RESOLUTION NO. 2219

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH PAYSON REGIONAL ECONOMIC DEVELOPMENT CORPORATION FOR DISBURSEMENT OF PUBLIC PURPOSE FUNDS.

WHEREAS, Section 35.03 of the Payson Town Code permits the disbursement of funds to certain non-profit organizations for public purposes, but prohibits the making of donations, gifts, or grants; and

WHEREAS, Payson Regional Economic Development Corporation ("PREDC") is an Arizona non-profit corporation; and

WHEREAS, the funds provided for in the attached agreement marked Exhibit "A" and made a part hereof by this reference do not constitute, a donation, gift or grant to Payson Regional Economic Development Corporation; and

WHEREAS, the Mayor and Common Council of the Town of Payson hereby find and declare:

A. That the goal sought to be achieved by the disbursement of the funds provided for in Exhibit "A" is one which the Town Council would seek to attain whether or not such non-profit organization requested the right to perform the services in return for such funds;

B. The funds provided for in Exhibit "A" are to be used for the support of PREDC, a non-profit corporation, in its efforts to hire an economic development facilitator to assist with economic development for the Town, which is a goal sought to be achieved by the Town Council;

C. That the consideration to be received by the Town from the use of such funds will inure to Town residents and taxpayers alone and that the funds identified in Exhibit "A" will not be disbursed in return for consideration beneficial to anyone other than Town taxpayers and residents; and

D. That the consideration to be received by the Town of Payson is approximately equal in value to the amount of funds provided to be disbursed through the agreement set forth in Exhibit "A"; and

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WHEREAS, Payson Regional Economic Development Corporation, by accepting the funds provided for in Exhibit "A", is fulfilling a public purpose for the Town of Payson,

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

Section 1. That the Public Purpose Funding Agreement set forth on Exhibit "A", attached hereto, be and is hereby approved in substantially the form set forth on Exhibit "A".

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute the Public Purpose Funding Agreement attached as Exhibit "A" in substantially the form set forth therein.

Section 3. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2219.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Resolution Number 2219 is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2006, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

EXHIBIT "A"

to Resolution No. 2219

PUBLIC PURPOSE FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 2006, between the TOWN OF PAYSON, an Arizona municipal corporation ("Town"), and PAYSON REGIONAL ECONOMIC DEVELOPMENT CORPORATION, an Arizona non-profit corporation ("Recipient").

WHEREAS, there are public services that are either not provided for by the Town directly or that may be enhanced through an agreement with third parties; and

WHEREAS, Section 35.03 of the Town Code authorizes the Town to make agreements with non-profit organizations to provide various services for the benefit of the Town and its citizens; and

WHEREAS, the Recipient has provided the Town with the foundation justifying its request for funding such services; and

WHEREAS, the Town has determined that the Recipient will use the funding provided for herein for a goal which the Town would seek to attain irrespective of the activities of Recipient; and

WHEREAS, Recipient can perform the services set forth hereunder more cost effectively than the Town; and

WHEREAS, Recipient is a non-profit organization; and

WHEREAS, the disbursement of funds hereunder is to obtain goals sought by the Town Council, to wit: funding of an economic development facilitator to assist with implementation of the Town's economic development program; and

WHEREAS, the funds being sought are believed to be approximately equal to the value of the services to be provided hereunder,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm, and agree as follows:

1. Term. The term of the Agreement shall commence July 1, 2006, and terminate June 30, 2007. This Agreement shall not be extended.

2. Funds. The Town agrees to disburse Fifty-three Thousand Dollars ($53,000.00) in twelve monthly payments to the Recipient in the amount of Four Thousand, Four Hundred Sixteen Dollars and Sixty-six Cents ($4,416.66).

3. Purpose of Funding. The Funds shall be used to provide funding for an economic development facilitator to assist with planned economic development for the Town and the Annual Plan of the Recipient as shown in Exhibit "A".

4. Restricted Use of Funds. Funds shall be used for the benefit of Town residents and taxpayers alone. No part of the Funds will be disbursed for the benefit of persons or entities other than Town taxpayers and residents. Any use of the Funds received from the Town by Recipient other than as permitted or required herein shall be deemed a material breach of this Agreement.

5. Non-Profit Status. The Recipient shall provide the Town with its state and federal tax identification numbers prior to receiving any of the Funds. Any changes in the Recipient's tax status or any change in tax numbers assigned to the Recipient shall be reported to the Town within five (5) days.

6. Records. Recipient shall provide legible, auditable records to the Town quarterly, on or before the thirtieth day of each January, April, July, and October, or at any other time the Town requests. Failure to provide these records or any other proper document requested by the Town shall be deemed a material breach of this Agreement. In such event, in addition to other remedies available to the Town, and without election, the Town may terminate this Agreement and not enter into any further agreements with Recipient until such records are produced and reviewed by the Town. Recipient shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the Town to assure proper accounting for all project funds. These records shall be retained for five (5) years after the expiration of this Agreement unless permission to destroy them is granted in writing by the Town.

7. Default. Without limiting the generality of what constitutes a default hereunder, the following shall each specifically be deemed a default constituting a material breach of this Agreement:

   A. Failure of Recipient to provide auditable records to the Town;

   B. Failure of Recipient to provide proper documents requested by the Town; or

   C. The making of any unauthorized or unexplained expenditures by Recipient from the Funds provided by the Town.

8. Remedies. If Recipient fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to Town at law or in equity, including the right to have specific performance of this Agreement, Town may cancel this Agreement without any further liability hereunder, such cancellation to be effective immediately upon Town giving written notice of cancellation to Recipient. In the event of a breach of any provision in this Agreement by Recipient, and in addition to any remedies provided in law or equity, this Agreement shall be conclusively deemed to

be terminated without further action by the Town. In the event of termination of this Agreement for breach, Recipient shall without demand return to the Town all funds received by Recipient from the Town which have not, as of the time of breach, been disbursed by Recipient. At the request of the Town after breach by Recipient, Recipient shall additionally repay the Town the full amount received by it under this Agreement, less any amount equal to the consideration received by the Town from the expenditure of any part of the Funds up to such time, if any.

9. Representations of Recipient. Recipient makes the following representations, which are agreed to constitute a material part of the consideration hereunder and which are, and shall remain, true and accurate:

   A. This Agreement and each of its terms constitutes a valid, legal, and binding obligation of Recipient, enforceable against Recipient in accordance with its terms;

   B. Recipient is a bona fide non-profit organization recognized as such under the revenue and tax laws of the United States and the State of Arizona;

   C. This Agreement is in compliance with the Constitution of the State of Arizona, and Article 9, Section 7 thereof, and relevant Arizona case law;

   D. The consideration to be received by the Town under this Agreement is approximately equal in value to the amount of the Funds; and

   E. The persons executing this Agreement on behalf of Recipient have full power and authority to do so and Recipient has full power and authority to enter into and to perform its obligations under this Agreement.

10. Conflict of Interest. This Agreement is subject to the terms of A.R.S. § 38-511, which are incorporated herein.

11. Indemnification. The Recipient shall indemnify, defend, and hold Town harmless from and against any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by Town on account of (1) loss or damage to any property or interest of Town; (2) any damages, injury to person or property, or death of any person arising out of any acts, errors, omissions, work, or services of the Recipient, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives; (3) any workers' compensation claims, unemployment compensation claims, or unemployment disability claims of employees of the Recipient or claims under similar such laws or obligations; (4) any use of the Funds by Recipient; and (5) any and all loss, damage, liability, or expense (including reasonable attorneys' fees) resulting from any breach or non-performance of

any covenant, agreement, or representation in this Agreement. In the event that any part of this Paragraph 11, Indemnification, is determined to be unenforceable, Recipient is not relieved of any liability resulting from its representation that said indemnification is a legally binding obligation of Recipient pursuant to Paragraph 9.A.

12. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. Any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission, with the written 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 arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona, or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient forum 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 such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

13. Notices. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Recipient and Town at the addresses set forth below in this Paragraph 12 or at such other address as a party may designate in writing. The date notice is given shall be the date on which notice is delivered, if notice is given by personal delivery, or the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail or by express delivery service. Notice shall be deemed to have been received on the date on which the notice is delivered if notice is given by personal delivery, one business day following such deposit with the express delivery service if notice is sent by express delivery service, or three days following such deposit in the mail if notice is sent through the United States mail.

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

To Recipient:
Payson Regional Economic Development Corp.
Attention: Judy Miller
P. O. Box 1771
Payson, Arizona 85547

14. Assignment. Neither this Agreement nor any part hereof shall be assigned by either party. Any attempted assignment in violation of this Paragraph 14 shall render this Agreement void and shall invoke the remedies set forth in Paragraph 7 hereinabove.

15. 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.

16. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Town or Recipient of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the wavier.

17. Construction. This Agreement shall be construed according to the internal law of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction.

18. Further Documentation. Each party agrees in good faith to execute and deliver such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

19. 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 Agreement 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.

20. Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of this parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Town and Recipient.

22. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

23. Civil Rights Act of 1964. Under Title VI of the Civil Rights Acts of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement or any program or activity receiving financial assistance under this Agreement.

24. Compliance with Laws. Recipient shall comply with all applicable laws, ordinances and codes of the United States, the State of Arizona, the Town of Payson, and other local governments.

25. No Employment Relation. Nothing herein creates, nor shall be deemed or construed to create, any employment relationship between the Town and any other person

26. No Partnership. This Agreement is not intended to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the Town and the Recipient. Recipient is a contractor independent of the Town. 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 of action hereunder.

IN WITNESS WHEREOF, Town and Recipient have executed this Agreement effective the day and year set forth above.

TOWN:
TOWN OF PAYSON,
an Arizona municipal corporation

By_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

RECIPIENT:
PAYSON REGIONAL ECONOMIC DEVELOPMENT CORPORATION,
an Arizona non-profit corporation

By_____
Judy Miller, President

ATTEST:

_____
Christine Harrison, Secretary

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EXHIBIT "A"

TO BE SUPPLIED BY

PAYSON REGIONAL ECONOMIC DEVELOPMENT CORPORATION