



COUNCIL DECISION REQUEST

SUBJECT: Water Development Trust Fund Utilization

MEETING DATE: August 13, 2015

SUBMITTED BY: Buzz Walker

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

AMOUNT BUDGETED: \$325,000.00

EXPENDITURE REQUIRED: \$-0-

EXHIBITS (If Applicable, To Be Attached): Attached: Environmental Trust Fund Agreement between the Town of Payson and the United States.

POSSIBLE MOTION: I MOVE TO AUTHORIZE THE CREATION OF AN ENVIRONMENTAL PROJECTS COMMISSION PRUSANT TO THE TERMS OF A "MEMORANDUM OF UNDERSTANDING FOR The Creation of a Trust Fund between the Town of Payson and the United States of America" and to appoint as Chairman – Buzz Walker, TOP representative, Vice-Chairman – Joel Goode – Northern Gila County Sanitary District representative, LaRon Garrett – TOP representative, Gary Isles - NGCSD representative, Darrel Jenkins – At-large representative and David Daniels - AZ Game & Fish representative.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION: The Town of Payson is developing an Environmental Projects Commission pursuant to terms of a 1994 Memorandum of Understanding (MOU) between the Town of Payson and the United States of America Bureau of Reclamation.

The MOU exists as a result of a 1994 transaction between the Town of Payson (Payson) and the City of Scottsdale wherein the Town's Central Arizona Project water allocation was transferred to Scottsdale in return for monies necessary to develop additional water supplies for the Town. As a condition of the United State's approval of this transaction a sum of these monies were set aside for future environmental projects in the Payson area. The projects are to be determined by the Town of Payson with input from a Town-appointed committee.

The MOU (copy attached) anticipates that "In proposing Environmental Projects to the BOR under Section 4 of this Memorandum, Payson shall give preference to proposed Environmental Projects which would create enhance or preserve riparian habitats. In particular, Payson shall give preference to its Urban Riparian Wildlife Refuge Project, which is a project in the process of formulation by Payson and which Payson believes will result in the creation, enhancement or preservation of riparian habitats and which will also fulfill the Trust Fund Purposes." This project is now known as Green Valley Park, dedicated in 1996.

Per the terms of the agreement invitations were sent to American Rivers and The Sierra Club, both of whom did not reply and the Nature Conservancy who replied with a letter declining participation but wishing us luck in our endeavor.

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COUNCIL DECISION REQUEST

PROS: Allows for the satisfaction of a contractual agreement between the Town of Payson and the United States of America.

CONS: Failure to form the committee as stated in the agreement would result in the forfeiture of \$325,000 to the United States with no benefit accruing to Payson.

FUNDING:

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

FM: _____ Date: _____

MEMORANDUM OF UNDERSTANDING

**For the Creation of a Trust Fund
between the
Town of Payson
and the
United States of America**

This Memorandum of Understanding (this "Memorandum") is made as of the 21st day of January, 1994 by and between the TOWN OF PAYSON ("Payson"), an Arizona municipal corporation, whose address is 303 North Beeline Highway, Payson, Arizona 85541, and the UNITED STATES OF AMERICA acting through the BUREAU OF RECLAMATION ("BOR"), whose address for purposes of this Memorandum is Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470.

Background

A. Payson has entered into that certain agreement entitled "Agreement Among the Town of Payson, Southwest Community Resources, Inc., the City of Scottsdale, the Central Arizona Water Conservation District and the United States for the Exchange of Central Arizona Project Water" (the "Exchange Agreement"). Section 6.1 of the Exchange Agreement provides that, subject to the terms and conditions thereof, the sum of \$4,318,796 plus certain accrued interest will be deposited into a trust fund (the "Trust Fund") created pursuant to the Trust Agreement (the "Trust Agreement") attached as Exhibit B to the Exchange Agreement.

B. Section 4.2 of the Exchange Agreement and Section 2 of the Trust Agreement provide that monies in the Trust Fund may only be used for purposes (the "Trust Fund Purposes") of defraying the expenses associated with investigating, planning, designing, constructing, acquiring and/or developing an alternative water supply to replace the Central Arizona Project water assigned by Payson pursuant to the Exchange Agreement, up to a combined net increase in Payson's water system capacity of 4995 acre-feet per year.

C. Payson desires to reserve a portion of the monies in the Trust Fund for use in projects which meet the Trust Fund Purposes and which also benefit the environment, principally in the area of riparian creation, enhancement and preservation. The BOR desires to facilitate the achievement of these twin goals by Payson by entering into this Memorandum.

IN CONSIDERATION of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. Conditions Precedent to Effectiveness. The obligations of Payson and the BOR hereunder and the other provisions of this Memorandum shall become effective upon the funding of the Trust Fund.

2. Reservation of Trust Monies for Environmental Purposes. Of the monies deposited in the Trust Fund, the sum of three hundred twenty-five thousand dollars (\$325,000) (the "Environmental Portion") is declared to be reserved and held in trust for use in projects ("Environmental Projects") both benefiting the environment and meeting the Trust Fund Purposes.

3. Administration of the Environmental Portion. Although the monies in the Trust Fund will remain in the actual custody and control of the financial institution selected to serve as trustee under the Trust Agreement, the BOR shall act as an additional trustee with respect to the Environmental Portion. Payson shall exercise its powers under Section 6 of the Trust Agreement to direct the investment of the monies in the Trust Fund so as to establish separate accounts within the Trust Fund into which the Environmental Portion shall be deposited or separate investments within the Trust Fund which shall be made with the Environmental Portion. No monies from the Environmental Portion shall be spent without the prior approval of Payson.

4. Selection of Environmental Projects. Payson shall establish a commission (the "Environmental Projects Commission") to make recommendations to Payson from time to time on Environmental Projects on which monies from the Environmental Portion should be spent. Payson shall invite American Rivers, the Sierra Club and the Nature Conservancy each to name one person to be a member of the Environmental Projects Commission. The size of the Environmental Projects Commission, its other members and its rules and procedures shall be as specified from time to time by Payson. After receipt of recommendations from the Environmental Projects Commission, Payson shall propose to the BOR the expenditure of monies from the Environmental Portion on Environmental Projects. In making such proposals, Payson shall describe in reasonable detail the Environmental Projects on which Payson proposes to spend monies from the Environmental Portion. The BOR shall review the Environmental Projects proposed by Payson, shall advise Payson if the BOR desires to consult with Payson on any Environmental Project proposed by Payson and, with respect to any proposed Environmental Project on which the BOR desires to consult, shall specify in reasonable detail any modifications to such proposed Environmental Project which the BOR considers beneficial to such project.

5. Preference for Riparian Creation, Enhancement and Preservation Projects. Payson and the BOR believe that projects which would create, enhance or preserve riparian habitats in the watershed in which Payson is located are likely to be projects which also would fulfill the Trust Fund Purposes. In proposing Environmental Projects to the BOR under Section 4 of this Memorandum, Payson shall give preference to proposed Environmental Projects which would create, enhance or preserve riparian habitats. In particular, Payson shall give preference to its Urban Riparian Wildlife Refuge Project, which is a project in the process of formulation by Payson and which Payson believes will result in the creation, enhancement or preservation of riparian habitats and which also will fulfill the Trust Fund Purposes.

6. Matching Funds. The BOR shall also endeavor to work cooperatively with Payson, as authorized by law, to provide funds for projects of mutual interest to both parties that

will assist in carrying out the goals and objectives of this Memorandum. In particular, but without limiting the generality of the foregoing, the BOR will assist Payson in dealing with the National Fish and Wildlife Foundation (the "Foundation") in an attempt to obtain funds under 16 U.S.C.A. § 3709 or any comparable legislation to match any expenditures of the Environmental Portion. To the extent permitted by law, any expenditures of the Environmental Portion shall be considered contributions to the Foundation in order to qualify such expenditures for such matching.

7. Termination. This Memorandum shall terminate on the date on which all of the Environmental Portion shall have been disbursed in accordance with this Memorandum.

8. Notices. All notices and communications hereunder shall be in writing and shall be deemed to be duly given if hand delivered or sent by (a) certified or registered mail, return receipt requested, or (b) by an overnight express mail or delivery service, at the addresses specified above or at such other address as any of the above may hereafter furnish in writing in the manner provided herein.

9. Counterparts. This Memorandum may be executed in duplicate originals, each of which shall constitute an original Memorandum.

10. Binding Effect. The provisions of this Memorandum shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto.

11. Further Assurances. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Memorandum.

12. Governing Law. This Memorandum shall be construed in accordance with applicable state and federal laws.

IN WITNESS WHEREOF, the parties hereto have executed the Memorandum on the day and year written below.

TOWN OF PAYSON, an Arizona
municipal corporation

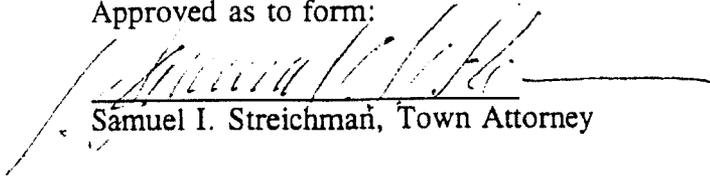
By: 
Craig Swartwood, Mayor

Date: 1-21-94

Attest:


Linda J. Foster, Town Clerk

Approved as to form:


Samuel I. Streichman, Town Attorney

UNITED STATES OF AMERICA

By: _____

David B. [Signature]
Commissioner
Bureau of Reclamation

Date: _____

1/21/94

Legal Review and Approval

By: _____

C. [Signature]
Field Solicitor
Phoenix, Arizona

Date: _____

1/20/94