RESOLUTION NO. 2618

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 CHAMBER OF COMMERCE, 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, Payson Chamber of Commerce, Inc., is a non-profit organization; and

WHEREAS, the funds provided for in the attached agreement do not constitute a donation, gift, or grant to Payson Chamber of Commerce, Inc.; 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 for in Exhibit "1" are goals 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 purpose for which the funds provided for in Exhibit "1" are to be used is to support and strengthen economic development within the community, 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 "1" 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 "1"; and

E. The expenditure of such funds is authorized by A.R.S. §§ 9-493 and 9-500.11; and

WHEREAS, Payson Chamber of Commerce, Inc., by accepting the funds provided for in Exhibit "1", is fulfilling a public purpose for the Town of Payson,

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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 "1", attached hereto, be and is hereby approved in substantially the form set forth therein.

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 "1" 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.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 21st day of July, 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 July 6, 2011 (2:11pm)
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EXHIBIT "1"

to Resolution No. 2618

PUBLIC PURPOSE FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 2011, between the TOWN OF PAYSON, an Arizona municipal corporation ("Town"), and the PAYSON CHAMBER OF COMMERCE, INC., a non-profit corporation authorized to do business in the State of Arizona dba Rim Country Regional Chamber of Commerce ("Recipient"), (collectively, "the Parties").

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, § 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, pursuant to A.R.S. § 9-493 and otherwise, the Town is authorized to appropriate funds for the purposes of encouraging new industries and investment in the Town, including the promotion of tourism development and advertising the advantages of the Town; 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 corporation and authorized to receive such funds pursuant to A.R.S. § 9-493(B); and

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

WHEREAS, the Town and Recipient desire to establish this contract to encourage tourism, new industries, and investment in the Town,

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, 2011, and terminate June 30, 2012. This Agreement shall not be extended.

2. Early Termination. In the event the Payson Town Council, for any reason, fails to appropriate sufficient funding to carry out the purposes of this Agreement, this Agreement shall terminate immediately and the Town shall not be liable to the Recipient for any damages or any funding resulting from such a termination. Notwithstanding the foregoing, either Party may terminate this Agreement, with or without cause, upon thirty (30) days' written notice. In the event either Party elects to terminate this Agreement, all rights and duties set forth in this Agreement shall immediately terminate, and neither Party shall be liable to the other Party for any damages resulting from the termination.

3. Funds. The Town agrees to disburse Thirty-six Thousand Dollars ($36,000.00) to the Recipient (the "Funds"). The amount to be provided by the Town is subject to appropriation by the Town's Council. Payment of the Funds will be made in 12 monthly installments subject to actual cash flow of the fund from which payment is made.

4. Scope of Services. The Recipient shall provide the services as set forth in Exhibit "A" attached hereto and made a part hereof.

5. Purpose of Funding. The objectives of this Agreement are as follows:

   A. To attract more tourists and visitors to the Rim Country to increase sales for existing businesses, and to bring in new commerce which caters to the tourism market and expands tax revenue.
   B. To increase sales and income benefits for existing businesses.
   C. To generate the market and opportunities for expanded food, fuel, lodging, general retail, real estate sales and services in the Town.
   D. To encourage new industries and investments in the Town.
   E. To print and distribute books, pamphlets and maps advertising the advantages of the Town of Payson.

6. 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.

7. 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.

8. Records. Recipient shall provide legible, auditable records to the Town quarterly on or before the thirtieth day of April, July, October, and January, or at any other time the Town requests. Failure to provide these records or any other document requested by the Town shall be deemed a material breach of this Agreement. 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.

9. 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.

10. 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.

11. 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.

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

13. 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 13, 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.

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 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 Recipient and Town at the addresses set forth below in this Paragraph 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 Chamber of Commerce, Inc.
Attention: Paul Bates, President/CEO
P. O. Box 1380
Payson, Arizona 85547

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

19. Authorized Presence Requirements/Government Procurement (A.R.S. § 41-4401).
    19.1 Recipient and any Subcontractor employed by Recipient warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214(A).
    19.2 A breach of the warranty under Paragraph 19.1 above shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of the Agreement.
    19.3 The Town retains the legal right to inspect the papers of the Recipient or Subcontractor who works on this Agreement to ensure that the Recipient and Subcontractor are complying with Paragraph 19.1.

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 Recipient.

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. 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.

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 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.

29. Use of Funds. No portion of the Funds shall be used to influence the outcome of an election and the Parties hereto shall be bound by the provisions of A.R.S. § 9-500.14.

30. Scrutinized Business Operations. Pursuant to A.R.S. § 25-391.06, the Parties hereby warrant and represent that they do not have, nor do any of their Subcontractors have, and during the term of this Agreement will not have a scrutinized business operation in either Sudan or Iran.

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_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

RECIPIENT:
PAYSON CHAMBER OF COMMERCE, INC.
an Arizona non-profit corporation

By_____
Paul Bates, President/CEO

ATTEST:

_____
Stephanie Creasy, Secretary

Prepared by Town of Payson Legal Department *July 6, 2011 (10:36am)*
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EXHIBIT "A"

SCOPE OF SERVICES

1. Maintain Arizona Office of Tourism "Designated Visitor Location" status based on AOT requirements as to accessibility, hours of operation, make available at least ten forms of information for the five AOT sections of Arizona, provide visitor statistics by place of origin on a monthly basis, maintain parking and ADA access compliance

2. Provide staff to operate Visitor Center and supervise volunteers

3. Maintain Hours of Operation in excess of AOT requirements

4. Provide visitor statistics to the Town of Payson in four major areas (local, Arizona, non-Arizona and foreign) on a quarterly basis

5. Provide telephone inquiry statistics quarterly

6. Provide relocation request statistics quarterly

7. Provide tourist packet request statistics quarterly

8. Provide volunteer hours quarterly

9. Provide staff hours and costs quarterly

10. Provide cost of operations quarterly

11. Provide marque and Highway banner statistics quarterly