RESOLUTION NO. 2495

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE NORTHERN GILA COUNTY SANITARY DISTRICT PROVIDING FOR PAYMENT OF SANITARY SEWER CAPACITY FEES RELATED TO THE RESTAURANT AT PAYSON MUNICIPAL AIRPORT.

WHEREAS, Northern Gila County sanitary sewer capacity fees ("Capacity Fees") have not been paid for the restaurant at Payson Municipal Airport; and

WHEREAS, the Town of Payson and the Northern Gila County Sanitary District have negotiated an agreement that will permit the payment of the Capacity Fees ("Agreement"); and

WHEREAS, the Town of Payson desires to enter into the 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 Town of Payson and Northern Gila County Sanitary District attached hereto and made a part hereof as Exhibit "A", be and is hereby approved in substantially the form as attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute the Agreement in substantially the form attached as Exhibit "A".

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of _____, 2009, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department
SIS:drs June 8, 2009 (2:44pm)
C:\Documents and Settings\sstreichman\My Documents\RESOLUTION agmnt with NGCSD airport restaurant.wpd

JUN 18 2009 G. 2

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF PAYSON
AND
NORTHERN GILA COUNTY SANITARY DISTRICT

THIS AGREEMENT is entered into this _____ day of _____, 2009, pursuant to A.R.S. §§ 11-951 through 11-954, as amended, between the TOWN OF PAYSON, an Arizona municipal corporation (the "Town") acting by and through its Mayor and Common Council, and the NORTHERN GILA COUNTY SANITARY DISTRICT, acting by and through its Chairman and Board of Directors (the "District). The Town and the District are collectively referred to as "Parties."

I. RECITALS

A. The Town is empowered by A.R.S. §§ 9-240, 11-952, and 48-572 to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

B. The District is empowered by A.R.S. §§ 11-952 and 48-909 to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the District.

C. The Town and the District desire to work together to achieve the common goal of bringing current all sewer plant capacity fees for any restaurant at the Payson Airport.

D. The Town and the District anticipate that, in accordance with the approved 2009 Payson Airport Master Plan, a new terminal building will be constructed at the Payson Airport which will contain a new restaurant facility that will replace the existing Payson Airport restaurant.

E. The Town and the District agree that all unpaid sewer plant capacity fees for any restaurant at the Payson Airport shall be paid prior to constructing the proposed airport terminal building.

THEREFORE, in consideration of the mutual covenants expressed herein, the Parties agree as follows:

II. SCOPE OF WORK

1. The Town shall:

   a. Provide the District with a copy of the improvement plans for the new terminal building for review and for the purpose of calculating sewer plant capacity fees for the new restaurant ("Capacity Fees") when they are submitted.

   b. Withhold the issuance of any building permit for the proposed Payson Airport terminal building containing the new restaurant until the Capacity Fees have been paid by the builder or lessee of the new restaurant.

EXHIBIT "A"

2. The District shall:

   a. Calculate the required Capacity Fees based on the configuration of the new restaurant to be constructed in the new Payson Airport terminal.

   b. Provide the cost of Capacity Fees due for the new restaurant to the Town of Payson and to the builder of the new terminal and restaurant.

   c. Provide sanitary sewer service to the new Payson Airport restaurant upon payment of the Capacity Fees and issuance of an occupancy permit for the new terminal building.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions, and provisions of this Agreement shall remain in full force and effect until full payment of the Capacity Fees.

2. This Agreement shall become effective thirty (30) days after the latest date of approval of a resolution of each Party's governing board.

3. This Agreement may be canceled in accordance with the provisions of A.R.S. § 38-511, the terms of which are incorporated herein.

4. In the event of any controversy between the parties which may arise out of this Agreement, the Parties hereto agree, in the event the same cannot be resolved through negotiation, to abide by required arbitration as is set forth for public works contracts in A.R.S. § 12-1518. In the event of a dispute, each Party shall bear its own attorneys' fees, costs, and expenses without contribution from the other Party and no attorneys' fees, costs, or expenses shall be awarded in any action or proceeding.

5. 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 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

6. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

   Town of Payson
   Attn: LaRon G. Garrett, P.E.
   Public Works Director
   303 North Beeline Highway
   Payson, Arizona 85541
   928-474-5242, ext. 283
   928-472-7490 Fax

   Northern Gila County Sanitary District
   Attn: Joel Goode
   District Manager
   P. O. Box 619
   Payson, Arizona 85547
   928-474-5257
   928-474-5258 Fax

7. In accordance with A.R.S. § 11-952(D), attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

8. 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 the Parties, whether oral or written, are superseded by and merged into this Agreement No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Agreement until it is executed and delivered by both Parties.

9. This Agreement may be executed in two (2) or more 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.

10. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either party 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.

11. This Agreement shall be construed and interpreted under the laws of Arizona without regard to principles of conflict of law.

12. Every payment obligation of the Town under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Town at the end of the period for which funds are available. No liability shall accrue to the Town pursuant to this Agreement in the event this provision is exercised and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

13. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the parties. 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 signatory hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder against either party, or otherwise.

14. Each of the Parties acknowledges and warrants that it has been, or has had an opportunity to be, represented by independent counsel. This Agreement is the result of negotiation between the Parties and their respective attorneys, and the terms, conditions, and provisions of this Agreement shall be construed in a fair and even manner regardless of the party who drafted this Agreement or any provision or portion thereof.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

THE TOWN OF PAYSON

By_____
Kenny J. Evans, Mayor

ATTEST:

By_____
Silvia Smith, Town Clerk

NORTHERN GILA COUNTY SANITARY DISTRICT

By_____
Robert Sanders, Board Chairman

ATTEST:

By_____
Guy Pfister, Board Secretary

Airport Restaurant Sewer Plant Capacity Fees

ATTORNEY APPROVAL FORM FOR THE TOWN OF PAYSON

I have reviewed the above referenced Intergovernmental Agreement Between the Northern Gila County Sanitary District and the Town of Payson, an agreement among public agencies, which has been reviewed pursuant to A.R.S. § 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the District to enter into this Agreement.

DATED this _____ day of _____, 2009.

_____
Samuel I. Streichman, Town Attorney

ATTORNEY APPROVAL FORM FOR THE NORTHERN GILA COUNTY SANITARY DISTRICT

I have reviewed the above referenced Intergovernmental Agreement Between the Northern Gila County Sanitary District and the Town of Payson, an agreement among public agencies, which has been reviewed pursuant to A.R.S. § 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the District to enter into this Agreement.

DATED this _____ day of _____, 2009.

_____
District Attorney