

RESOLUTION NO. 2886

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ("PAYSON") APPROVING THE GREEN VALLEY PARK IRRIGATION SYSTEM CONTROLS CONTRACT WITH AUTOMATION ELECTRIC, LLC ("CONSULTANT") UNDER THE BUREAU OF RECLAMATION ("BOR") ESTABLISHED TRUST FUND.

WHEREAS, pursuant to A.R.S. § 9-240 (B)(6), the Common Council shall 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 of Payson may construct, acquire from a willing seller or improve a wastewater treatment facility, drinking water facility or nonpoint source project; and

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into an intergovernmental agreement (IGA) or a memorandum of understanding (MOU), if authorized by their legislative or governing bodies; and

WHEREAS, on January 21, 1994 Payson entered into a Memorandum of Understanding with the United States of America acting through the Bureau of Reclamation ("BOR") for the creation of a Trust Fund for use in projects that benefit the environment, principally areas of riparian creation, enhancement and preservation; and

WHEREAS, Trust monies were deposited in the Trust Fund in the sum of \$325,000.00 for use in the Environmental Projects with the BOR acting as additional Trustee and Payson exercising its powers to direct the investment of monies and to establish a Commission to make recommendations to Payson on specific projects to spend Trust monies; and

WHEREAS, the Town of Payson created an Environmental Projects Commission ("EPC") for the purpose of recommending projects to be funded under the Trust Fund and on September 3, 2015 the EPC made its recommendations to Mayor and Council at its City Council meeting which were adopted; and

WHEREAS, the Town of Payson desires to contract the Professional Services of Automation Electric, LLC c/o Dewalt Oosthuizen, 304 S. Brassie Drive, Payson, AZ 85541 for the Design and Installation of the Green Valley Park Irrigation System Controls; and

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Prepared by Town of Payson Legal Department

IMW drs. November 9, 2015 (3:56PM)

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WHEREAS, the Town of Payson shall pay Automation Electric, LLC Forty Five Thousand dollars and no/100 (\$45,000.00) for the services set forth in the Contract Scope of Services.

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

Section 1: That the Green Valley Park Irrigation System Controls Contract with Automation Electric, LLC is approved in the amount of \$45,000.00.

Section: 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.

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 19th day of November , 2015, 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"

**GREEN VALLEY PARK IRRIGATION SYSTEM CONTROLS
DESIGN AND INSTALLATION CONTRACT
BETWEEN
AUTOMATION ELECTRIC, LLC
AND THE TOWN OF PAYSON**

1. **Parties.** The parties to this Contract are Automation Electric, LLC, an Arizona Limited Liability Company authorized to do business within the State of Arizona (“Consultant”), and the Town of Payson, an Arizona Municipal Corporation, (Payson) (collectively, the “Parties”). Payson and the Consultant agree as follows:

2. **Scope of Services**
 - 2.1 Consultant shall carry out in a satisfactory and proper manner, as determined by Town, the Scope of Services set forth above and in 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 Payson 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.

 - 2.4 Changes. If Payson 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.

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 project shall be completed on or before June 30, 2016.

 - 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 Payson in writing of the delay and Town shall extend the time of performance appropriately.

4. **Professional Fees and Payment.**
 - 4.1 Fees. Payson shall pay Consultant, for the services set forth in Section 2 above, Scope of Services Forty Five Thousand and No/100 (\$45,000.00).

 - 4.2 Payment. Consultant will submit to Payson monthly invoices based on a

percentage of work satisfactorily completed along with all reimbursable expenses incurred. Payson will pay the invoice within thirty (30) days of receipt. If Payson 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 Payson at a rate of 1.10 times the cost of such expense, up to a maximum of Five Hundred Dollars. Written approval by Payson 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 Payson, 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 Payson, 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 Payson and its officers, employees, and agents.
- 5.7 Prior to commencing Services, Consultant shall furnish Payson 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 Payson's representative as identified in Paragraph 15.2.
- 5.8 Payson 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 Payson 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 Payson 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 Payson and the Consultant.
 8. **Termination.** This Contract may be terminated by either Party upon thirty (30) days prior written notice. Upon termination, (a) Payson 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 Payson 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 Payson. Payson 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:

Payson:	Consultant:
Town of Payson	Automation Electric, LLC.
303 North Beeline Highway	304 S. Brassie Drive
Payson, Arizona 85541	Payson, AZ 85541
Attention: LaRon Garrett	Attention: Dewalt Oosthuizen

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 to this Contract, 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 Payson 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.** Payson 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. Payson shall not have any liability for payment 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 Payson, shall be provided to Payson upon request during the Contract, and without request at the conclusion of the Contract. Payson 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.

Automation Electric, LLC.

an Arizona Limited Liability Company authorized to do business within the State of Arizona

By _____
its _____

Date

TOWN OF PAYSON,
an Arizona Municipal Corporation

By _____
Mayor

_____ Dated

ATTEST:

Silvia Smith, Town Clerk

APPROVAL AS TO FORM

By _____
Hector M. Figueroa, Town Attorney

_____ Dated

Exhibit A
Scope of Services

The Scope of Services for the Green Valley Park Irrigation Controller Design and Installation Contract is as follows:

1. Review existing irrigation controls and operation including the pumps, valves, control equipment, and irrigation circuits with Town of Payson staff.
2. Design a modern PLC and SCADA based irrigation system to replace the current system at the Green Valley Park which will provide the following:
 - a. Updated, state of the art instrumentation to make better use of the existing water supply.
 - b. Daily and monthly reports on water usage and system alarms/ failures.
 - c. Remote access to the SCADA to manage system more efficiently.
3. Procure, build and install an updated pump control system for the three irrigation pumps.
4. Procure, build, program and install and a new PLC system with easy to use time schedules to manage the park irrigation system.
5. Commission system after installation.
6. Train operators on the use and maintenance of the system.