

RESOLUTION NO. 2250

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THREE AGREEMENTS FOR FUNDING IN LIEU OF DEEPENING OF WELL SITE (CROY, REISDORF, WILLSON).

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

Section 1. That the Agreements for Funding in Lieu of Deepening of Well Site, each attached hereto and marked Exhibit "A", Exhibit "B", and Exhibit "C", respectively, are hereby approved in substantially the form attached.

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Agreements for Funding in Lieu of Deepening of Well Site in substantially the form attached as Exhibits "A", "B", and "C" hereto.

Section 3. That the Town of Payson is hereby authorized to sign such other documents and to take such other and further actions as may be necessary or appropriate to carrying out the terms and intent of said Agreements for Funding in Lieu of Deepening of Well Site.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2007, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

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EXHIBIT "A"

to Resolution No. 2250

AGREEMENT FOR FUNDING IN LIEU OF DEEPENING OF WELL SITE

This Agreement made effective this ___ day of _____, 2007, by and between the Town of Payson ("Town"), an Arizona municipal corporation and Richard A. Croy and Cindy Lee Croy, ("Croy"), Husband and Wife, collectively, the "Parties".

RECITALS

- A. Heretofore, Croy paid for and caused one or more wells to be drilled upon real property owned by them and located within the Town of Payson (The "Well").
- B. Since the time of constructing the Well, Croy has used it for domestic and irrigation purposes.
- C. Over time, Croy has experienced a depletion of the water supply available in the Well.
- D. The Parties believe that the water supply in the Well may be restored by deepening the Well so as to access the deeper parts of the aquifer from which it is fed.
- E. Alternatively, Croy may fulfill Croy's water needs by receiving water from the Town, for which there is a cost.
- F. Croy believes that the Town has contributed, through it's adjacent well pumping activities, to the depletion of the water level in the Well.
- G. The Town believes that the depletion in water level in the Well arises from the general drought conditions existing in the area.
- H. The Parties wish to resolve any dispute between them and to provide a means whereby additional water may be made available to Croy.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions herein contained, do hereby agree as follows:

1. The Town shall pay to Croy the sum of Eight Thousand, One Hundred Dollars (\$8,100.00).
2. Croy may use this sum as Croy chooses. Illustratively it may be used to deepen the Well, to pay the costs of obtaining water from the Town municipal water system, or otherwise.
3. If Croy, in the future, desires to purchase one (1) or more equivalent residential units (ERUs) of water from the Town, they shall be permitted to purchase such unit(s) for their current cost

of Three Thousand, Seven Hundred Eighty-five Dollars (\$3,785.00) per ERU. Croy shall additionally be given credit for the sum of Eight Hundred Dollars (\$800.00) against Town fees required by the Town to be paid prior to delivery of Town water. Such water shall be deliverable to and used only upon the present real property of Croy, located at 1040 West Bridal Path Lane, Payson, Gila County, Arizona.

4. In consideration of the payment of said sum of Eight Thousand, One Hundred Dollars (\$8,100.00) and the other considerations herein set forth, Croy hereby individually and jointly agree, for themselves and their respective heirs, successors and assigns, to hold the Town, its elected officials, officers, employees, agents and servants harmless from and against and to hereby forever release, acquit and discharge the Town, its elected officials, officers, employees, agents and servants, from any and all claims, demands, actions, causes of action, damages, expenses, or losses arising from or in any way growing out of or related to any act or occurrence up to the present time including, but not limited to, any of the same arising in any manner from the Town's drilling and use of wells, whether adjacent to the real property of Croy or not, and/or the depletion of the water level in and/or the amount of water available to be withdrawn from the wells now existing on Croy's real property or hereafter drilled thereon.
5. Croy, and each of them, for themselves and their respective heirs, successors and assigns, agree to commence no action concerning any part of the subject matter of this Agreement.
6. The Parties agree and understand that the Town, its elected officials, officers and employees, hereby admit no liability of any sort by reason of this Agreement and the terms contained herein or otherwise and the consideration provided in connection herewith.
7. Croy hereby bind themselves, their respective heirs, administrators, executors, successors and assigns to the release and hold harmless provisions in this Agreement and understand that the Town, its officers, elected officials, employees, agents and servants hereby admit no liability of any sort by reason of this Agreement or such release and hold harmless provisions, or otherwise and the consideration in connection herewith. The release and hold harmless provisions in this Agreement are contractual and not mere recitals. Croy understands that the Town, its officers, elected officials, employees, agents and servants have made this Agreement as a compromise to terminate further controversy and dispute respecting all claims Croy or either of them have or may have against the Town, its officers, elected officials, employees, agents and servants as a result of the aforesaid occurrences, acts and matters, including, but not limited to the depletion of the water level and/or the amount of water available from Croy's well.
8. Cancellation. This Agreement is subject to the provisions of § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other party to the contract at any time while this

Agreement or any extension hereof is in effect, this Agreement may be canceled.

9. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. 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, .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.
10. Construction of Agreement. This Agreement 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 Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, whether oral or written are superseded by and merged into this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Agreement until it is executed and delivered by both Parties.
12. The Parties voluntarily accept this Agreement for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, known or unknown, if any, on account of the water level and/or availability of water to Croy's real property and the Well and its ability to produce water and for the express purpose of precluding forever any further or additional claims arising out of the subject matter of this Agreement.

EXECUTED on the date first above written.

RICHARD A. CROY

CINDY LEE CROY

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
F. Robert Edwards, Mayor

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:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract consideration (we do not review to determine if consideration is adequate);
4. 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: _____.

By _____
Samuel I. Streichman, Town Attorney

EXHIBIT "B"

to Resolution No. 2250

AGREEMENT FOR FUNDING IN LIEU OF DEEPENING OF WELL SITE

This Agreement made effective this ___ day of _____, 2007, by and between the Town of Payson ("Town"), an Arizona municipal corporation and David L. Reisdorf and Leslie A. Reisdorf, ("Reisdorf"), Husband and Wife, collectively, the "Parties".

RECITALS

- A. Heretofore, Reisdorf paid for and caused one or more wells to be drilled upon real property owned by them and located within the Town of Payson (The "Well").
- B. Reisdorf also paid a development fee to the Town necessary prior to being connected to the Town domestic water supply system.
- C. Since the time of constructing the Well, Reisdorf has used it for domestic and irrigation purposes.
- D. Over time, Reisdorf has experienced a depletion of the water supply available in the Well.
- E. The Parties believe that the water supply in the Well may be restored by deepening the Well so as to access the deeper parts of the aquifer from which it is fed.
- F. Alternatively, Reisdorf may fulfill Reisdorf's water needs by receiving water from the Town, for which there is a cost.
- G. Reisdorf believes that the Town has contributed, through its adjacent well pumping activities, to the depletion of the water level in the Well.
- H. The Town believes that the depletion in water level in the Well arises from the general drought conditions existing in the area.
- I. The Parties wish to resolve any dispute between them and to provide a means whereby additional water may be made available to Reisdorf.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions herein contained, do hereby agree as follows:

1. The Town shall pay to Reisdorf the sum of Seven Thousand, Nine Hundred Dollars (\$7,900.00).
2. Reisdorf may use this sum as Reisdorf chooses. Illustratively it may be used to deepen the

Well, to pay the costs of obtaining water from the Town municipal water system, or otherwise.

3. Reisdorf shall additionally be given credit for the sum of Eight Hundred Dollars (\$800.00) against one (1) meter fee required by the Town to be paid prior to delivery of Town water. Such water shall be deliverable to and used only upon the present real property of Reisdorf, located at 1036 West Bridal Path Lane, Payson, Gila County, Arizona.
4. In consideration of the payment of said sum of Seven Thousand, Nine Hundred Dollars (\$7,900.00) and the other considerations herein set forth, Reisdorf hereby individually and jointly agree, for themselves and their respective heirs, successors and assigns, to hold the Town, its elected officials, officers, employees, agents and servants harmless from and against and to hereby forever release, acquit and discharge the Town, its elected officials, officers, employees, agents and servants, from any and all claims, demands, actions, causes of action, damages, expenses, or losses arising from or in any way growing out of or related to any act or occurrence up to the present time including, but not limited to, any of the same arising in any manner from the Town's drilling and use of wells, whether adjacent to the real property of Reisdorf or not, and/or the depletion of the water level in and/or the amount of water available to be withdrawn from the wells now existing on Reisdorf's real property or hereafter drilled thereon.
5. Reisdorf, and each of them, for themselves and their respective heirs, successors and assigns, agree to commence no action concerning any part of the subject matter of this Agreement.
6. The Parties agree and understand that the Town, its elected officials, officers and employees, hereby admit no liability of any sort by reason of this Agreement and the terms contained herein or otherwise and the consideration provided in connection herewith.
7. Reisdorf hereby bind themselves, their respective heirs, administrators, executors, successors and assigns to the release and hold harmless provisions in this Agreement and understand that the Town, its officers, elected officials, employees, agents and servants hereby admit no liability of any sort by reason of this Agreement or such release and hold harmless provisions, or otherwise and the consideration in connection herewith. The release and hold harmless provisions in this Agreement are contractual and not mere recitals. Reisdorf understands that the Town, its officers, elected officials, employees, agents and servants have made this Agreement as a compromise to terminate further controversy and dispute respecting all claims Reisdorf or either of them have or may have against the Town, its officers, elected officials, employees, agents and servants as a result of the aforesaid occurrences, acts and matters, including, but not limited to the depletion of the water level and/or the amount of water available from Reisdorf's well.
8. This Agreement is subject to the provisions of § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person

significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other party to the contract at any time while this Agreement or any extension hereof is in effect, this Agreement may be canceled.

9. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. 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, .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.
10. This Agreement 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 Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
11. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, whether oral or written are superseded by and merged into this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Agreement until it is executed and delivered by both Parties.
12. The Parties voluntarily accept this Agreement for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, known or unknown, if any, on account of the water level and/or availability of water to Reisdorf's real property and the Well and its ability to produce water and for the express purpose of precluding forever any further or additional claims arising out of the subject matter of this Agreement.

EXECUTED on the date first above written.

David L. Reisdorf

Leslie A. Reisdorf

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
F. Robert Edwards, Mayor

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:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract consideration (we do not review to determine if consideration is adequate);
4. 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: _____.

By _____
Samuel I. Streichman, Town Attorney

EXHIBIT "C"

to Resolution No. 2250

AGREEMENT FOR FUNDING IN LIEU OF DEEPENING OF WELL SITE

This Agreement made effective this ___ day of _____, 2007, by and between the Town of Payson ("Town"), an Arizona municipal corporation and Calvin A. Willson and Sue Q. Willson, ("Willson"), Husband and Wife, collectively, the "Parties".

RECITALS

- A. Heretofore, Willson paid for and caused a well to be drilled upon his real property located within the Town of Payson (The "Well").
- B. Willson also paid a development fee to the Town necessary prior to being connected to the Town domestic water supply system.
- C. Since the time of constructing the Well, Willson has used it for domestic and irrigation purposes.
- D. Over time, Willson has experienced a depletion of the water supply available in the Well.
- E. The Parties believe that the water supply in the Well may be restored by deepening the Well so as to access the deeper parts of the aquifer from which it is fed.
- F. Alternatively, Willson may fulfill Willson's water needs by receiving water from the Town, for which there is a cost.
- G. Willson believes that the Town has contributed, through it's adjacent well pumping activities, to the depletion of the water level in the Well.
- H. The Town believes that the depletion in water level in the Well arises from the general drought conditions existing in the area.
- I. The Parties wish to resolve any dispute between them and to provide a means whereby additional water may be made available to Willson.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions herein contained, do hereby agree as follows:

1. The Town shall pay to Willson the sum of Seven Thousand, Nine Hundred Dollars (\$7,900.00).
2. Willson may use this sum as Willson chooses. Illustratively it may be used to deepen the

Well, to pay the costs of obtaining water from the Town municipal water system, or otherwise.

3. Willson shall additionally be given credit for the sum of Eight Hundred Dollars (\$800.00) against one (1) meter fee required by the Town to be paid prior to delivery of Town water. Such water shall be deliverable to and used only upon the present real property of Willson, located at 1043 West Bridal Path Lane, Payson, Gila County, Arizona.
4. In consideration of the payment of said sum of Seven Thousand, Nine Hundred Dollars (\$7,900.00), and the other considerations herein set forth, Willson hereby individually and jointly agree, for themselves and their respective heirs, successors and assigns, to hold the Town, its elected officials, officers, employees, agents and servants harmless from and against and to hereby forever release, acquit and discharge the Town, its elected officials, officers, employees, agents and servants, from any and all claims, demands, actions, causes of action, damages, expenses, or losses arising from or in any way growing out of or related to any act or occurrence up to the present time including, but not limited to, any of the same arising in any manner from the Town's drilling and use of wells, whether adjacent to the real property of Willson or not, and/or the depletion of the water level in and/or the amount of water available to be withdrawn from the wells now existing on Willson's real property or hereafter drilled thereon.
5. Willson, and each of them, for themselves and their respective heirs, successors and assigns, agree to commence no action concerning any part of the subject matter of this Agreement.
6. The Parties agree and understand that the Town, its elected officials, officers and employees, hereby admit no liability of any sort by reason of this Agreement and the terms contained herein or otherwise and the consideration provided in connection herewith.
7. Willson hereby bind themselves, their respective heirs, administrators, executors, successors and assigns to the release and hold harmless provisions in this Agreement and understand that the Town, its officers, elected officials, employees, agents and servants hereby admit no liability of any sort by reason of this Agreement or such release and hold harmless provisions, or otherwise and the consideration in connection herewith. The release and hold harmless provisions in this Agreement are contractual and not mere recitals. Willson understands that the Town, its officers, elected officials, employees, agents and servants have made this Agreement as a compromise to terminate further controversy and dispute respecting all claims Willson or either of them have or may have against the Town, its officers, elected officials, employees, agents and servants as a result of the aforesaid occurrences, acts and matters, including, but not limited to the depletion of the water level and/or the amount of water available from Willson's well.
8. Cancellation. This Agreement is subject to the provisions of § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any

person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other party to the contract at any time while this Agreement or any extension hereof is in effect, this Agreement may be canceled.

9. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. 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, .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.
10. Construction of Agreement. This Agreement 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 Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, whether oral or written are superseded by and merged into this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Agreement until it is executed and delivered by both Parties.
12. The Parties voluntarily accept this Agreement for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, known or unknown, if any, on account of the water level and/or availability of water to Willson's real property and the Well and for the express purpose of precluding forever any further or additional claims arising out of the subject matter of this Agreement.

EXECUTED on the date first above written.

CALVIN A. WILLSON

SUE Q. WILLSON

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
F. Robert Edwards, Mayor

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:

- M. Identification of parties;
- N. Offer and acceptance;
- O. Existence of contract consideration (we do not review to determine if consideration is adequate);
- P. 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: _____.

By _____
Samuel I. Streichman, Town Attorney