

**RESOLUTION NO. 2892**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MGC CONTRACTORS, INC., TO PROVIDE PRECONSTRUCTION SERVICES FOR THE C.C. CRAGIN WATER TREATMENT PLANT AND HYDROELECTRIC FACILITY CONSTRUCTION.**

**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 of Payson may construct, acquire from a willing seller, or improve a wastewater treatment facility, drinking water facility, or nonpoint source project; and

**WHEREAS**, pursuant to A.R.S. § 41-2578 *et.seq.*, the Town has the power to seek procurement for professional services or construction services utilizing prescribed procedures through the solicitation of Request for Qualifications; and

**WHEREAS**, the Town of Payson has and will be using monies borrowed from or financial assistance provided by the Water Infrastructure Finance Authority of Arizona (“WIFA”); and

**WHEREAS**, the Town solicited a Request for Qualifications (RFQ) process pursuant to A.R.S. § 41-2578 *et.seq.*; and

**WHEREAS**, the Town negotiated and agreed to mutually acceptable contract terms for Preconstruction Services in a sum certain of \$131,680.00 with MGC Contractors, Inc. c/o Randy L. Gates, President/CEO, 4110 East Elwood Street, Phoenix, AZ 85040.

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

Section 1: That the Agreement between the Town of Payson and MGC Contractors, Inc. (“Agreement”), attached hereto as Exhibit 1, is approved in substantially the form attached.

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said Agreement in substantially the form attached.

Section 3: That the Town of Payson and its 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.

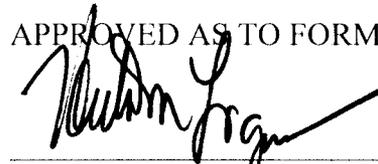
**PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA**, this 7<sup>th</sup> day of January, 2016, by the following vote:

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

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

ATTEST:

APPROVED AS TO FORM:



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

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

# EXHIBIT 1

to Resolution No. 2892

**CMAR Preconstruction Services  
for the  
C.C. Cragin Water Treatment Plant and Hydroelectric Facility  
CONTRACT BETWEEN  
MGC Contractors, Inc.  
AND THE TOWN OF PAYSON**

1. **Parties.** The parties to this Contract are MGC Contractors, Inc., an Arizona Corporation (“Contractor”), and the Town of Payson, an Arizona municipal corporation (Town), (collectively, the “Parties”). The Town and the Contractor agree as follows:

2. **Scope of Services**

2.1

Contractor shall carry out in a satisfactory and proper manner, as determined by Town, the Scope of Services set forth herein and in Exhibit A hereto.

Provide preconstruction services for the C.C. Cragin Water Treatment Plant and Hydroelectric Facility construction as specified in the attached Exhibit A “Scope of Services”.

Construction documents shall satisfy all applicable standards for the industry for complete documents necessary to construct a fully operational and functional facility. Incomplete items shall be completed by Contractor at its cost. Any review or approval of the bid package by Town does not diminish these requirements.

2.2 **Extra Services.** Contractor 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 Contractor 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 to the extent of the Project, the time of performance of the services of Contractor and the compensation shall be adjusted appropriately and shall be incorporated in written amendments to this Contract. Contractor shall perform no modifications, 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 hereto.

3. **Effective Date and Term.**

- 3.1 This Contract shall be in effect on the date of the last signature of the Parties hereto and shall terminate upon completion of the project.
- 3.2 The project shall be completed on or before December 31, 2016.
- 3.3 Delays Beyond the Control of the Contractor. Events beyond the control of the Contractor may occur which may delay the performance of the Scope of Services. In the event of such delay, the Contractor shall notify the Town in writing of the delay and Town shall extend the time for performance appropriately.

4. **Professional Fees and Payment.**

- 4.1 Fees. Town shall pay Contractor, for the services set forth in Section 2 above, Scope of Services, a maximum lump sum fixed fee of **one hundred thirty one thousand six hundred eighty dollars and 00/100 (\$131,680.00)**.
- 4.2 Payment. Contractor 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, Contractor may suspend services until it has been paid in full all amounts due for services and expenses. Contractor 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 Contractor 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.** Contractor 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 Contractor'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 Contractor 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, Contractor 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 Contractor 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 Contractor, 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 Contractor, 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 workmens' compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Contractor, or out of claims under similar such laws.

- 6.2 Contractor 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 Contractor, its employees, agents, representatives, or subcontractors.
7. **Modification.** This Contract may be amended or modified only by a written instrument executed by the Town and the Contractor.
8. **Termination.** This Contract may be terminated by either Party upon thirty (30) days prior written notice. Upon termination, (a) the Town shall pay Contractor all monies owed under this Contract for all work performed up to the effective date of termination; and (b) all work performed by Contractor 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.** Contractor shall have exclusive liability for and shall pay all taxes and fees imposed in connection with any part of the Services. Contractor shall hold the Town harmless for such taxes and fees.
10. **Laws and Regulations.** Contractor 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 Contractor shall obtain a Town 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.
14. **Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).**
- 14.1 Contractor and any SubContractor employed by Contractor 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 Contractor or SubContractor who works on this Contract to ensure that the Contractor or SubContractor is complying with Section 14.1.
15. **Other Provisions.**
- 15.1 **Assignment.** Contractor 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:                     | Contractor:               |
| Town of Payson            | MGC Contractors, Inc.     |
| 303 North Beeline Highway | 4110 E. Elwood St.        |
| Payson, Arizona 85541     | Phoenix, AZ 85040         |
| Attention: LaRon Garrett  | Attention: Randy L. Gates |
- 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.** Contractor 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 preceeding 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.
- 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 review of and entry into 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 Contractor 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 Contractor'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.

**MGC Contractors**  
an Arizona Corporation

By \_\_\_\_\_  
Randy L. Gates, President/CEO

\_\_\_\_\_  
Dated

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

By \_\_\_\_\_  
Kenny J. Evans, 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: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**

**C.C. Cragin WTP and Hydroelectric Facility CMAR Pre-Construction Services**

1. Project Meetings: The CM@Risk will attend 12 Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, and Contract Documents rolling reviews.
2. The CM@Risk will provide a 70% cost model estimate and provide design phase cost management input from the 70% to 100% design phase.
3. The CM@Risk will provide a design phase schedule that is to be integrated with input from the design team and the Town. This schedule is to be updated on a monthly basis. The CM@Risk will develop construction schedule to be included with the project bid packages.
4. The CM@Risk will do and provide constructability reviews of the project drawings and specifications at completion of the 70% and 100% design phases.
5. The CM@Risk will complete the following tasks in preparing the project guaranteed maximum price:
  - a. Pre-qualify subcontractors/equipment suppliers
  - b. Prepare Bid Package No. 1 bidding documents
  - c. Bid out the project bid package
  - d. Review and provide a detailed abstract analysis for each scope of work
  - e. Will provide the abstract bid results for process equipment systems and process materials (Ex: piping, valves) to the Town and they will select the best value Equipment Manufacturer/Supplier for the project.
  - f. Will select the subcontractors
  - g. Will prepare, review, reconcile and finalize the GMP contract with the project.
  - h. Will prepare, issue, negotiate and finalize the subcontractor and purchase order agreements for the project.
- 6. Additional Design Phase Service Allowances**

When authorized by the Town, the CM@Risk will be entitled to reimbursement at cost of design phase services related expenses incurred for the following items:

- (a) Site investigative and development of the Storm Water Prevention Plan discovery for the C.C. Cragin WTP and Hydroelectric Facility. The CM@Risk shall provide

detailed receipts for all reimbursable charges. These costs will not exceed \$4,000 without further approval of the Town.

- (b) Site investigative and field discovery of the existing rock conditions at the C.C. Cragin WTP and Hydroelectric Facility. The CM@Risk shall provide detailed receipts for all reimbursable charges. These costs will not exceed \$15,000 without further approval of the Town.
- (c) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the Town. The cost of such service will not exceed \$2,500 without further approval by the Town.

**7. CONTRACT AMOUNT**

Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the Town the CM@Risk fee is \$131,680 dollars as follows:

For the basic services described in Items 1 thru 5, the CM@Risk fee is	\$110,180
<u>Additional Services and allowances, as described in item 6:</u>	
(SERVICES)	\$21,500
Total Contract Amount	\$131,680

**EXHIBIT B**  
**SUPPLEMENTAL CONDITIONS**

**NONE**