

COUNCIL DECISION REQUEST

SUBJECT: Facilities Use Agreement Between The Payson Unified School District and the Town of Payson

MEETING DATE: May 16, 2013

PAYSON GOAL: NEW: EXISTING: x

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Cameron Davis 
Park, Recreation and Tourism Director

AMOUNT BUDGETED: N/A

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: N/A

CONT. FUNDING REQUIRED:


EXHIBITS (If Applicable, To Be Attached):

POSSIBLE MOTION

I move to (1) approve the Agreement for facilities use between the Payson Unified School District and the Town of Payson in substantially the form attached and (2) authorize the Town Manager to sign such Agreement.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

This agreement creates a formal structure for the Town of Payson and the Payson Unified School District to follow when facilities, equipment and personal are involved as it relates to each Party using each the other's resources for special events, activities and programming. This agreement also reiterates the fact that normal fees are waived in association with the use of its facilities for the other Party's use. It also sets preference for each Party and shall give the other Party preference for reserving facilities over all other third parties expect when either Party is aware of a revenue producing event that desires to use a specific facility.

PROS: _____

- Creates a facilities management structure that doesn't exist today.
- Creates formal facilities scheduling and calendaring criteria.
- Sets a preference for each party that once a facility is booked that no other third party can overwrite the reservation, unless there is prior knowledge of a revenue producing event that may be interested in the same dates.

CONS:

- None.

PUBLIC INPUT (if any):

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct: Budget: Available: Expense: Remaining:

MAY 16 2013 I.1

COUNCIL DECISION REQUEST

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

BA: _____ Date: _____

**FACILITIES USE AGREEMENT BETWEEN
THE PAYSON UNIFIED SCHOOL DISTRICT NUMBER 10
AND THE TOWN OF PAYSON**

Background:

- A. The Payson Unified School District Number 10 (“the District”) and the Town of Payson (“Town”) (collectively the “Parties”) both own recreational facilities, parking areas, meeting spaces, and other facilities described below.
- B. Over the past years, the Parties have informally allowed each other to utilize each other’s facilities when the Party owning such facility was not utilizing it.
- C. By utilizing each other’s facilities, the Parties, the taxpayers of each, and the citizens of the Payson area all benefit.
- D. The Parties desire to formalize this cooperative relationship and cross utilization of each other’s facilities.

Terms:

1. **Parties.** The Parties to this Agreement are the Payson Unified School District Number 10 and the Town of Payson.

2. **Term of the Agreement.**

2.1 The term of this Agreement shall be 5 years from the date of the last signature.

2.2 At the end of the first 5 years, and any potential extensions, this Agreement shall automatically renew for an additional 5 year term unless one of the Parties provides written notice to the other Party of non renewal at least 90 days prior to the end of the then current term.

2.3 Either Party may terminate this Agreement by providing 90 days written notice to the other Party.

3. **Fees.**

Each Party will waive the normal fees associated with the use of its Facilities for the other Party’s use of the Facilities.

4. Facilities.

- 4.1 For the purposes of this Agreement, the District's Facilities shall include:
Baseball and softball fields located at Payson High School
Football stadium and track located at Payson High School
Auditorium located at Payson High School
The Wilson Dome located at Payson High School
The 'old' gymnasium located at Payson High School
The gymnasium located at Rim Country Middles School
The cafeterias and gymnasiums located at Payson Elementary School and Julia Randall Elematary School
Classrooms in all of the District's schools
Parking areas at all of the District's schools
- 4.2 The Adventure Course adjacent to the Payson High School shall not be deemed a District Facility for the purposes of this Agreement.
- 4.3 For the purposes of this Agreement, Payson's Facilities shall include:
Softball fields located at Rumsey Park
Baseball fields located at Rumsey Park
Multi-purpose fields located at Rumsey Park
Ramadas located at Rumsey Park
Tennis courts located at Rumsey Park
Sand volleyball courts located at Rumsey Park
Outdoor basketball courts located at Rumsey Park
Equipment room at Rumsey 1 field
Scoreboards and controllers associated with the fields located at Rumsey Park
Parking areas in the Town's parks
The Payson Event Center, including parking areas
- 4.4 The District's Superintendent and the Town's Recreation and Tourism Director may designate additional similar properties as Facilities for the purpose of this Agreement. Such agreement shall be in writing and for specific dates.

5. Preference.

- 5.1 Each Party shall give the other Party preference for reserving Facilities over all other third persons except when either Party is aware of a revenue producing event that desires to use a specific Facility.
- 5.2 Neither Party shall be required to cancel or reschedule a previously scheduled event by a third person to accommodate the other Party.

6. Reservation Process.

- 6.1 Reservations for a Facility shall be made by emailing the other Party at the email address listed below. If the Facility is available, the reservation shall be confirmed by email.

Town Reservation Contact - Janell Blizzard - Jblizzard@Paysonaz.gov
928-474-5242, extension 7

District Reservation Contact - Todd Poer - Todd.poer@pusd.com
928-472-2024

- 6.2 The District's Superintendent and the Town's Recreation and Tourism Director may amend the Reservation Process listed in section 6.1 above. Such amendment shall be in writing.

7. Equipment and Staffing Use.

- 7.1 Either Party may arrange to have the other Party provide Equipment normally associated with the specific use of the Facilities. If the Equipment needed is machinery, the Party that owns the Facility would provide the staff to operate such machinery.
- 7.2 Either Party may arrange to have the other Party provide additional staffing services normally associated with the specific use of the facilities.
- 7.3 Neither Party may direct the other Party's employees.

8. Insurance.

Each Party shall have insurance in at least the following amounts:

- 8.1 Workers Compensation Insurance to cover obligations imposed by Federal and State Statutes having jurisdiction of its employees engaged in the performance of the Services, and Employer's Liability insurance with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 8.2 Comprehensive General Liability insurance with a minimum combined single limit of ONE MILLION DOLLARS (\$1,000,000) for each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability (including coverage for contractual and employee acts), and blanket contractual. The policy shall contain a severability of interests provision.

9. **Indemnity.**

9.1 Each Party (or first Party) shall indemnify, hold harmless and defend the other Party (or second Party) and its agents and employees from all suits and actions, including reasonable attorneys' fees and all costs of litigation and judgment of every name and description against the second Party as a result of loss, damage, or injury to person or property by reason of any action or omission by the first Party, its agents, or employees on account of loss of or damage to any property and for injuries to or death of any person by reason of or arising out of any act or omission by the first Party, its employees and agents or out of claims under similar such laws.

10. **Modification.** Except as explicitly provided, this Agreement may only be amended or modified by a written instrument executed by the Town and the District.

11. **Dispute Resolution.**

11.1 This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.

11.2 If any dispute arises under this Agreement, such dispute shall first be referred to the Town Manager and the District Superintendent who shall attempt to resolve such dispute informally.

11.3 With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement not resolved under subsection 11.2 above may be settled by submission 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. 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.

11.4 The venue for any such dispute shall be Gila County, Arizona.

11.5 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.

12. **Cancellation (A.R.S. §38-511).** This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of contracts by the municipality for certain conflicts of interest.

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

- 13.1 Each Party warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).
- 13.2 A breach of the warranty under Section 13.1 above shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of the Agreement.
- 13.3 Each Party retains the legal right to inspect the papers of the other to ensure that each is complying with Section 13.1.

14. **Other Provisions.**

- 14.1 **Notices.** All notices, filings, consents, approvals, and other communications under this Agreement shall be made, delivered, or served, to:

Town:	District:
Town of Payson	Payson Unified School District
303 North Beeline Highway	P.O. Box 919
Payson, Arizona 85541	Payson, AZ 85547-919
Attention: Recreation and Tourism Director	Attention: Superintendent

or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Communication delivered by certified mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid. Notices delivered personally shall be deemed delivered upon delivery.

- 14.2 **Counterparts.** This Agreement may be executed in counterparts.
- 14.3 **Entire Contract.** This Agreement contains the entire agreement between the Parties pertaining to the subject matter. All prior or contemporaneous oral or written agreements concerning the subject matter of this Agreement shall have no effect.
- 14.4 **Scrutinized Business Operations.** Pursuant to A.R.S. §§35-391.06 and 35-393.06 the Parties hereby 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.

WHEREFORE, the parties have caused this Agreement to be executed by their duly authorized representatives.

PAYSON UNIFIED SCHOOL DISTRICT

APPROVAL AS TO FORM

By 
Dave Pauole, Attorney
Holm Wright Hyde & Hays PLC

4/18/13
Dated

By 
Ron Hitchcock, Superintendent

4/22/13
Dated

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
Debra Galbraith, Town Manager

Dated

ATTEST:

Silvia Smith, Town Clerk

APPROVAL AS TO FORM

By 
Timothy M. Wright, Town Attorney

5/7/13
Dated