

RESOLUTION NO. 2648

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH STAR VALLEY FOR THE PROVISION OF AFTER HOURS AND EMERGENCY WATER SYSTEM SERVICES AND EMERGENCY BACKUP WATER SERVICE.**

**WHEREAS**, the Town of Payson ("Payson") operates a water system for its residents; and

**WHEREAS**, the Town of Star Valley ("Star Valley") has or is in the process of purchasing a water system to service a portion of its citizens; and

**WHEREAS**, Payson and Star Valley desire to enter into an agreement whereby Payson, upon request, will provide after hours and emergency services for Star Valley's water system; and

**WHEREAS**, Payson and Star Valley desire to enter into an agreement whereby Payson, upon request, will provide emergency backup water service for Star Valley's water system; and

**WHEREAS**, two contracts for such services have been prepared,

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

Section 1. That the Agreement with Star Valley for After Hours and Emergency Services, attached hereto as Exhibit 1 and made a part hereof by this reference, is hereby approved in substantially the form attached.

Section 2. That the Agreement with Star Valley for Emergency Backup Water Service, attached hereto as Exhibit 2 and made a part hereof by this reference, 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 Agreements with Star Valley in substantially the form attached.

Section 3. That the Town of Payson is authorized to take such other and further actions as may be necessary or appropriate to carrying out the terms and intent of said Agreements and this Resolution.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this \_\_\_\_\_ day of January, 2012 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 1 to Resolution 2648  
(Agreement for After Hours and  
Emergency Water System  
Services)**

**AGREEMENT FOR AFTER HOURS AND  
EMERGENCY WATER SYSTEM SERVICES  
BETWEEN THE TOWN OF PAYSON  
AND THE TOWN OF STAR VALLEY**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Town of Payson, a municipal corporation (hereinafter, "Payson") and the Town of Star Valley, a municipal corporation (hereinafter, "Star Valley") (collectively "the Parties").

**RECITALS**

- A. Payson is an Arizona municipal corporation and the Payson Water Department (hereinafter, "Department") is a department of Payson.
- B. Star Valley is an Arizona municipal corporation and operates a water system for some of its citizens.
- C. Star Valley desires to contract with Payson to provide After Hours and Emergency Services for Star Valley's water system.

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations herein contained, and pursuant to the terms and provisions herein, the Parties hereby agree as follows:

1. Definitions.

*After Hours Services* shall include all routine services by field personnel of a water system provider that occur outside of Normal Business Hours. After Hours Services may include connects or reconnects if the customer has previously paid all outstanding amounts due. After Hour Services shall not include any billing, meter reading, or fees receipt of any type.

*Emergency Services* shall include all services necessitated by an unexpected event that threatens the provision of water to a water system's customers. Such unexpected events shall include, but not be limited to water line breaks, well failures, and similar events.

*Normal Business Hours* shall mean the hours of 8:00 am through 5:00 pm, Monday through Friday, excluding all holidays observed by Payson.

2. Term.

2.1 This Agreement shall be effective as of the date above and shall remain in effect for 60 months.

2.2 The Term of this Agreement may be extended for subsequent terms of 12 months by the mutual written consent of the Town Manager of Star Valley and the Assistant/Deputy Town Manager (over Public Works) of Payson.

2.3 Either Party, upon 30 days written notice to the other Party, may terminate this Agreement.

3. Provision of Services.

3.1 During the first 12 months of this Agreement, Payson shall provide After Hours Services to Star Valley. The 12 month duration of this paragraph may be reduced or extended by the mutual written consent of the Town Manager of Star Valley and the Assistant/Deputy Town Manager (over Public Works) of Payson.

3.2 During the Term of this Agreement, Payson shall provide Emergency Services to Star Valley.

3.3 After Hours Services and Emergency Services shall be provided to Star Valley in the same manner that such services are provided to Payson's water system.

3.4 Payson personnel shall have full discretion to determine the means and manner in which to execute Emergency Services and After Hours Services.

3.5 Payson agrees to provide technical assistance (operational and management) to Star Valley on a time availability basis.

3.6 Payson's response and obligations under this Agreement are contingent upon Payson having sufficient resources in excess of its own needs to meet the needs of Star Valley. In the event that Payson does not have sufficient labor, equipment, or materials, the needs of Payson's water system shall be met prior to Payson having any obligation to respond to a request by Star Valley.

3.7 During the provision of any services under this Agreement, equipment owned by Payson may be operated only by an employee being compensated at such time by Payson.

4. Call Out Procedures.

4.1 If Star Valley desires to obtain Emergency Services during Normal Business Hours, Star Valley shall contact the Water Department at 474-5242, Extension 4 to request such services.

4.2 If Star Valley desires to obtain Emergency Services or After Hours Services outside of Normal Business Hours, Star Valley shall contact the Payson Police Department at 928-474-5177 to request such services.

5. Consultation and Coordination.

5.1 When possible, Payson and Star Valley will work to coordinate and consult with each other in training opportunities, vendor demonstrations, and well testing and monitoring.

- 5.2 If Payson or Star Valley determines that coordination and consultation under this paragraph is not practical, is not in its best interest, or does not have sufficient personnel, such coordination and consultation shall not be required.
6. Compensation.
- 6.1 Star Valley agrees to pay Payson for all expenses associated with the provision of Emergency Services or After Hours Services in accordance with the rates set forth in Exhibit A.
- 6.2 The rates set forth in Exhibit A shall remain in effect for the first 12 months of this Agreement. Prior to the expiration of the first 12 months, and every 12 months thereafter, the Town Manager of Star Valley and the Assistant/Deputy Town Manager (over Public Works) of Payson shall meet and agree to update the rates as needed. If such an agreement cannot be reached, this Agreement shall terminate.
7. Payment.
- 7.1 Following the provision of Emergency Services or After Hour Services, Payson shall invoice Star Valley and such invoice shall be payable upon receipt.
- 7.2 In the event Star Valley is delinquent on any payment for more than 30 days, Payson may terminate this Agreement.
8. Cooperation by Star Valley. Star Valley agrees to cooperate with Payson in the performance of Payson's obligations under this Agreement. Such cooperation shall include the providing all maps, diagrams, schematics, etc., that may be required.
9. Insurance. Payson and Star Valley are both members of the Arizona Municipal Risk Retention Pool ("AMRRP"). If either of the Parties leave AMRRP, they shall notify the other Party within 30 days, obtain substitute insurance and name the other Party as an additional insured. If any claims are made to or paid by AMRRP related to the services covered by this Agreement, the Parties shall mutually request that AMRRP attribute such claims to the experience rating of Star Valley.
10. Other Provisions.
- 10.1 Entire Agreement. This written instrument constitutes the entire agreement between the Parties hereto and all prior agreements related to the same subject matter, written or oral, are merged with this Agreement, except as otherwise herein provided.
- 10.2 Modification. Except as specifically provided in Paragraph 2 and Paragraph 6.2, this Agreement shall not be altered, modified or amended in whole or in part except by a similar written instrument executed with the same formalities as this instrument.

- 10.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.
- 10.4 Authority. The Parties represent and warrant to each other that 1) the execution and performance of this Agreement has been duly authorized by the respective responsible officers of each Party, 2) the execution and performance of this Agreement has been duly authorized and entered into in compliance with each Party's respective Town Code, Ordinances, and Resolutions, 3) the individuals executing this Agreement on behalf of each Party are respectively duly authorized and empowered to bind the respective Parties, and 4) each Party has full power and authority to perform its respective obligations under this Agreement.
- 10.5 Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of the Parties, 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 to binding arbitration or mediation 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), if filed in Arizona Superior Court, shall be filed 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, and the 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 without contribution from the other Party, whether the same is resolved through arbitration, mediation, litigation in a court, or otherwise.
- 10.6 Indemnification. Star Valley shall hold harmless Payson, its Council Members, officers, and employees from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this agreement.
- 10.7 Paragraph Headings. The subject headings of paragraphs are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.
- 10.8 Other Acts. The parties agree to execute, acknowledge and deliver such other documents and instruments and perform such other acts as may be reasonably

necessary or appropriate to carry out the full intent and purpose of this Agreement.

- 10.9 No Third Party Beneficiaries. 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.
- 10.10 No Partnership. It is not intended by this Agreement to, and nothing contained herein shall, create any partnership or joint venture between Payson and Star Valley.
- 10.11 Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by United States Mail, or delivered to the party for which the same is intended, as follows:

Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Assistant/Deputy Town Manager (over Public Works)

With a copy to  
Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Town Manager

Town of Star Valley  
P.O. Box 640  
Payson, AZ 85547  
Attention: Town Manager

- 10.12 Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are included herein. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of any other party to the contract, that this Agreement may be canceled.
- 10.13 Time of Essence. Time is of the essence of this Agreement and all of its parts.
- 10.14 Termination. Without limiting or waiving any other remedies, Payson, in case of a breach of any provision of this Agreement by Star Valley, and without election, may terminate this Agreement by written notice to Star Valley.

- 10.15 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Payson or Star Valley of a breach of any of the covenants of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement.
- 10.16 Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating Payson to expend any money in excess of appropriations authorized by law and administratively allocated for this work.
- 10.17 Construction. 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.
- 10.18 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.
- 10.19 Severability. If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement and to this end the provisions of this Agreement are severable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date written above.

FOR THE TOWN OF PAYSON:

FOR THE TOWN OF STAR VALLEY:

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Kenny J. Evans, Mayor

---

William Rappaport, Mayor

**APPROVAL AS TO FORM**

The Attorney for the Town of Star Valley has reviewed this Agreement and approved it as to form and has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Timothy Grier, Town Attorney

The Attorney for the Town of Payson has reviewed this Agreement and approved it as to form and has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

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

# EXHIBIT A

## TO AGREEMENT FOR AFTER HOURS AND EMERGENCY WATER SYSTEM SERVICES BETWEEN THE TOWN OF PAYSON AND THE TOWN OF STAR VALLEY

### PERSONNEL RATES

\$30.15 per person per hour (straight time)

\$39.72 per person per hour (over time)

There is a 1 hour minimum for any call out.

### MATERIALS

If Payson purchases materials, cost plus 25%.

If Star Valley has an established account with a vendor, not additional cost.

### EQUIPMENT

Equipment	Hourly	Daily	Weekly	# of Emp.
Backhoe	\$35.00	\$240.00	\$918.00	1
Bucket Truck	\$40.00	\$285.00	\$1,085.00	2
Crack Sealer (Excl. Truck)	\$32.00	\$220.00	\$875.00	4
Grader	\$55.00	\$420.00	\$1,600.00	1
Loader	\$65.00	\$495.00	\$1,888.00	1
Pickup	\$30.00	\$197.00	\$754.00	1
Pickup Broom	\$45.00	\$320.00	\$1,220.00	1
Side Broom	\$30.00	\$197.00	\$754.00	1
Snow Plow (Grader)	\$55.00	\$420.00	\$1,600.00	1
Snow Plow (Pickup)	\$30.00	\$197.00	\$754.00	1
Water Truck	\$70.00	\$495.00	\$1,817.00	1
Tractor	\$35.00	\$240.00	\$918.00	1
Vacuum Excavator (Small)	\$35.00	\$240.00	\$918.00	2
Vacuum Excavator (Large)	\$65.00	\$495.00	\$1,888.00	2
Dewatering Pump	\$15.00	\$105.00	\$405.00	1
Service Truck (3/4-1T)	\$30.00	\$191.00	\$754.00	1
Dump Truck	\$40.00	\$285.00	\$1,085.00	1
Skid Steer w/attachments	\$45.00	\$315.00	\$1,350.00	1
Equipment Trailer	\$20.00	\$160.00	\$800.00	1

Equipment prices are exclusive of operators. As noted, some equipment requires multiple employees to operate.

**Exhibit 2 to Resolution 2648  
(Agreement for Emergency  
Backup Water Services)**

**AGREEMENT FOR EMERGENCY BACKUP  
WATER SERVICE  
BETWEEN THE TOWN OF PAYSON  
AND THE TOWN OF STAR VALLEY**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Town of Payson, a municipal corporation (hereinafter, "Payson") and the Town of Star Valley, a municipal corporation (hereinafter, "Star Valley") (collectively "the Parties").

**RECITALS**

- A. Payson is an Arizona municipal corporation and the Payson Water Department (hereinafter, "Department") is a department of Payson.
- B. Star Valley is an Arizona municipal corporation and operates a water system for some of its citizens.
- C. Star Valley desires to contract with Payson to provide Emergency backup water service for Star Valley's water system.

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations herein contained, and pursuant to the terms and provisions herein, the Parties hereby agree as follows:

- 1. Definitions.  
*Emergency* means a circumstance in which Star Valley is unable to provide water to meet its customers' demands due to failure of equipment or a loss of system pressure and Star Valley has unsuccessfully attempted to restore operation of the system. High or above normal water demand shall not constitute an Emergency.
- 2. Term.
  - 2.1 This Agreement shall be effective as of the date written above and shall remain in effect for 60 months.
  - 2.2 The Term of this Agreement may be extended for subsequent 1 year terms by the mutual written consent of the Town Manager of Star Valley and the Assistant/Deputy Town Manager (over Public Works) of Payson.
  - 2.3 Either Party, upon 30 days written notice to the other Party, may terminate this Agreement.
- 3. Provision of Services.
  - 3.1 Payson agrees to provide Emergency water backup service to Star Valley under the terms and conditions described in this Agreement.

- 3.2 In case of an Emergency, Payson will provide water to Star Valley through connections that have previously been agreed upon, constructed, and that are in compliance with the requirement of Paragraph 9.
- 3.3 Unless otherwise agreed to in writing, the maximum daily volume of water Payson will provide for Emergency backup water services is 100,000 gallons.
- 3.4 Unless otherwise agreed to in writing, the maximum flow rate Payson will provide during an Emergency is 100 gallons per minute.
- 3.5 Unless otherwise agreed to in writing, Emergency backup water service shall not extend for more than ten (10) days per Emergency.

4. Initiation and Termination of Emergency Backup Water Service.

- 4.1 Star Valley will notify Payson if Emergency backup water service is needed. During Normal Business Hours, Star Valley shall contact the Water Department at 474-5242, Extension 4 to request such services. After normal business hours, Star Valley shall contact the Payson Police Department at 928-474-5177 to request such service.
- 4.2 Upon verification that Emergency backup water service is available, Payson shall provide, and Star Valley shall take backup water as provided in this Agreement.
- 4.3 Star Valley shall terminate Emergency backup water service in the same manner as provided in Paragraph 4.1 above.
- 4.4 Payson reserves the right to immediately terminate Emergency backup water service if there is insufficient volume and/or pressure to serve Payson's customers, or if Star Valley is in violation of any provision of this Agreement.

5. Payment.

- 5.1 Payson shall charge and invoice Star Valley for any Emergency backup water service in the same manner as Payson charges and invoices its commercial customers.
- 5.2 Star Valley shall be charged and invoiced only during months when Star Valley receives Emergency backup water service.
- 5.3 In the event Star Valley is delinquent on any payment for more than 30 days, Payson may terminate this Agreement.

6. Contingent Upon Availability. Payson's obligations under this Agreement are contingent upon Payson having sufficient water resources in excess of the needs of its own customers. The water needs of Payson's customers shall take precedence over the needs of Star Valley customers. In addition, the delivery of Emergency water shall not cause the pressure in Payson's water system to drop below the level necessary to serve its customers.
7. Water Quality. Payson makes no representations or warranties regarding the quality of the water delivered to Star Valley other than the representation that the quality of the water delivered to Star Valley at the connection point will be of the same general quality of water that Payson transports and distributes to customers within its municipal water system.
8. Limitation on Use. Any water provided to Star Valley under this Agreement shall be strictly limited to use by the customers of Star Valley located within Star Valley's service area. Star Valley shall not extend service to other customers or provide water utility service to locations outside its service area with water delivered under this Agreement.
9. Water Connection, Point of Delivery.
  - 9.1 Payson and Star Valley shall jointly agree upon a Point of Delivery for any Emergency backup water services. Such agreement shall be in writing and executed by Star Valley's Town Manager and Payson's Assistant/Deputy Town Manager over Public Works.
  - 9.2 Prior to commencement of connection at the Point of Delivery, Payson shall notify Star Valley that construction is imminent. No construction may begin until Star Valley has requested the construction of the connection and given written approval of the location of the connection.
    - 9.2.1 At a minimum, the connection will (a) limit the total rate of flow to 100 gallons per minute; (b) include a back flow preventer; and (c) allow monitoring by Payson's Supervisory Control and Data Acquisition (SCADA) system, if Payson so desires.
  - 9.3 Payson shall be responsible for all costs associated with the construction of the physical connection to Payson's water system. Star Valley shall be responsible for all costs associated for any Star Valley water system modifications necessary to store and deliver water to Star Valley customers.
  - 9.5 All construction necessary for the connection shall be the property of Payson and Payson shall be responsible for maintenance and repairs of such construction.
10. Limitation on Payson's Obligations.
  - 10.1 Payson's obligations under this Agreement shall arise only after Star Valley has an approved connection to Payson's system that is in full compliance with the requirements of Paragraph 9.

- 10.2 Payson's obligations under this Agreement shall cease if Star Valley's connection point falls below the standards established in Paragraph 9.
- 10.3 Payson's obligations under this Agreement shall terminate at the point of delivery.
11. Cooperation by Star Valley. Star Valley agrees to cooperate with Payson in the performance of Payson's obligations under this Agreement.
12. Insurance. Payson and Star Valley are both members of the Arizona Municipal Risk Retention Pool ("AMRRP"). If either of the Parties leaves AMRRP, they shall notify the other Party within 30 days, obtain substitute insurance and name the other Party as an additional insured. If any claims are made to or paid by AMRRP related to the services covered by this Agreement, the Parties shall mutually request that AMRRP attribute such claims to the experience rating of Star Valley.
13. Other Provisions.
- 13.1 Entire Agreement. This written instrument constitutes the entire agreement between the Parties hereto and all prior agreements related to the same subject matter, written or oral, are merged with this Agreement, except as otherwise herein provided.
- 13.2 Modification. This Agreement shall not be altered, modified or amended in whole or in part except by a similar written instrument executed with the same formalities as this instrument.
- 13.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.
- 13.4 Authority. The Parties represent and warrant to each other that 1) the execution and performance of this Agreement has been duly authorized by the respective responsible officers of each Party, 2) the execution and performance of this Agreement has been duly authorized and entered into in compliance with each Party's respective Town Code, Ordinances, and Resolutions, 3) the individuals executing this Agreement on behalf of each Party are respectively duly authorized and empowered to bind the respective Parties, and 4) each Party has full power and authority to perform its respective obligations under this Agreement.
- 13.5 Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of the Parties, 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 to binding arbitration or mediation 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), if filed in Arizona Superior Court, shall be filed 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, and the 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 without contribution from the other Party, whether the same is resolved through arbitration, mediation, litigation in a court, or otherwise.

- 13.6 Indemnification. Star Valley shall hold harmless Payson, its Council Members, officers, and employees from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this agreement.
- 13.7 Paragraph Headings. The subject headings of paragraphs are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.
- 13.8 Other Acts. The Parties agree to execute, acknowledge and deliver such other documents and instruments and perform such other acts as may be reasonably necessary or appropriate to carry out the full intent and purpose of this Agreement.
- 13.9 No Third Party Beneficiaries. 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.
- 13.10 No Partnership. It is not intended by this Agreement to, and nothing contained herein shall, create any partnership or joint venture between Payson and Star Valley.
- 13.11 Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by United States Mail, or delivered to the party for which the same is intended, as follows:

Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Assistant/Deputy Town Manager (over Public Works)

With a copy to  
Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Town Manager

Town of Star Valley  
P.O. Box 640  
Payson, AZ 85547  
Attention: Town Manager

- 13.12 Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are included herein. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of any other party to the contract, that this Agreement may be canceled.
- 13.13 Time of Essence. Time is of the essence of this Agreement and all of its parts.
- 13.14 Termination. Without limiting or waiving any other remedies, Payson, in case of a breach of any provision of this Agreement by Star Valley, and without election, may terminate this Agreement by written notice to Star Valley.
- 13.15 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Payson or Star Valley of a breach of any of the covenants of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement.
- 13.16 Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating Payson to expend any money in excess of appropriations authorized by law and administratively allocated for this work.
- 13.17 Construction. 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.
- 13.18 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.

13.19 Severability. If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement and to this end the provisions of this Agreement are severable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date written above.

FOR THE TOWN OF PAYSON:

FOR THE TOWN OF STAR VALLEY:

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

\_\_\_\_\_  
William Rappaport, Mayor

**APPROVAL AS TO FORM**

The Attorney for the Town of Star Valley has reviewed this Agreement and approved it as to form and has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Timothy Grier, Town Attorney

The Attorney for the Town of Payson has reviewed this Agreement and approved it as to form and has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

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