RESOLUTION NO. 2500

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE PAYSON MULTIPURPOSE SENIOR CENTER DEVELOPMENT ASSOCIATION, INC., 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, the attached represents the agreement with the Payson Multipurpose Senior Center Development Association, Inc. ("Senior Center"); 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 the Senior Center; and

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

A. That the goals sought to be achieved by the disbursement of the funds provided in Exhibit "A" are goals which the Town Council would seek to attain whether or not the Senior Center requested the right to perform the services in return for such funds; and

B. 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

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

D. The expenditure of such funds is authorized by A.R.S. § 9-500.11 and Section 35.04 of the Payson Town Code; and

WHEREAS, by accepting funds under Exhibit "A" , the Senior Center 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 with the Payson Multipurpose Senior Center Development Association, Inc., set forth on Exhibit "A" attached hereto, be and is hereby approved in substantially the form set forth on Exhibit "A".

Section 2. That Kenny J. Evans, 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 acts as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2500.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Resolution Number 2500 is for any reason held to be invalid or unconstitutional by 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 _____, 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

EXHIBIT "A"

to Resolution No. 2500

PUBLIC PURPOSE FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 2009, between the TOWN OF PAYSON, an Arizona municipal corporation ("Town"), and PAYSON MULTIPURPOSE SENIOR CENTER DEVELOPMENT ASSOCIATION, INC., an Arizona non-profit corporation ("Senior Center").

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 Senior Center has provided the Town with services consisting of providing transportation, home-delivered meals to qualifying home-bound seniors and the handicapped, congregate meals and a community center; and

WHEREAS, the Town desires to continue to use such services; and

WHEREAS, Senior Center wishes to perform such services; and

WHEREAS, Senior Center is a non-profit organization; and

WHEREAS, the disbursement of funds hereunder is to obtain goals sought by the Town Council; and

WHEREAS, the funds being sought are 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, 2009, and terminate June 30, 2010.

2. Funds. The Town agrees to disburse to Senior Center the sum of Six Thousand Seven Hundred Dollars ($6,700.00) each month, commencing July 1, 2009 and continuing each month thereafter during the term of this Agreement. Such disbursements shall only be made if Senior Center is current with all the reports and records pursuant to paragraph 6 of this Agreement.

3. Purpose of Funding. The Funds shall be used only for the following programs, including but not limited to:
   a. Providing of home-delivered meals to qualifying home-bound seniors and the handicapped through the Meals-on-Wheels Program, pursuant to the requirements and oversight of Pinal Gila Council for Senior Citizens; and
   b. Providing of transportation to handicapped persons, medically incapacitated persons, and senior citizens pursuant to the written transportation policy of Senior Center, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein by this reference.
   c. Senior Center agrees to further provide, through funding sources other than the Town, a community gathering place focusing on the needs of seniors and handicapped citizens.

4. Restricted Use of Funds. Funds shall be used for the benefit of Town residents alone. No part of the Funds provided under this Agreement will be disbursed for the benefit of persons or entities other than Town and residents.

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

6. Records. Senior Center shall keep and make available all necessary records so as to account for its provision of services. Senior Center's records shall be available for inspection by Town at any time during normal business hours, subsequent to twenty-four (24) hours prior notification. Said notifications may be oral or written. Each fiscal quarter, Senior Center shall make a full accounting to Town of all public funds spent by Senior Center for the provision of services.

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 Senior Center to provide records to the Town as required herein; or
   b. The making of any unauthorized or unexplained expenditures by Senior Center from the Funds provided by the Town.

8. Remedies. If Senior Center 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 Senior Center. In the event of a breach of any provision in this Agreement by Senior Center, 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, Senior Center shall without demand return to the Town all funds received by Senior Center from the Town which have not, as of the time of breach, been disbursed by Senior Center.

9. Representations of Senior Center. Senior Center 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 Senior Center, enforceable against Senior Center in accordance with its terms;
   b. Senior Center 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 Senior Center have full power and authority to do so and Senior Center has full power and authority to enter into and to perform its obligations under this Agreement.

10. Termination. This Agreement shall be valid and in force from July 1, 2009 through June 30, 2010. Should either Senior Center or Town desire to terminate this Agreement before the expiration of the term hereof, such party may do so by giving ninety (90) days advance written notice to the other party. After ninety (90) days have elapsed from the date of said notice, this Agreement shall be deemed terminated and of no further force or effect.

11. Renewal. Unless terminated under Paragraph 10 above, this Agreement shall renew at the end of each term for an additional one year term. Prior to each renewal, Senior Center and Town will review the services provided by Senior Center and the costs associated therewith at a Town Council meeting. This provision shall be for the purpose of adjusting the contracted amount, if services provided by Senior Center and costs associated therewith warrant such modification. In conjunction with this review, Senior Center will provide to Town a copy of its annual budget no later than March 31 of each year.

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

13. Indemnification. Senior Center 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 Senior Center, 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 Senior Center or claims under similar such laws or obligations; (4) any use of the Funds by Senior Center; 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 13, Indemnification, is determined to be unenforceable, Senior Center is not relieved of any liability resulting from its representation that said indemnification is a legally binding obligation of Senior Center pursuant to Paragraph 9.A.

14. 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.

15. 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 Senior Center and Town at the addresses set forth below in this Paragraph 15 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 Senior Center:
Payson Multipurpose Senior Center
Development Association, Inc.
Attention: Barbara Underwood, President
514 West Main Street
Payson, Arizona 85541

16. Assignment. Neither this Agreement nor any part hereof shall be assigned by either party. Any attempted assignment in violation of this Paragraph 16 shall render this Agreement void and shall invoke the remedies set forth in Paragraph 8 hereinabove.

17. 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.

18. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Town or Senior Center 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 Senior Center.

24. 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.

25. 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.

26. Compliance with Laws. Senior Center 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.

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

28. 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 Senior Center. Senior Center 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.

29. Non-Availability of Funds. 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 Section.

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

[SIGNATURES ON FOLLOWING PAGE]

TOWN:
TOWN OF PAYSON,
an Arizona municipal corporation

By_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

SENIOR CENTER:
PAYSON MULTIPURPOSE SENIOR CENTER DEVELOPMENT ASSOCIATION, INC., an Arizona non-profit corporation

By_____
Barbara Underwood, President

ATTEST:

_____
Connie Jewell, Secretary

C:\MyFiles\Agreements and Contracts\Public Pupose Funding Agreements\Senior Center\09-10.wpd
July 29, 2009 (5:23pm)