

**RESOLUTION NO. 2884**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CANYON INDUSTRIES, INC., FOR PURCHASE OF A MANUFACTURED TURBINE AND GENERATOR EQUIPMENT FOR THE C.C. CRAGIN RESERVIOR WATER SUPPLY PROJECT – SMALL CONDUIT HYDROELECTRIC FACILITY.**

**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**, 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 formal bids and received bids from bidders; and

**WHEREAS**, the Low Bid of \$428,808.00 was submitted by Canyon Industries, Inc. c/o Richard A. New, Canyon Industries, Inc., 5500 Blue Heron Lane, Deming, WA 98244.

**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 Canyon Industries, 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 is 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 5<sup>th</sup> day of November, 2015, by the following vote:**

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

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Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:



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Silvia Smith, Town Clerk

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Hector M. Figueroa, Town Attorney

**EXHIBIT 1**

**TO**

**RESOLUTION NO. 2883**

# AGREEMENT

THIS AGREEMENT made this 5th day of November, 2015, by and between Town of Payson, hereinafter called "OWNER" and Canyon Industries, Inc., doing business as a Corporation hereinafter called "MANUFACTURER/SUPPLIER".  
(OWNER's Name) (MANUFACTURER/SUPPLIER's Name)  
(Insert Corporation, Partnership, or Individual as appropriate)

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The MANUFACTURER/SUPPLIER will commence and complete the manufacture of the system equipment for the

***C.C. CRAGIN RESERVOIR WATER SUPPLY PROJECT - SMALL CONDUIT HYDROELECTRIC FACILITY  
REQUEST FOR BIDS FOR TURBINE AND GENERATOR EQUIPMENT***

2. The MANUFACTURER/SUPPLIER will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the manufacture, delivery, testing, startup, and integration of the System Equipment as described herein.
3. The MANUFACTURER/SUPPLIER will commence the work required by the BIDDING DOCUMENTS within 10 calendar days after the date of the NOTICE TO PROCEED and will complete the same by June, 2018, unless the period for completion is extended otherwise by the BIDDING DOCUMENTS. The MANUFACTURER/SUPPLIER further agrees to pay as liquidated damages, the sum of \$500.00 for each calendar day thereafter as provided in the RFB and in Section 00700 of the General Conditions.
4. The MANUFACTURER/SUPPLIER agrees to perform all of the WORK described in the BIDDING DOCUMENTS and comply with the terms therein for the sum of \$ 428,808.00, or as shown otherwise in the BID.
5. The term "BIDDING DOCUMENTS" means and includes the following:
  - (A) REQUEST FOR BIDS
  - (B) PUBLIC NOTICE
  - (C) SUMMARY OF RFB
  - (D) BACKGROUND INFORMATION/DESIGN CRITERIA
  - (E) INFORMATION TO BIDDERS AND GENERAL REQUIREMENTS
  - (F) TECHNICAL BID CONTENTS
  - (G) BID EVALUATION CRITERIA
  - (H) PERFORMANCE GUARANTEE
  - (I) BID COST SHEET
  - (J) EQUIPMENT & PERFORMANCE DATA SHEET
  - (K) AGREEMENT
  - (L) NOTICE OF AWARD
  - (M) NOTICE TO PROCEED
  - (N) CONTRACT CHANGE ORDER
  - (O) GENERAL CONDITIONS
  - (P) EQUIPMENT SPECIFICATIONS
  - (Q) FIGURES

(R) DRAWINGS AND INFORMATION IN APPENDIX A THROUGH APPENDIX C OF RFB

- 6. The OWNER will pay to the MANUFACTURER/SUPPLIER in the manner and at such times as set forth in Part I- Summary of RFP and such amounts as required by the BIDDING DOCUMENTS.
- 7. This AGREEMENT shall be binding upon the Parties and any successor-in-interest. No provision herein is intended to create a third beneficiary interest in any person or entity, including but not limited to the respective employees or agents of either Party.
- 8. If any provision of this AGREEMENT shall be held to be unconstitutional, invalid, or unenforceable, it shall be deemed severable; however, the remainder of the AGREEMENT shall not be affected and shall remain in full force and effect.
- 9. This AGREEMENT shall be construed and interpreted under the laws of Arizona and shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This AGREEMENT is the result of negotiations between, and has been reviewed by, each of the Parties hereto and their respective counsel. Accordingly, this AGREEMENT shall be deemed to be the product of all the Parties hereto, and no ambiguity shall be construed in favor of, or against any one of, the Parties hereto. The Parties understand and agree that any litigation arising out of this Agreement shall be deemed to be within the jurisdiction of the Superior Court for Gila County, Arizona.
- 10. This AGREEMENT sets forth the entire understanding of the Parties as to the matters set forth herein as of the date of this AGREEMENT and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by the authorized representatives of each of the Parties hereto. This AGREEMENT is intended to reflect the mutual intent of the Parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any Party.
- 11. This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in 3 copies, each of which shall be deemed an original on the date first above written.

OWNER: Town of Payson

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

(SEAL)

ATTEST \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

**APPROVAL AS TO FORM**

The Town of Payson Legal Department has reviewed this contract and approved it as to form and has determined that said contract is in proper form and is within the powers and authority granted under the laws of the State of Arizona and the Town of Payson Procurement Policy.

By Hector M. Figueroa, Town Attorney

\_\_\_\_\_ Date

MANUFACTURER/SUPPLIER:

\_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

(SEAL)

ATTEST \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_