

RESOLUTION NO. 2680

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 TOWN OF STAR VALLEY FOR PLAN REVIEW AND BUILDING INSPECTION SERVICES.

WHEREAS, the Town of Payson provides its citizens with plan review and inspection services through the Payson Community Development Department; and

WHEREAS, the Town of Star Valley has adopted zoning and building codes which require plan review and building inspection; and

WHEREAS, in April of 2012, Payson authorized its staff to begin doing reviews and inspection for Star Valley and directed its attorney to negotiate a formal agreement for such services; and

WHEREAS, Star Valley and Payson have negotiated an agreement for plan review and building inspection services for residential and commercial buildings within Star Valley,

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

Section 1. That the Plan Review and Building Inspection Services Agreement between the Town of Payson and the Town of Star Valley, attached hereto, 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 the Agreement in substantially the form attached upon approval and execution of the agreement by Star Valley.

Section 3. That the Town of Payson, acting by and through its Mayor and/or its other appropriate officers and officials, is hereby authorized to take all other actions necessary or appropriate to carrying out the terms of this Resolution and the Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2012, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

JUL 19 2012 D.4

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

**AGREEMENT
BETWEEN THE TOWN OF PAYSON
AND THE TOWN OF STAR VALLEY
FOR PLAN REVIEW AND
BUILDING INSPECTION SERVICES**

THIS AGREEMENT is made this ____ day of _____, 2012, by and between the Town of Payson, an Arizona municipal corporation (hereinafter, "Payson") and the Town of Star Valley, an Arizona municipal corporation (hereinafter, "Star Valley") (collectively "the Parties").

RECITALS

- A. Payson provides its citizens with plan review and inspection services through the Payson Community Development Department (hereinafter, "Department").
- B. Star Valley has adopted zoning and building codes which require plan review and building inspection.
- C. Star Valley desires to contract with Payson to provide plan review and building inspection services for residential and commercial buildings within Star Valley.

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. Term.

- 1.1 This Agreement shall be effective as of the date written above and shall remain in effect until June 30, 2013.
- 1.2 The parties may extend this Agreement for additional terms of 12 months if, prior to the expiration of the current term, the Star Valley Town Manager requests an extension in writing and the Payson Town Manager agrees to such extension request in writing.
- 1.3 Upon termination of this Agreement, Payson shall return all pending applications and open permits to Star Valley and shall not have any additional obligations with respect to such applications or permits.

2. Plan Review and Building Inspection Services.

- 2.1 Payson, through the Department, will provide Plan Review and Building Inspection Services ("Services") as described on Exhibit A, attached hereto, within the jurisdiction of Star Valley.

2.2 The Town Managers of the Parties may mutually agree to modify the Services described on Exhibit A, so long as such mutual agreement is in writing and signed by each. If such a modification of Services is agreed to, such modification may also include an increase in the compensation rate set forth in Paragraph 5.

3. Manner of Providing of Services.

3.1 Payson shall exercise professional discretion in the providing of Services.

3.2 Payson will use its best efforts to provide Services at the same level and in the same time periods as Payson provides to its own citizens. If a scheduling or time conflict exists between the Services to be provided under this Agreement and comparable services to be provided to the citizens of Payson, Payson may prioritize its own citizens ahead of the Services to be provided under this Agreement.

3.3 Payson will provide all Services, except field inspections, out of its facilities at 303 North Beeline Highway, Payson, Arizona.

3.4 The Services may be provided by Payson employees or by outside contractors and/or consultants retained by Payson.

4. Personnel Oversight.

4.1 The Parties agree that all management, control, oversight, supervision or direction provided to the Payson's employees and any outside contractors and/or consultants retained by Payson is solely within the authority of Payson.

4.2 Payson shall have the sole responsibility and the sole discretion of determining the level and amount of resources, including equipment and personnel, to be provided under the obligations of this Agreement.

4.3 If an employee or an elected official of Star Valley has a question, concern, or issue with the conduct of a Department employee or outside contractor or consultant, such employee or elected official shall forward such question, concern, or issue to the Star Valley Town Manager who may communicate such question, concern, or issue to the Payson Town Manager.

5. Compensation.

5.1. Payson shall document all time spent by its employees on the Services provided under this Agreement. Such time shall be rounded to the nearest half (1/2) hour with a half (1/2) hour minimum.

- 5.2. Star Valley shall pay Payson according to the rates set forth in Exhibit B for all time spent on the Services.
- 5.3. Notwithstanding subsection 5.2, Star Valley shall pay Payson one and one half times the rate set forth in Exhibit B for any time spent on the Services if any non exempt Payson employee works more than 40 hours in a work week and during such week performs Services under this Agreement. The rate under this subsection shall be limited to the number of hours the employee worked over 40 in such week. All other hours shall be billed pursuant to subsection 5.2.
- 5.4. Notwithstanding subsection 5.2, Star Valley shall pay Payson one and one half times the rate set forth in Exhibit B for any time spent on the Services that is performed outside normal business hours.
- 5.5. Star Valley shall pay Payson a vehicle charge of ten dollars and 00/100 (\$10.00) for each trip to Star Valley necessary to provide Services.
- 5.6. At the time of any extension pursuant to Paragraph 1.2, the Town Managers of the Parties may agree in writing to increase the rates in Exhibit B and increase the vehicle charge in Paragraph 5.5.

6. Invoice and Payment.

- 6.1. Payson shall invoice Star Valley monthly for any amounts due pursuant to this Agreement. Star Valley shall pay such invoice within 15 days.
- 6.2. In the event Star Valley does not pay any invoice within 15 days, Payson may cease to provide the Services or terminate this Agreement at Payson's option and in its sole discretion.

7. Cooperation.

- 7.1. Star Valley agrees to cooperate with Payson in the performance of Payson's obligations under this Agreement.
- 7.2. Star Valley, at its expense, shall provide Payson with current copies of Star Valley's zoning, building, and any other applicable codes (including all applicable maps).
- 7.3. Star Valley shall notify Payson upon approval of any change to any of Star Valley's codes within 48 hours of such approval.
- 7.4. Payson and Star Valley will mutually agree to a permit review, issuance, and inspection process. Such process shall be reduced to writing and address the following: location of application submission, payment of fees, verification that all applicable fees have been paid, status updates on pending applications or

permits, and any other items deemed appropriate by the Parties. The initial process agreed to by the Parties is attached hereto as Exhibit C. Such process may be amended by mutual consent of the Parties.

8. Building Permit Fees.

- 8.1 Star Valley shall be entitled to all applicable building permit fees for all permits covered by this Agreement.
- 8.2 Star Valley shall provide Payson with a list of all applicable building permit fees and rates.
- 8.3 Payson shall make a determination of all applicable fees for any permit application. Prior to accepting such fees, Star Valley may review and as necessary may adjust or correct the amount of the applicable fees. Payson shall not be responsible for any errors in the determination or collection of applicable fees.
- 8.4 Prior to the issuance of a permit, Payson shall require from the applicant proof that all applicable permit fees have been paid.

9. Public Records.

- 9.1 Payson shall maintain all records applicable to a building permit and/or application during the time any application and/or permit is open.
- 9.2 If a permit application is denied or no action is taken on an application for 60 days, Payson shall forward the original documents relating to such application to Star Valley for retention.
- 9.3 If a building permit expires or a final approval is issued, Payson shall forward the original documents relating to such building permit to Star Valley for retention.

10. Insurance. The Parties are both members of the Arizona Municipal Risk Retention Pool ("AMRRP"). If either Party leaves AMRRP, it 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 and/or payments to the experience rating of Star Valley.

11. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).

- 11.1 The Parties warrant their compliance with all Federal immigration laws and regulations that relate to their employees and with A.R.S. §23-214(A).

- 11.2 A breach of the warranty under Section 11.1 shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of this Agreement.
- 11.3 The Parties retain the legal right to inspect the papers of each other to ensure that each is complying with Section 11.1.
12. Choice of Law; Dispute Resolution; Venue.
- 12.1 This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
- 12.2 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 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.
- 12.3 The venue for any such dispute shall be Gila County, Arizona, and the Parties consent in advance to such venue and jurisdiction.
- 12.4 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. 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. Indemnification. Payson shall hold harmless Star Valley, its Council Members, officers, employees, agents, and attorneys and Star Valley shall hold harmless Payson, its Council Members, officers, employees, agents, and attorneys 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. In proceeding to and returning from the territory of Star Valley and while providing Services, Payson and all of its agents, employees, contractors and volunteers shall be considered to be employees of Payson for all purposes and not under the direction and control of Star Valley or any of its Council members, employees, contractors or agents.
14. Other Terms.
- 14.1 Entire Agreement. This written instrument constitutes the entire agreement between the parties and all prior agreements related to the same subject matter, written or oral, are merged with this Agreement.

- 14.2 Modification, Amendment. Except as provided in Paragraphs 1.2, 2.2, and 5.5, 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 Agreement.
- 14.3 Counterparts. This Agreement may be executed in several counterparts.
- 14.4 Authority. The Parties represent and warrant to each other that the execution and performance of this Agreement has been duly authorized by the respective responsible officers of each Party.
- 14.5 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.
- 14.6 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.
- 14.7 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.
- 14.8 No Partnership. It is not intended by this Agreement to create any partnership or joint venture between the Parties.
- 14.9 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 | Town of Star Valley |
| 303 North Beeline Highway | 3675 East Highway 260 |
| Payson, Arizona 85541 | Payson, Arizona 85541 |
| Attention: Town Manager | Attention: Town Manager |
- 14.10 Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are included herein.
- 14.11 Time of Essence. Time is of the essence of this Agreement and all of its parts.

- 14.12 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by a Party 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.
- 14.13 Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating either of the Parties to expend, or as involving either in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Nor shall anything herein be construed as obligating either Party to expend, or as involving either Party in any contract or other obligation for the future payment of money if such Party does not have sufficient revenues for such expenditure.
- 14.14 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.
- 14.15 Scrutinized Business Operations. Pursuant to A.R.S. §§35-391.06 and 35-393.06 the Parties warrant and represent that they do not have and during the term of this Agreement will not have a scrutinized business operation in either Sudan or Iran.

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

FOR THE TOWN OF STAR VALLEY:

Bill Rappaport, Mayor

APPROVAL AS TO FORM

The Attorneys for the Town of Star Valley have reviewed this agreement and approved it as to form and have 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

FOR THE TOWN OF PAYSON:

Kenny J. Evans, Mayor

APPROVAL AS TO FORM

The Town of Payson Legal Department 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

AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TOWN OF STAR VALLEY FOR PLAN REVIEW AND BUILDING INSPECTION SERVICES

Plan Review and Building Inspection Services shall include:

1. Residential and Commercial Plan Review, Permit issuance, and associated inspections.
2. Over the counter consultations regarding pre-application questions concerning residential and commercial building permits.
3. Zoning reviews and associated inspections in connection with a building permit application, including time spend becoming familiar with Star Valley's Zone Code.
4. Engineering and grading review and associated inspections in connection with a building permit application.
5. Comply with any public records requests related to Plan Review and Building Inspection Services during the time that Payson has such records.

Plan Review and Building Inspection Services shall not include:

1. Review of septic, sanitary sewer, or alternate waste water systems.
2. Zoning services not associated with the issuance of a building permit, including, but not limited to zone code amendments, subdivision plats, minor land divisions, records of survey, any type of special use permits or conditional use permits, signs, etc.
3. Review of applicable water regulations except applicable plumbing codes.
4. Drainage or other engineering issue reviews unrelated to the issuance of a building permit.
5. Review for compliance with applicable fire codes.
6. Code enforcement unrelated to an open building permit.
7. Zoning Administrator or Board of Adjustment related activities (including, but not limited to zoning appeals).

EXHIBIT B

AGREEMENT BETWEEN THE TOWN OF PAYSON
AND THE TOWN OF STAR VALLEY
FOR PLAN REVIEW AND BUILDING INSPECTION SERVICES

DESCRIPTION	RATE/HOUR
General Employees, except as otherwise listed	\$ 50.00
Building Official	\$ 75.00
Zoning Administrator, Community Development Director, or Registered Engineer	\$ 100.00
Outside contractors or consultants	Contract rate plus 15% (but in no case shall the rate be less than the General Employee rate above)

EXHIBIT C

AGREEMENT BETWEEN THE TOWN OF PAYSON
AND THE TOWN OF STAR VALLEY
FOR PLAN REVIEW AND BUILDING INSPECTION SERVICES

To be provided prior to the July 19, 2012 Council Meeting