RESOLUTION NO. 2014-13

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR A NEW SUPERVISORY CONTROL AND DATA ACQUISITION ("SCADA") SYSTEM AND GRANTING FURTHER AUTHORITY

WHEREAS, the City previously awarded a contract to Design 21 Group to develop plans and specifications for a Supervisory Control and Data Acquisition System ("SCADA System");

WHEREAS, upon completion of the plans and specifications, the City duly advertised for bid proposals for construction work for the SCADA System in accordance with such plans and specifications (the "Project");

WHEREAS, the City received and opened and read aloud the bids for the Project on February 6, 2014 at 11:00 a.m. at Pacific City Hall, 300 Hoven Drive, Pacific, MO 63069;

WHEREAS, bids were reviewed by staff for compliance to the bid specifications and after determining all qualified bids, staff recommends awarding the Project to Electric Controls Co. Inc., the lowest, qualified bidder, in the amount of $314,638.00;

WHEREAS, staff has reviewed the contract and recommends that the City award the contract for the limited scope of the Water System SCADA System as shown in the bid proposal for the amount of $182,769.00;

WHEREAS, after due consideration, the Board of Aldermen has determined that Electric Controls Co. Inc. was the lowest, qualified bidder and finds that it is in the best interests of the City to award the contract for the limited scope of the Water System SCADA System as shown in the bid proposal to Electric Controls Co. Inc.; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF PACIFIC, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a City-Contractor Agreement with Electric Controls Co. Inc. for only the Water System SCADA System in an amount not to exceed $182,769.00 in substantially the form of Exhibit A incorporated herein by reference ("City-Contractor Agreement"), and authorizes the City Administrator and City Engineer to take such other actions as may be required to effect the provisions of this Resolution.

Section 2: This Resolution shall take effect and be in full force from and after its passage by the Board of Aldermen.

Adopted by the Board of Aldermen and approved by the Mayor this 18th day of February 2014.

_____

Herbert C. Adams, Mayor

ATTEST:

_____

Exhibit A

City-Contractor Agreement

CITY-CONTRACTOR AGREEMENT

THIS CITY CONTRACTOR AGREEMENT (this "Agreement"), is made and entered into as of this _____ day of February 2014, by and between **Electric Controls Company**, a Missouri Corporation having a principal office at 2735 Mercantile Dr., St. Louis, Mo. 63144 (the "Contractor"), and the **City of Pacific,** a Missouri municipal corporation located in Franklin and St. Louis Counties (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

A. In response to RFP 2013-004 of the City requesting bid proposals for New SCADA System Project (the "Project"), the Contractor has submitted a certain Bid Proposal in accordance with the Bid Documents to perform the Work.

B. After due consideration, the City has accepted the Bid Proposal of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Project in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents.** This Agreement shall consist of: (i) RFP 2013-004 including, without limitation:

1. Advertisement for Bids
2. Instructions to Bidders
3. Executed City Contractor Agreement (executed by City and Contractor)
4. General Conditions
5. Applicable Wage Rates
6. Plans and Technical Specifications
7. Bid Proposal (executed by Contractor)
8. Bidder Qualifications (executed by Contractor)
9. Bid Bond (if submitted, executed by Contractor and surety)
10. Performance and Maintenance Bond (executed by Contractor and surety)
11. Payment Bond (executed by Contractor and surety)
12. Subcontractor Utilization Form (executed by Contractor)
13. Affidavit of Non-Collusion (executed by Contractor)
14. Notice of Award (issued by City and receipt acknowledged by Contractor)
15. Notice to Proceed (issued by City and receipt acknowledged by Contractor)

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, any duly-issued Modifications, and all other documents contained or specified

within the Project Manual dated _____, as such may be on file in the office of the City Clerk of Pacific, Missouri. (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **The Work/Contract Sum.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is 314,638.00, which includes all compensation to Contactor due for the Work, which shall include all such work within the Base Bid. Any additional Work not within the Base Bid that is hereinafter approved by the City in writing pursuant to a Change Order shall be completed for the unit prices set forth in the Contract Documents, if applicable.

3. **Time of Completion.** Contractor shall commence work under this Agreement within fourteen (14) days of receipt of written notice from the City to proceed and shall fully complete all items of the Work within sixty (60) consecutive calendar days from the date of such notice to proceed. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

4. **Guaranty.** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

5. **Payment Bond.** If the Contractor's Bid is in excess of $25,000, the Contractor shall furnish within five (5) days of notification of contract award, a satisfactory Payment Bond in the full amount of the Bid listed on the Bid Proposal form. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents. The Payment Bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular

Number 570. The expense of this bond shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the City. The premiums on such bond shall be paid by the Contractor.

6. **Performance and Maintenance Bond.** The Contractor shall also furnish within five (5) days of notification of contract award a satisfactory Performance and Maintenance Bond in the full amount of the Bid listed on the Bid Proposal form. The Performance and Maintenance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this City Contractor Agreement. The submitted Performance and Maintenance Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents. The Performance and Maintenance Bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of this bond shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the City. The premiums on such bond shall be paid by the Contractor.

7. **Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverages at least equal to the coverages set forth in this paragraph 7, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	$1,000,000 per occurrence $2,700,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	$1,000,000 per occurrence $2,700,000 aggregate
Employer's Liability	$1,000,000 bodily injury by accident (each accident) $1,000,000 bodily injury by disease (each employee) $1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site. The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the

complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Within five (5) days of notification of contract award, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph 7. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. The City may waive any insurance coverages or amounts required by this paragraph 7 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

8. **Indemnification.** To the fullest extent permitted by law, the Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

9. **Attorney Fees' and Costs.** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement or Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

10. **Liquidated Damages.** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of five hundred dollars ($500.00) for each calendar day that the Work remains uncompleted after the time allowed for the completion,

including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.

11. **Compliance with Federal, State and Local Law.** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

12. **Prevailing Wage.** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Missouri Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.

13. **Required OSHA Training.** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees who have not previously completed the program are required to complete the program within sixty days of beginning work on such construction project. Contractor acknowledges and agrees that any of Contractor's employees found on the Project site without documentation of the successful completion of the program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the Project. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph 14 shall have the definitions as provided in Section 292.675.1 RSMo.

15. **Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

16. **Other Representations, Warranties and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Project and has provided services such as the ones to be performed under this

Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.

17. **Amendment; Waiver.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

18. **Choice of Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

19. **Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

20. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

21. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR	CITY OF PACIFIC, MISSOURI
_____	_____
Name	City Administrator
_____	_____
Address	Attested
_____	_____
City, State, Zip	Date

By: _____