

RESOLUTION NO. 2910

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN THE TOWN OF PAYSON (“SPONSOR”) AND MCCAULEY CONSTRUCTION, INC. (“CONTRACTOR”), FOR THE ADOT PROJECT NO. E5S1X.

WHEREAS, A.R.S. § 28-8411 authorizes the governing body of a Town to own, operate, and regulate airports for the use of aircraft within or outside the limits of the town; and

WHEREAS, A.R.S. § 28-8418 authorizes the governing body of a Town to construct, improve, equip, maintain, and operate airport facilities; and

WHEREAS, the SPONSOR advertised for sealed proposals, sealed proposals were received, and ADOT Project No: E5S1X has been awarded to CONTRACTOR; and

WHEREAS, the SPONSOR desires to enter into an Agreement with CONTRACTOR to perform Drainage Work at the Town of Payson Airport for the total estimated cost of Fifty Thousand Seven Hundred Eighty Dollars (\$50,780.00); and

WHEREAS, the SPONSOR desires to approve the Agreement and to authorize the Mayor to execute the Agreement.

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

Section 1: That the Agreement, a copy of which is attached hereto marked Exhibit “A” and made a part hereof by this reference, be and is hereby approved in substantially the form attached hereto.

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute said Agreement attached as Exhibit “A” in substantially the form attached hereto.

Section 3: That the Town of Payson and Town Officials are hereby authorized to take such other and further actions as may be necessary or appropriate to carry out the terms and intent of said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 7th day of April, 2016, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT

Kenny J. Evans, Mayor

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:



Hector M Figueroa, Town Attorney

EXHIBIT A

to Resolution No. 2910

AGREEMENT

This Agreement made and entered into this ____ day of _____, 2016, by and between the TOWN OF PAYSON, ARIZONA, party of the first part, hereinafter in the Contract Documents referred to as the "Sponsor," and MCCAULEY CONSTRUCTION INC., hereinafter in the Contract Documents called the "Contractor," party of the second part.

WITNESSETH, that the Sponsor advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for Payson Airport Improvements.

WHEREAS, ADOT Project No. E5S1X has been awarded to the above-named Contractor by the Sponsor and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1

Contract Documents

It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Agreement and all of said instruments, drawings and documents taken together as a whole constitute the Agreement between the parties hereto and they are as fully a part of this Agreement as if they were set out verbatim and in full herein:

- Invitation for Bids
- Instructions to Bidders
- Proposal
- Non-Collusion Affidavit
- Bid Bond
- Notice of Award
- Agreement
- Performance, Payment and Maintenance Bonds
- Certificate of Inclusion of Labor & EEO Requirements in Subcontracts
- Notice to Proceed
- Change Orders
- Applications for Payment
- Wage Rates
- General Provisions
- Technical Specifications
- Special Provisions

ARTICLE 2

Statement of Work

The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all of the work described, drawn, set forth, shown and included in said Contract Documents.

ARTICLE 3

Contract Time

The Contractor agrees to undertake the performance of the Work under the Agreement on the date stated on the Notice to Proceed and agrees to fully complete said Work within twenty one (21) consecutive calendar days unless an extension of time is granted by the Sponsor in accordance with the provisions of Section 80, paragraph 7, General Provisions.

ARTICLE 4

Liquidated Damages

It is understood and agreed by and between the Sponsor and the Contractor that should the completion of the entire project be delayed beyond the stipulated day herein specified, the Sponsor will suffer substantial damages, which damages it would be difficult to accurately determine. The parties hereto have considered the possible limit of damages and have agreed that a delay in completion of this project will cost the Sponsor not less than One Thousand Dollars (\$1,000) for each calendar day. In view of these facts and in accordance with the General and Special Provisions, the Contractor agrees to pay the Sponsor as liquidated damages and not as a penalty, the sum of One Thousand Dollars (\$1,000) for each calendar day, if any, which exceeds the total project time limit stated in Article 3 above with allowances for any extensions of time which the Sponsor may properly grant. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefore, the Surety on the Performance Bond shall pay such damages. Also, the Sponsor may hold all or part of such liquidated damages from payments due the Contractor.

ARTICLE 5

Terms of Payment

The Contractor agrees to accept as his full and only compensation for the performance of all the work required under this Agreement, the sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's Proposal, attached hereto and made a part hereof for the total estimated cost thereof to be Fifty Thousand Seven Hundred Eighty Dollars (\$ 50,780.00). Partial payments will be made for Work completed during the previous month as well as for materials (invoice cost only) delivered to the Project site and suitably stored.

Application for partial payments for stored materials must be accompanied by certified invoices

showing all pertinent data that may be required by the Engineer to verify the accuracy of the invoices and their relation to the stored materials. Failure to provide certified invoices will disqualify the materials in question from consideration for partial payment. Partial payments for Work completed during the previous month will be made based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

The Sponsor will retain, from partial payments, ten percent (10%) of the total amount due the Contractor based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

Nothing contained herein shall be construed as relieving the Contractor and the Sureties on the Contractor's Bond from any claim or claims for work or labor done or materials or supplies furnished in the execution of the Agreement.

It is the intent of Sponsor, to make payment for partial payments in a timely manner as follows:

- A. The Contractor shall submit to the Engineer his Application for Payment not later than the next to last Friday of the month.
- B. The Engineer will, within 7 days after receipt, submit the Application for Payment to the Sponsor for payment along with his Recommendation of Payment, noting any changes. The Sponsor will make payment to the Contractor when funds are received from State of Arizona.

ARTICLE 6

Bonds and Insurance

The party of the second part furnishes concurrently herewith the bonds and insurance required by the Contract Documents, said bonds and insurance having been approved by the Sponsor and attached hereto. The Performance Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the completion of the project in accordance with the Contract Documents, without additional cost to the Sponsor. The Payment Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the payment of all project costs in accordance with the Contract Documents, without additional cost to the Sponsor. The Maintenance Bond will be so conditioned as to provide for the correction or replacement of any portion of the Work that proves defective in materials or workmanship for a period of one year following final acceptance of the project and shall cover not only the material but also the costs of removal, correction, re-construction and any other costs incurred in the repair of defective portions of the Work.

ARTICLE 7

Breach Of Contract Terms, Sanctions – 49 CFR Part 18 (Version 1, 1/5/90)

Any Violation or breach of the terms of this Contract on the part of the Contractor or Subcontractor may result in the suspension or termination of this Contract or such other action which may be

necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 8

Termination Of Contract – 49 CFR Part 18

(Version 1, 1/5/90)

1. The Sponsor may, by written notice, terminate this Contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the Contract Price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the Contract Price shall be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9

Bonding Clauses for Construction Contracts and Subcontracts.

1. The Contractor agrees to furnish a performance bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract.
2. The Contractor agrees to furnish a Payment Bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to assure payment of all monies owing by the Contractor under the Agreement and other Contract Documents.

ARTICLE 10

Arizona Executive Order 75-5

This Contract complies with the provisions of Arizona Executive Order 75-5, dated April 28, 1975, related to equal opportunity. The duly Authorized Representatives of the State shall have access to

any books, documents, papers and records of the Consultant which are in any way pertinent to the Contract for a period of five (5) years, in accordance with A.R.S. 35-214, for the purpose of making inspections, examinations, excerpts and transcriptions.

ARTICLE 11

Hold Harmless

All Contractors or Subcontractors performing work under this Agreement agree to hold harmless, indemnify and defend, the Town of Payson and the Engineer, their consultants and each of their officers, agents and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the Work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the Town of Payson, the Engineer, their consultants or their officers, agents and employees

ARTICLE 12

Agreement Binding

The Sponsor and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Sponsor and the Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Sponsor nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and specifically, the Contractor shall not assign any moneys due or to become due without the prior written consent of the Sponsor.

IN WITNESS WHEREOF, the Town of Payson has caused this Agreement to be subscribed by its Chair and sealed and attested by its Secretary in its behalf; and the Contractor, Second Party, has signed this Contract the day and the year first mentioned herein.

This Agreement is executed in five counterparts, each deemed to be an original.

SPONSOR, First Party

Town of Payson

By _____, Mayor

ATTEST:

_____, Secretary

CONTRACTOR, Second Party
McCauley Construction Inc.

By _____, _____
(Title)

WITNESS:

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: _____