

**CONTRACT
FOR
ARCHITECTURAL, ENGINEERING & LAND SURVEYING SERVICES**

This Contract, made by and between the City of Independence, Missouri (hereinafter called City) and, A2V Partners, LLC, a Missouri Corporation (hereinafter called Consultant).

WITNESSETH:

WHEREAS, City requires consulting services for transmission circuit breaker replacements at IPL Substation M and,

WHEREAS, Consultant is prepared to provide said professional services and shall give consultation and advice to City during the performance of said services;

NOW THEREFORE, City and Consultant in consideration of the mutual covenants contained in this Contract, agree as follows:

ARTICLE 1 – EFFECTIVE DATE

The effective date of this Contract shall be April 1, 2019.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONSULTANT

Consultant shall perform engineering and consulting services to upgrade 2 relay panels, effect replacement of 69kV circuit breakers in IPL Substation M and for the removal of one 161 kV circuit breaker. Proposal from A2V Partners dated February 20, 2019, attached hereto and made a part of this Contract.

ARTICLE 3 – PERIOD OF SERVICE

The services shall be completed by October 31, 2019.

ARTICLE 4 – COMPENSATION

For services performed, the City shall pay the Consultant, an amount not to exceed \$90,167.

Monthly invoices shall be submitted by the Consultant to the City for payment of services performed and expenses incurred during the preceding month. Invoices shall indicate the hours expended for each person, the total labor billing, and a summary of other expenses and charges with supporting documentation.

Payment will be made by the City within thirty (30) days of receipt of the invoice.

The City is exempt from State of Missouri sales and use taxes on purchases made directly for the City. Consultant shall not include any sales or use taxes on transactions between the Consultant and City.

ARTICLE 5 – PERMITS AND LICENSES

The Consultant shall procure all necessary local construction permits and licenses and a City of Independence occupation license, unless exempt under state law.

Consultant will abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this contract is performed, and will require the same of all sub-consultants.

The Consultant must furnish and maintain certification of authority to conduct business in the State of Missouri.

ARTICLE 6 – OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by Consultant as part of the Services shall become the property of City, provided, however, that Consultant shall have the unrestricted right to their use. Notwithstanding the foregoing, City accepts that any re-use of the documents or intellectual property shall be at City's sole risk and liability.

ARTICLE 7 – CHANGES, DELETIONS, OR ADDITIONS TO CONTRACT

Either party may request changes within the general scope of this Contract. If a requested change causes an increase or decrease in the cost or time required to perform this Contract, City and Consultant will agree to an equitable adjustment of the Contract price, period of service, or both, and will reflect such adjustment in a change order or formal modification.

ARTICLE 8 – STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a peer professional under similar circumstances.

ARTICLE 9– LIABILITY AND INDEMNIFICATION

Having considered the potential liabilities that may exist during the performance of this Contract and the Consultant's fee, and in consideration of the mutual covenants contained in the Contract, City and Consultant agree to allocate and limit such liabilities in accordance with this Article.

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, directors, and employees, against all damages liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Contract and that of its sub-consultants or anyone for whom the Consultant is legally liable. Consultant shall indemnify City against legal liability for damages arising out of claims by Consultant's employees.

LIMITATION OF LIABILITY

To the fullest extent permissible by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant, its officers, directors, shareholders, employees, agents, and consultants, and any of them, to City and anyone claiming by, through or under City, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any form of negligence, professional errors or omissions (including breach of contract or warranty) of Consultant, its officers, directors, employees, agents or consultants, or any of them, SHALL NOT EXCEED the limits of insurance set forth in Article 10. If the Consultant fails to procure or maintain the coverages and limits required in Article 10, paragraphs 1, 2, & 3, the limits referenced there will be the maximum liability of the Consultant for any damages

claimed through this agreement regardless of the existence of insurance coverage to satisfy any judgment, award or satisfaction of claim. The parties agree that specific consideration has been given by the Consultant for this limitation and that it is deemed adequate.

In no event will Consultant be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of City, or governmental fines or penalties.

ARTICLE 10 – INSURANCE

The Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the materials, equipment or supplies provided to the City. The insurer(s) must be licensed for business in the State of Missouri and maintain an A.M. Best rating of no less than A: VII; or an insurer approved by the City. Each policy requires a minimum cancellation notification of at least thirty (30) daysq advance written notice to the City.

(1) General Liability Insurance, with bodily injury and property damage limits of \$1,000,000 for each occurrence with a \$2,000,000 general aggregate and \$2,000,000 products and completed operations aggregate.

(2) Professional Liability or Errors and Omissions Insurance, with a limit of \$1,000,000 annual aggregate.

(3) Automobile Liability Insurance, with bodily injury limits of \$1,000,000 for each person and \$1,000,000 for each accident, and with property damage limits of \$1,000,000 for each accident.

The above limits are the minimum acceptable and do not infer or place a limit on the liability of the Consultant. The City is to be named as an additional insured as the City's interest may appear for the General Liability and the Automobile Liability Insurance. The Consultant's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess for the City and not contribute with the coverage maintained by the Consultant.

The City shall not obtain worker's compensation insurance on behalf of the Consultant or the employees of the Consultant. The Consultant shall comply with the worker's compensation law concerning its business and its employees.

WAVIER OF SUBROGATION: City and Consultant waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance (including deductibles) during and after the completion of Consultant's services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by City, and all construction Contractors shall be required to provide waivers of subrogation in favor of City and Consultant for damage or liability covered by any construction Contractor's policy of insurance.

ARTICLE 11 – SHIPPING, TITLE AND RISK OF LOSS

All sales and deliveries are F.O.B. City.

ARTICLE 12 – DELAY IN PERFORMANCE

Neither City nor Consultant shall be considered in default of this Contract for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Contract, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restrains; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Contract. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Contract.

ARTICLE 13 – TERMINATION

City may terminate or suspend performance of this Contract for City's convenience upon written notice to Consultant. Consultant shall terminate or suspend performance of the services on a schedule acceptable to City. If termination or suspension is for City's convenience, City shall pay Consultant for all the services performed till the date of the termination by the City or suspension expenses. Upon restart, an equitable adjustment shall be made to Consultant's compensation.

This Contract may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Contract. The nonperforming party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. In the event that funding for the Contract is discontinued, City shall have the right to terminate this Contract immediately upon written notice to Consultant.

ARTICLE 14– WAIVER

A waiver by either City or Consultant of any breach of this Contract shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 15 – SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Contract from being void should a provision that is of the essence of this Contract be determined void.

ARTICLE 16 – SUCCESSORS AND ASSIGNS

City and Consultant each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to the Contract and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Contract.

ARTICLE 17 – ASSIGNMENT

Neither City nor Consultant shall assign any rights or duties under this Contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract.

ARTICLE 18– THIRD PARTY RIGHTS

Nothing in this Contract shall be construed to give any rights or benefits to anyone other than City and Consultant.

ARTICLE 19– INDEPENDENT CONSULTANTS

Each party shall perform its activities and duties hereunder only as an independent Consultant. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this Contract shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Contract shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

ARTICLE 20– AUDIT

Consultant agrees that the City, or a duly authorized representative, shall, until the expiration of three (3) years after final payment under this Contract have access to and the right to examine and copy any pertinent books, documents, papers and records of the Consultant involving transactions related to this Contract.

ARTICLE 21 – EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract or purchase order, the Consultant agrees as follows: The Consultant will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin or any other legally protected category. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, age, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin.

The Consultant will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Consultant will furnish all information and reports required by Executive Order 11246 of

September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Consultant's noncompliance with the non-discrimination clauses of this contract or purchase order with any of the said rules, regulations, or orders, this contract or purchase order may be canceled, terminated, or suspended in whole or in part, and the organization may be declared ineligible for any further government contracts or purchase order or federally assisted contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-consultant or vendor. The Consultant will take such action with respect to any sub-consultant or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions of noncompliance; provided, however, that in the event an Consultant becomes involved in, or is threatened with litigation with a sub-consultant or vendor as a result of such direction by the Department, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE 22 – GOVERNING LAW

This Contract shall be governed by the laws of the State of Missouri. The City and the Consultant agree that the performance of this Contract will be deemed to have occurred in the State of Missouri and that Consultant's performance under this Contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this Contract shall be exclusively in the Sixteenth Judicial Circuit of Missouri and the Consultant submits to personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to, that court.

ARTICLE 23 – COMMUNICATIONS

Any communication required by this Contract shall be made in writing to the authorized representative at the address specified below:

Consultant: E. Matt Bedinghaus, CEO & Chief Engineer, 3804 S. Freemont, Springfield, MO 65804.

City: Procurement Manager, 111 E. Maple, Independence, MO 64050

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and City.

ARTICLE 24 – SEPARATE CONTRACTS

City and Consultant each reserve the right to, from time to time, enter into other contracts for specific projects. If such contracts are separately approved in writing by the parties, the terms and conditions of those contracts shall prevail for the specific projects set forth therein.

ARTICLE 25 – ENTIRE CONTRACT

This Contract represents the entire agreement between the City and Consultant. All previous or contemporaneous contracts, representations, promises, and conditions relating the Consultant's services described herein are superseded.

ARTICLE 26 – SURVIVAL OF TERMS

The following provisions shall survive the expiration or termination of this Contract for any reason: if any payment obligations exist, Article 4 – Compensation; Article 5 – Permits and Licenses; Article 9 – Liability and Indemnification; Article 14 – Waiver; Article 15 – Severability; Article 17 – Assignment; Article 19 – Independent Consultants; Article 22 – Governing Law; Article 25 – Entire Contract; and this Article 26 – Survival of Terms.

IN WITNESS WHEREOF, City and Consultant, by and through their authorized officers, have made and executed this Contract.

City

By _____

Date _____

Consultant

By E. Matt Bedington

Title CEO & Chief Engineer

Date 3/7/2019

Approved as to form:

City Counselor