RESOLUTION NO. 2921

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE NORTH MANZANITA DRIVE RECONSTRUCTION CONTRACT BETWEEN JNL CONTRACTING, INC. ("CONTRACTOR"), AND THE TOWN OF PAYSON, AN ARIZONA MUNICIPAL CORPORATION, ("TOWN").

WHEREAS, pursuant to A.R.S. § 9-240 (A) and (B), the Town 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)(3), the Town Council shall also have power to exercise exclusive control over the streets and to regulate, grade or otherwise improve the same within the town limits; and

WHEREAS, pursuant to A.R.S. § 28-6533, all Highway User Revenue Funds ("HURF") shall be spent for the purposes prescribed in Article IX. § 14 of the Arizona Constitution exclusively street and highway purposes; and

WHEREAS, the TOWN solicited bids for Reconstruction of approximately 1,235 linear feet of roadway and installation of approximately 1,200 linear feet of water line and five bidders submitted bids with CONTRACTOR having submitted the low bid; and

WHEREAS, the TOWN desires to accept the low bid from CONTRACTOR to perform the contract work in accordance with the approved plans and specifications to specific town drive listed in the Contract Documents; and

WHEREAS, the TOWN agrees to pay CONTRACTOR up to $471,210.10 for the work specified in Section 2.1 in Exhibit A and identified as the **NORTH MANZANITA DRIVE RECONSTRUCTION CONTRACT** with final project costs being based on field measurement of the bid items.

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

Section 1: That **NORTH MANZANITA DRIVE RECONSTRUCTION CONTRACT,** with JNL CONTRACTING, INC., c/o Jarrall W. Floyd, Jr., P.O. Box 362, Payson, Arizona 85547 is approved and authorized, in the bid amount up to $471,210.10. Final project costs will be based on field measurement of the bid items.

Prepared by Town of Payson Legal Department

HMF:dkk May 11, 2016 (3:01PM)

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Section 2: That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Contract in substantially the form attached hereto as Exhibit A.

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 **May**, 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

Prepared by Town of Payson Legal Department

HMF:dkk May 11, 2016 (12:08PM)

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EXHIBIT A

to Resolution 2921

(Manzanita Drive Reconstruction Contract)

NORTH MANZANITA DRIVE RECONSTRUCTION CONTRACT BETWEEN JNL CONTRACTING, INC. AND THE TOWN OF PAYSON

1. **Parties.** The parties to this Contract are JNL Contracting, Inc., an Arizona Corporation, ("Contractor") and the Town of Payson, an Arizona municipal corporation, ("Town") (collectively, the "Parties"). The Town and the Contractor agree as follows:

2. **Scope of Services**

2.1 Reconstruct approximately 1,235 linear feet of roadway and install approximately 1,200 linear feet of water line including all appurtentces in accordance with the approved plans and specifications.

2.2 The term "Contract Documents" means and includes the following when prepared in conjunction with this Contract:

A. Advertisement for bids or proposals;
B. Information for bidders;
C. Bid;
D. Bid bond;
E. Contract;
F. General conditions;
G. Supplemental general conditions;
H. Payment bond;
I. Performance bond;
J. Notice of award;
K. Notice to proceed;
L. Drawings;
M. Specifications;
N. Addenda;
O. Special provisions;
P. Details;
Q. Proposal;
R. Plans.

2.3 The Contractor represents that he/she has visited the site or otherwise familiarized themselves with the conditions necessary to complete the Project.

2.4 The Contractor represents that: (a) it is validly exists and in good standing under the laws of Arizona (b) it is appropriately licensed by the Arizona State Registrar of Contractors to perform this work, and (c) it is authorized to perform the work contemplated by the Contract Documents in the Town of Payson, County of Gila, State of Arizona.

2.5 The Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the Project; and shall provide all reasonable

protection to prevent damage, injury or loss to: (a) employees on the Project and other persons who may be affected; (b) the Project, raw materials, and equipment to be incorporated therein; and (c) other property at the site or adjacent thereto, including, but not limited to trees, shrubs, walks, pavements, lawns, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

3. **Effective Date and Term.**

This Contract shall be effective on the date of the last signature of the Parties and shall terminate on _____, ninety (90) calendars after the issuance of the Notice to Proceed.

4. **Compensation and Payment.**

The Contractor agrees to perform as described herein for the bid sum of Four Hundred Seventy One Thousand, Two Hundred Ten Dollars and 10/100 ($471,210.10). Final project cost will be based on actual field measurement of the bid items.

5. **Insurance.** Contractor 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 ONE MILLION DOLLARS ($1,000,000) for 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) for each occurrence with respect to Contractor's vehicles.

5.4 The policies required by Sections 5.2 and 5.3 shall be endorsed to include Town, 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 Town, its officers or employees shall be excess and not contributory insurance.

5.5 Contractor and its insurers providing the required coverages shall waive all rights of subrogation against Town and its officers, employees, and agents.

5.6 Prior to commencing Services, Contractor shall furnish Town 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 Town's representative as identified in Paragraph 15.2.

5.7 Town 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 To the fullest extent permitted by law, Contractor, its successors and assigns shall indemnify and hold harmless PAYSON, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or other persons employed or used by the Contractor in the performance of this Agreement. Contractor's duty to indemnify and hold harmless PAYSON, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by Contractor's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person by Contractor or used by Contractor in the performance of this Agreement.

6.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

7. **Modification.** This Contract may only be amended or modified by a written instrument executed by the Town and the Contractor.

8. **Termination.** In case of a breach of any provision in this Contract by Contractor, the Town may terminate this Contract, in whole or in part, by written notice to Contractor. Such termination will not limit or waive any other remedies available to the Town.

9. **Taxes.** Contractor shall have exclusive liability for and shall pay all taxes and fees imposed in connection with any part of the Services. Contractor shall hold the Town harmless for these taxes and fees.

10. **Laws and Regulations.** Contractor and it 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 Contractor shall obtain a Town business license. If the Contractor 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 Contractor and any Subcontractor employed by Contractor warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with 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 Contractor or Subcontractor who works on this Contract to ensure that the Contractor and Subcontractor is complying with Section 14.1.

15. **Other Provisions.**

15.1 **Assignment.** Contractor shall not assign or subcontract the Contract or any part without the written consent of Town. The Town 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:

Town:
Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Attention: Town Manager

Contractor:
JNL Contracting, Inc.
P.O. Box 362
Payson, Arizona 85547
Attention: Jarrall W. Floyd, Jr.
President

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.** Contractor 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 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 Town 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.** The Town 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. The Town shall not have any liability for payments for which it is 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.

WHEREFORE, the parties have caused this Contract to be executed by their duly authorized representatives.

JNL CONTRACTING, Inc.

an Arizona Corporation

By_____ _____
Dated

TOWN OF PAYSON,
an Arizona municipal corporation

By_____ _____
Mayor Dated

ATTEST:

_____
Silvia Smith, Town Clerk

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_____ Date:_____

Hector M. Figueroa, Town Attorney