RESOLUTION 2692

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR MAGISTRATE SERVICES WITH THE HONORABLE DOROTHY LITTLE.
(2013-2014 MAGISTRATE SERVICES CONTRACT)

WHEREAS, the Town of Payson and Gila County have negotiated consolidation of the Town of Payson Magistrate Court and the Payson Precinct of the Gila County Justice Court, which benefits both agencies as an efficient and economical means of operating these courts; and

WHEREAS, the Town has budgeted funds for the payment of wages to its Magistrate; and

WHEREAS, the Town previously appointed the Honorable Dorothy Little as its Magistrate and entered into a contract with her for a two year term ending December 31, 2012; and

WHEREAS, the Town desires to enter into a new two year contract with the Honorable Dorothy Little to perform Town Magistrate services as a part time, salaried contract employee during 2013 and 2014,

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

Section 1. That the Agreement for Magistrate Services with the Honorable Dorothy Little be and is hereby approved in substantially the form set for in Exhibit "A" attached hereto.

Section 2. That the Mayor of the Town of Payson, be and is hereby authorized to execute the Agreement for Magistrate Services in substantially the form set forth in Exhibit "A" attached hereto.

Section 3. That the Town of Payson be and is hereby authorized to take such other actions as are necessary to carrying out the intent of said Agreement and this Resolution.

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

NOV 15 2012 G.2*

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney

Prepared by Town of Payson Legal Department

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EXHIBIT A
TO
RESOLUTION
2692

AGREEMENT FOR MAGISTRATE SERVICES
(Exhibit A to Resolution 2692)

THIS AGREEMENT made and entered this _____ day of _____, 2012, by and between the TOWN OF PAYSON, an Arizona municipal corporation ("the Town"), and THE HONORABLE DOROTHY LITTLE ("the Magistrate") (collectively, the "Parties").

RECITALS

A. Pursuant to A.R.S. § 22-402 and Section 34.01 of the Town Code of the Town of Payson, there is established within the Town of Payson a Magistrate Court.

B. On May 14, 1999, the Town and the County of Gila entered into an Agreement (Intergovernmental Agreement by and between Town of Payson and Gila County, Consolidated Administration and Operation of Limited Jurisdiction Courts) providing for, among other things, the consolidation of the Payson Precinct of the Gila County Justice Court and the Town of Payson Magistrate Court. Said Agreement is hereinafter referred to as the "1999 Consolidation Agreement".

C. Said 1999 Consolidation Agreement has from time to time been extended.

D. On November 2, 2010, the Honorable Dorothy Little was elected as the Payson Justice of the Peace for a four year term commencing January 1, 2011.

E. Pursuant to Resolutions 2228, 2494, and 2581, the Town has entered into prior two-year contracts with the Magistrate as a part time, salaried contract employee of the Town during her time as Justice of the Peace.

F. The Town and the Magistrate desire to enter a new contract through December 31, 2014.

AGREEMENT

Pursuant to the terms and conditions set forth herein, the Parties do hereby covenant and agree as follows:

1. The Parties agree that this Agreement for Magistrate Services ("the Agreement"), as of its effective date, shall supercede all prior agreements between the Parties.

2. This Agreement shall be effective commencing January 1, 2013.

3. During the term of this Agreement, the Magistrate shall perform all duties of the Presiding Officer of the Town of Payson Magistrate Court pursuant to this Agreement, the Code of the Town of Payson, and A.R.S. §§ 22-401, *et seq.*, and as otherwise empowered by law.

3. The Magistrate shall be a part time, salaried contract employee of the Town. As such, all terms of the Magistrate's employment shall be determined by this Agreement and such employment shall not be subject to the terms of the Town's Personnel Policy Manual.

4. Town shall pay to Magistrate a salary in the sum of Twenty-eight Thousand Dollars ($28,000.00) for each year that this Agreement is in effect. The Magistrate understands and acknowledges that she will receive no additional compensation, benefits or any other form of remuneration as the Magistrate of the Town of Payson Magistrate Court, through this Agreement or otherwise.

5. All amounts due pursuant to this Agreement shall be paid on a bi-weekly basis in accordance with the standard payroll procedures of the Town. The Town shall withhold all required employment and income taxes in accordance with federal law.

6. The Magistrate shall perform the duties of the Magistrate of the Magistrate Court pursuant to law and pursuant to the 1999 Consolidation Agreement. It is understood that the Magistrate is the Justice of the Peace of the Payson Precinct of the Gila County Justice Court.

7. The Parties understand and agree that this Agreement is predicated upon the continued existence of the 1999 Consolidation Agreement. As a result, the Parties further agree that in the event the 1999 Consolidation Agreement is not extended by and between the County of Gila and the Town, or in the event such Agreement is canceled according to its terms, this Agreement shall likewise terminate on the date said 1999 Consolidation Agreement terminates. This Agreement shall also terminate in the event that the Magistrate ceases to function as Justice of the Peace of the Payson Precinct of the Gila County Justice Court on the date that the Magistrate ceases so to function. Otherwise, this Agreement shall terminate and expire on December 31, 2014, unless it is sooner terminated pursuant to its terms. Notwithstanding, and in addition to the foregoing, the Town may terminate this Agreement for good cause shown at any time. The Magistrate may terminate this Agreement at any time by providing to the Town thirty (30) days written notice of the Magistrate's intention so to do.

8. This Agreement and its existence are hereby made specifically subject to the provisions of A.R.S. § 38-511, and this Agreement may be canceled in conformity therewith.

9. The Town shall use its best efforts to fund its financial obligations under this Agreement at each budget year. In the event that the Town does not budget sufficient funds with which to perform its obligations under this Agreement during any fiscal year, then the Town may terminate and cancel this agreement at such time for such reason.

10. The Town shall have no other financial or contractual obligation except as herein set forth.

11. The Parties acknowledge that A.R.S. § 22-403(B) authorizes Magistrate to accept this position without having to forfeit her office as Justice of the Peace of the Payson Precinct of the Gila County Justice Court.

12. All notices sent by either party to this Agreement to the other party shall be sent to the addresses as follows:

The Honorable Dorothy Little
714 South Beeline Highway #103
Payson, Arizona 85541

Town Manager
Town of Payson
303 North Beeline Highway
Payson, Arizona 85541

13. 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. 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.

14. The Parties agree that in the event any provision in this Agreement is found by a court of competent jurisdiction to be invalid, the invalidity of such portions shall not affect the remaining portions, which shall remain valid and enforceable according to their terms, unless the purposes of the remainder of this Agreement are frustrated on account of such partial invalidity.

15. 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 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. 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.

16. 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.

17. No rights or duties under this Agreement may be assigned by Magistrate except as provided in Section 34.04 of the Code of the Town of Payson (relating to Associate Magistrates), and any attempt at such assignment shall render this Agreement void and of no further effect.

18. The approval of this Agreement by the Mayor and Common Council of the Town of Payson shall constitute the appointment of the Magistrate subject to the terms of this Agreement.

WHEREFORE, the Parties have executed this Agreement the day and year first above written.

TOWN OF PAYSON,
an Arizona municipal corporation

By_____
Kenny J. Evans, Mayor

_____
The Honorable Dorothy Little
Magistrate/Justice of the Peace

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney