protocol for using the Fire Chief and the management services provided for hereunder, including Fire Chief Services.
2. HMFD DISTRICT agrees to treat the Fire Chief as an independent contractor and a Town of Payson Department Head for all matters including, but not limited to, purposes of compensation, workman's compensation premiums, benefits, retirement and discipline.
3. HMFD DISTRICT agrees to contract for Management Services from TOWN PFD and thus shall not be responsible for tracking or accounting any of the costs associated with the employment of the Fire Chief and/or any PFD personnel, except as outlined within this IGA.

4. The Fire Chief and or his Designee will be present at meetings of the HMFD DISTRICT Governing Board to review and establish needs, priorities, and costs for providing the Management Services, and to present to the Governing Board recommendations for continued success in the management service programs operated or started while this IGA is in effect.
5. Except as otherwise provided for herein, or as otherwise provided by separate Exhibit, each Party shall be responsible for the acquisition and maintenance of its own equipment, notwithstanding that the Fire Chief may direct the use of such equipment by either Party, from time to time.

SECTION 5- DUTIES

The TOWN PFD duties to be performed on behalf of HMFD DISTRICT shall be the same as those reflected in the Management Services Agreement, as amended from time to time (a copy of which is attached hereto as **Exhibit "I"**).

SECTION 6 - SEVERABILITY

If any provision of this IGA shall be held to be unconstitutional, invalid, or unenforceable, it shall be deemed severable; however, the remainder of the IGA shall not be affected and shall remain in full force and effect.

SECTION 7 – LIABILITY INSURANCE

The HMFD DISTRICT and the TOWN PFD shall maintain, during the life of this IGA, a policy of liability insurance naming the other Party as an additionally named insured, in the minimum amount of \$1,000,000.00 per occurrence with aggregate liability coverage of not less than \$5,000,000.00. Such insurance shall provide coverage for the conduct and acts of the Fire Chief acting within the scope of his authority.

SECTION 8– TERM

The term of this IGA shall be effective upon it being approved by the Town of Payson Mayor and Council, executed by the Mayor and signed by the authorized representatives of the HMFD DISTRICT, and shall remain in effect from the date it is signed, until the end of the fiscal year of both Parties (June 30th), and shall automatically renew for successive one-year terms thereafter unless terminated by either Party.

This IGA shall be subject to review and notice of termination by the District Governing Board after every election cycle. In addition, this IGA shall be subject to available funding for

the District, and nothing in this IGA shall bind either Party to expenditures in excess of funds appropriated and allotted for the purposes outlined in this IGA.

SECTION 9 – TERMINATION

This IGA may be terminated by either Fire District, for any reason, effective one hundred twenty (120) days from the giving of written notice to the other Party at the following addresses:

Houston Mesa Fire District
Attn: Fire Board Chair
8139 Mescalero Rd.
Payson, AZ 85541

Town of Payson Fire Department
Attn: Fire Chief Staub
400 W. Main Street
Payson, AZ 85541

This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein.

SECTION 10 – INDEMNIFICATION

The Parties to this IGA shall indemnify and hold harmless each other and their respective districts, boards, employees, and agents, from any and all claims, liabilities, and expenses resulting from the indemnifying Party's negligence, or the negligence, acts of omissions of its directors, employees, and agents incurred in connection with the performance of its responsibilities under this IGA. Nothing herein shall be construed as a waiver by either Party of the right to bring an action for contribution against the other or as against any third person or entity.

SECTION 11– WORKERS COMPENSATION COVERAGE

For purposes of A.R.S. §23-1022 TOWN PFD shall be considered the primary employer of the Fire Chief, and agrees to provide Workers Compensation Insurance for the Fire Chief in accordance with all applicable Federal and State Laws. Each Party herein shall also comply with the provisions of A.R.S. §23-1022(E) by posting the required employee notice of Workers Compensation Insurance.

SECTION 12 – NON-DISCRIMINATION

The Parties warrant that they comply with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, creed, religion, sex, genetic information, age, national origin, disability, familial status or political affiliation, shall have equal access to employment opportunities, including but not limited to the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that it will not participate

either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Genetic Information Nondiscrimination Act of 2008.

SECTION 13 – BINDING EFFECT

This AGREEMENT shall be binding upon the Parties and any successor-in-interest. No provision herein is intended to create a third beneficiary interest in any person or entity, including but not limited to the respective employees or agents of either Party.

SECTION 14– PRIVACY

Each Party acknowledges that the Chief or the Parties’ employees or agents may, in the performance of its obligations under this IGA, come into possession of information that is confidential or privileged, including confidential patient information. In that event, said Party shall maintain the private or confidential nature of that information.

SECTION 15 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

The Parties are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the “state and federal immigration laws”). The Parties further agree to ensure that each subcontractor that performs any work under this IGA likewise complies with the state and federal immigration laws.

Each Party retains the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the IGA to ensure that the other Party is complying with the warranties regarding compliance with the state and federal immigration laws.

A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the IGA and the Party who breaches may be subject to penalties up to and including termination of the IGA.

SECTION 16 - OTHER AGREEMENTS

This IGA in no way restricts either Party from participating in similar activities with other public or private agencies, organizations and individuals.

SECTION 17– WAIVER OF JURY TRIAL

The Parties hereto expressly covenant and agree that in the event of litigation arising from this IGA, each Party agrees to waive its right to trial by jury.

SECTION 18 – ARBITRATION

To the extent permitted, the Parties agree to resolve any dispute arising out of this IGA by arbitration, making use of the Uniform Rules of Arbitration as adopted by the State of Arizona.

SECTION 19 – WAIVER OF ATTORNEY’S FEES

The Parties hereto expressly covenant and agree that in the event of mediation, arbitration or litigation arising from this IGA, neither Party shall be entitled to an award of attorney’s fees as against the other, either pursuant to the IGA, pursuant to A.R.S. §12-341.01(A) and (E), or pursuant to any other state or federal statute.

SECTION 20 – AMENDMENT AND CONSTRUCTION

This IGA sets forth the entire understanding of the Parties as to the matters set forth herein as of the date of this IGA and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by the authorized representatives of each of the Parties hereto. This IGA is intended to reflect the mutual intent of the Parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any Party.

SECTION 21 – INTERPRETATION AND GOVERNING LAW

This IGA shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This IGA is the result of negotiations between, and has been reviewed by, each of the Parties hereto and their respective counsel. Accordingly, this IGA shall be deemed to be the product of all the Parties hereto, and no ambiguity shall be construed in favor of, or against any one of, the Parties hereto.

This IGA shall be construed and interpreted under the laws of Arizona.

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IN WITNESS WHEREOF, The Parties enter into this IGA on the date(s) set forth below.

HOUSTON MESA FIRE DISTRICT

TOWN OF PAYSON (FIRE DEPARTMENT)

By: _____
Randy Norman, Chair/Fire Board

By: _____
Kenny J. Evans, Mayor

Date: _____

Date _____

By: _____
Susan Starr, Clerk/Fire Board

By: _____
Silvia Smith, Town Clerk

Date: _____

Date: _____

Determinations of Counsel

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to the Houston Mesa Fire District under A.R.S. §48-805 et seq..

By _____ Date _____
Counsel for Houston Mesa Fire District

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to the Town of Payson.

By _____ Date _____
Counsel for Town of Payson

Exhibit "I"

Personnel

- Assume responsibility for the management of all of Houston Mesa Fire Department's firefighting and EMS staff.
- Assign duties to and monitor the performance of personnel. .
- Subject to Board By Laws, Policies and budgetary considerations and with notification to the Board that such actions were taken: Hire qualified personnel as needed to fill open positions.
 - Promote or demote staff.
 - Suspend or terminate employees when necessary.
- Schedule and supervise internal training of all personnel. .
- Subject to budget constraints, arrange for external training as needed.
- Ensure that all personnel maintain their appropriate certification(s).
- Ensure all laws ordinances and HMFD Policies are enforced.
- Make recommendations to the Board of any Policies that may be necessary
- Adopt such SOPs as may be necessary for the efficient and safe operations of the HMFD.
- Investigate all complaints related to the District and take such action as the Fire Chief believes necessary..

Apparatus and Equipment:

- Ensure that all apparatus and equipment are maintained in proper working equipment are tested and certified as required.

Ensure that all apparatus and equipment are tested and certified as required.

Administration

- Prepare a monthly Chiefs Report for the Board, including a description of the previous month's activities, the status of all apparatus and personnel, and a discussion of any issues relevant to the Department's operations.
- Have the Chief or his designee attend Houston Mesa Fire District's Board meetings and provide input as needed on agenda items. .
- Inform the Board chairperson in a timely manner of any major problems or issues that may affect the Department or District. .
- Ensure that personnel and equipment expenditures are within budgeted amounts, unless pre-approved by the Board.
- Make recommendations to the Board if opportunities exist to improve the level of service or reduce expenses.
- Next year, assist the Board in putting together a budget for Fiscal Year 2016-2017.
- Ensure compliance with all District agreements.
- Supervise the purchase of all materials, supplies, and equipment for which funds are provided in the budget; obtain contracts necessary for the operation and maintenance of District services as provided for in the District's Purchasing Policy; receive bids for purchase or contracts and present them to the Board for approval, and advise the Board on the advantages and disadvantages of contract and bid proposals; and issue rules governing purchasing procedures within the administrative organization.