

**RESOLUTION NO. 2862**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE ASR PROJECT PHASE 4 CONTRACT BETWEEN HYDROSYSTEMS, INC., AN ARIZONA CORPORATION (“CONSULTANT”), AND THE TOWN OF PAYSON, AN ARIZONA MUNICIPAL CORPORATION (“TOWN”).**

**WHEREAS**, pursuant to A.R.S. § 9-240 (A) and (B), the Common Council shall have control of the finances of the municipal corporation and shall appropriate money and provide for the payment of its debts and expenses; and

**WHEREAS**, pursuant to A.R.S. § 9-240 (B)(6), the Common Council shall also have power to provide the Town with water, to construct public wells, cisterns and reservoirs in the streets and other public and private places within the town and beyond the limits thereof and to supply the same with pumps and conducting pipes or ditches; and

**WHEREAS**, pursuant to A.R.S. § 9-571 (A), the Town may construct, acquire from a willing seller or improve a demonstration ASR recharge well, drinking water facility or nonpoint source project with monies borrowed from or financial assistance provided by the water infrastructure finance authority of Arizona (“WIFA”); and

**WHEREAS**, the Town of Payson has and will be using funds provided under WIFA Loan No. 920232-13 to fund the project; and

**WHEREAS**, the Town agrees to spend \$66,230.00 of WIFA funds to compensate Consultant to perform the Scope of Services in Exhibit A and enumerated as Task 400, Task 401, Task 402, Task 403, Task 404, Task 410, Task 411, and Task 412; and

**WHEREAS**, the Consultant, Hydrosystems, Inc., 9831 S. 51<sup>st</sup> Street, Ste. C-115 Phoenix, Arizona 85044 c/o Gary Small agrees to perform pursuant to the contract.

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

Section 1. That the ASR Project Phase 4 Contract with Hydrosystems, Inc., 9831 S. 51<sup>st</sup> Street, Ste. C-115 Phoenix, Arizona 85044 is approved and authorized in the amount of \$66,230.00.

*Page 1*

***Prepared by Town of Payson Legal Department***

*HMF:drs June 22, 2015 (11:20AM)*

*O: civil resolutions 2800 2862 Hydrosystems-WIFA*

**JUL 02 2015** *5.1*

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Contract in substantially the form attached hereto as Exhibit A.

Section 3. That the Town and the Acting Town Manager 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 TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA**, this 2<sup>nd</sup> day of July, 2015, by the following vote:

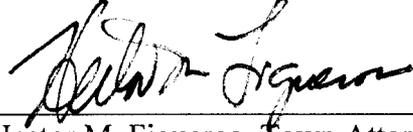
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Hector M. Figueroa, Town Attorney

**EXHIBIT A**  
**TO**  
**RESOLUTION NO. 2862**

**ASR PROJECT PHASE 4 CONTRACT BETWEEN  
HYDROSYSTEMS, INC.  
AND THE TOWN OF PAYSON**

1. **Parties.** The parties to this Contract are HydroSystems, Inc., an Arizona Corporation, (“Consultant”), and the Town of Payson, an Arizona municipal corporation, (Town) (collectively, the “Parties”). The Town and the Consultant agree as follows:
  
2. **Scope of Services**
  - 2.1 Consultant shall carry out in a satisfactory and proper manner, as determined by Town, the Scope of Services set forth above and in Exhibit A , Scope of Work Phase 4(A) and Phase 4(B) attached.
  
  - 2.2 Extra Services. Consultant shall provide extra services, not specifically called for in the Scope of Services, upon request or authorization of the Town 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 Consultant in the Special Provisions, if any, is complete and sufficient to accomplish the purposes of this Contract.
  
  - 2.4 Changes. If the Town has requested modifications or changes in the extent of the Project, the time of performance of the services of Consultant and the compensation shall be adjusted appropriately and shall be incorporated in written amendments to this Contract. Consultant shall perform no modification, changes or additional work, except as and until authorized in writing by the Town to do so.
  
  - 2.3 Supplementary Conditions. Supplementary Conditions, if any, are set forth in Exhibit B.
  
3. **Effective Date and Term.**
  - 3.1 This Contract shall be effect on the date of the last signature of the Parties and shall terminate on completion of the project.
  
  - 3.2 The project shall be completed within 180 calendar days of the latest signatures executing this contract.
  
  - 3.3 Delays Beyond the Control of the Consultant. Events beyond the control of the Consultant may occur which may delay the performance of the Scope of Services. In the event of such delay, the Consultant shall notify the Town in writing of the delay and Town shall extend the time of performance appropriately.
  
4. **Professional Fees and Payment.**
  - 4.1 Fees. Town shall pay Consultant, for the services set forth in Section 2 above, Scope of Services, on a time and materials basis for an amount not to exceed Sixty Six Thousand, Two Hundred Thirty Dollars and No/100 (\$66,230.00). The hourly rates to be charged are as shown in Exhibit C.

4.2 Payment. Consultant will submit to the Town monthly invoices based on a percentage of work satisfactorily completed along with all reimbursable expenses incurred. The Town will pay the invoice within thirty (30) days of receipt. If the Town fails to pay any invoice within thirty (30) days after receipt, the amount due shall include a charge at the rate of 1.50% per month. In addition, Consultant may suspend services until it has been paid in full all amounts due it for services and expenses. Consultant 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 Contract.

4.3 Reimbursables. Unless otherwise stated in the Scope of Services, charges for out-of-pocket expenses not directly furnished by Consultant will be paid by Town at a rate of 1.10 times the cost of such expense, up to a maximum of Five Hundred Dollars. Written approval by Town shall be received prior to incurring additional expenses. Costs of printing, binding, copying and deliveries of documents, inspection reports, field notes and record drawings are not reimbursable.

5. **Insurance.** Consultant shall provide and maintain the minimum insurance coverage as follows:

5.1 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).

5.2 Comprehensive General Liability insurance with a minimum combined single limit of TWO MILLION DOLLARS (\$2,000,000) 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.

5.3 Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence with respect to Consultant's vehicles whether owned, hired, or non-owned, assigned to be used in the performance of the services.

5.4 Professional Liability insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000.00) per claim.

5.5 The policies required by Sections 5.2, 5.3, and 5.4 shall be endorsed to include Town, its officers and employees as additional insureds, and shall stipulate that the insurance afforded for Town, its officers and employees shall be primary insurance and that any insurance carried by Town, its officers or employees shall be excess and not contributory insurance.

5.6 Consultant and its insurers providing the required coverages shall waive all rights of subrogation against Town and its officers, employees, and agents.

5.7 Prior to commencing Services, Consultant shall furnish Town with Certificates of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall provide that not less than thirty days advance notice of

cancellation, termination, or alteration shall be sent directly to Town's representative as identified in Paragraph 15.2.

5.8 Town reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

6. **Indemnity.**

6.1 Consultant shall indemnify and hold harmless the Town of Payson 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 Town as a result of loss, damage, or injury to person or property by reason of the negligence, recklessness or intentional wrongful conduct of Consultant, 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 Consultant, its employees and agents, or arising out of any defects in the methods, equipment or tools used, or in the manner of carrying on the Services itself, or arising out of workmen's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Consultant or out of claims under similar such laws.

6.2 Consultant shall further indemnify, hold harmless, and defend the Town and all of its employees and agents from any and all suits and actions, including costs of investigation and apprehension of persons involved, attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Town arising out of any dishonest act on the part of Consultant, its employees, agents, representatives, or subcontractors.

7. **Modification.** This Contract may only be amended or modified by a written instrument executed by the Town and the Consultant.

8. **Termination.** This Contract may be terminated by either Party upon thirty (30) days prior written notice. Upon termination, (a) the Town shall pay Consultant all monies owed under this Contract for all work performed up to the effective date of termination; and (b) all work performed by Consultant 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 Town.

9. **Taxes.** Consultant shall have exclusive liability for and shall pay all taxes and fees imposed in connection with any part of the Services. Consultant shall hold the Town harmless for these taxes and fees.

10. **Laws and Regulations.** Consultant and its employees shall comply with all applicable laws, ordinances, statutes, rules and regulations, of the United States, State of Arizona, and local governments, including but not limited to those relating to wages, hours, discrimination, and safety (including OSHA).

11. **Dispute Resolution.**

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

11.2 With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Contract 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.

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

11.4 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. Each party shall bear its own attorneys' fees without contribution from the other party.

12. **Cancellation (A.R.S. §38-511).** This Contract 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. **Town Business License.** The Consultant shall obtain a Town business license. If the Consultant 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.

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

14.1 Consultant and any Subconsultant 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) (E-Verify Program).

14.2 A breach of the warranty under Section 14.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

14.3 The Town retains the legal right to inspect the papers of the Consultant or Subconsultant who works on this Contract to ensure that the Consultant or Subconsultant is complying with Section 14.1.

15. **Other Provisions.**

15.1 **Assignment.** Consultant shall not assign or subcontract the Contract or any part without the written consent of Town. The Town may withhold its consent for any or no reason. Any attempted assignment or subcontracting in violation of this Paragraph shall render this Contract void and of no effect.

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

Town:  
Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Town Manager

Consultant:  
HydroSystems, Inc.  
9831 S. 51<sup>st</sup> Street, Ste. C-115  
Phoenix, Arizona, 85044  
Attention: Gary Small

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.

- 15.3 **No Partnership.** Consultant is an independent contractor. This Contract shall not create any employment relationship, partnership, joint venture, or other arrangement between the Parties.
- 15.4 **No Third Party Beneficiaries.** No term or provision of this Contract is intended to be for the benefit of any person or entity not a party, and no other person or entity shall have any right or cause of action hereunder.
- 15.5 **Counterparts.** This Contract may be executed in counterparts.
- 15.6 **No Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town of a breach of any of the covenants of this Contract shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Contract.
- 15.7 **Non-Appropriation/Non-Receipt.** The Town shall not have any liability for any future payments of money or expenditures, except for those amounts appropriated, authorized, and administratively allocated for this work. The Town shall not have any liability for payments for which it does not have sufficient revenues for such payments.
- 15.8 **Construction of Contract.** This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Contract. The parties acknowledge that each has had the opportunity to seek legal counsel in the entry of this Contract.
- 15.9 **Further Documentation.** Each Party agrees in good faith to execute such further documents as may be necessary to carry out the intent of this Contract.
- 15.10 **Time of Essence.** Time is of the essence in this Contract.
- 15.11 **Time Periods.** Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Contract shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided. If the time for the performance of any obligation expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 15.12 **Severability.** If any portion of this Contract is found to be invalid, such finding will not affect the validity of the remainder of this Contract.
- 15.13 **Authority.** The Parties represent that each is fully authorized to execute this Contract by the individual(s) executing below.
- 15.14 **Entire Contract.** This Contract 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 Contract shall have no effect.
- 15.15 **Publicity.** No information relative to the Project shall be released by the Consultant for publication, advertising, or any other purpose without the prior written consent of the Town.

15.16 **Ownership and Re-Use of Documents.** All documents prepared during the Scope of Services are the property of the Town, shall be provided to the Town upon request during the Contract, and without request at the conclusion of the Contract. Town will not reuse the documents for any other project without Consultant's written authorization. Pursuant to Arizona's Public Records Act, all documents may be subject to public disclosure.

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

**HydroSystems, Inc.**  
an Arizona Corporation

By \_\_\_\_\_  
its \_\_\_\_\_

\_\_\_\_\_  
Dated

**TOWN OF PAYSON,**  
an Arizona municipal corporation

By \_\_\_\_\_  
its Mayor

\_\_\_\_\_  
Dated

ATTEST:

\_\_\_\_\_  
Silvia Smith, Town Clerk

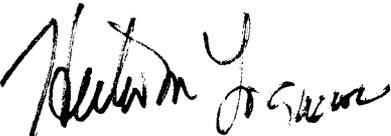
## APPROVAL AS TO FORM

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 contract provisions have been addressed:

1. Identification of parties to the Contract;
2. Offer and acceptance;
3. Existence of contract consideration but not whether consideration is adequate;
4. Town authority to enter into the transaction;
5. Town Officials signatory authority;
6. That certain provisions specifically required by statute are included as contract terms (i.e., provisions concerning non - availability of funds and conflict of interest, A.R.S. § 38 -511).

The Town of Payson Legal Department has limited the legal review as noted herein. Therefore, approved as to form should not be deemed 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.

APPROVED AS TO FORM

By   
\_\_\_\_\_  
Hector M. Figueroa, Town Attorney

Date: 6/22/15

EXHIBIT A  
SCOPE OF SERVICES

May 28, 2015

**Town of Payson  
Demonstration ASR Recharge Well  
Phase 4 (A)**

The Town of Payson (Town), as part of a water right settlement, has received approximately 3,000 acre-feet per year of surface water from Cragin Reservoir that will be delivered through a pipeline to a treatment plant and then distributed to customers through the water distribution system. This phase of the project will include the technical support during the construction, start up and operation of a demonstration ASR Recharge Well along with a Summary Report documenting all the pertinent information.

**SCOPE OF WORK**

**Task 400 Construction of Demonstration ASR Recharge Well**

HSI will provide technical support to the Town in the development of the Tyler Well into a demonstration ASR Recharge Well. The technical support will include the development and review of all well site and well head drawings along with recommending equipment configuration and piping layouts. Where appropriate, HSI will provide equipment specifications and sizing to match the recharge and recovery of this well. This task will include two (2) site visits to observe the installation of the downhole flow control valve and the site construction of the demonstration well.

**Task 401 Start Up and Operation of the Demonstration ASR Recharge Well**

HSI will work closely with the Town during the start up and operation of the demonstration ASR Recharge Well. HSI will utilize the performance data from the well to establish the operational recharge rates plus determine the frequency and duration of the back flush cycles. This task includes two (2) site visits to perform the start up of the well and to observe the operation of the well approximately 2-4 weeks after start up to perform the initial back flush. HSI will continue to work closely with the Town during the operation of the well to analyze the operational data, refine the operational procedures and answer any questions about the performance of the ASR Recharge Well.

**Task 402 Demonstration ASR Recharge Well Summary Report**

HSI will assemble all of the technical data and information developed during the construction and operation of the demonstration well. This report will include documentation on the construction of the well and injection equipment as well as information associated with the well site and the instrumentation. This report will become the basis for the Field Operations Manual to be developed later in this phase of the project.

#### **Task 403      Water Storage Evaluation and Report**

HSI will utilize hydrologic data from the Town's data base to develop a simple relationship (not a numerical model) between pumping and drawdown within the Town's service area. This relationship will then be used to estimate the volume of storage that is available for recharge within the fractures. Based on the projected future water demand and the volume of Cragin surface water available for recharge an estimation of mound rise will be developed. This will provide the Town with a better understanding of how much water can be stored in the aquifer for the future. A brief summary report will be prepared to document the assumptions and the results.

#### **Task 404      Project Management and Administration**

This task is associated with HSI's project management and administration services. In order to keep the project in scope and on budget, HSI utilizes effective time and cost management processes along with accurate invoicing, Client coordination, and project scheduling. Communication will be timely through phone, email, and/or written formats. Project meetings are included in this task that will most likely be held in Payson or by telephone conferencing. The meeting frequency is estimated at one every two months over the next 6 months.

June 8, 2015

**Town of Payson**  
**ASR Recharge Well Field Operations Manual**  
**Phase 4 (B)**

The Town of Payson (Town) as part of a water right settlement has received approximately 3,000 Acre-feet per year of surface water from Cragin Reservoir that will be delivered through a pipeline to a treatment plant and then distributed to customers through the water distribution system. This phase of the project will include the development of a Field Operations and Maintenance Manual plus some operational training on the demonstration ASR Recharge Well

**SCOPE OF WORK**

**Task 410      Field Operations and Maintenance Manual**

Based on the information obtained from the start up and operation of the Demonstration ASR Recharge well, HSI will develop an outline of the Field Operations Manual for the Town's review. This outline will then be populated with the general sections that apply to the overall well field. The specific individual well sections will be developed and added to the Manual as the various ASR Recharge Wells are constructed and brought on line. This task will also include two (2) site visits to observe the well operations plus the routine communications by phone and/or email with the Town to ensure the most appropriate operating procedures are adequately documented in the Manual. Including the Town's operating experience will be critical to fully document the agreed on operating procedure within the Manual.

**Task 411      Operator Training**

Using the information obtained from the start up and operations of the Demonstration ASR Recharge Well and recharge expertise from other projects, HSI will develop a ½ day Operator Training program. This will include items such as: 1) back flushing and well rehab requirements, 2) data collection, 3) data archiving, 4) injection system design, 5) routine inspections and maintenance and 6) trouble shooting tips.

**Task 412      Project Management and Administration**

This task is associated with HSI's project management and administration services. In order to keep the project in scope and on budget, HSI utilizes effective time and cost management processes along with accurate invoicing, Client coordination, and project scheduling. Communication will be timely through phone, email, and/or written formats. Project meetings are included in this task that will most likely be held in Payson or by telephone conferencing. The meeting frequency will be two (2) meetings as needed over the next 6 months.

EXHIBIT B  
SUPPLEMENTARY CONDITIONS

NONE

EXHIBIT C  
HOURLY RATE SCHEDULE

Principal	\$159 per hour
Project Manager	\$136 per hour
Senior Hydrologist/Geologist	\$118 per hour
Senior Water Resources Analyst	\$118 per hour
Senior Field Hydrologist	\$98 per hour
Hydrologist 1	\$81 per hour
Computer Analyst	\$76 per hour
Project Account	\$76 per hour
Field Hydrologist	\$76 per hour
Technical Assistant	\$65 per hour
Field Technician	\$48 per hour
Secretarial Clerical	\$48 per hour