

RESOLUTION NO: 3132

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE GENERAL RELEASE OF ALL CLAIMS AND RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS BETWEEN THE TOWN OF PAYSON, ARIZONA (“TOWN”), COMMUNITY CENTERS PARTNERS, LLC (“CCP”), AND VARXITY DEVELOPMENT CORPORATION (“VDC”) (COLLECTIVELY, THE “PARTIES”)

WHEREAS, the **Parties** negotiated terms and conditions to formulate the **TRI-PARTY AGREEMENT** for the Development of the **Rumsey Park Master Plan** which was presented to Mayor and Council on September 21, 2017 and approved pursuant to the passage and adoption of Resolution No: 3065; and

WHEREAS, the TOWN received and adopted the **Rumsey Park Master Plan** pursuant to Resolution No: 3104 as passed by Mayor and Council on May 24th, 2018; and

WHEREAS, pursuant to Section 7 (B) of the **AGREEMENT**, the TOWN and VDC agreed to equally share the financial responsibility of the Consulting Agreement for the sum certain amount of \$250,000.00 USD which said amounts were paid to **CCP** as full payment and satisfaction for work performed; and

WHEREAS, on May 24, 2018, by a majority vote of Mayor and Council (6-1), the TOWN officially approved and adopted the Rumsey Park Master Plan Report; and

WHEREAS, on June 14, 2018, by a majority vote of Mayor and Council (6-1), the TOWN officially approved and adopted an Amendment to the Original **AGREEMENT** between the TOWN and CCP, ***subject to donor funding***, for Consulting Services for the Validation of the Rumsey Park Master Plan Report; and

WHEREAS, on June 14, 2018, by a majority vote of Mayor and Council, the TOWN officially approved and adopted an Agreement between the TOWN and The Friends of Payson Parks and Recreation, Inc. (**“FRIENDS”**), an Arizona Charitable Non-Profit 501(c)(3) Corporation to collect and transmit donated funds to the TOWN for distribution to CCP; and

WHEREAS, on August 28, 2018, the electorate of Payson passed two ballot initiatives (401 and 402) which will become effective on January 1, 2019 and which may have a direct effect on the future of Rumsey Park, thus impacting the validation process; and

WHEREAS, on September 27, 2018, an official of **FRIENDS** notified Mayor and Council of requests being made by contributors and/or pledging donors for the return of donated funds or rescission of pledges; and

Prepared by Town of Payson Legal Department

HMF:dkk November 19, 2018 (10:33AM)

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WHEREAS, the funding structure contemplated under the Agreement with **FRIENDS** has not produced the amount required to be transferred to the **TOWN** in order for the Notice to Proceed with Phase One to be issued by the **TOWN**; and

WHEREAS, the **TOWN, CCP and VDC** met to confer regarding the process going forth and the available options to continue the Validation Process; and

WHEREAS, the **Parties** desire to reach a mutually beneficial option to terminate the existing Agreements between each other without any **Party** having to reimburse any other **Party** for so exercising their right to terminate upon providing an executed **GENERAL RELEASE OF ALL CLAIMS AND RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS** to the other **Parties**; and

WHEREAS, the **TOWN** agrees to approve and adopt the **GENERAL RELEASE OF ALL CLAIMS AND RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS** to terminate the Joint Planning, Development, Validation and Implementation Strategy with **CCP**, the Friends of Payson Parks and Recreation ("501 [c]3"), the Special Purpose Entity ["63-20"] and **VDC** as contemplated to explore various Economic and Recreational opportunities.

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

Section 1: That the **GENERAL RELEASE OF ALL CLAIMS AND RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS** is hereby approved and adopted in substantially the form attached hereto as Exhibit "A".

Section 2: That the Mayor of the Town of Payson, is authorized to execute Resolution No: 3132 and **GENERAL RELEASE OF ALL CLAIMS AND RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS** in substantially the form attached hereto as Exhibit "A".

Section 3: That the Town Manager and Town officials are authorized to take such other and further actions as may be necessary or appropriate to carrying out the intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 29th day of November, 2018, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

B. Craig Swartwood, Mayor

Prepared by Town of Payson Legal Department

HMF:dkk November 20, 2018 (9:18AM)

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ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:


Hector M. Figueroa, Town Attorney

Prepared by Town of Payson Legal Department

HMF:dkk November 19, 2018 (10:33AM)

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Exhibit A

to Resolution 3132

(General Release of all Claims and Release of Documents and Confidentiality Agreements)

**GENERAL RELEASE OF ALL CLAIMS.
AND
RELEASE OF DOCUMENTS AND CONFIDENTIALITY AGREEMENTS**

This agreement is entered into effective the 29th day of November, 2018 between the Town of Payson, Arizona (“Town”), Community Center Partners, LLC (“CCP”) and Varxity Development Corporation (“VDC”), for the purposes of resolving all claims and disputes between the parties related to all agreements entered into between the parties, involving the master planning of and redevelopment of Rumsey Park in Payson, Arizona (the “Project”), including all resolutions enacted by the Town in furtherance of that Project (the “Agreements”).

In consideration of the mutual agreements and releases contained herein, the sufficiency of which are acknowledged, Town, CCP and VDC each do now release, acquit, and forever waive, discharge and indemnify each other, their respective elected officials, employees representatives, agents, officers and administrators from all actions, claims, demands or damages accruing to each of the parties from any known or unknown injury, loss or damage, sustained by each arising out of the obligations of each contained in the Agreements, and mutually declare that the Agreements are mutually terminated without liability owed either to or from each party.

Town further agrees to release and deliver to CCP and VDC all documents, including reports, data, opinions, estimates and other confidential information received by Town from CCP and or VDC during the term of the Agreements and release to CCP and VDC all intellectual property created during the term of the Agreements for use by CCP, VDC or any other entity, selected in CCP’s sole discretion, in further developments in and outside Arizona.

Other than expressed above Town, CCP and VDC each agree to continue to keep confidential any information exchanged in furtherance of the performance of the Agreements and not share such information with any third parties unless required by applicable law.

This Agreement shall be governed and construed in accordance with the laws of the State of Arizona. Any dispute arising out of this Agreement shall be resolved in the courts of Arizona.

The signatories below represent and warrant that each is fully authorized to enter into this Agreement on behalf of its entity; that they fully understand its content and the rights being waived and the obligations being undertaken; and have had full opportunity to consult legal counsel with regard to the terms stated herein and the effects thereof.

TOWN OF PAYSON, ARIZONA

By: _____
Its: _____

COMMUNITY CENTER PARTNERS, LLC,
an Arizona limited liability company

By: _____
Its: _____

VARXITY DEVELOPMENT CORPORATION

By: _____
Its: _____

SUBSCRIBED AND SWORN to before me this _____ day of November, 2018, by _____, _____ of the Town of Payson.

My Commission Expires: _____ Notary Public

SUBSCRIBED AND SWORN to before me this _____ day of November, 2018, by Leon J. Ploszaj, Manager of Community Center Partners, LLC.

My Commission Expires:

Notary Public

SUBSCRIBED AND SWORN to before me this _____ day of November, 2018, by _____, _____ of Varxity Development Corporation.

My Commission Expires:

Notary Public