RESOLUTION NO. 2785

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE HUMANE SOCIETY OF CENTRAL ARIZONA, INC., FOR FISCAL YEAR 2014-2015.

WHEREAS, the Town of Payson has contracted with Humane Society of Central Arizona, Inc., for the providing of an animal shelter for the Town; and

WHEREAS, the Town of Payson wishes to continue such a contractual relationship for the Fiscal Year 2014-2015,

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

Section 1. The Agreement between the Town of Payson and the Humane Society of Central Arizona, Inc., attached as Exhibit "A" is approved in substantially the form attached.

Section 2. Kenny J. Evans, Mayor of the Town of Payson is authorized to execute the Agreement in substantially the form set forth in Exhibit "A" attached.

Section 3. The Town of Payson is authorized to take such other actions as are necessary to carrying out the terms of the Agreement

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 19th day of June, 2014, 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 June 11, 2014 (2:57pm)
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JUN 19 2014 D.2*

EXHIBIT A

TO

RESOLUTION NO. 2785

AGREEMENT

This Agreement is entered into this _____ day of _____, 2014, between the **TOWN OF PAYSON**, an Arizona municipal corporation ("Town"), and **THE HUMANE SOCIETY OF CENTRAL ARIZONA, INC.**, an Arizona non-profit corporation ("Society").

WHEREAS, Society desires to be of service to Town for the purpose of humane animal care; and

WHEREAS, Town desires to continue to use the services of Society for the purpose of humane animal care,

NOW, THEREFORE, the Parties agree as follows:

1. This Agreement shall be limited to the care and treatment of animals placed in the care and control of the Society by Town or by any other person or entity as delineated in Chapter 90, Animals, of the Town Code ("Town Animals").

2. Society agrees to and shall follow and abide by the provisions in Chapter 90 which shall control the maintenance and disposition of animals in the custody of Society and shall apply to all operations of Society concerning Town Animals.

3. Society shall provide for rabies control facilities, spaying, neutering, adoption, care and any necessary disposal of animals placed in Society's control by anyone, in accordance with the ordinances duly enacted by Town and applicable State laws. In this connection, Society shall make no charge for and shall not seek to collect from anyone any amount for the taking in of stray animals.

4. Town shall collect all licensing fees and impound fees and retain the same for its own benefit.

5. The housing of any potbellied pig captured by the Town of Payson Animal Control Officer and/or his/her representative shall be of minimum duration to enable the Arizona Livestock Board to be notified and to act in accordance with the livestock laws of the State of Arizona. Society acknowledges having received the text of Chapter 90 which provides the methodology employed by Town to handle and dispose of any potbellied pig which is captured or impounded by Town.

6. Town agrees to compensate the Society the amount of $6,266.67 per month ($75,200.00 for twelve months).

7. Society shall keep and make available all records necessary to account for its treatment of all Town Animals and its use of Public Funds. Society's records shall be available for inspection by Town at any time during normal business hours, subsequent to twenty-four (24) hours prior notification. Said notification may be oral or written.

8. On or before the tenth day of each month, Society shall make a full accounting to Town of all public funds spent by Society for the care of Town Animals during the previous month.

9. The term of this Agreement shall be from July 1, 2014, through June 30, 2015. Should either Society or Town desire to terminate this Agreement before the expiration of the term hereof, such party may do so by giving thirty (30) days advance written notice to the other party. After thirty (30) days have elapsed from the date of said notice, this Agreement shall be deemed terminated and of no further force or effect.

10. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference.

11. All notices and other communications shall be made, delivered or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

The Town:	Town of Payson 303 North Beeline Highway Payson, Arizona 85541 Attention: Town Manager
The Society:	Humane Society of Central Arizona, Inc. P.O. Box 242 Payson, Arizona 85547 Attention: President

12. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either of the Parties 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.

13. This Agreement may be executed in two or more counterparts.

14. It is not intended by this Agreement to create any partnership, joint venture, or other arrangement between the Town and the Society. No term or provision of this Agreement 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. The Parties understand, agree, and acknowledge that Society shall act under this Agreement solely as an independent contractor and not as an agent or employee of the Town.

15. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter of this Agreement.

16. This Agreement is entered into in Arizona and shall be construed and interpreted under the internal laws of the State of Arizona.

17. Any dispute arising out of or related to this Agreement may, with the written consent of both parties, 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.*, and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be 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, whether the same is resolved through arbitration, litigation in a court, or otherwise.

18. Town Business License. Society shall provide the Town with a copy of its Town business license. If Society is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Payson Town Code.

19. Every payment obligation of the Town under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Town at the end of the period for which funds are available. No liability shall accrue to the Town pursuant to this Agreement in the event this provision is exercised and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section.

20. Reserved.

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

21.1 Society and any Subcontractor employed by Society warrant their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).

21.2 A breach of the warranty under Section 21.1 above shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of the Agreement.

21.3 The Town retains the legal right to inspect the papers of Society or any Subcontractor who works on this Agreement to ensure that Society and Subcontractor are complying with Section 21.1.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month and year first above written.

TOWN OF PAYSON,
an Arizona municipal corporation

By_____
Kenny J. Evans, Mayor

HUMANE SOCIETY OF CENTRAL ARIZONA, INC., an Arizona corporation

By_____
Diane Enos, Chairman

ATTEST:

Silvia Smith, Town Clerk

Samantha Spinelle, Secretary

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney

U:\Agreements and Contracts\Humane Society\14-15.wpd
TMW:drs June 6, 2014 (12:29pm)

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an Arizona municipal corporation

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HUMANE SOCIETY OF CENTRAL ARIZONA, INC., an Arizona corporation

By_____
Diane Enos, Chairman

ATTEST:

Silvia Smith, Town Clerk

Samantha Spinelle, Secretary

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney

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TMW:drs June 6, 2014 (12:29pm)