

**RESOLUTION NO. 2563**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT AND ANCILLARY DOCUMENTS WITH THE NORTHERN GILA COUNTY SANITARY DISTRICT FOR THE INSTALLATION OF WATER AND SANITARY SEWER FACILITIES IN THE AREA OF AIRLINE BOULEVARD AND LUKE DRIVE (THE "PROJECT").**

**WHEREAS**, the Northern Gila County Sanitary District ("NGCSD") has formed an assessment district to construct sanitary sewer facilities in the Airline Boulevard/Luke Drive area of Payson; and

**WHEREAS**, the Town of Payson ("Town") intends to participate in the assessment district through a financial contribution, accepting assessments for Town owned properties within the district, and installing additional water facilities for fire protection within the assessment district boundaries; and

**WHEREAS**, NGCSD and the Town agree that jointly constructing the sewer and water improvements will reduce the overall cost to each party and minimize disruption in the neighborhood; and

**WHEREAS**, for such purpose, an intergovernmental agreement has been prepared,

**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 the Northern Gila County Sanitary District, attached hereto marked Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form attached.

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

Section 3. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to sign such other ancillary documents as may be necessary for the completion of said Project.

Section 4. That the Town of Payson be and is hereby authorized to take such other and further actions as may be necessary or appropriate to carrying out the intent of this Resolution Number 2563.

*Prepared by Town of Payson Legal Department*

*TMW:drs June 15, 2010 (11:05am)*

*C:\MyFiles\Resolutions\2500s\2563 Approving IGA w-NGCSD re Airline Blvd-Luke Dr.wpd*

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**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA**, this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Timothy M. Wright, Town Attorney

# EXHIBIT "A"

to Resolution No. 2563

Project: Airline Boulevard / Luke Drive  
Sewer and Water Project

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE TOWN OF PAYSON  
AND  
NORTHERN GILA COUNTY SANITARY DISTRICT

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2010, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the TOWN OF PAYSON, acting by and through its MAYOR and TOWN COUNCIL (the "Town") 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

1. The Town is empowered by Arizona Revised Statutes §§ 9-240(B)(3) and 11-951 et seq. 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 .
2. The District is empowered by Arizona Revised Statutes §§ 11-952 and 48-2043 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.
3. The District has formed an Assessment District to construct sanitary sewer facilities in the Airline Boulevard / Luke Drive area of Payson.
4. The Town intends to participate in the Assessment District through a financial contribution towards the sewer improvements. This participation is to protect existing Town ground water wells in the area by eliminating the risk of Nitrate contamination to the wells by removing the existing failing individual septic systems, rather than installing Nitrate treatment on each well.
5. The Town intends to accept assessments for the four properties owned by the Town within the proposed Assessment District boundaries to provide sanitary sewer service to those properties.
6. The Town and the District desire to work together to achieve the common goal of installing water and sanitary sewer facilities in the Airline Boulevard / Luke Drive area of Payson (The "Project").
7. The Town desires to install additional water facilities for fire protection within this proposed Assessment District boundary if financially feasible. The cost of the water improvements will be borne by the Town of Payson Water Department and will not be included in the property assessments levied against the individual properties.
8. The Town and the District agree that jointly constructing the Airline Boulevard / Luke Drive sewer and water improvements will reduce the overall cost to each Party by sharing the cost of construction items that would need to be duplicated if each party performed its respective portion of the Project separately.

9. The Town and the District are committed to minimizing the neighborhood disruption caused by the construction project and agree that one combined project will cause much less neighborhood disruption than two separate projects.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The Town shall:
  - a. Pay \$300,000 towards the total construction cost of the sanitary sewer items included in the Project. This may be paid up front, or in installments by the Town accepting assessments on the Town owned lots.
  - b. Pay the standard sanitary sewer improvement assessment for the four Town owned properties within the improvement district boundaries in the same manner as any private property owner. This may be paid up front or as a part of the District's Assessment.
  - c. Coordinate and pay for water line and fire hydrant specifications and design with Tetra Tech, Inc., as part of the overall construction documents. This includes modifying the bid schedule to bid these items as an Add Alternate with the overall Project. The Town will pay for these design costs separate from any costs incurred by the District for design of the sewer facilities.
  - d. Coordinate with the District during the bidding and construction phase of the Project for all water related items.
  - e. Pay for all costs associated with installing the new water line and fire hydrants as contained in an "Add Alternate" in the bid documents if the Town requests that the Add Alternate be included in the project. The associated costs shall include all additional pavement replacement required by the addition of the water line. This cost is in addition to the cost described in Items 1a and 1b. These costs will be separate from any of the individual property assessments. This may be paid up front by the Town or it may be included as a part of a Town Assessment.
  - f. Notify the District during the Cash Collection period if they intend to pay for the cost of Items 1a, 1b, and, if included, 1e up front or to allow the Town costs to go to bond.
  - g. Provide construction observation and supervision for the water line, fire hydrants, and pavement replacement items.
2. The District shall:
  - a. Be responsible for all engineering, design, and incidental costs excluding those costs the Town will be responsible for as described in Item 1c.
  - b. Bid the complete The Project including the sewer and water improvements upon written approval from the Town of Payson. The water improvements shall be bid as an "Add Alternate" in order to keep their costs separate from the rest of the Project.

- c. Invoice the Town for its share of the construction cost described in Items 1a and 1b during the Cash Collection period. The Town may pay the invoice directly, or elect to allow the cost to be included in the District's bonds.
- d. Invoice the Town for its share of the construction cost described in Item 1e on a "construction completed" basis if the Town elects to have the Add Alternate included in the construction project and the Town elects to pay for the improvement up front. If the Town elects to allow the construction cost of Item 1e to be included in the Improvement District bond then no invoice is required.
- e. Provide construction observation for all sewer related construction items.
- f. Pay or assess the cost of all sewer related construction items.

**III. MISCELLANEOUS PROVISIONS**

- 1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until the Project is completed; and if the Town accepts assessments, until such assessments are paid in full.
- 2. If the Town elects not to include the construction of the new water line and fire hydrants included in the Add Alternate with The Project, the District has no responsibility in constructing those items now or in the future.
- 3. This Agreement shall become effective 30 days after the latest date of approval of a Resolution of each Parties' governing board.
- 4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
- 5. 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 Arizona Revised Statutes § 12-1518.
- 6. This Agreement is subject to all applicable provisions of the Americans with Disability 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".
- 7. 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: Debra A. Galbraith  
Town Manager  
303 N. Beeline Highway, Payson AZ 85541  
(928) 474-5242 x262  
(928) 474-4610 Fax

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

- 8. In accordance with Arizona Revised Statutes § 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 this State to enter into this Agreement and that the Agreement is in proper form.
- 9. To the extent applicable under A.R.S. § 41-4401, each Party and its respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. §23-214(A). Each Party has the right to inspect the papers of the other Party or its subcontractors participating in this Agreement to ensure compliance with this paragraph. A Party's or its subcontractors breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by a non-breaching Party under the terms of this Agreement.
- 10. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, the Parties certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 or 35-393, as applicable. If one Party determines that the other Party submitted a false certification, the non-breaching Party may impose remedies as provided by law including terminating this Agreement.

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

**THE TOWN OF PAYSON**

**NORTHERN GILA COUNTY SANITARY DISTRICT**

By \_\_\_\_\_  
Kenny J. Evans, Mayor

By \_\_\_\_\_  
Robert Sanders, Board Chairman

ATTEST:

ATTEST:

By \_\_\_\_\_  
Silvia Smith, Town Clerk

By \_\_\_\_\_  
Guy Pfister, Board Secretary

**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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
Town Attorney

**ATTORNEY APPROVAL FORM FOR THE NORTHERN GILA COUNTY SANITARY DISTRICT**

I have reviewed the above referenced Intergovernmental Agreement between the Town of Payson, and the Northern Gila County Sanitary District, 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 District under the laws of the State of Arizona.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Attorney for the District