



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Kellen Gamradt, Engineering Inspector

SUBJECT: Professional Services Agreement for the 2016 Burrup Lift Station Improvements Project

MEETING DATE: June 27th, 2016

AGENDA ITEM TYPE: Consent

RECOMMENDATION: Authorize the City Manager to sign a Professional Services Agreement with AE2S to provide Electrical Instrumentation and Programming for the Burrup Lift Station Improvements Project.

BACKGROUND: As a component of the Burrup Lift Station Improvements Project, programming and electrical instrumentation modifications are required to get a fully functional lift station. City staff have selected AE2S as the most qualified firm to complete this scope of services.

UNRESOLVED ISSUES: None

ALTERNATIVES: Disapprove

FISCAL EFFECTS: The cost of these services total \$9,500 and will be paid for with approved funding from the waste water fund.

Attachments: *Professional Services Agreement, Scope of Services*

Report compiled on: 06/13/16



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the **CITY OF BOZEMAN, MONTANA**, a self governing municipal corporation organized and existing under its Charter and the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana, with a mailing address of PO Box 1230, Bozeman, MT 59771, hereinafter referred to as “City,” and, AE2S, hereinafter referred to as “Engineer.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to enter this Agreement with Engineer to perform for City services described in the Scope of Services attached hereto as Attachment “A” and by this reference made a part hereof.

2. **Term/Effective Date:** This Agreement is effective upon the date of its execution [and will terminate on the 13 day of June, 2017.

3. **Scope of Work:** Engineer will perform the work and provide the services in accordance with the requirements of the Scope of Services. For conflicts between this Agreement and the Scope of Services, unless specifically provided otherwise, the Agreement governs.

4. **Payment:** City agrees to pay Engineer the amount specified in the Scope of Services. Any alteration or deviation from the described services that involves additional costs above the Agreement amount will be performed by Engineer after written request by the City, and will become an additional charge over and above the amount listed in the Scope of Services. The City must agree in writing upon any additional charges.

5. **Engineer’s Representations:** To induce City to enter into this Agreement, Engineer makes the following representations:

a. Engineer has familiarized itself with the nature and extent of this Agreement, the Scope of Services, and with all local conditions and federal, state and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress or performance of the Scope of

Services.

b. Engineer represents and warrants to City that it has the experience and ability to perform the services required by this Agreement; that it will perform said services in a professional, competent and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or any other rights of any nature whatsoever, or violate any federal, state and municipal laws. The City will not determine or exercise control as to general procedures or formats necessary to have these services meet this warranty.

6. Independent Contractor Status/Labor Relations: The parties agree that Engineer is an independent Contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Engineer is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Engineer is not authorized to represent the City or otherwise bind the City in any dealings between Engineer and any third parties.

Engineer shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Engineer shall maintain workers' compensation coverage for all members and employees of Engineer's business, except for those members who are exempted by law.

Engineer shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent Contractors.

Engineer shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes.

Engineer shall post a legible statement of all wages and fringe benefits to be paid to the Engineer's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the Engineer's normal place of business and shall be made no later than the first day of services provided under this Agreement. Such posting shall be removed only upon expiration or termination of this Agreement.

Engineer shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes and for any claims regarding underpaid prevailing wages.

7. Indemnity/Waiver of Claims/Insurance: For other than professional services rendered, to the fullest extent permitted by law, Engineer agrees to release, defend, indemnify, and hold harmless the City, its agents, representatives, employees, and officers (collectively referred to for purposes of this Section as the City) from and against any and all claims, demands, actions, fees and costs (including attorney's fees and the costs and fees of and expert witness and consultants), losses, expenses, liabilities (including liability where activity is inherently or intrinsically dangerous) or damages of whatever kind or nature connected therewith and without limit and without regard to the cause or causes thereof or the negligence of any party or parties that may be asserted against, recovered from or suffered by the City occasioned by, growing or arising out of or resulting from or in any way related to: (i) the negligent, reckless, or intentional misconduct of the Engineer; (ii) any negligent, reckless, or intentional misconduct of any of the Engineer's agents.

For the professional services rendered, to the fullest extent permitted by law, Engineer agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Engineer or Engineer's agents or employees.

Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist. The indemnification obligations of this Section must not be construed to negate, abridge, or reduce any common-law or statutory rights of the indemnitee(s) which would otherwise exist as to such indemnitee(s).

Engineer's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by City.

Should any indemnitee described herein be required to bring an action against the Engineer to assert its right to defense or indemnification under this Agreement or under the Engineer's applicable insurance policies required below the indemnitee shall be entitled to recover reasonable costs and attorney fees incurred in asserting its right to indemnification or defense but only if a court of competent jurisdiction determines the Engineer was obligated to defend the claim(s) or was obligated to indemnify the indemnitee for a claim(s) or any portion(s) thereof.

In the event of an action filed against City resulting from the City’s performance under this Agreement, the City may elect to represent itself and incur all costs and expenses of suit.

Engineer also waives any and all claims and recourse against the City or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except “responsibility for his own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent” as per 28-2-702, MCA.

These obligations shall survive termination of this Agreement and the services performed hereunder.

In addition to and independent from the above, Engineer shall at Engineer’s expense secure insurance coverage through an insurance company or companies duly licensed and authorized to conduct insurance business in Montana which insures the liabilities and obligations specifically assumed by the Engineer in this Section. The insurance coverage shall not contain any exclusion for liabilities specifically assumed by the Engineer in subsection (a) of this Section.

The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by the City without limit and without regard to the cause therefore and which is acceptable to the City and Engineer shall furnish to the City an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

- Workers’ Compensation – statutory;
- Employers’ Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Automobile Liability - \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate; and
- Professional Liability - \$1,000,000 per claim; \$2,000,000 annual aggregate.

The above amounts shall be exclusive of defense costs. The City of Bozeman, its officers, agents, and employees, shall be endorsed as an additional or named insured on a primary non-contributory basis on both the Commercial General and Automobile Liability policies. The insurance and required endorsements must be in a form suitable to City and shall include no less than a sixty (60) day notice of cancellation or non-renewal. The City must approve all insurance

coverage and endorsements prior to the Engineer commencing work. Engineer shall notify City within two (2) business days of Engineer's receipt of notice that any required insurance coverage will be terminated or Engineer's decision to terminate any required insurance coverage for any reason.

The City must approve all insurance coverage and endorsements prior to the Engineer commencing work.

8. Termination for Engineer's Fault:

a. If Engineer refuses or fails to timely do the work, or any part thereof, or fails to perform any of its obligations under this Agreement, or otherwise breaches any terms or conditions of this Agreement, the City may, by written notice, terminate this Agreement and the Engineer's right to proceed with all or any part of the work ("Termination Notice Due to Engineer's Fault"). The City may then take over the work and complete it, either with its own resources or by re-letting the contract to any other third party.

b. In the event of a termination pursuant to this Section 8, Engineer shall be entitled to payment only for those services Engineer actually rendered.

c. Any termination provided for by this Section 8 shall be in addition to any other remedies to which the City may be entitled under the law or at equity.

d. In the event of termination under this Section 8, Engineer shall, under no circumstances, be entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

9. Termination for City's Convenience:

a. Should conditions arise which, in the sole opinion and discretion of the City, make it advisable to the City to cease performance under this Agreement City may terminate this Agreement by written notice to Engineer ("Notice of Termination for City's Convenience"). The termination shall be effective in the manner specified in the Notice of Termination for City's Convenience and shall be without prejudice to any claims that the City may otherwise have against Engineer.

b. Upon receipt of the Notice of Termination for City's Convenience, unless

otherwise directed in the Notice, the Engineer shall immediately cease performance under this Agreement and make every reasonable effort to refrain from continuing work, incurring additional expenses or costs under this Agreement and shall immediately cancel all existing orders or contracts upon terms satisfactory to the City. Engineer shall do only such work as may be necessary to preserve, protect, and maintain work already completed or immediately in progress.

c. In the event of a termination pursuant to this Section 13, Engineer is entitled to payment only for those services Engineer actually rendered on or before the receipt of the Notice of Termination for City's Convenience.

d. The compensation described in Section 13(c) is the sole compensation due to Engineer for its performance of this Agreement. Engineer shall, under no circumstances, be entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

10. Limitation on Engineer's Damages; Time for Asserting Claim:

a. In the event of a claim for damages by Engineer under this Agreement, Engineer's damages shall be limited to contract damages and Engineer hereby expressly waives any right to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature or kind.

b. In the event Engineer wants to assert a claim for damages of any kind or nature, Engineer shall provide City with written notice of its claim, the facts and circumstances surrounding and giving rise to the claim, and the total amount of damages sought by the claim, within ten (10) days of the facts and circumstances giving rise to the claim. In the event Engineer fails to provide such notice, Engineer shall waive all rights to assert such claim.

11. Representatives:

a. **City's Representative:** The City's Representative for the purpose of this Agreement shall be Kellen Gamradt, P.E. (Engineering Inspector) or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or

submission shall be directed to Craig Woolard as the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, Engineer may direct its communication or submission to other designated City personnel or agents as listed above and may receive approvals or authorization from such persons.

b. **Engineer's Representative:** The Engineer's Representative for the purpose of this Agreement shall be _____ or such other individual as Engineer shall designate in writing. Whenever direction to or communication with Engineer is required by this Agreement, such direction or communication shall be directed to Engineer's Representative; provided, however, that in exigent circumstances when Engineer's Representative is not available, City may direct its direction or communication to other designated Engineer personnel or agents.

12. **Permits:** Engineer shall provide all notices, comply with all applicable laws, ordinances, rules, and regulations, obtain all necessary permits, licenses, including a City of Bozeman business license, and inspections from applicable governmental authorities, and pay all fees and charges in connection therewith.

13 **Laws and Regulations:** Engineer shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA, all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act, and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.

14. **Nondiscrimination:** The Engineer will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. The Engineer will not refuse employment to a person, bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, color, religion, creed, political ideas, sex, age, marital status, national origin, actual or perceived sexual orientation, gender identity, physical or mental disability, except when the reasonable demands of the position require an age, physical or mental disability, marital status or sex distinction. The Engineer shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 2, United States Code, and all regulations promulgated

thereunder. The Engineer shall require these nondiscrimination terms of its sub-Contractors providing services under this agreement.

15. Intoxicants; DOT Drug and Alcohol Regulations/Safety and Training: Engineer shall not permit or suffer the introduction or use of any intoxicants, including alcohol or illegal drugs, by any employee or agent engaged in services to the City under this Agreement while on City property or in the performance of any activities under this Agreement. Engineer acknowledges it is aware of and shall comply with its responsibilities and obligations under the U.S. Department of Transportation (DOT) regulations governing anti-drug and alcohol misuse prevention plans and related testing. City shall have the right to request proof of such compliance and Engineer shall be obligated to furnish such proof.

The Engineer shall be responsible for instructing and training the Engineer's employees and agents in proper and specified work methods and procedures. The Engineer shall provide continuous inspection and supervision of the work performed. The Engineer is responsible for instructing his employees and agents in safe work practices.

16. Modification and Assignability: This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Engineer may not subcontract or assign Engineer's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any sub-Contractor or assignee will be bound by all of the terms and conditions of this Agreement.

17. Reports/Accountability/Public Information: Engineer agrees to develop and/or provide documentation as requested by the City demonstrating Engineer's compliance with the requirements of this Agreement. Engineer shall allow the City, its auditors, and other persons authorized by the City to inspect and copy its books and records for the purpose of verifying that the reimbursement of monies distributed to Engineer pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, state, and local law. The Engineer shall not issue any statements, releases or information for public dissemination without prior approval of the City.

18. Non-Waiver: A waiver by either party any default or breach by the other party of any terms or conditions of this Agreement does not limit the other party's right to enforce such term or conditions or to pursue any available legal or equitable rights in the event of any subsequent default or breach.

19. **Attorney's Fees and Costs:** That in the event it becomes necessary for either Party of this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs, including fees, salary, and costs of in-house counsel to include City Attorney.

20. **Taxes:** Engineer is obligated to pay all taxes of any kind or nature and make all appropriate employee withholdings.

21. **Dispute Resolution:**

a. Any claim, controversy, or dispute between the parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the parties, the parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions.

b. If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute may only be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.

22. **Survival:** Engineer's indemnification shall survive the termination or expiration of this Agreement for the maximum period allowed under applicable law.

23. **Headings:** The headings used in this Agreement are for convenience only and are not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

24. **Severability:** If any portion of this Agreement is held to be void or unenforceable, the balance thereof shall continue in effect.

25. **Applicable Law:** The parties agree that this Agreement is governed in all respects by the laws of the State of Montana.

26. **Binding Effect:** This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the parties.

27. **No Third-Party Beneficiary:** This Agreement is for the exclusive benefit of the

parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party.

28. Counterparts: This Agreement may be executed in counterparts, which together constitute one instrument.

29. Integration: This Agreement and all Exhibits attached hereto constitute the entire agreement of the parties. Covenants or representations not contained therein or made a part thereof by reference, are not binding upon the parties. There are no understandings between the parties other than as set forth in this Agreement. All communications, either verbal or written, made prior to the date of this Agreement are hereby abrogated and withdrawn unless specifically made a part of this Agreement by reference.

****** END OF AGREEMENT EXCEPT FOR SIGNATURES ******

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BOZEMAN, MONTANA

ENGINEER (Type Name Above)

By _____
Chris Kukulski, City Manager

By _____

Print Name:
Print Title: _____

APPROVED AS TO FORM:

By _____
Greg Sullivan, Bozeman City Attorney



June 13, 2016

John Alston, Public Works Director
 City of Bozeman
 PO Box 1230
 Bozeman, MT 59771-1230

Re: Burrup Lift Station electrical panel improvements

Mr. Alston:

Upon your request, AE2S has prepared a proposal for engineering, drafting, and materials procurement to be provided in association to the Burrup Lift Station electrical panel improvements discussed.

Engineering

1. Re-engineer where practical the Burrup Lift Station RTU so that the new design is comparable to the Cattail lift station RTU.
2. Redline the existing drawings for the Burrup Lift Station, showing changes required to the power distribution schematics, motor control, RTU enclosure backplate, terminal strip layouts, and I/O layouts,
3. Reuse as possible the components presently installed in the Burrup RTU including;
 - Power distribution terminal strip
 - I/O terminal strip for field wiring from I/O devices
 - Telemetry radio and related components
 - 24VDC power supply
4. Each pump motor starter will have an enclosed, non-fused, disconnect switch in the supplying power circuit.

Documentation

Supply drawing sets for the Burrup Lift Station Upgrade, including:

- a. Demolition and Construction drawings for upgrading Burrup Lift Station panels. The drawings shall be the redlined current drawings and/or new construction drawings.
- b. Drafted As-Built drawing for upgraded Burrup lift station control system as marked up from the construction drawings by the installer.

Materials Procurement

Item	Qty	Unit Price	Total Cost
Micrologix 1400 (1766-L32AWA)	1	\$881	\$881
Memory Module (1766-MM1)	1	\$211	\$211
Analog Input Module (1766-IF4)	1	\$391	\$391
Starter Disconnect (Leviton N3303-DS)	2	\$110	\$220
Surge Protection Device (SOLA HD FTV-2K-10S)	1	\$215	\$215
Current Transducer (AT1-420-24L-FT)	2	\$140	\$280

Advanced Engineering and Environmental Services, Inc.

300 15th Street South Suite 7 • Great Falls, MT 59405 • (t) 406-268-0626 • (f) 406-268-0628

Pressure Transducer (KPSI 750)	1	\$750	\$750
Digital Display (Red Lion)	2	\$200	\$400
Level Float	1	\$150	\$150
TOTAL EQUIPMENT COST			\$3,498

The total cost for the drafting and materials procurement associated with this project is **\$9,500**. Upon approval, please sign at the space provided below as acceptance of the proposed project costs.

Thank you for the opportunity to provide this proposal, please feel free to contact me at (406) 868-7166 or me at ross.hanson@ae2s.com with any questions or concerns you may have in regards.

Sincerely,

Ross Hanson
AE2S – I&C Technician

PROJECT PROPOSAL ACCEPTANCE –

BY:
Public Works Director **PROJECT ENGINEER**

DATE: 6-13-16