



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission
FROM: Natalie Meyer, Sustainability Program Manager
SUBJECT: Professional Services Agreement with Gradient Systems for utility and resource tracking software.

MEETING DATE: January 9, 2017

AGENDA ITEM TYPE: Consent

RECOMMENDATION: Authorize the City Manager to sign a Professional Services Agreement with Gradient Systems to maintain the municipal utility and resource tracking software.

BACKGROUND: In an effort to conserve financial resources and reduce greenhouse gas emissions under the Mayor's Climate Protection Agreement, the City acquired professional utility management software in 2010. The software, known as ResourceOne, aids the City in tracking municipal electricity, natural gas, solid waste, fleet fuel, water, and wastewater accounts. Gradient Systems coordinates directly with the utility and fuel providers to update the software electronically on a quarterly basis, thereby reducing error associated with manual data entry. The software provides on-demand reports with detail and summary data of accounts along with the associated greenhouse gas emissions. Each quarterly update includes anomaly flagging to help identify any billing errors or significant consumption changes. Maintaining the software largely satisfies the recommendation to manage municipal energy use (PBE-1) in the adopted 2008 Municipal Climate Action Plan.

UNRESOLVED ISSUES: There are no known unresolved issues to be addressed by the Commission.

ALTERNATIVES: As suggested by the Commission.

FISCAL EFFECTS: Per the attached agreement, the City would pay the Consultant \$7,200 for the technology platform, quarterly updates, anomaly flagging and technical support. This amount was authorized by the City Commission in the FY17 budget.

Attachments:
Professional Services Agreement

Report compiled on: 12/19/16

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of January , 2017, by and between the **CITY OF BOZEMAN, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana 59771, hereinafter referred to as “City,” and, Gradient Systems, 110 Schutz Lane, Bozeman, MT 59718, hereinafter referred to as “Consultant.”

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 hire Consultant as an independent contractor to perform for City services described in the Scope of Services attached hereto as Exhibit “B” and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 31st day of October, 2017.

3. **Scope of Work:** Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services attached hereto. Such services and products shall be referred to as the Work. For conflicts between this Agreement and the Scope of Services, unless specifically provided otherwise, the Agreement governs.

4. **Payment:** City agrees to pay Consultant, Gradient Systems, Seven Thousand and Two Hundred Dollars (\$7,200) for services performed pursuant to the Work Timeline attached hereto as Exhibit “A” and Seven Hundred Dollars (\$700) per additional license and installation upon request by the City. Any alteration or deviation from the described work that involves additional costs above the Agreement amount will be performed by Consultant after written request by the City, and will become an additional charge over and above the contract amount. The parties must agree in writing upon any additional charges.

5. **Consultant’s Representations:**

To induce City to enter into this Agreement, Consultant makes the following representations:

a. Consultant 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, growth policies, adopted plans of the City, ordinances, rules, and regulations that in any manner may affect cost, progress or performance of the Scope of Services.

b. Consultant 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: The parties agree that Consultant is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant 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. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant 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. Consultant shall maintain workers' compensation coverage for all members and employees of Consultant's business, except for those members who are exempted by law.

Consultant 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.

7. Indemnity/Waiver of Claims/Insurance: For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or Consultant's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Consultant 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 Consultant or Consultant's agents or employees.

Consultant 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.

Should City be required to bring an action against the Consultant to assert its right to defense or indemnification under this Agreement or under the Consultant's applicable insurance policies

required below the City 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 Consultant was obligated to defend the claim(s) or was obligated to indemnify the City for a claim(s) or any portion(s) thereof.

The above obligations shall survive termination of this agreement.

In addition to and independent from the above, Consultant shall secure insurance coverage for 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 Contractor shall furnish the City an accompanying certificate of insurance and accompanying endorsements issued by a company authorized to do business in the State of Montana in amounts not less than as follows:

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

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 thirty (30) day notice of cancellation or non-renewal. The City must approve all insurance coverage and endorsements prior to the Consultant commencing work.

8. Professional Service: Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.

9. Compliance with Laws: Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Consultant agrees to purchase a City business license.

10. Nondiscrimination: The Consultant agrees that all hiring by Consultant of persons performing this Agreement shall be on the basis of merit and qualifications. The Consultant will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. The Consultant 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 Consultant shall require these nondiscrimination terms of its subcontractors providing services under this Agreement.

11. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. Modification and Assignability: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

13. Grant/Work Made for Hire. To the extent that Consultant's Work includes any work of authorship entitled to protection under the copyright laws of the United States or elsewhere, the parties agree that: Consultant's Work has been specially ordered and commissioned by the City as a contribution to a collective work, a supplemental work, or such other category of work as may be eligible for treatment as a "work made for hire"; Consultant's is an independent contractor and not an employee, partner, joint author or joint venturer of the City; Consultant's Work shall be deemed to be a "commissioned work" and a "work made for hire" to the greatest extent possible under the law; and the City shall have the right to use, execute, reproduce, display, perform, distribute internally or externally, and prepare derivative works of the Consultant's Work.

To the extent that Consultant's work is not properly characterized as a "work made for hire," then Consultant shall, at its own expense, cause the City to have and obtain the right and license to use, execute, reproduce, display, perform, distribute internally or externally, and prepare derivative works based upon all such works and derivative works thereof and shall provide to the CITY a written license granting the City such rights. It is the intent of the parties that the specific work subject to said license shall be comprised of text, illustrations, calculations, photographs, and all other works Contractor copies that may belong to third parties for which license for use is required.

The City may reproduce and distribute reports available from Consultant's software for the duration of the agreement. The City may not install Consultant's software on additional computers without written permission from Consultant and additional expenses to the City may apply.

14. Liaison: City's designated liaison with Consultant is Jonas Grenz and Consultant's designated liaison with City is Natalie Meyer.

15. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

16. **Reports/Accountability/Public Information:** Consultant agrees to develop and/or provide documentation as requested by the City demonstrating Consultant’s compliance with the requirements of this Agreement. Consultant 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 Consultant pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, state, and local law. The Consultant shall not issue any statements, releases or information for public dissemination without prior approval of the City.

17. **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.

18. **Conflict of Interest:** Consultant shall not offer or give a gratuity of any type to any City employee or agent.

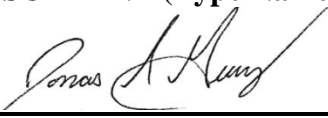
19. **Extensions:** this Agreement may, upon mutual agreement, be extended for a period of one year by written agreement of the Parties. In no case, however, may this Agreement run longer than five years.

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

CITY OF BOZEMAN, MONTANA

Gradient Systems
CONSULTANT (Type Name Above)

By _____
Chris Kukulski, City Manager

By 
Print Name: Jonas Grenz
Print Title: Owner/Operator

APPROVED AS TO FORM:

By _____
Greg Sullivan, Bozeman City Attorney

ATTACHMENT A

Year	Month	Activity	Gross		Percent of Total	Deliverable*	Payment	Note
			Payment	Total Payments				
2016	Jan							
	Feb							
	Mar							
	April							
	May							
	Jun							
	Jul							
	Aug							
	Sep							
	Oct	Update (July - September 2016)			25%	Database update on COB computer	\$ 1,800.00	
	Nov							
	Dec							
2017	Jan	Update (September - December 2016)			25%	Database update on COB computer	\$ 1,800.00	
	Feb							
	Mar							
	April	Update (January - March 2017) Initiate process for FY18 contract			25%	Database update on COB computer	\$ 1,800.00	Suggested action but not required
	May							
	Jun							
	Jul							
	Aug	Update (January - March 2017)			25%	Database update on COB computer	\$ 1,800.00	
	Sep							
	Oct							
	Nov							
	Dec							
TOTAL						\$ 7,200.00		

*Payments not to exceed percent of total payment prior to completion of deliverable

**City will maintain software license for a 14-day grace period following date of final quarterly update

ATTACHMENT B

SCOPE OF SERVICES

- I. Contractor will continue to collect and update ResourceOne with all City of Bozeman municipal electricity and natural gas accounts by,
 - a. importing all City of Bozeman's electricity and natural gas account data into the contractor's software program, *ResourceOne*, directly from the utility provider,
 - b. update all emission factors utilized in ResourceOne, and
- II. Contractor will continue to collect and update ResourceOne with street and traffic lighting electricity consumption,
- III. Contractor will continue to collect and update ResourceOne with municipal City of Bozeman
 - a. solid waste,
 - b. fleet fuel
 - c. municipal water and wastewater utility accounts
- IV. Contractor will continue working with the City of Bozeman to
 - a. program all the necessary tables, graphs, and analysis agreed upon by both parties and needed for proper financial and environmental reporting,
 - b. anomaly and high-priority flagging of accounts,
 - c. data updates on a quarterly basis or schedule agreed upon by both parties.
 - d. reports available on-demand from a designated City of Bozeman computer, and
 - e. general recommendations based on priority flagging and anomalies.
- V. Contractor will collect one-time facility data for entry into *ResourceOne* for any new building that comes online under the City of Bozeman's control by
 - a. coordinating with the Sustainability Program Manager to obtain any needed facility data.
- VI. Contractor will provide technical customer support and may be contacted during regular business hours: Monday through Friday, 9 a.m. to 5 p.m, and will
 - a. respond to initial contact within 24 hours Monday through Friday,
 - b. provide a five business day turnaround for special reports or data updates, for which additional costs may apply.

Deliverables:

- I. Database updates according to the Work Timeline associated with this scope of work.