



City of Bentonville
Bentonville Utility Board Meeting
Tuesday, August 20th – 11:30 am
Bentonville City Hall 305 SW “A” St.
City Council Chambers

AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: August 6th, 2024

New Business

1. Resolution – Technology Work Plan MSA – Travis Matlock, PE (pages 2-11)
2. Resolution – Bid Award IFB 24-50 – Electric Materials – Travis Matlock, PE (pages 12-13)
3. Adjournment



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

Item Type (Check all that apply)

Informational	Bid Award	Enter into an Agreement	Change Order
Recognizing Funds	Budget Adjustment	Waiver of Bid	Emergency Clause
Ordinance	Resolution	Informational	

Title, Recommendation & Justification

Title:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
-----------------------------	----

Budget Impact

Is this Item Budgeted? YES NO ITEM HAS NO COST OTHER: _____

Budget Adjustment (to be completed by Finance when applicable)

Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue

Fund(s) Impacted

(check all that apply)

General Fund Utility Fund Street Fund Other(s): _____

Budget Impact Notes for Consideration (Optional):



PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME: Technology Assistance

THIS AGREEMENT ("AGREEMENT") is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter referred to as "CITY", and Power System Engineering, Inc. hereinafter referred to as "PROFESSIONAL CONSULTANT" (collectively, the "PARTIES").

The PARTIES have caused this AGREEMENT to be effective this 9th day of August, 2024 ("EFFECTIVE DATE").

RECITALS:

- A. WHEREAS, the CITY has a need for technology assistance; and
- B. WHEREAS, The CITY has selected the PROFESSIONAL CONSULTANT and negotiated this AGREEMENT using the procedures as set forth in Ark. Code Ann. § 19-11-801 et. seq.; and
- C. WHEREAS, the CITY wishes to contract for Professional Services; and
- D. WHEREAS, The PROFESSIONAL CONSULTANT has the skill, experience, ability, background, certifications and knowledge to provide these services; and
- E. WHEREAS, The PROFESSIONAL CONSULTANT wishes to perform such professional services under this AGREEMENT with the CITY.

NOW, THEREFORE, in consideration of the terms in this AGREEMENT, the CITY and PROFESSIONAL CONSULTANT agree to the following:

ARTICLE I - PROJECT DESCRIPTION

The PROJECT shall be as described in APPENDIX A, "Proposed Scope of Work" attached hereto and incorporated herein by reference.

ARTICLE II - SCOPE OF SERVICE

Upon issuance of a written Notice to Proceed by the CITY, PROFESSIONAL CONSULTANT agrees to provide the CITY the necessary professional services related to the PROJECT, as set forth in APPENDIX A, "Proposed Scope of Work" attached hereto and incorporated herein by reference.

ARTICLE III - STANDARD OF CARE

PROFESSIONAL CONSULTANT shall at all times material hereto adhere to the generally accepted standard of care typically exhibited by similarly situated professionals performing similar scope(s) of service on projects of like size, scope, nature, cost, schedule, and complexity, at the same time and in the same general regional locale ("Standard of Care").

ARTICLE IV - ADDITIONAL SERVICES

- A. Any service outside of the work described herein or included by reference hereto must be pre-approved by the CITY and executed as an AMENDMENT to this AGREEMENT by the Parties prior to any such work being completed; any such AMENDMENT shall be in accordance with the CITY's purchasing laws and guidelines and may require approval from the Bentonville City Council.
- B. PROFESSIONAL CONSULTANT shall make no claims for additional services or changes in the services until an AMENDMENT has been fully executed by the Parties.

ARTICLE V - SCHEDULE OF FEES, SERVICES AND PAYMENT

- A. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall proceed in accordance with APPENDIX A, "Proposed Scope of Work", attached hereto and incorporated herein by reference.
- B. The cost of this AGREEMENT shall be in accordance with APPENDIX A.
- C. The cost of this AGREEMENT shall not exceed the price determined by project in accordance with attached rate sheet without approval by the Bentonville Utility Board and Bentonville City Council.
- D. CITY agrees to pay PROFESSIONAL CONSULTANT for all services authorized by inclusion in this AGREEMENT which have been properly performed by PROFESSIONAL CONSULTANT in accordance with this AGREEMENT.
- E. All fees paid to PROFESSIONAL CONSULTANT shall be based on invoices submitted by PROFESSIONAL CONSULTANT for work performed under this AGREEMENT, less any previous payments. PROFESSIONAL CONSULTANT shall submit invoices for services related to this AGREEMENT on a monthly basis.
- F. CITY reserves the right to delay, without penalty, any partial payment when, in the opinion of the CITY, PROFESSIONAL CONSULTANT has not made satisfactory progress on the Project based on the SCOPE. If CITY objects to any portion of an invoice, the CITY shall notify PROFESSIONAL CONSULTANT and shall pay all other portions of the invoice which are not in dispute. In the event of dispute, CITY and PROFESSIONAL CONSULTANT shall immediately make every effort to settle the disputed portion of the invoice.

- G. In the event that the CITY becomes credibly informed that any representations of PROFESSIONAL CONSULTANT provided in its invoicing are wholly or partially inaccurate, CITY may withhold payment of sums then, or in the future, otherwise due to PROFESSIONAL CONSULTANT until the inaccuracy and the cause thereof is corrected to the CITY's reasonable satisfaction.
- H. If the CITY fails to make any payment, not in dispute, due to PROFESSIONAL CONSULTANT within thirty (30) days after receipt of an invoice, then the amount due to the PROFESSIONAL CONSULTANT will increase at the lesser of one percent (1 %) per month or the maximum amount allowed by law after the 30th day. In addition, PROFESSIONAL CONSULTANT may, after giving seven (7) days' written notice to CITY, suspend its services and any deliverables until PROFESSIONAL CONSULTANT has been paid in full for all amounts outstanding more than thirty (30) days.

ARTICLE VI - INSURANCE

- A. PROFESSIONAL CONSULTANT shall during the term hereof maintain in full force and effect the following insurance:
 - 1. A comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the PROFESSIONAL CONSULTANT's performance of services pursuant to this AGREEMENT with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for injury to persons (including death), and for property damage;
 - 2. A policy of automobile liability insurance covering any vehicles owned and/or operated by PROFESSIONAL CONSULTANT, its officers, agents, and employees, and used in the performance of this AGREEMENT with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
 - 3. Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of PROFESSIONAL CONSULTANT's employees involved in the provision of services under this AGREEMENT with policy limit of not less than \$1,000,000.00; and
 - 4. Professional Liability/Errors and Omissions coverage covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00.
- B. All insurance and certificate(s) of insurance shall contain the following provisions:
 - 1. Include CITY as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability/Errors and Omissions coverage; and
 - 2. provide for at least thirty (30) days prior written notice to CITY for cancellation or non-renewal of the insurance;
 - 3. provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability/Errors and Omissions coverage.
- C. PROFESSIONAL CONSULTANT shall provide 30 day written notice to CITY of any material change of or to the insurance required herein.
- D. All insurance companies providing the required insurance shall be authorized to transact business in Arkansas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance and all endorsements required by this Agreement shall be submitted prior to commencement of services.

- E. In the event that additional or greater insurance requirements are warranted, these requirements shall be included as an Appendix, which will be attached hereto and incorporated by reference.

ARTICLE VII - RIGHT OF ACCESS

- A. CITY will obtain and/or furnish right-of-access for PROFESSIONAL CONSULTANT to perform any required studies, surveys, tests or other necessary investigations in relation to the PROJECT.
- B. PROFESSIONAL CONSULTANT will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.
- C. CITY recognizes that PROFESSIONAL CONSULTANT's operations and use of equipment may unavoidably alter existing conditions or affect the environment at the PROJECT site. The cost of repairing such damage shall be the responsibility of PROFESSIONAL CONSULTANT, at no additional cost to the CITY. In the event that PROFESSIONAL CONSULTANT fails to correct such damages, CITY is entitled to utilize CITY forces or other labor to repair the damage; any costs incurred by CITY for such work shall be deducted from the monies due to PROFESSIONAL CONSULTANT.

ARTICLE VIII - RECORDS AND RETENTION

- A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees in connection with this AGREEMENT ("PROJECT DOCUMENTS") are intended for the use and benefit of CITY. PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the PROJECT DOCUMENTS. Notwithstanding anything to the contrary, CITY shall own, have, and retain all rights, title and interest in and to all PROJECT DOCUMENTS, whether in draft form or final form, which are produced at CITY's request or otherwise produced from PROFESSIONAL CONSULTANT's performance of the work described herein for CITY. The CITY's ownership of PROJECT DOCUMENTS shall not apply to PROFESSIONAL CONSULTANT's proprietary standard details that were developed by the PROFESSIONAL CONSULTANT prior to the commencement of this PROJECT.
- B. CITY shall have full authority to reuse, reproduce, publish, disclose and distribute PROJECT DOCUMENTS, as needed, according to Arkansas State Law.
- C. PROFESSIONAL CONSULTANT shall, upon completion of the services and full payment for the PROFESSIONAL CONSULTANT'S services by the CITY, or earlier termination and appropriate compensation as provided by this AGREEMENT, provide the CITY with all PROJECT DOCUMENTS prepared by PROFESSIONAL CONSULTANT pursuant to this AGREEMENT in formats requested by the CITY.
- D. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared under this AGREEMENT shall be submitted for approval to the CITY. All instruments of service shall be professionally sealed in accordance to applicable laws or at CITY's request.
- E. Acceptance and approval of the PROJECT DOCUMENTS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of PROFESSIONAL CONSULTANT, its employees, associates, agents and PROFESSIONAL CONSULTANT's for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an

assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by PROFESSIONAL CONSULTANT, its employees, contractor, agents and PROFESSIONAL CONSULTANT's.

- F. PROFESSIONAL CONSULTANT will retain the PROJECT DOCUMENTS for a period of three years following project completion. During this three year period, any requests for document recovery and reproduction will be assessed a fee in accordance with PROFESSIONAL CONSULTANT's FEES.

ARTICLE IX - SAFETY

- A. CITY agrees to inform PROFESSIONAL CONSULTANT of any applicable site safety procedures and regulations known to CITY as well as any special safety concerns or dangerous conditions at the site of which the CITY is aware, which PROFESSIONAL CONSULTANT shall communicate to its employees. PROFESSIONAL CONSULTANT and its employees shall adhere to such procedures and regulations once notice has been given by the CITY.
- B. Unless specifically provided in the SCOPE, PROFESSIONAL CONSULTANT shall not have any responsibility for overall job safety at the site. If in the PROFESSIONAL CONSULTANT's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, PROFESSIONAL CONSULTANT may immediately suspend performance until such safety standards can be attained.
- C. PROFESSIONAL CONSULTANT agrees to indemnify and hold harmless the CITY for any safety conditions that may arise out of PROFESSIONAL CONSULTANT's performance of this AGREEMENT.

ARTICLE X - TERMINATION

- A. CITY may suspend or terminate this AGREEMENT for cause or without cause at any time by giving written notice to PROFESSIONAL CONSULTANT. In the event suspension or termination is without cause, payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, will be made on the basis of services reasonably determined by the CITY to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.
- B. Should the CITY require a modification of this AGREEMENT with the PROFESSIONAL CONSULTANT, and in the event the CITY and PROFESSIONAL CONSULTANT fail to agree upon a modification to this AGREEMENT, the CITY shall have the option of terminating this AGREEMENT and the PROFESSIONAL CONSULTANT's services hereunder at no additional cost other than the payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, for the services reasonably determined by the CITY to be properly performed by PROFESSIONAL CONSULTANT prior to such termination date.
- C. If, for whatever reason adequate funding is not made available by CITY to support or justify continuation of the level of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT, CITY may terminate or reduce the amount of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT. In such event, CITY will notify PROFESSIONAL CONSULTANT in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.
- D. In no event shall the CITY pay to PROFESSIONAL CONSULTANT fees for termination outside of payment for services reasonably determined by the City to be properly performed prior to termination.

ARTICLE XI - INDEMNIFICATION

- A. For purposes of this AGREEMENT, PROFESSIONAL CONSULTANT agrees to indemnify, hold harmless the CITY, its officers and employees from any loss, damage, liability or expense, of any nature whatsoever to the extent caused by the negligence, willful misconduct, or other actionable fault of PROFESSIONAL CONSULTANT, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. PROFESSIONAL CONSULTANT is not required hereunder to defend the CITY, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on the CITY's negligence
- B. Nothing contained herein shall waive any governmental immunity CITY may be entitled to by law.
- C. This provision shall survive the termination of this AGREEMENT.

ARTICLE XII - CONTINGENCY CLAUSE

- A. NOT USED

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

It is understood and agreed by and between the parties that the PROFESSIONAL CONSULTANT, in satisfying the conditions of this AGREEMENT, is acting independently, and that the CITY assumes no responsibility or liabilities to any third party in connection with PROFESSIONAL CONSULTANT's actions. All services to be performed by the PROFESSIONAL CONSULTANT pursuant to this AGREEMENT shall be in the capacity of an Independent Contractor, and not as an agent or employee of CITY. The PROFESSIONAL CONSULTANT shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this AGREEMENT. There is no intended third party beneficiary to the AGREEMENT and nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE XIV - DISPUTE RESOLUTION

- A. CITY and PROFESSIONAL CONSULTANT agree that disputes relative to the services will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, PROFESSIONAL CONSULTANT will proceed with the services as per this AGREEMENT as if no dispute existed, and CITY will continue to make payment for PROFESSIONAL CONSULTANT's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

ARTICLE XV - OPINIONS OF PROBABLE COST

- A. Since the PROFESSIONAL CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, the PROFESSIONAL CONSULTANT's estimates of PROJECT costs and construction costs provided for herein are to be made on the basis of the PROFESSIONAL CONSULTANT's experience and qualifications and represent the PROFESSIONAL CONSULTANT's judgement in accordance with the "Standard of Care". The PROFESSIONAL CONSULTANT cannot and does not guarantee that proposals,

bids or actual PROJECT or construction costs will not vary from estimates prepared by the PROFESSIONAL CONSULTANT.

- B. The CITY understands that the construction cost estimates developed by the PROFESSIONAL CONSULTANT do not establish a limit for construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the CITY, the PROFESSIONAL CONSULTANT will not be required to re-design the PROJECT or any part thereof without additional compensation.

ARTICLE XVI - APPLICABLE LAWS

PROFESSIONAL CONSULTANT shall comply with all Federal, State, Local laws, ordinances, resolutions, specifications, regulations and all other laws or regulations relating or applicable to service to be performed under this AGREEMENT. Interpretation of this AGREEMENT and disputes arising out of or related to this AGREEMENT will be subject to and governed by the laws of the State of Arkansas. Jurisdiction and venue for any suit arising out of or related to this AGREEMENT will be in the District Court of Benton County, Arkansas.

ARTICLE XVII - PRECEDENCE

This AGREEMENT shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or any other like document regarding the PROJECT or PROFESSIONAL CONSULTANT's services.

ARTICLE XVIII - SEVERABILITY

- A. In the event that one or more provisions contained herein shall, for any reason, be deemed invalid, illegal, void or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect.
- B. In the event that any provision hereof is in conflict with any statutory provision of the State of Arkansas, said provision, which may be in conflict therewith, shall be deemed inoperative, null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions; provided, however, that the remaining provisions of this AGREEMENT will be unaffected and will continue to be valid and enforceable.

ARTICLE XIX - SURVIVAL OF OBLIGATIONS

The obligations of the Parties contained in this AGREEMENT, which by their nature survive after the term of the AGREEMENT, shall survive the termination or expiration of this AGREEMENT and continue indefinitely or as otherwise provided by this AGREEMENT.

ARTICLE XX - ENTIRE AGREEMENT

This AGREEMENT, including all documents and Appendices included by reference herein, constitutes the entire agreement between the PARTIES and supersedes all prior agreements, whether oral or written, covering the same subject matter. This AGREEMENT may not be modified or amended except in writing, mutually agreed upon and accepted by both PARTIES to this AGREEMENT.

[This page has been intentionally left blank]

The cost of this AGREEMENT including all reimbursable expenses as described in the FEES AND SCHEDULE, **shall not exceed** the price determined by project in accordance with attached rate sheet unless otherwise approved by the CITY through an official AMENDMENT agreed and executed by CITY and PROFESSIONAL CONSULTANT.

IN WITNESS THEREOF, the CITY and PROFESSIONAL CONSULTANT have executed this AGREEMENT, the EFFECTIVE DATE of which is indicated on page 1 of this AGREEMENT.

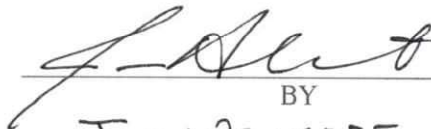
CITY OF BENTONVILLE
CITY

BY

MAYOR
TITLE

DATE SIGNED

POWER SYSTEM ENGINEERING, INC.
PROFESSIONAL CONSULTANT


BY

JIM WEIKERT
VICE PRESIDENT, AUTOMATION
TITLE

8/9/2024
DATE SIGNED



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

Item Type (Check all that apply)

Informational	Bid Award	Enter into an Agreement	Change Order
Recognizing Funds	Budget Adjustment	Waiver of Bid	Emergency Clause
Ordinance	Resolution	Informational	

Title, Recommendation & Justification

Title:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
-----------------------------	----

Budget Impact

Is this Item Budgeted? YES NO ITEM HAS NO COST OTHER: _____

Budget Adjustment (to be completed by Finance when applicable)

Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue
Account Number (ORG-OBJECT)	Account Description	\$	Expense	\$	Revenue

Fund(s) Impacted

(check all that apply)

General Fund

Utility Fund

Street Fund

Other(s): _____

Budget Impact Notes for Consideration (Optional):

