

**RESOLUTION NO. 2019-07**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE PROFESSIONAL SERVICES AGREEMENT WITH JF ENGINEERING, PLLC FOR SERVICES RELATED TO THE WASTE WATER TREATMENT PLANT**

**WHEREAS**, the City of Benton City desires to engage the professional services and assistance of a contractor on a temporary basis to provide back-up waste water treatment plant testing and supervision in cases where a City employee cannot be available; and

**WHEREAS**, the services contracted for pursuant to this Resolution and attached Agreement are not for engineering services as defined by Chapter 39.80 RCW and as such this contract does not fall under the requirements of Chapter 39.80 RCW; and

**WHEREAS**, the JF Engineering, PLLC, has shown that it employs one or more individuals with the required qualifications and the expertise to provide back-up waste water treatment plant testing and supervision; and

**WHEREAS**, JF Engineering, PLLC, has expressed its desire to engage in the above-mentioned services for the City of Benton City; and

**WHEREAS**, the City has determined that it is appropriate to enter into a Professional Services Agreement with JF Engineering, PLLC to provide back-up waste water treatment plant testing and supervision for the City on a temporary and as-needed basis. **NOW, THEREFORE**,

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

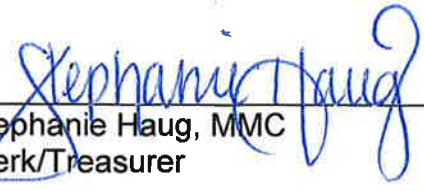
That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Professional Services Agreement Between the City of Benton City, Washington, and JF Engineering, PLLC, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required to complete this transaction.

**ADOPTED** this 2 day of April 2019, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 2 day of April 2019.

Resolution 2019-07 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 2 day of April 2019.

  
\_\_\_\_\_  
Linda Lehman, Mayor

Attest:

  
\_\_\_\_\_  
Stephanie Haug, MMC  
Clerk/Treasurer

Approved as to Form:

  
\_\_\_\_\_  
Kerr Law Group  
City Attorney

**PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL WASTE  
WATER TREATMENT PLANT SERVICES**

**THIS AGREEMENT**, made and entered into between the City of Benton City, hereinafter referred to as the "City", and JF Engineering, PLLC, hereinafter referred to as the "Contractor".

**WHEREAS**, the City desires to engage the professional services and assistance of Contractor to provide waste water treatment plant testing and supervision and Contractor has demonstrated that they are qualified to perform these services; and

**WHEREAS**, the City requires these services on an on-call basis while the current full-time waste water supervisor is unavailable, and no other City employee has the necessary certifications to provide waste water treatment plant testing services and supervision;

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

1. **Scope of work.** The Scope of Work shall include all services necessary to accomplish the above-mentioned objectives in accordance with the task list attached hereto as **Exhibit "A"**.
2. **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, collectively referred to as "Work Product", shall be deemed as the exclusive property of the City, including copyright as secured thereon. Contractor may not use them except in connection with the performance of the services under this Agreement or with the prior written consent of the City. Any prior copyrighted materials owned by the Contractor and utilized in the performance of the services under this Agreement, or embedded in the materials, products and services provided thereunder, shall remain the property of the Contractor subject to a license granted to the City for their continued use of the products and services provided under this Agreement. Any work product used by the Contractor in the performance of these services which it deems as "confidential," "proprietary," or a "trade secret" shall be conspicuously designated as such.
  - C. All Work Product shall be subject to the following:

- (1) All final reports, presentations and testimony prepared by Contractor shall be considered Work Product and the property of the City.
- (2) The City shall have the right, upon reasonable request, to inspect, review and 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 six (6) years after completion of the work. This provision shall survive termination of this Agreement.
- (5) If the Contractor becomes a custodian of public records of the City and a request for such records is received by the City, Contractor shall respond to the request by the City for such records within five (5) business days by either providing the records, or by identifying in writing the additional time necessary to provide the records with a description of the reasons why additional time is needed. Such additional time shall not exceed twenty (20) business days unless extraordinary good cause is shown. Provisions of Section 5 in this Agreement (“Hold harmless agreement; indemnification”) 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.

3. **Payments.** Upon approval of invoices by the City, the Contractor shall be paid by the City for completed work for services rendered under this Agreement as provided hereinafter, and for reasonable travel time to (but not from) the Benton City wastewater treatment plant when that travel is related to services rendered under this Agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

- A. Payment for work accomplished under the terms of this Agreement shall be on an hourly basis at the rate of \$92.00 per hour.

- B. All invoices shall be submitted by the Contractor to the City for payment pursuant to the terms of this Agreement. Upon approval of the City shall pay the appropriate amount for each invoice to the Contractor. The Contractor may submit invoices to the City monthly during the progress of the work for payment of completed phases of the project. Invoices shall be reviewed in conjunction with the City's current process.
  - C. The costs records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City for a period of six (6) years after final payment. Copies shall be made available upon request.
  - D. No payment shall be made for any services rendered by the Contractor except for services identified and set forth in this Agreement except as may be authorized by a prior written supplemental agreement approved by the City.
4. **Time of performance.** The Contractor shall perform the work authorized by this Agreement promptly as needed and requested by the City of Benton City.
5. **Hold harmless agreement; indemnification.**
- A. In performing the work under this Agreement, the Contractor agrees to defend the City, its officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from all suits, claims, demands, causes of action, actions or proceedings, and to the extent permissible by law, and indemnify and hold harmless the Indemnities from:
    - (1) 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 the Contractor may be responsible, and arising out of the performance of professional services under this Agreement; and
    - (2) 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 the Contractor or any person or organization for whom the 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 the Contractor's performance or non-performance of said work or service.
  - B. Should a Court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injuries or damages to property caused by or resulting from the concurrent negligence of the Contractor, and the City, its officers, employees, agents and

volunteers, the Contractor's liability and obligation to defend hereunder shall only be the proportionate extent of the Contractor's negligence.

- C. It is further agreed that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.
  - D. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.
  - E. This waiver has been mutually negotiated by the parties, and the provisions of this section shall survive the expiration or termination of this Agreement.
6. **Insurance.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors.
- A. **Minimum Scope of Insurance.** Contractor shall obtain insurance of the types described below:
    - (1) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
    - (2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
    - (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
    - (4) Professional Liability insurance appropriate to the Contractor's profession.
  - B. **Minimum Amounts of Insurance.** Contractor shall maintain the following insurance limits:
    - (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

(2) Commercial General Liability insurance shall be written with limits no less than:

\$1,000,000 each occurrence;

\$2,000,000 general aggregate; or

\$\_\_\_\_\_ each occurrence; and \$\_\_\_\_\_ general aggregate

(3) Professional Liability insurance shall be written with limits no less than:

\$1,000,000 per claim;

\$1,000,000 policy aggregate limit; or

\$\_\_\_\_\_ per claim; and \$\_\_\_\_\_ per policy aggregate limit.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

(1) The Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

(2) The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

E. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

F. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) calendar days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

G. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the

full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

7. **Discrimination prohibited.** Contractor shall not discriminate against any employee, applicant for employment, or subcontractor because of race, color, religion, age, sex, national origin or physical handicap.
8. **Contractor is an independent contractor.** The parties intend that an independent contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. The City is interested primarily in the results to be achieved; subject to the scope of services and the specific requirements of this Agreement, the implementation of services will lie solely with the discretion of the Contractor. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this Agreement. 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 comply with all State and Federal laws including, but not limited to, the requirements of RCW 50.04.0140 and RCW 51.08.195.

Contractor shall obtain and maintain proper business licenses as may be required.

9. **City approval.** In the performance of the services provided in this Agreement, Contractor is an independent contractor with full authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory performance thereof. The City may, at its sole discretion, require the Contractor to remove any employee, agent or servant from employment on this Project who, in the City's sole discretion, may be detrimental to the City's interest.
10. **Term; termination.** The term of this Agreement shall be for a period of twelve (12) months commencing on the 1st day of April 2019, unless sooner terminated as provided in this Agreement. Unless otherwise terminated as provided below, this Agreement shall automatically be renewed for an additional twelve (12) month term. The terms and conditions of the renewal term shall be identical to the terms and conditions of the original term.
  - A. **Termination for Convenience.** Either party may terminate this Agreement for any reason upon giving the other party written notice of such termination no fewer than ten (10) calendar days in advance of the effective date of said termination.



- B. **Termination for Cause.** If the Contractor fails to perform in the manner called for in this Agreement, or if the Contractor fails to comply with any other provisions of this Agreement and fails to correct such noncompliance within five (5) calendar days of written notice thereof, the City may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services for complying with the terms of this Agreement.
11. **Integration.** The Agreement between the parties shall consist of this document and any schedules or exhibits listed in this agreement and attached hereto. These writings constitute the entire Agreement of the parties and shall not be amended except by a writing executed by both parties. In the event of any conflict between this written Agreement and any provision of the exhibits if any, this Agreement shall control.
12. **Non-assignable.** The City has awarded this Agreement to the Contractor due to its unique qualifications to perform these services. The services to be provided by the Contractor shall not be assigned or subcontracted without the express written consent of the City, which consent must be sought at least thirty (30) days prior to the date of any proposed assignment. Any work or services assigned or subcontracted hereunder shall be subject to each provision of this Agreement including Section 2, Ownership and use of documents; Section 7, Discrimination prohibited; proper bidding procedures where applicable; and all local, State and Federal statutes, ordinances and guidelines.
13. **Covenant against contingent fees.** The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the 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.
14. **General Provisions.** For the purpose of this Agreement, time is of the essence. In the event of 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 Chapter 7.04A RCW, as amended, and the Mandatory Arbitration Rules (MAR), with both parties waiving the right of a jury trial upon trial de novo; 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 as additional award and judgment against the other.

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.

15. **Nonwaiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement, shall not constitute a waiver of any other similar event or other provision of this Agreement.
16. **Notices.** Notices to the City of Benton City shall be sent to the following address:

City of Benton City  
PO Box 70  
Benton City, WA 99320

Notices to the Contractor shall be sent to the following address:

JF Engineering  
5220 S. Auburn Pl  
Kennewick, WA 99337

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U. S. mails, with proper postage and properly addressed.

17. **Authorization.** By signature below, each party warrants that they are authorized and empowered to execute this Agreement binding the City and the Contractor respectively.

DATED THIS 4 DAY OF April, 2019

CITY OF BENTON CITY

By: L. Lehman  
Linda Lehman, Mayor

CONTRACTOR:

By: [Signature]  
JF Engineering, PLLC

ATTEST:

[Signature]  
Stephanie Haug, MMC, City Clerk

APPROVED AS TO FORM:

[Signature]  
Kerr Ferguson Law, PLLC, City Attorney

## EXHIBIT A:

### WWTP Tasks and Time Requirements

Generally: Testing and supervision at the Benton City waste water treatment plant

#### Daily:

- Collect and calculate influent & effluent daily flows
  - Perform checks of all running equipment; grinder, auger, blowers, aeration basin lines, clarifier rake, return activated sludge (“RAS”) air lift, clean RAS bar screen, ultraviolet (“U.V.”) lights, irrigation pump
  - Collect effluent sample for pH (two separate pH tests and results required), 1 dissolved oxygen, and 1 temperature
    - pH should be between 7.55 and 7.25
    - Dissolved oxygen (“DO”) must be at least 2.00 mg/l
- \* Total 1 to 2 hours per day

#### Weekly:

- ❖ Mixed liquor suspended solids (“MLSS”) performed preferably Mondays
  - Collect Samples of MLSS and RAS
    - Perform Settleometer test with RAS sample for min. 1 hour
      - Filter and weigh samples of each
      - Furnace MLSS sample to determine mixed liquor volatile suspended solids (“MLVSS”)

\*Total 2 to 3 hours per week
- ❖ Biochemical oxygen demand (“BOD”) down from previous week
  - Measure all samples 5-day dissolved oxygen and pH
  - Calculate 5-day BOD results
    - Wash BOD bottles

\*Total 1 to 2 hours per week
- ❖ BOD up from previous week
  - Start 24-hour grab samplers 24 hours previous to test
  - Fill & aerate distilled water carboy 24 hours previous to test
    - Collect seed, influent and effluent samples from grab samplers
    - Filter and weigh each influent and effluent sample
    - Fill BOD bottles with corresponding samples and measure DO and pH before placing in incubator for 5 days
      - Wash dishes

\*Total 2 to 3 hours per week
- ❖ Weekly laboratory effluent tests -
  - Ammonia- TNTplus Hach test 1 hour per week
  - Nitrates- TNTplus Hach test 1 hour per week
  - Fecal - 3 samples and 1 blank 1 hour per week

Total of 13 to 21 hours per work per full week, assuming no other unforeseen issues arise.

Additionally, there would be the requirement of after-hours availability for the emergency instance in which an operator would be needed.