

RESOLUTION NO. 2899

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE UNDERGROUND STORAGE FACILITY AND WATER STORAGE PERMITTING 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 ASR injection wells, 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. 920257-15 to fund the project to develop necessary Hydrologic Report to support the Underground Storage Facility (“USF”); and

WHEREAS, the Town agrees to spend a maximum of \$28,000.00 of WIFA funds to compensate Consultant to perform the Scope of Services in Exhibit A; and

WHEREAS, the Consultant, HydroSystems, Inc., 9831 S. 51st 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 USF and Water Storage Permitting Contract with HydroSystems, Inc., 9831 S. 51st Street, Ste. C-115 Phoenix, Arizona 85044 is approved and authorized in the amount of \$28,000.00.

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 I.

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Section 3: That the Town and the 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.

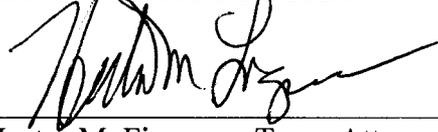
PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 21st day of January, 2016, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:



Silvia Smith, Town Clerk

Hector M. Figueroa, Town Attorney

**EXHIBIT I
TO
RESOLUTION 2899**

(HYDROSYSTEMS CONTRACT)

**EXHIBIT I
TO
RESOLUTION 2899**

(HYDROSYSTEMS CONTRACT)

**UNDERGROUND STORAGE FACILITY AND WATER STORAGE
PERMITTING 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:
 - 2.1 Consultant shall carry out in a satisfactory and proper manner, as determined by Town, by developing the necessary hydrologic report and application materials to support the Underground Storage Facility (USF) permit and Water Storage Permits for the Town of Payson for their storage of C.C. Cragin water via ASR injection wells as described in the Scope of Services and attached as Exhibit A.
 - 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.
 - 2.3 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.
 - 2.4 Supplementary Conditions. Supplementary Conditions, if any, are set forth in Attachment "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 final permit application shall be submitted to the Arizona Department of Water Resources on or before April 15, 2016 and the project shall be completed on or before February 28, 2017.
 - 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 an hourly basis with a maximum fee of Twenty Eight Thousand dollars and NO/100 (\$28,000.00).

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. 51st 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:

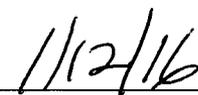


Exhibit A
Scope of Services
Town of Payson
Recharge Permitting

HydroSystems, Inc (HSI) will develop the necessary hydrologic report and application materials to support the Underground Storage Facility (USF) permit and Water Storage Permits for the Town of Payson for their storage of C.C. Cragin water via ASR injection wells. The following tasks support this effort.

Task 100 -- Acquire USF Permit and Water Storage Permits

This task includes all the steps in obtaining a new full-scale USF permit and two Water Storage Permits for ASR wells in the Town of Payson. It includes developing the pre-application meeting materials for ADWR and two pre-application meetings. An analytic modeling approach proposal will be submitted to ADWR prior to the start of the modeling process. A meeting separate from the pre-application meeting will be held, if necessary, between HSI, and ADWR staff to review the proposal and seek ADWR's approval to the approach. *If ADWR requires a more robust numerical model, this will be completed under a separate scope of work.*

HSI will use previously collected and existing published data to prepare the hydrogeologic report as required by ADWR to develop a USF and WS permit applications for the recharge site according to the guidelines provided by ADWR (2004). This includes documenting the existing hydrogeology within the study area and determining what impacts the recharge facility will have on the surrounding landowners and water users based on the conceptual facility design.

A digital draft copy of each permit application/report and four (4) final hard copies of the application will be provided. ADWR will receive 1 original, 2 hard copies, and a digital copy. The Town will receive 1 hard copy and a digital copy. *The associated fees for the permit applications are not included in this scope of work.*

This task includes an "in-take" meeting, whereby HSI will meet with ADWR at the time of submittal to ensure a complete application is submitted. This step is new in ADWR's process and is intended to reduce overall application review. This may require follow up prior to the actual submittal of the application.

HSI will provide one response each to the ADWR administrative and/or substantive reviews by answering any questions posed by the Agency after their initial review of the application documents for the recharge site. HSI will meet with the Agency if necessary, to provide follow-up materials.

This task includes a review of the draft permit for the recharge site and the development of a formal response to ADWR. Digital copies of each draft response will be submitted for review and comment. All appropriate comments will be included in the final response. A final digital copy of the response for the recharge site will be provided to the Town of Payson.

This scope is estimated to cost \$28,000 on a time and materials basis to complete.

The application schedule will take approximately 60 days to prepare, assuming ADWR accepts the modeling proposal. Once submitted, ADWR has a licensing timeframe of approximately 295 days to complete their permit process.

Exhibit B
Supplementary Conditions

NONE