

RESOLUTION NO. 2922

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ("TOWN") AWARDING THE BID AND AUTHORIZING THE CONTRACT ON THE AQUIFER STORAGE AND RECOVERY HYDRAULIC VALVES WITH CACTUS CONTROLS, INC. ("CONTRACTOR"), AND THE TOWN OF PAYSON, AN ARIZONA MUNICIPAL CORPORATION, ("TOWN").

WHEREAS, pursuant to A.R.S. § 9-240 (A) and (B), the Town 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 Town 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 wastewater treatment facility, 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; and

WHEREAS, the Town solicited formal bids and the Low Bid of \$249,658.00 was submitted by **CACTUS CONTROLS, INC.**; and

WHEREAS, the TOWN agrees to pay CONTRACTOR up to \$249,658.00 for the work specified in Section 2.1 in Exhibit A, and identified as the **AQUIFER STORAGE AND RECOVERY HYDRAULIC VALVES CONTRACT** with payment to be made in accordance with Purchase Terms and Conditions.

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

Section 1: That the Bid Award for the **AQUIFER STORAGE AND RECOVERY HYDRAULIC VALVES CONTRACT** with **CACTUS CONTROLS, INC.**, c/o Robert L. Tribble, 7345 S. Durango Dr., Ste. B107-176, Las Vegas, NV 89113 is approved and authorized in the amount up to \$249,658.00 with payment to be made in accordance with Exhibit A- Purchase Terms and Conditions.

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 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 COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 19th day of May, 2016, by the following vote:

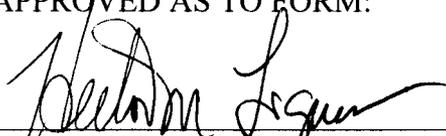
AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Hector M. Figueroa, Town Attorney

EXHIBIT A
To Resolution 2922

(AQUIFER STORAGE AND RECOVERY HYDRAULIC VALVES CONTRACT)

**AQUIFER STORAGE AND RECOVERY HYDRAULIC VALVES
CONTRACT BETWEEN
CACTUS CONTROLS, INC.
AND THE TOWN OF PAYSON**

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

2. **Scope of Services**
 - 2.1 Provide three (3) hydraulically-operated down-hole control valves and hydraulic hose set for each.

 - 2.2 The term "Contract Documents" means and includes the following when prepared in conjunction with this Contract:
 - A. Advertisement for bids or proposals;
 - B. Information for bidders;
 - C. Bid;
 - D. Bid bond;
 - E. Contract;
 - F. General conditions;
 - G. Notice of award;
 - H. Specifications;
 - I. Addenda;

 - 2.3 The Vendor represents that it has reviewed the requirements of this bid or otherwise familiarized itself with the conditions necessary to complete the delivery of the requested items.

 - 2.4 The Vendor represents that: (a) it is validly existing and in good standing under the laws of Arizona, and (b) it is authorized to perform the work contemplated by the Contract Documents in the Town of Payson, County of Gila, State of Arizona.

 - 2.5 The Vendor shall initiate, maintain and supervise all safety precautions and programs in connection with the Project; and shall provide all reasonable protection to prevent damage, injury or loss to: (a) employees on the Project and other persons who may be affected; and (b) the Project, materials supplied, and equipment to be incorporated therein;

3. **Effective Date and Term.**

This Contract shall be effective on the date of the last signature of the Parties and shall

terminate on upon supply of the 3 hydraulic valves and hoses or October 1, 2017, whichever occurs first.

4. **Compensation and Payment.**

The Vendor agrees to provide all items as described based on the unit cost contained in the Proposal, delivered to the Town of Payson, for an sum of Two Hundred Forty Nine Thousand, Six Hundred Fifty Eight Dollars and NO/100 (\$249,658.00). Payment shall be in accordance with the attached Exhibit A – Purchase Terms and Conditions.

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

5.1 Workers Compensation Insurance and Comprehensive Automobile Liability Insurance adequate to cover obligations imposed by Federal and State Statutes having jurisdiction of its employees engaged in the performance of the Services.

5.2 Comprehensive General Liability insurance with a minimum combined single limit of ONE MILLION DOLLARS (\$1,000,000) for 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.

5.6 The Town reserves the right to require the Vendor to furnish the 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.

6. **Indemnity.**

6.1 Vendor shall indemnify, hold harmless and defend 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 any action or omission by Vendor, 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 Vendor, 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 Vendor or out of claims under similar such laws.

- 6.2 Vendor 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 Vendor, its employees, agents, representatives, or subVendors.
7. **Modification.** This Contract may only be amended or modified by a written instrument executed by the Town and the Vendor.
8. **Termination.** In case of a breach of any provision in this Contract by Vendor, the Town may terminate this Contract, in whole or in part, by written notice to Vendor. Such termination will not limit or waive any other remedies available to the Town.
9. **Taxes.** Vendor shall have exclusive liability for and shall pay all taxes and fees imposed in connection with any part of the Services. Vendor shall hold the Town harmless for these taxes and fees.
10. **Laws and Regulations.** Vendor 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 Vendor shall obtain a Town business license. If the Vendor 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 Vendor and any SubVendor employed by Vendor warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with 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 Vendor or SubVendor who works on this Contract to ensure that the Vendor and SubVendor is complying with Section 14.1.

15. **Other Provisions.**

- 15.1 **Assignment.** Vendor 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

Vendor:
Cactus Controls, Inc.
7345 S. Durango Dr., Ste. B107-176
Las Vegas, NV 89113
Attention: Robert L. Tribble,
President

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.** Vendor is an independent Vendor. 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.

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

Cactus Controls, 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: _____

**Town of Payson
Bid Package for the Materials for the Payson Aquifer Storage and Recovery Project**

May 5, 2016

**Cactus Controls, Inc.
Attachment A - Purchase Terms and Conditions**

Purchase Price (from bid proposal page): \$249,658

Purchase orders shall be made out to Cactus Controls, Inc. for \$249,658, per the following payment schedule.

\$124,829 (50%) payment due upon approved submittals and release to manufacturing.

\$99,863 (40%) payment due upon delivery, and prior to installation supervision.

\$24,966 (10%) payment due upon final acceptance.

Cancellation Terms: (After release to manufacturing) 0 to 60 days 35%, 61 to 90 days 50%, 91 days thru delivery 75%

Bidder acknowledges receipt of Addendum #1, dated 4-21-16 by Buzz Walker, and complies with same.

Bidder acknowledges full compliance with American Iron & Steel (AIS) requirements of the Consolidated Appropriations Act of 2014.

Bid pricing is guaranteed for a minimum of 60 days from date of bid opening, until July 10, 2016.

Bid proposal pricing includes costs of all materials, FOB Payson, factory authorized installation supervision and start-up commissioning per spec, and includes any and all applicable taxes.

Bidder acknowledges delivery of materials will be complete prior to October 1, 2017.

Bidder has included a cashier's check for \$24,966 as bid surety, to be refunded upon final acceptance.

Additional site visits or days requested by the Town in Payson in excess of those days required per specification will be billed at \$1,200 per day (port to port) plus travel expenses.

Installation supervision, start-up and training services: 2 weeks notice required prior to travel.