

COUNCIL DECISION REQUEST

SUBJECT: Green Valley Park Bank Stabilization and Storm Water Study

MEETING DATE: 09-24-09

PAYSON GOAL: NEW: EXISTING: X

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: LaRon G. Garrett, Pub. Wks. Dir. AMOUNT BUDGETED: \$52,500

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: \$36,790

CONT. FUNDING REQUIRED: \$0

EXHIBITS (If Applicable, To Be Attached): Contract, including Scope of Services and Fee

POSSIBLE MOTION

I move to award the contract for the Green Valley Park Bank Stabilization and Storm Water Study to Mountain Standard Inc. of Payson Arizona and authorize the Mayor to sign all necessary contract documents.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

The Town of Payson received a technical assistance grant from the Arizona Water Infrastructure and Finance Authority (WIFA) to investigate the causes and potential remedies of excessive bank erosion, storm sediment loading into the lakes, and sources of non-point source pollution at the Green Valley Park Lakes. The grant is for up to \$35,000 from the American Recovery and Reinvestment Act (ARRA) administered by WIFA with the Town providing a 50% match of up to \$17,500 for a maximum total project cost of \$52,500. The grant is to develop options for: 1) stabilization of the recharge lake banks; 2) mitigation of storm water sediment loading in the lakes; and 3) minimization of non-point source pollution to protect the water quality and the lakes aquatic life. The study will also include estimated costs for each of the options explored.

Town Staff has solicited a proposal, including a Scope of Services and professional fee, from Mountain Standard Inc., a local engineering firm. The negotiated Scope of Services and professional fee is attached to the proposed contract. The professional fee for this study is \$36,790. Based on that fee, WIFA will fund \$24,526.67 and the Town will fund \$12,263.33. There is an item in the Scope of Services for Miscellaneous On-Call Services which is not included in the \$36,790. However, the total cost of the study will not exceed the \$52,500 budget.

Staff recommends awarding this contract to study Green Valley Park Bank Stabilization and Storm Water Study to Mountain Standard Inc. for a fee of \$36,790.

PROS: This study will determine the most cost effective way to address the bank erosion at Green Valley Lake as well as determine steps that need to be implemented to protect the lakes from sediment loading and pollution.

CONS: None

PUBLIC INPUT (if any): N/A

SEP 24 2009 I.3

COUNCIL DECISION REQUEST

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

FUNDING:

Acct: 661-5-5451-00-7890	Budget: \$52,500	Available: \$52,500	Expense: \$0	Remaining: \$52,500
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

3A: _____ Date: _____

**AGREEMENT
BETWEEN MOUNTAIN STANDARD INC.
AND THE TOWN OF PAYSON
FOR PROFESSIONAL SERVICES IN CONNECTION WITH
GREEN VALLEY PARK BANK STABILIZATION AND STORM WATER STUDY**

THIS AGREEMENT entered into this ___ day of _____, 2009 by and between **Mountain Standard Inc.**, (hereinafter referred to as the "Engineers and Architects" or "E/A") and the Town of Payson, a municipal corporation, located at 303 North Beeline Highway, Payson, Arizona 85541 (hereinafter referred to as "Client").

RECITALS

- A. Client desires to engage E/A to provide professional services; and
- B. Client finds that the proposed Scope of Services and terms of this Agreement are acceptable; and
- C. E/A desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth.

NOW, THEREFORE, based upon the mutual promises, covenants and conditions herein contained, the Parties do hereby agree as follows:

Section 1. Terms and Conditions

- A. Employment of the E/A. Client hereby engages E/A and E/A hereby agrees to perform the professional services as set forth herein.
- B. Scope of Services. E/A shall perform, in a proper and professional manner, the services set forth in the Scope of Services, marked Attachment "A", attached hereto, and by this reference incorporated herein as though set forth in full at this point. The work is generally described as:

Investigate the causes and potential remedies of excessive bank erosion, storm sediment loading into the lakes, and sources of non-point source pollution at the Green Valley Park Lakes.
- C. Time for Completion. The professional engineering report for Green Valley Park Bank Stabilization and Storm Water Study as defined in Attachment "A", Scope of Services, shall be completed within Ninety (90) calendar days from date of execution of this contract.
- D. Extra Services. E/A shall provide extra services, not specifically called for in Attachment "A", Scope of Services, upon request or authorization of the Client at a fee to be determined at the time of the request. However, it is the intent that the Scope of Services, with modifications by the E/A in the Special Provisions, if any, is complete and sufficient to accomplish the purposes of this Agreement.
- E. Changes. If Client has requested modifications or changes in the extent of the Project, the time of performance of the services of E/A and the compensation therefore shall be adjusted appropriately and shall be incorporated in written amendments to this

Agreement. Notwithstanding the foregoing, E/A shall perform no modification, changes or additional work, except as and until authorized in writing by Client to do so.

F. Fees. Client shall pay E/A, for the services set forth in Attachment "A", Scope of Services, a Fixed Fee of Thirty Six Thousand, Seven Hundred Ninety Dollars and 00/100, (\$36,790.00).

G. Payment. E/A will submit to Client monthly invoices based on a percentage of work completed along with all reimbursable expenses incurred. Client will be responsible for paying the invoice in full within thirty (30) days of receipt. If Client fails to make any payment due E/A for services performed as set forth in Attachment "A", Scope of Services, within thirty (30) days after receipt of E/A's bill therefore the amounts due E/A shall include a charge at the rate of 1.50% per month from said day; and in addition E/A may suspend services under this Agreement until it has been paid in full all amounts due it for services and expenses. E/A shall be entitled to actual costs for remobilizing on any work suspended for thirty (30) days or more on account of non-payment or a substantial portion of the fee within the time prescribed in this Agreement.

H. Reimbursables. Unless otherwise stated in Attachment "A", Scope of Services, charges for out-of-pocket expenses not directly furnished by E/A will be paid by Client at a rate of 1.10 times the cost of such expense, up to a maximum of Five Hundred Dollars, excluding subconsultants, in addition to the amount set forth in paragraph 2 (F) herein above. E/A shall not be entitled for payment for printing or copying that occurs during the normal course of work required to accomplish the Scope of Services, except as authorized by the Client. Printing, binding, copying and deliveries of inspection reports, field notes and record drawings for the Client shall not be considered reimbursable.

I. Ownership and Re-Use of Documents. All documents, including original drawings, estimates, specifications, field notes, inspection reports, testing results, record drawings and data are and shall be the property of the Client, and shall be provided to the Client upon request during the term of this Agreement, and without demand at the conclusion of this Agreement. Client will not reuse the documents for any other project unless E/A has given written authorization to do so.

J. Delays Beyond the Control of the E/A. It is agreed that events which are beyond the control of the E/A may occur which may delay the performance of the Scope of Services of this Agreement. In the event that the performance of the Scope of Services by the E/A is delayed beyond its control, the E/A shall notify, in writing, the Client of such delay and the reason therefore, and Client shall extend the time of performance appropriately.

K. Liability of E/A. E/A shall be liable only for damage caused by negligence of it, its employees, sub-consultants or subcontractors. E/A shall notify Client of the engagement of any and all subcontractors or consultants, and client shall have sufficient and adequate opportunity to review the qualifications of such subcontractors or consultants, and shall have the right to approve or disapprove their engagement. Client requires subcontractors or consultants of the E/A shall provide appropriate certificates of insurance to the client prior to their performing of any work relating to this Agreement.

L. Problems. Any problems relating to the services provided herein are to be brought to the attention of E/A as soon as encountered and, if possible, before E/A incurs any obligations. E/A reserves the sole right to correct any errors it is responsible for,

including, but not limited to, the selection of a subcontractor or sub-consultant and the negotiation of fees.

M. Indemnification. To the fullest extent permitted by law, the E/A shall defend, indemnify and hold harmless the Town of Payson, its agents, officers, officials and employees from and against all tortuous claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions of the E/A, its agents, employees, or any tier of E/A's sub-consultants in the performance of this Contract. E/A's duty to defend, hold harmless and indemnify the Town of Payson, its agents, officers, officials and employees shall arise in connection with any tortuous claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any E/A's negligent acts errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the E/A, any tier of E/A's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the E/A may be legally liable.

The amount and type of insurance coverage requirements set forth in Paragraph N herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

N. Insurance. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Town of Payson, constitute a material breach of this Contract.

The E/A's insurance shall be primary insurance as respects to the Town of Payson, and any insurance or self-insurance maintained by the Town of Payson shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Town of Payson.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Town of Payson, its agents, officers, officials and employees for any claims arising out of the E/A's negligent acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Town of Payson under such policies. The E/A shall be solely responsible for the deductible and/or self insured retention and the Town of Payson, at its option, may require the E/A to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Town of Payson, its agents, officers, officials and employees as Additional Insureds.

Required Coverage

General Liability. \$1,000,000 / occurrence; \$2,000,000 aggregate.
Workers' Compensation. \$100,000 / accident; \$100,000 disease; \$500,000
disease limit
Professional Liability \$1,000,000 per claim.

Prior to commencing work or services under this Contract, E/A shall furnish the Town of Payson with Certificates of Insurance, or formal endorsements as required by the Contract, issued by E/A's insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Town of Payson fifteen (15) days prior to the expiration date.

O. Termination of Contract. This Agreement may be terminated by either Party at any time upon thirty (30) days prior written notice to the other Party. Upon such termination, Client shall pay E/A all monies owed under this Agreement for all work performed up to the effective date of termination. Unless sooner terminated, this Agreement shall terminate fourteen (14) calendar days after completion of construction. In the event of such cancellation, all work performed by E/A up to that time, including but not limited to field information, studies and rough or final drafts of working papers, shall be delivered to the Client by E/A.

P. Publicity. No information relative to the Project shall be released by E/A for publication, advertising, or for any other purpose without the prior written approval of the Client.

Q. Supplementary Conditions. Supplementary Conditions, if any, shall apply to this Agreement, as set forth in Attachment "B" - Supplementary Conditions, which is attached hereto and incorporated herein by this reference as though set forth in full at this point.

R. Entire Agreement. This Agreement, with attachments, represents the entire understanding between Client and E/A in respect to the Project, all prior understanding and agreements are merged herein and this Agreement may only be modified by an instrument in writing executed with the same formalities as this instrument.

S. Successors and Assigns. Client and E/A each binds himself and his partners, successors, executors, administrators and assigns to the other party to this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither Client nor E/A shall assign, sublet or transfer its interest in this Agreement without the written consent of the other; however, E/A may employ others to assist him in carrying out its duties under this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and E/A.

T. Business License. The Contractor shall provide the Town with a copy of its Town of Payson business license. If the Contractor 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 Town Code.

U. Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of the Contract will not have a scrutinized business operation in either Sudan or Iran.

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

V.1 Consultant and any Sub-consultant employed by Consultant warrants their compliance with all Federal immigration laws and regulations that relate to their employees and Arizona Revised Statutes Section 23-214(A).

V.2 A breach of the warranty under Section V.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

V.3 The Town retains the legal right to inspect the papers of the Consultant or Sub-consultant who works on this Contract to ensure that the Consultant or Sub-consultant is complying with Section V.1.

W. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, 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; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. 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 without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

WITNESS WHEREOF, E/A and Client have executed this Agreement on the day and year first above written.

Town of Payson
303 N. Beeline Highway
Payson, AZ 85541
Telephone: (928) 474-5242
FAX: (928) 474-7052

By: _____
Mayor

Attest: _____
Town Clerk

Mountain Standard Inc.
308 W. Grace Lane
Payson, AZ 85541
Telephone: (928) 978-0856
FAX: (928) 474-0720

By: _____

Title: _____

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

- I. Identification of parties;
- II. Offer and acceptance;
- III. Existence of contract consideration (we do not review to determine if consideration is adequate);
- IV. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated this _____ day of _____, 2009.

By _____
Samuel I. Streichman, Town Attorney

EXHIBIT 'A'
SCOPE OF SERVICES

ISCE Recommendations Report
Green Valley Lakes Shoreline Improvements

SCOPE OF SERVICE

September 11, 2009

PURPOSE

The intent of this proposed scope of service is to define that professional engineering necessary to provide an Initial Stormwater Control Evaluation (ISCE) recommendations report to assist the Town of Payson, Arizona (CLIENT), in proceeding with shoreline improvements at the three existing Green Valley Park lakes with the goal of reducing known erosion, sedimentation, and pollution potential. A general Scope of Work, prepared by the Town of Payson, dated August 18, 2009, provides guidelines and goals for obtaining design and construction of a workable solution to reduce shoreline problem areas within the Park. Mountain Standard INC (MSI) will utilize goals of the Town, apply engineering judgement, and provide a written summary of findings that the Town may use to continue with more detailed analysis, design, permitting, and construction of stormwater control projects.

FOCUS

Identified are challenges pertaining to shoreline construction, operation, and maintenance. Though some of the stormwater control challenges may not originate at Green Valley Park, much of the negative impact is experienced in and around the lakes. Likely causes for, and potential solutions to, lake and shoreline degradation will be investigated and presented. Resolution for the following problem category types will be considered:

- ▶ Soil erosion at the constructed sloped earthen shoreline and at foundations of placed/constructed structures,
- ▶ Deposition of sediment and introduction of invasive plants, and
- ▶ Vulnerability of aquatic and human health due to pollution conveyed in drainageways.

MSI will embrace the defined purpose and focus of this project. Respectful understanding of fiscal responsibility, reliable facility design life, and subsiding disruption of Park operations, will be incorporated into each possible solution. The work to be performed by the ENGINEER (MSI) for the CLIENT is described as follows:

1. Data Research and Field Reconnaissance

MSI will gather best available information from Town of Payson, understood to be owners and operators of Green Valley Park. MSI will further gather best available information from Northern Gila County Sanitary District (NGCSD), understood to be owners and processors of effluent used to create the lakes at Green Valley Park. MSI will also attend a field trip with Town personnel to pinpoint locations implicated as problem areas and causes. The following outlines intended elements of research and reconnaissance:

- Receive best available paper and electronic documents provided by Town of Payson, including aerial photos, topographic mapping, flood control reports, construction documents, as-built drawings, operations manual, maintenance procedures, water quality records, and history of remedial efforts conducted thus far.
- Receive best available records provided by NGCSD including construction documents, as-built drawings, processing summaries, details of any incidents or Notices of Violations, and Operations and Maintenance Manuals.
- Participate in a walk of the three Green Valley lakes with members of the Town of Payson and NGCSD personnel. Problem areas pointed out by the participants will be noted.

September 11, 2009
Scope -1 of 3



- Write letter, on behalf of Town of Payson, to Arizona Game and Fish Department requesting details of any concerns or trends that may jeopardize Green Valley lakes' ongoing participation in the State's urban fishing program.
- Compile, organize, and discern information gathered from written data, verbal communication, and field observations.

Fee. \$3,720.00

2. Problem Areas Cause Investigation

Utilizing available information from above Task 1 effort, MSI will apply engineering judgement, education, and experience to consider a range of causation for problems that currently exist, as well as trends that expose the lakes to future risks. The following outlines intended elements of Cause Investigation:

- Consider sources of potential shoreline erosion, such as impact of waves caused by prevailing winds, activities of Park patrons, and maintenance practices. Impact of shoreline erosion, both positive and negative, will be explored.
- Consider sources of potential sediment deposition, including onsite erosion of adjacent soils and offsite import via stormwater. Impact of deposition, both positive and negative, will be explored.
- Consider sources of potential lake water pollution, including constituents carried in treated effluent, carried in from offsite locations by way of stormwater, and direct discharge into the lakes from incidents that may occur on adjacent roadways and private property.

Fee. \$6,960.00

3. Alternatives Demonstration and Recommendations

Each problem area and problem type likely have several alternative solutions. Effectiveness, design life, cost of construction, level of disruption to park operations, and aesthetics, are all considerations that will make up a recommended solution. Some problem types, such as shoreline erosion, will have more practical alternative solutions than other problem types, such as sedimentation. An average of approximately three alternative solution approaches will be provided for each problem type. A recommendation will be made to alleviate each problem type, while it is anticipated that one or more solutions may be selected to solve each of the multiple problem areas along the lake shoreline. The following outlines intended elements of Alternatives and Recommendations:

- Alternatives such as armored shoreline, wave dissipaters, cutoff walls, sedimentation traps, and filters will be discussed and presented in sketch form.
- Estimated unit costs for each problem type alternative fix will be presented. Estimated construction cost for each problem area will also be calculated, so that an overall project budget can be better determined.
- Recommendations will be positively presented to alleviate every known problem type in multiple problem areas at each of the three lakes. Recommendations are anticipated to be a useful first step to accomplish orderly and effective future steps in final design and construction.

Fee. \$13,290.00



4. Initial Stormwater Control Evaluation (ISCE) Recommendations Report

MSI will utilize data gathered in above Task 1, investigation of above Task 2, and alternatives promoted in above Task 3, and provide initial stormwater control evaluation, preparing a report of findings. The report will include advice on relieving the Town's focus concerns and discuss any other identified high priority issues. The following outlines elements of the report:

- Discuss findings, potential solutions, and challenges discovered during performance of above Tasks 1, 2, and 3.
- Prepare Exhibits showing general location and type of both problem areas and cursory stormwater control facility possibilities.
- Summarize recommended future steps to accomplish project designs, construction, and permitting.
- Three copies of the ISCE Recommendations Report and Exhibits will be provided.

Fee. \$12,820.00

5. Miscellaneous On-Call Services

MSI may provide additional services external to the defined Tasks 1, 2, 3, and 4 as might be requested by the CLIENT, or initially excluded, but subsequently desired. Work under this task would be performed on a Time and Materials basis according to the latest MSI fee schedule, or per a written scope of service addendum. A lump sum fee does not initially accompany this task.

Fee. T&M

TOTAL PROFESSIONAL SERVICE FEE (Tasks 1, 2, 3, & 4).. \$36,790.00

ASSUMPTIONS & EXCLUSIONS

- ▶ Any Designs, including Improvement Plans or Specifications, are excluded.
- ▶ Any field surveys, topographic mapping, utility mapping, legal descriptions, elevation certification, or any other Registered Land Surveyor functions are excluded.
- ▶ Any geological or geotechnical investigations.
- ▶ Relied upon is the CLIENT making available access for field reconnaissance, and records for research.
- ▶ Relied upon is Town of Payson providing paper and electronic files of data for use in this project. Quality of our exhibits and calculations is related to quality of documents provided for base mapping.
- ▶ Submittals to, and review coordination with, any Government agency or interested entities, including FEMA, USFS, EPA, USACOE, USGS, ADWR, ADEQ, ADOT, AGFD, and SRP are excluded. Interface with those agencies/entities, if required, and unless specifically stated in the above scope of service, would be provided as an additional service within Task 5.
- ▶ Service or product items which are requested during or following meetings and reviews by governmental agencies, are excluded.
- ▶ Any other services or products not specifically stated in this scope of service are excluded.



EXHIBIT 'B'
SUPPLEMENTARY CONDITIONS

NONE