

Town of Little Elm, Texas

Professional Services Agreement

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and [Signature Automation, LLC](#), (hereinafter referred to as the "Consultant") for Construction and Engineering Services for the Water and Wastewater System SCADA Improvement Design Phase I, (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

The Contract between the Owner and the Consultant, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last Party to execute it.

1.2. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Solicitation, Requirements and Instructions to Bidders/Proposers, the Specifications, terms and conditions, Attachments, Maps, Drawings, Scope of Service, Timeline, all Change Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Agreement.

ARTICLE 2: RECITALS

- 2.1 The Town desires to have the Consultant develop the program and provide necessary services to develop the same ("PROJECT"); and
- 2.2 The Consultant has the knowledge, ability and expertise to provide such services; and
- 2.3 The Town desires to engage the services of Consultant, as an independent Consultant and not as an employee, to provide services as set forth herein and in Exhibit A: Scope of Services which is attached hereto and incorporated herein.

ARTICLE 3: TERM / TERMINATION

3.1 TERM

The term of this Agreement shall begin on the date of its execution by all Parties. This Agreement shall continue until Consultant completes the services required herein to the satisfaction of the Town, unless sooner terminated as provided herein.

3.2 TERMINATION

This Agreement may be suspended or terminated by either Party with or without cause at any time by giving written notice to the other Party. In the event suspension or termination is without cause, payment to the Consultant, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

In the event that the Town requires a modification of this Agreement with Consultant, and in the event the Parties fail to agree upon a modification of this Agreement, the Parties shall have the option of terminating this Agreement. Payment to Consultant shall be made by the Town in accordance with the

terms of this Agreement, for the services mutually agreed upon by the Parties to be properly performed by the Consultant prior to such termination date.

ARTICLE 4: SCOPE OF SERVICES

4.1 SCOPE

The following services, when authorized in writing by a Notice to Proceed from the Town, shall be performed by Consultant in accordance with the Town's requirements and as set forth in the attached Exhibit A, Scope of Services:

Construction phase services for the Project, which includes the following:

- Engineering Services during construction of the Project.
- Submittal and RFI review for all items required under the Project scope.
- Programming services to program the site PLCs and modify the main HMI system to include the new signals and controls for the sites under this Project.
- Final as-built record drawings

If there is a conflict between the above quoted subjects and Exhibit A, then such conflict shall be resolved pursuant to the provisions of Section 10.9, below.

4.2 AUTHORIZED AGENT

All work performed by the Consultant will be performed under this Agreement, signed by a duly authorized agent of the Town as approved by resolution of the Town Council of the Town of Little Elm, Texas, and the designated authorized agent for the Consultant.

ARTICLE 5: COMPENSATION / PAYMENT TERMS AND CONDITIONS

5.1 Compensation for the performance of Professional Services described herein shall be paid to Consultant by the Town in a total amount not to exceed **Three hundred and twenty-two thousand one hundred eighty-six** dollars and twenty-five cents (\$322,186.25) which shall accrue and be payable as provided in Sections 5.1 and 5.2 hereof.

5.2 Work will be performed as set forth in Exhibit A – Scope of Services, which is attached hereto and incorporated herein by reference, or as otherwise provided in negotiated fee schedules approved within this Agreement, if any.

5.3 Consultant payment for work under this Agreement shall be made in installments billed not more frequently than once each month upon receipt of invoices from the Consultant. If the Town fails to make any payment due the Consultant within thirty (30) days after receipt of Consultant's invoice, the amounts due the Consultant will be increased at the rate of 1.5% per month from said thirtieth day, unless there is a good faith refusal by the Town to pay. Payment shall be remitted to Consultant by Town as instructed on invoices.

ARTICLE 6: TIME FOR COMPLETION

6.1 The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Assigned Project(s) through completion of the project(s). Specific periods of time for rendering services are set forth in the Scope of Services to this Agreement, by which times defined services are to be completed.

6.2 If the Town fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation, but in no event shall such compensation exceed the scope of services schedule of maximum payment unless a written amendment to this Agreement is executed between the Parties.

ARTICLE 7: INDEMNIFICATION

7.1 THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE, LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE CONSULTANT, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE CONSULTANT'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE CONSULTANT SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO CONSULTANT AS A MATTER OF LAW.

7.02 NOTHING CONTAINED HEREIN SHALL CONSTITUTE A WAIVER OF GOVERNMENTAL IMMUNITY IN FAVOR OF ANY PARTY.

7.03 CONSULTANT AGREES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT OF THE TOWN, AND THAT CONSULTANT IS SUBJECT, AS AN EMPLOYER, TO ALL APPLICABLE UNEMPLOYMENT COMPENSATION STATUTES, SO FAR AS TO RELIEVE THE TOWN OF ANY RESPONSIBILITY OR LIABILITY FROM TREATING CONSULTANT'S EMPLOYEES AS EMPLOYEES OF TOWN FOR THE PURPOSE OF KEEPING RECORDS, MAKING REPORTS OR PAYMENTS OF UNEMPLOYMENT COMPENSATION TAXES OR CONTRIBUTIONS. CONSULTANT FURTHER AGREES TO INDEMNIFY AND HOLD THE TOWN HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.

7.04 CONSULTANT SHALL DEFEND AND INDEMNIFY AND HOLD THE TOWN HARMLESS FROM ANY AND ALL CLAIMS, SUITS OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THIS AGREEMENT.

ARTICLE 8: INSURANCE

8.1 Insurance

The Consultant shall provide and maintain insurance as listed in the insurance requirements document.

ARTICLE 9: DEFAULT

In the event Consultant fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within thirty (30) days after written notice by Town to Consultant, Town may, at its sole discretion without prejudice to any other right or remedy.

- (a) Terminate this Agreement and be relieved of the payment of any further consideration to Consultant except for all work determined by the Town to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Consultant to and from meetings called by the Town at which Consultant is required to attend, but shall not include any loss of profit of Consultant. In the event of such termination, the Town may proceed to complete the services in any manner

deemed proper by the Town, either by the use of its own forces or by resubmitting to others. Consultant agrees that any costs incurred to complete the services herein provided for may be deducted and paid by the Town out of such monies as may be due or that may thereafter become due to Consultant under and by virtue of this Agreement.

- (b) The Town may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of Consultant.

ARTICLE 10: MISCELLANEOUS

10.1 Reuse of Documents:

All documents including Maps, Plans and Specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service; and Consultant shall retain ownership and property interest therein whether or not the work is completed. The Town may make and retain copies of any plans or specifications provided under this Agreement for the use by Town and others; such documents are not intended or suitable for reuse by Town or others on extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the Town's sole risk and without liability to the Consultant.

10.2 Entire Agreement.

This Agreement constitutes the sole and only Agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties with respect to this subject matter.

10.3 Assignment.

Neither this Agreement nor any duties or obligations under it shall be assignable by Consultant without the prior written consent of the Town. In the event of an assignment by Consultant to which the Town has consented, the assignee or the assignee's legal representative shall agree in writing with the Town to personally assume, perform, and be bound by all the covenants, obligations, and agreements contained in this Agreement.

10.4 Adjustments in Services/Amendment.

This Agreement may be amended by the mutual written agreement of the Parties. Consultant shall not make any claims for extra services, additional services or changes in the services without a written agreement with the Town prior to the performance of such services.

10.5 Governing law.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Denton County, Texas.

10.6 Notices.

All notices required by this Agreement shall be in writing and addressed to the following, or such other Party or address as either Party designates in writing, by certified mail, postage prepaid or by hand delivery:

Town of Little Elm

Purchasing
100 W. Eldorado Pkwy.
Little Elm, TX 75068
214-975-0411
purchasing@littleelm.org

Firm Name

Rick Hidalgo, P.E., President/CEO
17950 Preston Road, Suite 300
Dallas, TX 75252
469-619-1241
hjhidalgo@prime-control.com

10.7 Legal construction.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10.8 Successors and Assigns.

- (a) The Town and Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of Town and Consultant are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other Party in respect of all covenants and obligations of this Agreement.
- (b) Neither the Town nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other Party, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- (c) Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Consultant, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Town and the Consultant.

10.9 Conflict.

If a conflict exists between this Agreement, and an Exhibit, the Solicitation, and/or the Response, then such conflicts shall be resolved as follows:

- (a) If a conflict exists between this Agreement and an Exhibit, the Solicitation, or the Response, then this Agreement shall control.
- (b) If a conflict exists between the Response and an Exhibit, the Exhibit shall control.
- (c) If a conflict exists between the Response and the Solicitation, the Solicitation shall control.

10.10 Severability

Any provision or part of this Agreement that is held to be void or unenforceable under any law or regulation or by a court of competent jurisdiction shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Town and the Consultant, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.11 Captions

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

10.12 Counterparts

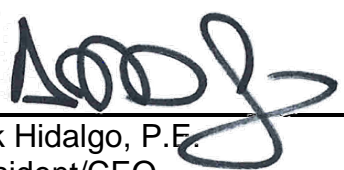
This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this the ____ day of _____, 2024.

TOWN OF LITTLE ELM

CONSULTANT

Matt Mueller, Town Manager



Rick Hidalgo, P.E.
President/CEO
Signature Automation, LLC

Exhibit A: Scope of Services