RESOLUTION NO. 2602

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LIBRARY SERVICE AGREEMENT WITH THE GILA COUNTY LIBRARY DISTRICT FOR FISCAL YEAR 2011-2012.

WHEREAS, the Town of Payson has participated in the Gila County Free Library District since at least July 31, 1987; and

WHEREAS, the Town of Payson desires to continue to participate in the Gila County Free Library District; and

WHEREAS, Gila County has presented an agreement to the Town of Payson for said purpose for Fiscal Year 2011-2012,

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

Section 1. That the Gila County Library District Library Service Agreement, attached hereto marked Exhibit "A" is hereby approved in substantially the form attached.

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

Section 3. That the Town of Payson is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes of this Resolution and the terms of said Library Service Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 16th day of June, 2011, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

Prepared by Town of Payson Legal Department
TMW:drs June 2, 2011 (9:39am)
C:\MyFiles\Resolutions\2600s\2602 Library Service Agreement for FY11-12.wpd

JUN 16 2011 G.2*

EXHIBIT "A"

to Resolution No. 2602

GILA COUNTY LIBRARY DISTRICT
LIBRARY SERVICE AGREEMENT
JULY 1, 2011 TO JUNE 30, 2012

This agreement is entered into between the GILA COUNTY LIBRARY DISTRICT, hereinafter referred to as the "District," and the TOWN OF PAYSON, hereinafter referred to as the "Town," and shall be for a period commencing July 1, 2011 to June 30, 2012.

WHEREAS, the Gila County Board of Supervisors has established a County Library District, pursuant to A.R.S. 11-901 et seq. and 48-3901 et seq.; and

WHEREAS, the District and the Town recognize the need to cooperate in the provision of library services to the citizens of the District; and

WHEREAS, the Town operates and maintains a library and it is the desire of the Town to continue as a participating member of the District; and

WHEREAS, the parties wish to establish terms and conditions prior to distribution of District tax levied funds to participating Towns.

NOW THEREFORE IT IS AGREED by and between the District and the Town as follows:

1. All citizens of the District shall have full use of the library facilities and services.

2. All library materials purchased with District funds by the Town, are the property of the Town.

3. It is understood by both parties that officials, employees and agents of the District remain the sole responsibility of the District. It is further understood that the officials, employees and agents of the Town remain the sole responsibility of the Town.

4. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses including reasonable attorney's fees (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, official agents, employees or volunteers.

5. The Town agrees to the following conditions:

   A. The Town shall use the District funds to insure the payments of salaries, routine maintenance and upkeep and other necessary expenses of the Town's library, pursuant to ARS 48 - 3901 et seq. Funds will not be used for capital improvement projects or major building repairs without prior approval from the Board of Directors of the Gila County Library District.

   B. The Town shall annually submit to the District the Arizona Public Library Data Report as required by the State Library.

   C. The Town shall support resource sharing among libraries by participating in interlibrary loan services as a borrower and lender of library materials.

   D. The Town shall comply with any reasonable conditions or restrictions which the District or another participating library imposes with respect to loans of books, materials, or equipment to the Town library.

   E. The Town agrees to reimburse any other participating library for any losses and/or damage to books, materials, or equipment belonging to another participating library or the District, which occur while these items are in the possession and control of the Town.

   F. The Town's decision to participate in a countywide online system is evidenced by the authorized signature(s) on this Agreement. The Town agrees to utilize the online system for: cataloging, circulation, online shared public access catalog, long-term loan of supplementary Library District materials, if applicable, and other online functions as may be implemented.

   G. The Town shall insure that the Library Manager (Librarian) and staff understand and are proficient in all functions of the online system that they are responsible for by providing reasonable time for staff to attend training on the online system at the District's recommendation. Training will be overseen by, and coordinated through the District.

   H. Town library staff agrees to attend and participate in at least three of the four quarterly countywide librarians meetings each year.

6. The District will provide the following benefits and support services to the library:

   A. Opportunity to participate in a countywide online system subject to conditions specified in this agreement. Operation of the countywide online system is a Library District function subject to oversight by the Board of Directors of the Library District, who will make final decisions regarding this system.

   B. Operate the online system continuously, notifying the participating library in advance of any scheduled shutdowns, should any be necessary for maintenance and backup routines.

C. Coordination of countywide library development.

D. Continuing education opportunities for staff and volunteers.

E. Offer regular orientation training on the online system for all new staff at the affiliate libraries, as well as coordinate and oversee special update training for veteran staff.

F. Professional assistance and consultation services.

7. The Town and the District acknowledge that the services performed have a value to the District and the Town. In consideration of that value, the District agrees:

   A. To match the Town local funds for library services, up to the amount of $229,230.00, such amount subject to annual review.

   B. To distribute this amount in two installments, in November 2011 and May 2012.

8. This agreement may be renewed from year to year by mutual agreement of the parties involved.

9. **Legal Arizona Workers Act Compliance**

   The Town hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Town's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Town shall further ensure that each subcontractor who performs any work for Town under this contract likewise complies with the State and Federal Immigration Laws.

   The District shall have the right at any time to inspect the books and records of Town and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

   Any breach of Town's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Town to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Town shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

   The Town shall advise each subcontractor of District's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that District

may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of the Town.

10. This agreement contains the entire agreement of the parties with respect to the subject matter hereof and, it may be amended, modified or waived only by an instrument in writing signed by both parties.

11. This agreement may be canceled pursuant to A.R.S. 38-511, the pertinent provisions of which are fully incorporated herein by reference.

12. Either party may terminate this Agreement by giving 30 days' notice to the other. Upon termination of this Agreement by either party, the Town agrees to return to the owner, by the date of termination, any books, materials and equipment belonging to the Library District or other participating library, which had been entrusted to the possession or control of the Town. Conversely, the Library District agrees to deliver to the Town library, by the date of termination, any books, materials, and equipment belonging to the Town library which had been entrusted to the possession or control of the Library District and to make reasonable, good faith efforts to return to the Town library any books, materials and equipment belonging to the Town library which had been entrusted to the possession or control of another participating library.

13. Any dispute, controversy, claim, or cause of action arising out of or related to this agreement shall be governed by Arizona law and may, but in no event need, be settled by submission with the consent of both parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, ARS 12 - 1501, et seq., and judgment upon any award rendered by the arbitrators may be entered in the Superior Court of Gila County, or any such dispute, controversy, claim, or cause of action may be litigated in a court. The venue for any such dispute shall be Gila County, Arizona. Each party waives the right to object to venue in Gila County for any reason. Neither party shall be entitled to recover any of its attorneys' fees or other costs from the other party incurred in any such dispute, controversy, claim or cause of action, but each party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized representatives.

TOWN OF PAYSON	GILA COUNTY LIBRARY DISTRICT
_____	_____
Mayor	Chairman, Board of Directors
ATTEST:	ATTEST:
_____	_____
Town Clerk	Clerk of the Board
_____	_____
Date	Date

Pursuant to A.R.S. 11-952(D) the foregoing agreement has been reviewed by the undersigned attorney for the Town, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State to the Town.

_____
Town Attorney

Pursuant to A.R.S. 11-952(D) the foregoing agreement has been reviewed by the undersigned attorney for the Gila County Library District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State to Gila County.

_____
Chief Deputy County Attorney, Gila County