

RESOLUTION NO. 2016-05

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE AGREEMENT FOR STREET LIGHT MAINTENANCE BETWEEN THE CITY OF BENTON CITY AND NW POWER, INC.

WHEREAS, the City needs to retain professional services for the purpose of maintaining City street lights and other exterior lighting; and

WHEREAS, Contractor possesses knowledge, experience and proper licensing to provide maintenance for the City's street and exterior lighting; and

WHEREAS, the City Council has reviewed the Contractor's proposal to provide said services and determined this Agreement to be in the best interest of the citizens of the City of Benton City; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the original Agreement for Street Light Maintenance between the City of Benton City, Washington, and NW Power, Inc., a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required for the implementation of this Agreement.

ADOPTED this 15 day March, 2016, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 15 day March, 2016.

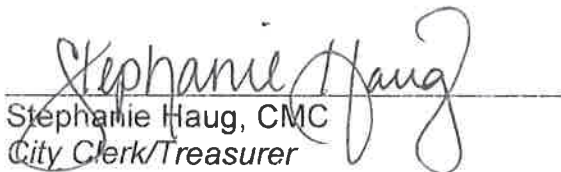
Resolution 2016-05 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 15 day March, 2016.




Linda Lehman
Mayor

Attest:

Approved as to Form:



Stephanie Haug, CMC
City Clerk/Treasurer



Leland B. Kerr
City Attorney

AGREEMENT FOR STREET LIGHT MAINTENANCE

THIS AGREEMENT is entered into this 15 day of March, 2016, by and between the City of Benton City, a Washington Municipal Corporation, (hereinafter "City"), and NW Power, Inc., a Washington Corporation (hereinafter "Contractor").

WHEREAS, the City needs to retain professional services for the purpose of maintaining City street lights and other exterior lighting; and

WHEREAS, Contractor possesses knowledge, experience and proper licensing to provide maintenance for the City's street and exterior lighting; and

WHEREAS, the City Council having reviewed the Contractor's proposal to provide said services and determining this Agreement to be in the best interest of the citizens of the City of Benton City.

NOW, THEREFORE, in consideration of the mutual benefits accruing, it is agreed by and between the parties hereto as follows:

1. **Scope of Services.** Contractor shall furnish all materials and perform all the labor necessary for the repair and maintenance of street and other exterior lighting owned by the City. Maintenance services including wiring shall meet all applicable laws, regulations, building codes and industry standards. Services may include, but not be limited to, repair and replacement of lamps, ballasts and fixtures on an as-needed basis. Work is to be performed within a reasonable time after requested by the City. Specific projects estimated to exceed \$2,500.00 are to be completed only after obtaining written approval by the Mayor, or his designee.
2. **Payment.** Contractor shall be reimbursed by the City for services consistent with the Unit Price Sheet attached hereto as Exhibit A.
3. **Time for Payment.** The City shall pay Contractor's invoices not later than the 30th of the month billed, provided such invoices are received by the City not later than the third business day of the month. In the event questions concerning any invoice should arise that might delay payment in a timely manner, payment of the unquestioned portion of the invoice shall be submitted to the City Council by the third Tuesday of that month for payment approval.
4. **Insurance.** Contractor shall secure and maintain in full force and effect during the performance of all work pursuant to this Agreement a policy of comprehensive general liability insurance providing coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury; \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage; errors and omissions insurance in the amount of \$1,000,000; and automobile insurance as required by law. Each such insurance policy shall name the City as an additional insured and shall include a provision prohibiting cancellation of said policies, except upon thirty (30) days written notice to the City. The City shall be named as a certificate holder on each insurance policy. Certificates of coverage shall be delivered to the City within fifteen (15) days of execution of this Agreement.
5. **Termination.** This Agreement may be terminated by either party giving thirty (30) days' written notice to the other party. The term of this Agreement shall be for a period of one (1) year commencing on the date this Agreement is signed, and shall automatically renew each

year absent notice of one party to the other of intent to cancel pursuant to this section. In the event this Agreement is terminated, Contractor's final invoice shall be paid on the regularly scheduled payment date.

In the event Contractor is in breach of any of the terms of this Agreement, the City may provide written notice of the breach to Contractor, and Contractor shall have twenty (20) days from the date of the notice to cure the breach and provide written documentation of such to the City. In the event the breach is not cured within ten (10) days, the City may thereupon immediately terminate this Agreement.

6. **Independent Contractor.** It is understood and agreed that Contractor is an independent contractor and is not employed by the City. Contractor shall make no claims for benefits for employment against the City including, but not limited to, sick leave, medical insurance, coverage under the City's State Department of Labor and Industries policy, vacation benefits, retirement, or unemployment benefits.

Contractor shall be solely responsible for all acts of its agents, employees, representatives during the performance of this Agreement. Contractor shall comply with all State and Federal laws including, but not limited to, the requirements of RCW 50.04.0140 and RCW 51.08.195.

7. **Notices.** Any notice required to be given under this Agreement shall be give by certified mail addressed below:

To the City: City of Benton City
 PO Box 70
 Benton City WA 99320

To Contractor: NW Power Inc.
 4400 S 47th Ave, Suite 101
 West Richland, WA 99353

8. **Hold Harmless Agreement.** In performing the work under this Agreement, Contractor agrees to defend the City, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from all suits, claims, demands, actions or proceedings, and to the extent permissible by law, indemnify and hold harmless the Indemnitees from:

- A. All damages or liability of any character including in part costs, expenses and attorney fees, based upon, any negligent act, error, or omission of Contractor or any person or organization for whom Contractor may be responsible, and arising out of the performance of professional services under this Agreement; and
- B. All liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including in part, court costs and attorney fees, based upon, or alleged to be based upon, any act, omission, or occurrence of Contractor or any person or organization for whom Contractor may be responsible, arising out of, in connection with, resulting from or caused by the performance or failure of performance of any work or services under this Agreement, or from conditions created by Contractor's performance or non-performance of said work or service. Contractor shall not be required to indemnify the City for injury, damages, and liabilities as shall have been occasioned by the sole negligence of the City.

9. **Ownership and Use of Documents.**

- A. The parties acknowledge that this Agreement shall be governed by RCW Chapter 42.56 and any other State or Federal law relating to confidentiality, intellectual properties, and public disclosure. The parties shall make a good faith effort to comply with such laws, and to the fullest extent allowed by law, comply with the provisions of this section.
- B. All research, tests, surveys, preliminary data and any and all other work product prepared or gathered by the Contractor in preparation for the services rendered shall not be considered public records, provided, however, that:
 - (1) All final reports, presentations and testimony prepared by Contractor shall become the property of the City upon their presentation to and acceptance by the City and shall at that date become public records.
 - (2) The City shall have the right, upon reasonable request, to inspect, review and, subject to the approval of Contractor, copy any work product.
 - (3) In the event that Contractor shall default on this Agreement, or in the event that this Agreement shall be terminated prior to its completion as herein provided, the work product of Contractor, along with a summary of work done to date of default or termination, shall become the property of the City and tender of the work product and summary shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost, if the Agreement is terminated through default by Contractor. If the Agreement is terminated through convenience by the City, the City agrees to pay Contractor for the preparation of the summary of work done.
 - (4) Contractor shall maintain all documents associated with work performed under this Agreement for a minimum period of three (3) years after completion of the work. This provision shall survive termination of this Agreement.
 - (5) Contractor shall respond to requests by the City for records within five (5) business days by either providing the records, or by identifying in writing that additional time is necessary to provide the records with a description of the reasons why additional time is needed. Records shall be provided to the City within twenty (20) days of the date of the request. Provisions of Section 8 in this Agreement shall specifically apply to any claim arising out of Contractor's failure to properly maintain or timely produce records as described herein and as otherwise required by law.
- 10. **Non-assignable.** All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment or transfer to a third party of this Agreement shall be made without written prior consent of the parties to the Agreement. Prior written consent shall not be required for assignment by Contractor of this Agreement to a business entity of which Contractor holds a majority or controlling interest.
- 11. **Discrimination Prohibited.** Contractor shall not discriminate against any employee or job applicant for work on this Agreement, and shall not discriminate any property owner or permit applicant for reasons of race, color, religion, age, sex, national origin or physical handicap.

12. **Covenant Against Contingent Fees.** Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. **General Provisions.** For the purpose of this Agreement, time is of the essence. In the event a dispute regarding the enforcement, breach, default or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Arbitration Rules (MAR); venue shall be placed in Benton County, Washington, the laws of the State of Washington shall apply; and the prevailing party shall be entitled to its reasonable attorney fees and cost.

In the event any provision of this Agreement is deemed to be unenforceable, the other provisions of the Agreement shall remain in full force and effect.

Failure of the City to enforce any terms or provisions of this Agreement shall not be deemed a waiver of said terms or provisions. Waiver of any provision of this Agreement by the City shall only be made in writing. Any such waiver shall be specific only to the provision so listed, and shall not constitute a waiver of any other provision of this Agreement.

DATED this 15 day of March, 2016.

CITY OF BENTON CITY, WASHINGTON

NW POWER INC

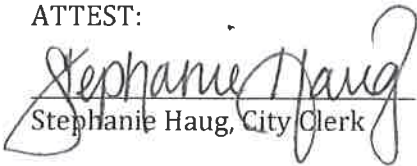


Linda Lehman, Mayor



C.R. Steelman, President

ATTEST:



Stephanie Haug, City Clerk

APPROVED AS TO FORM:



Leland B. Kerr, City Attorney

EXHIBIT A

Unit Pricing

Unit Price Rates as follows:

Bucket Truck- \$79.00 HR Round Trip

Electrician- \$91.00 HR Straight Time

Electrician- \$136.00 HR Overtime (Excludes Sundays and Holidays)

Note: City lighting has been changed over to LED. The City will maintain back stock on replacement fixtures.