

**RESOLUTION NO. 2952**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO AMEND A CATEGORY 6 MAJOR COST RECOVERY AGREEMENT WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, TONTO NATIONAL FOREST (C.C. CRAGIN WATER PROJECT).**

**WHEREAS**, the Town of Payson ("Town") and the United States Department of Agriculture, Forest Service, Tonto National Forest ("USFS") have entered into a Category 6 Major Cost Recovery Agreement (Agreement) on or about April 24, 2009; and

**WHEREAS**, the Parties are authorized to enter into this Agreement pursuant to 36 CFR 251.58, A.R.S. §§ 9-241 *et seq.* and 9-496 *et seq.*; and

**WHEREAS**, the USFS is entitled to recover its full reasonable costs incurred in processing the Application or monitoring any special use authorization which may be issued to the Town; and

**WHEREAS**, the funds paid with the initial agreement have been expended; and

**WHEREAS**, the USFS and the TOWN have prepared an amendment to the Agreement providing for the recovery of such costs; and

**WHEREAS**, the Town wishes to amend such cost recovery agreement,

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

Section 1: That the Amendment to the Category 6 Major Cost Recovery Agreement between the United States Department of Agriculture, Forest Service, Tonto National Forest, attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "A".

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute such Amendment in substantially the form attached.

Section 3: That the Town of Payson and the Town Manager be and are hereby authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Amendment.

**PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON,  
ARIZONA, this 1<sup>st</sup> day of September, 2016, by the following vote:**

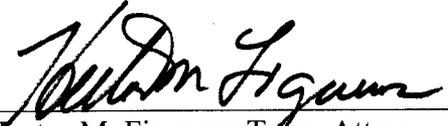
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

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

ATTEST:

APPROVED AS TO FORM:

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

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

# Exhibit A

to Resolution 2952

(Amendment to C.C. Cragin Water Project Agreement)

**AMENDMENT FOR CATEGORY 6 MAJOR COST RECOVERY  
AGREEMENT**

**Agreement Number – 09-MJ-11031200-661 – Dated 04/24/2009**

**Between**

**USDA, FOREST SERVICE, Tonto National Forest,  
and Town of Payson**

**The Cost Recovery Agreement is hereby amended as follows:**

This agreement is entered into between the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, **Tonto National Forest** (the Forest Service), and the **Town of Payson** (the applicant) under 36 CFR 251.58.

**A. RECITALS**

1. On **11/20/2008**, the Forest Service accepted the applicant's application for use and occupancy of National Forest System lands (hereinafter "the application"), which is enumerated in Appendix A. The Forest Service shall assess the applicant a cost recovery fee for the agency's costs to process the application.
2. The Forest Service has determined that the fee for processing the application falls within category 6 under the applicable Forest Service processing fee schedule and/or that the fee for monitoring the applicant's special use authorization falls within category 6 under the applicable Forest Service monitoring fee schedule.
3. A special use authorization ("the authorization") may be issued to the applicant. The authorization is enumerated in Appendix A and subject to assessment of monitoring fees by the Forest Service.
4. The geographic area to be covered by this agreement is **Payson RD - T. 11 N., R. 10 E., Sections 1, 2, 11-14, 23, 24, 26, and 27; T. 11 1/2 N., R. 10 E., Sections 24, 25, 35, and 36; T. 12 N., R 10 E., Sections 23, 26, 27, 33, and 34, GSRPM, Gila County, AZ.** See Appendix B.
5. The application has been submitted or the applicant's special use authorization is being issued under an authority other than the Mineral Leasing Act, and the applicant has not waived payment of reasonable costs. Therefore, the Forest Service is entitled to recover its full reasonable costs incurred in processing the application or monitoring the authorization.

6. Information associated with this agreement may be released to the public in accordance with the provisions of the Freedom of Information Act and Privacy Act.

## **PART II - MONITORING FEES**

### **B. BASIS FOR MONITORING FEES**

The Forest Service shall assess the applicant a monitoring fee based upon the agency's estimated costs to ensure compliance with the terms and conditions of the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

### **C. AGREEMENT**

In consideration of the foregoing, the parties agree as follows:

1. Scope of Work. The Forest Service shall develop a scope of work for monitoring the authorization and an estimate of the agency's costs to monitor the authorization, which will be incorporated into this agreement as Appendix C. This scope of work shall report direct costs in categories that correspond to those in the agency's accounting system, e.g., job code, personnel compensation based upon the cost to the government (salary and benefits), travel, and other direct services, materials, and supplies. In addition, the scope of work shall include the agency's indirect costs based upon the approved annual indirect cost rate. Classification of costs as direct or indirect shall be in accordance with the published Forest Service budget for the applicable fiscal year.

2. Billing. The Forest Service shall bill the applicant prior to commencement of construction, reconstruction, rehabilitation, or any other activity subject to a monitoring fee. The applicant shall pay an initial estimated monitoring fee of **\$99,698.73 (Will be paid through the processing fees already paid – No payment due)** before or at the same time the authorization is issued and a subsequent estimated monitoring fee of **\$99,951.86**, for a total of **\$199,650.59**. The second bill for the estimated monitoring fee will be processed in August 2016.

3. Payment. The applicant shall pay the initial estimated monitoring fee and any subsequent estimated monitoring fees within 30 days of the date the bill for the fee is issued. The Forest Service shall not initiate monitoring the authorization until the estimated monitoring fee is paid. If the applicant fails to pay the initial or any subsequent estimated monitoring fee or the fee is late, the Forest Service shall not issue the authorization or shall suspend or revoke the authorization in whole or in part.

4. Statement of Costs. The Forest Service shall annually report costs incurred for monitoring the authorization by providing a financial statement from the agency's accounting system to the applicant.

5. Underpayment. When the estimated monitoring fee is lower than the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or lower than the full reasonable costs (when the applicant has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the applicant shall pay the difference in the next

periodic payment or the Forest Service shall bill the applicant for the difference between the estimated and full actual or reasonable monitoring costs. Payment shall be due within 30 days of receipt of the bill.

**6. Overpayment.** If payment of the monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or the full reasonable costs (when the applicant has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the Forest Service shall either (a) adjust the next periodic payment to reflect the overpayment or (b) refund the excess payment to the applicant.

## **7. Disputes**

a. If the applicant disagrees with the estimated dollar amount of the processing costs, the applicant may submit a written request before the disputed fee is due for substitution of alternative estimated costs to the immediate supervisor of the authorized officer who determined the estimated costs. The written request must include supporting documentation.

b. If the applicant pays the full disputed monitoring fee, the Forest Service shall issue the authorization and/or allow the use and occupancy to continue during the supervisory officer's review of the disputed fee, unless the applicant elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

c. If the applicant fails to pay the full disputed monitoring fee, the Forest Service shall not issue the applicant an authorization for any new uses or shall suspend or revoke the applicant's existing authorization in whole or part pending the supervisory officer's determination of an appropriate monitoring fee and the applicant's payment of that fee.

d. The authorized officer's immediate supervisor shall render a decision on a disputed monitoring fee within 30 calendar days of receipt of the written request from the applicant. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the applicant if the supervisory officer does not respond to the written request within 30 days of receipt.

**8. Lack of Administrative Appeal.** A decision by an authorized officer to assess a monitoring fee or to determine estimated costs is not subject to administrative appeal. A decision by an authorized officer's immediate supervisor in response to a request for substitution of alternative estimated costs likewise is not subject to administrative appeal.

**9. Amendment.** Modifications to this agreement shall be made in writing and shall be signed and dated by both parties.

**10. Expiration and Termination.** This agreement expires on **12/31/2017**. Either party, in writing, may terminate this agreement in whole or in part at any time before it expires. The applicant is responsible for all Forest Service costs covered by this agreement that are incurred up to the date of expiration or termination.

**11. Principal Point of Contact.** The Forest Service and the applicant shall each establish a principal point of contact for purposes of this agreement.



## APPENDIX A

Special Use Permit for Construction of Facilities – PAY500

Engineering Specs and Technical Design

Construction Plan

## APPENDIX B

Description and Map

**Payson RD - T. 11 N., R. 10 E., Sections 1, 2, 11-14, 23, 24, 26, and 27; T. 11 1/2 N., R. 10 E., Sections 24, 25, 35, and 36; T. 12 N., R 10 E., Sections 23, 26, 27, 33, and 34, GSRPM, Gila County, AZ**

## APPENDIX C

Monitoring Construction of approved project – as outlined in SU Permit.