

VERSION 1.0



BOARD OF DIRECTORS SPECIAL MEETING

JUNE 6, 2017

SUPERSTITION FIRE & MEDICAL DISTRICT BOARD

JEFF CROSS, BOARD CHAIRMAN
GENE GEHRT, BOARD CLERK
TODD HOUSE, BOARD DIRECTOR
JASON MOELLER, BOARD DIRECTOR
LARRY STRAND, BOARD DIRECTOR



Superstition Fire & Medical District

Board of Directors Work Session Agenda

June 6, 2017

Mission Statement

Preserve Life ~ Protect Property ~ Add Value to *OUR* Community

PURSUANT TO A.R.S. §38.431.02

Notice is hereby given to the general public that the Superstition Fire & Medical District Governing Board will hold a work session on **Tuesday, June 6, 2017**. The meeting will be held at the Superstition Fire & Medical District's Administrative Office, located at 565 N. Idaho Road, Apache Junction, Arizona. The meeting will be open to the public and will begin at 4:00 p.m. local time.

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call

The following agenda items are scheduled for discussion at the work session. The Governing Board may or may not decide to take action on any or all items. The order of the agenda items may or may not be taken in the order listed.

1. **Discussion, review, and possible approval of the Intergovernmental Agreement with the Town of Florence, for fire apparatus maintenance services performed by the SFMD. (BOD #2017-06-01)**
2. **Executive Session for Legal Advice. The board may vote to go into executive session pursuant to ARS §38-431.03(A)(3) and/or ARS §38-431.03(A)(4) for discussion or consultation for legal advice with an attorney for the district in order to consider the board's position regarding contracts that are subject of negotiations, in contemplated litigation, or in settlement discussions to avoid or resolve litigation as related to the fire chief's employment contract, district's by-laws, and the letter dated May 24, 2017 from the fire chief's attorney regarding breach of contract. (BOD #2017-06-02)**

Note: Executive Sessions are confidential pursuant to ARS §38-431.03(C).

Note: Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorney as provided in ARS §38-431.03(A)(4).

3. **Review, discussion, and possible action regarding the fire chief's employment contract and the letter dated May 24, 2017 from the fire chief's attorney regarding breach of contract. (BOD #2017-06-03)**

4. **Call to the Public. (BOD #2017-06-n/a)**

A.R.S. §38-431.01(H) A public body may make an open call to the public during a public meeting, subject to reasonable time, place, and manner restrictions, to all individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter, or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

5. **Adjourn (BOD #2017-06-04)**

NOTICE: The governing board may go into executive session for the purpose of obtaining legal advice from the fire district's attorney(s) on any of the above agenda items pursuant to A.R.S. 38-431.03(A)(3).

One or more members of the governing board may attend the meeting telephonically.

Governing Board meeting agenda dated and posted (at least 24 hours before the scheduled meeting date and time):

Original Post on June 5, 2017

At: 1400 Hours

By: Jasmin Jones

The Superstition Fire & Medical District (SFMD) Administrative Office Board Meeting Room is accessible to the handicapped. In compliance with the American with Disabilities Act (ADA), those with special needs, such as large-type face print or other reasonable accommodations may request those through the SFMD Administration Office (480-982-4440) at least twenty-four hours before the board meeting.

Governing Board Meeting – June 6, 2017

Agenda Item: 1

BOD#: 2017-06-01

Agenda Item Title:

Discussion, review, and possible approval of the Intergovernmental Agreement with the Town of Florence, for fire apparatus maintenance services performed by the SFMD.

Submitted By:

Acting Fire Chief Jerome Schirmer

Finance Director Roger Wood

Background/Discussion:

SFMD provided the Town of Florence the IGA for fire apparatus maintenance services that was approved and signed by the SFMD Board at the May 17, 2017 Board Meeting.

The Town of Florence has requested two changes detailed below, neither of which affects the financial aspect of the IGA for SFMD.

Page 4, Item #5e. The wording “only by qualified EVT certified technicians has been added.

Page 4, item h). This section has been added in its entirety. This language existed in the prior IGA and the Town of Florence wants it added to this IGA. It defines the responsibilities and authority of its employees regarding the Town of Florence’s Procurement Policy.

All other aspects of the IGA signed on May 17 remain intact. Donna Avera, SFMD Legal Counsel, has reviewed and approved these changes.

Staff recommends the approval of the Florence Fire IGA with an effective start date of July 1, 2017.

Financial Impact(s)/Budget Line Item:

TBD

Enclosure(s):

Updated Town of Florence IGA for Fire Apparatus Maintenance

Recommended Motion:

“Motion to approve the new three (3) year Intergovernmental Agreement between Superstition Fire & Medical District and the Town of Florence for fire apparatus maintenance with a term starting on July 1, 2017.”



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INTERGOVERNMENTAL AGREEMENT

Repair and Maintenance of Fire Apparatus and Equipment

Between

The TOWN of FLORENCE, ARIZONA,
a municipal corporation of the State of Arizona

And

The SUPERSTITION FIRE & MEDICAL DISTRICT,
a political subdivision of the State of Arizona

DATED AS OF July 1, 2017

**INTERGOVERNMENTAL AGREEMENT
FOR
REPAIR AND MAINTENANCE OF
FIRE APPARATUS AND EQUIPMENT**

This Agreement is entered into effective as of July 1, 2017 by and between the Town of Florence, a municipal corporation of the State of Arizona (“Town”), and the Superstition Fire & Medical District, an Arizona fire district existing pursuant to the authority of Title 48, Chapter 5 of the Arizona State Revised Statutes (“SFMD”) and collectively referred to as the Parties.

RECITALS

Whereas, the Parties each are authorized to provide fire and emergency medical services and each have fire and rescue apparatus, fleet vehicles, and equipment reasonably necessary to perform those services (collectively the “apparatus”); and

Whereas, SFMD has a Fleet Maintenance Division directly supervised by a Fleet Services Supervisor, employs Emergency Vehicle Technicians (“EVTs”), uses fleet maintenance software tracking, and has specialized tools for the diagnostics, repair, and maintenance of its own apparatus and from time to time has provided repair and maintenance of the Town’s apparatus; and,

Whereas, SFMD is familiar with the Town’s apparatus; and

Whereas, Town is familiar with SFMD’s Fleet Maintenance Division; and

Whereas, Town desires SFMD to provide repair and maintenance on the Town’s apparatus; and

Whereas, SFMD has capacity to provide the Town with repair and maintenance services on the Town’s apparatus; and

Whereas, each Party has determined that it is its best interests and mutually beneficial to for SFMD to provide the Town with repair and maintenance services upon the terms and conditions as set forth in this Agreement; and

Whereas, it is the desire of SFMD and the Town to jointly exercise their powers pursuant to A.R.S. Sec. 11-952 and 48-805(B) to enter into an intergovernmental agreement for fleet maintenance services to be provided by SFMD to Florence Fire upon the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions contained herein, the parties hereby agree as follows:

1 *Recitals.*

- a. The Recitals set forth above are incorporated into the terms and conditions of this Agreement.

2 *Effective Date and Duration.*

- a. This Agreement shall be effective on the 1st day July, 2017 and shall continue in full force and effect until the 30th day of June, 2020.
- b. This Agreement may be renewed by either party for up to two successive three year terms provided the Parties mutually agree upon any changes to the rate schedule within 90 days of the expiration of then current term.
- c. Either Party may cancel this Agreement with sixty (60) days written notice to the other party.
- d. In the event of a material breach of any of the provisions in this Agreement, the non-breaching Party may terminate this Agreement by delivering written notice to the breaching party specifically stating the nature of the breach giving the breaching party 30 days to cure the breach. If the breach is not cured, this Agreement shall be deemed terminated.
- e. In the event either Party fails to appropriate funds based on a reasonable determination by that Party that there are insufficient funds to meet its obligations under this Agreement, the non-appropriating Party shall immediately provide written notice to the other Party and then shall have the right to terminate the Agreement effect as of the last day of the fiscal period for which funds are legally available.
- f. Upon cancellation or termination for any reason, Town shall pay SFMD all sums due and owing at the time of cancellation.

3 *Budget.*

- a. Each party represents that it has within its respective budget, sufficient funds to discharge the obligations and duties assumed under this Agreement. Should either party fail to obtain continued funding during the term of this Agreement through a failure of appropriation or approval of funds, or through other legal means, then this Agreement shall be deemed to terminate by operation of law.

4 *Obligations of the Town.*

- a. The Town shall pay SMFD for labor, parts, mileage and any other applicable costs as invoiced pursuant to the fee schedule then in effect. Payment from the Town shall be due and payable to SFMD within 30 days of invoice.
- b. The Town shall be responsible to deliver its apparatus to and pick up from SFMD's Fleet Service Center located at 1455 E. 18th Ave., Apache Junction, AZ.
 - i. In the event the Town cannot or does not deliver its apparatus to SMFD, the Town shall pay costs incurred by SFMD in obtaining and returning the Town's apparatus at the hourly rate then in effect plus \$2 per mile travel costs for any SFMD service truck.
- c. The Town shall provide SFMD a list of Town personnel who are authorized to approve repair and maintenance work from SFMD.

- d. The Town shall provide SFMD prompt notification of any additions to or reductions from the Town's apparatus.
- e. The initial rate schedule for work done by SFMD under this Agreement is as follows:
 - i. Labor Rate: Monday – Thursday from 7 a.m. to 6 p.m. (excluding holidays) \$73.00/hr.
 - ii. Labor Rate: All other times \$110.00/hr.
 - iii. Parts and materials
Cost plus 10% handling charge
 - iv. For the first year of this Agreement, the Town's handling charge for parts shall be capped at \$6,000.00.
- f. The labor rates as set forth above may be increased by an amount up to 3% annually as mutually agreed upon by the Parties prior to July 1 of each year.

5 *Obligations of SFMD*

- a. At its Fleet Services Center, SFMD will perform routine repairs and maintenance for the Town's apparatus as may be requested by the Town as needed on a 24-hour basis seven days a week.
- b. SFMD will provide the Town with the same service standards and priority for out of service front line apparatus that would be expected of SFMD's own apparatus. In addition, non-emergency repairs shall be assigned the appropriate priority at the discretion of SFMD's Fleet Supervisor. Ultimately, the prioritization of the service on all apparatus shall be at the discretion of SFMD's Fleet Supervisor.
- c. SFMD will promptly notify the Town of any repairs that fall outside SFMD's technician or shop equipment capabilities that would require outsourcing of the needed repairs
- d. SFMD will perform repair and maintenance services consistent with manufacturers recommended maintenance schedules and applicable NFPA guidelines.
- e. Repair and maintenance services will be performed only by qualified EVT certified technicians.
- f. On an as needed basis, SFMD will provide repair and maintenance at the Town's facility located in Florence for apparatus that is not drivable or otherwise cannot be delivered to SFMD's Fleet Services Center.
- g. In providing repair and maintenance services for the Town, SFMD in its sole discretion may, from time to time, obtain assistance or subcontract; however, in the event the cost of outside assistance exceeds \$1,000, SFMD shall obtain the consent of the Town.
- h. Individual purchases under this Agreement shall not exceed \$5,000. Purchases exceeding \$5,000 are subject to competition requirement and can only be made by the Contracting Specialists and Purchasing Agents from the Town within their delegated procurement authority.
- i. SFMD shall maintain records of repairs and maintenance on the Town's apparatus on SFMD's computerized records system and shall provide the Town monthly summaries of the work.
- j. SFMD shall provide the Town monthly invoices based on the rate schedule then in effect.

6 *Indemnification.*

- a. SFMD shall defend, indemnify, and hold harmless Florence Fire, its officers, agents, employees, elected and appointed officials, and volunteers, from and against all actions, lawsuits, losses and expenses (including court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or SFMD's performance hereunder (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property). The obligations of this indemnification provision shall not apply in the event that any such Liability is found to have resulted from the negligence or intentional misconduct of Florence Fire.
- b. The Town shall defend, indemnify, and hold harmless SFMD, its officers, agents, employees, elected and appointed officials, and volunteers, from and against all actions, lawsuits, losses and expenses (including court costs, expenses for litigation, and reasonable attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or SFMD's performance hereunder (including, without limitation, Liability on account of any injury, sickness, disease, or death of any person or damage, destruction, or loss of any property). The obligations of the foregoing indemnification provision shall not apply in the event that any such Liability is found to have resulted from the negligence or intentional misconduct of SFMD.
 - a. The obligation to indemnify survives the termination of this Agreement.

7 *Insurance.*

- a. Each party represents that it shall maintain for the duration of this Agreement, sufficient policies of public liability insurance covering all of its obligations undertaken in the implementation of this Agreement.
- b. The Town is solely responsible for maintaining insurance on its apparatus to cover any damage that might occur while apparatus is being transported to or from SFMD or while being repaired by SFMD. SFMD is not responsible for personal property left on or in the Town's apparatus.

8 *Notices.*

- a. All notices or demands required under this Agreement from either party to the other shall be in writing and shall be deemed to have been given when the notice is delivered in person or on the date deposited in the U.S. Mail addressed as follows:

TO SFMD: Fire Chief
Superstition Fire & Medical District
565 N. Idaho Road
Apache Junction, AZ 85119
(480) 982-4440

TO TOWN: Town Manager
Town of Florence
P.O. Box 2670
Florence, AZ 85232
(520) 868-7500

9 *Miscellaneous.*

- a. Each party warrants that prior to signing this Agreement, all of its internal procedures; rules and regulations have been complied with. The signing of this Agreement constitutes a binding agreement.
- b. Failure of any party to strictly enforce any provisions hereunder shall not constitute a waiver of rights to demand strict performance of that, or any other provisions hereof at any time hereafter.
- c. The terms and conditions of this Agreement are separate and severable. If for any reason, any Court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.
- d. Neither the employees of SFMD shall become employees of the Town nor shall the employees of the Town become employees of SFMD by virtue of this Agreement. Nothing in this Agreement shall be construed to create any partnership or joint venture between the Parties.
- e. Pursuant to A.R.S. Section 38-511, either party may cancel this Agreement for conflict of interest.

10 *Compliance with Legal Authorities.*

- a. The parties shall each be responsible for their respective compliance with all requirements of any federal, state, county or local ordinances, statutes, charters, codes, rules, regulations, or any other governmental requirements including, but not limited to, the rules and regulations of the Arizona Department of Health Services.
- b. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination."
- c. Each party shall comply with the notice provisions of A.R.S. § 23-1022(e). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the incident command protocol in place, and said party shall have the sole responsibility for the payment of workers' compensation benefits or other fringe benefits of said employees.
- d. This Agreement and all documents and instruments executed in furtherance hereof may be amended or supplemented only by an instrument in writing, signed by the parties against which enforcement thereof may be sought.
- e. Titles and headings of the paragraphs contained herein are solely for the purpose of convenience and are not intended to in any way affect, control or limit the meaning or application of any such paragraph.
- f. Words and expressions used herein shall be applicable according to the context and without regard to the number or gender of such words or expressions.
- g. The parties acknowledge and agree that no representations, warranties, or covenants have been made to, or relied upon by them, or by any person acting for or on their behalf, which are not fully and completely set forth herein. This Agreement

supersedes any terms, conditions, covenants or other documents or agreements between the parties

- h. This Agreement has been negotiated by the parties and no party has acted under compulsion or duress, economic or otherwise. The parties waive any rule of interpretation which would construe any provision of this Agreement against any party who drafted this Agreement.
- i. This Agreement and all documents and instruments executed in furtherance hereof, and the rights and obligations of the parties hereunder, shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of Arizona, statutory and decisional, in effect from time to time, without giving effect to principles of conflicts of law. All parties consent to personal jurisdiction in Arizona, and venue for any action to enforce this Agreement shall be in Pinal County, Arizona.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed this _____ day of _____, 2017.

TOWN OF FLORENCE

By: _____

Its: _____

SUPERSTITOIN FIRE & MEDICAL DISTRICT

Chairman of the Board

The foregoing Intergovernmental Agreement between the Town of Florence and the Superstition Fire & Medical District has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

Donna Aversa
Attorney for
Superstition Fire & Medical District

Attorney for
The Town of Florence

Governing Board Meeting – June 6, 2017

Agenda Item: 2

BOD#: 2017-06-02

Agenda Item Title:

Executive Session for Legal Advice. The board may vote to go into executive session pursuant to ARS §38-431.03(A)(3) and/or ARS §38-431.03(A)(4) for discussion or consultation for legal advice with an attorney for the district in order to consider the board's position regarding contracts that are subject of negotiations, in contemplated litigation, or in settlement discussions to avoid or resolve litigation as related to the fire chief's employment contract, district's by-laws, and the letter dated May 24, 2017 from the fire chief's attorney regarding breach of contract.

Note: Executive Sessions are confidential pursuant to ARS §38-431.03(C).

Note: Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorney as provided in ARS §38-431.03(A)(4).

Submitted By:

Legal Counsel Donna Aversa

Background/Discussion:

N/A

Financial Impact(s)/Budget Line Item:

N/A

Enclosure(s):

N/A

Recommended Motion:

"Motion to go into Executive Session at (Say Time) pursuant to ARS §38-431-03(A)(3) and/or ARS §38-431-03(A)(4) for discussion or consultation for legal advice with an attorney for the district in order to consider the board's position regarding contracts that are the subject of negotiations, in contemplated litigation, or in settlement discussions to avoid or resolve litigation as related to the fire chief's employment contract, district's by-laws, and the letter dated May 24, 2017 from the fire chief's attorney regarding breach of contract ."



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Governing Board Meeting – June 6, 2017

Agenda Item: 3

BOD#: 2017-06-03

Agenda Item Title:

Review, discussion, and possible action regarding the fire chief's employment contract and the letter dated May 24, 2017 from the fire chief's attorney regarding breach of contract.

Submitted By:

Donna Aversa, Legal Counsel

Background / Discussion:

N/A

Financial Impact(s) / Budget Line Items:

N/A

Enclosure(s):

N/A

Recommended Motion:

TBD



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Governing Board Meeting – June 6, 2017

Agenda Item: 4

BOD#: 2017-06-n/a

Agenda Item Title:

Call to the Public

A.R.S. §38-431.01(H):

A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body.

At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda.

However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

Background / Discussion:

Call to the Public is provided so citizens may address the public body (Governing Board) with matters concerning the fire district. Arizona public meeting law provides that the public body may discuss, consider, or decide only matters listed on the agenda and other matters related thereto. Since the public body will generally not know what specific matters may be raised at call to the public, they will be unable to act until the matter is placed on a subsequent meeting agenda (at the board's discretion). The board may also direct staff to follow up on the issue with the citizen.

Scheduled:

None



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Governing Board Meeting – June 6, 2017

Agenda Item: 5

BOD#: 2017-06-04

Agenda Item Title:

Adjournment

Recommended Motion:

“Motion to adjourn the board meeting.”



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