

RESOLUTION NO. R21-110

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH
"IN CONTROL, INC." TO PREPARE A PRE-ENGINEERING SURVEY FOR THE
CITY'S WATER TREATMENT PLANT.**

BE IT RESOLVED by the City Council of the City of Laurel, Montana:

Section 1: Approval. The Contract between the City of Laurel and In Control, Inc. for the preparation of a Pre-Engineering Survey for the City's Water Treatment Plant as described in the attached Contract and Proposal (Exhibit A) is accepted and approved.

Section 2: Execution. The Mayor and City Clerk/Treasurer of the City of Laurel are hereby given authority to accept and execute the Contract on behalf of the City.

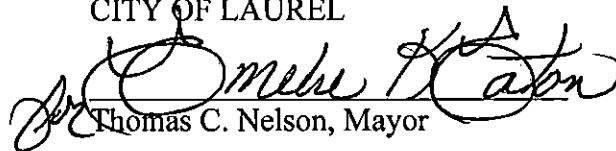
Section 3: Effective date. The effective date for the attached Contract is the date this Resolution is approved by the City Council.

Introduced at a regular meeting of the City Council on October 12, 2021, by Council Member Wilke.


PASSED and APPROVED by the City Council of the City of Laurel this 12th day of October 2021.

APPROVED by the Mayor this 12th day of October 2021.


CITY OF LAUREL


Thomas C. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk-Treasurer

Approved as to form:


Sam S. Painter, Civil City Attorney

INDEPENDENT CONTRACTOR SERVICE CONTRACT

This Contract is made and entered into this ^{5th CJB EKE} ~~26th~~ ^{November} day of ~~October~~ 2021, between the City of Laurel, a municipal corporation organized and existing under the laws of the State of Montana whose address is P.O. Box 10, Laurel, Montana 59044, hereinafter referred to as "City" and ~~In Control Inc.~~ ^{In Control}, a contractor licensed to conduct business in the State of Montana, whose address is ~~10352 Jamestown St. NE, Blaine, MN 55449~~ ^{10350 Jamestown}, hereinafter referred to as "Contractor". EKE
CJB
In Control

**SECTION ONE
DESCRIPTION OF SERVICES**

- A. Purpose. City shall hire Contractor as an independent contractor to perform for City the services described in the Bid dated October 13, 2021, attached hereto as Exhibit "A" and by this reference made part of this contract.
- B. Effective Date. This contract is effective upon the date of its execution by both Parties. ~~Contractor shall complete the services within 60 days of commencing work.~~ The parties may extend the term of this contract in writing prior to its termination for good cause. CJB EKE
- C. Scope of Work. Contractor shall perform his/her work and provide services in accordance with the specifications and requirements of this contract, any applicable Montana Public Work Standard(s) and Exhibit "A".

**SECTION TWO
CONTRACT PRICE**

Payment. City shall pay Contractor fifty thousand dollars and no cents (\$50,000.00) for the work described in Exhibit A. Any alteration or deviation from the described work that involves extra costs must be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree to extra payments or charges in writing. Prior to final payment, Contractor shall provide City with an invoice for all charges.

**SECTION THREE
CITY'S RESPONSIBILITIES**

Upon completion of the contract and acceptance of the work, City shall pay Contractor the contract price, plus or minus any additions or deductions agreed upon between the parties in accordance with Sections one and two, if any.

**SECTION FOUR
CONTRACTOR'S WARRANTIES AND RESPONSIBILITIES**

A. Independent Contractor Status. The parties agree that Contractor is an independent contractor for purposes of this contract and is not to be considered an employee of the City for any purpose hereunder. Contractor is not subject to the terms and provisions of the City's personnel policies or handbook and shall not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings, agreements or sub-contracts in any dealings between Contractor and any third parties. The City is interested solely in the

results of this contract. Contractor is solely responsible for all work and work product under this contract, including techniques, sequences, procedures, and means. Contractor shall supervise and direct the work to the best of his/her ability.

B. Wages and Employment. Contractor shall abide by all applicable State of Montana Rules, Regulations and/or Statutes in regards to prevailing wages and employment requirements. Contractor shall comply with the applicable requirements of the Workers' Compensation Act. Contractor shall maintain workers' compensation coverage for all members and employees of his/her business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA. Contractor understands that all contractors or subcontractors working on publicly funded projects are required to have withheld from earnings a license fee of one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more. This license fee is paid to the Montana Department of Revenue pursuant to Montana law.

C. Unless otherwise specified by the terms of this Agreement, all materials and equipment used by Contractor on the Construction Project shall be new and where not otherwise specified, of the most suitable grade for their intended uses.

D. All workmanship and materials shall be of a kind and nature acceptable to the City.

E. All equipment, materials, and labor provided to, on, or for the Contract must be free of defects and nonconformities in design, materials, and workmanship for a minimum period beginning with the commencement of the work and ending one (1) year from completion and final acceptance by the City. Upon receipt of City's written notice of a defective or nonconforming condition during the warranty period, Contractor shall take all actions, including redesign and replacement, to correct the defective or nonconforming condition within a time frame acceptable to the City and at no additional cost to the City. Contractor shall also, at its sole cost, perform any tests required by City to verify that such defective or nonconforming condition has been corrected. Contractor warrants the corrective action taken against defective and nonconforming conditions for a period of an additional one (1) year from the date of City's acceptance of the corrective action.

F. Contractor and its sureties are liable for the satisfaction and full performance of all warranties.

G. Contractor has examined the facilities and/or has made field examinations. Contractor has knowledge of the services or project sought under this Contract and he/she further understands the site conditions to be encountered during the performance of this Contract. Contractor has knowledge of the types and character of equipment necessary for the work, the types of materials needed and the sources of such materials, and the condition of the local labor market.

H. Contractor is responsible for the safety of the work and shall maintain all lights, guards, signs, temporary passages, or other protections necessary for that purpose at all times.

I. All work is performed at Contractor's risk, and Contractor shall promptly repair or replace all damage and loss at its sole cost and expense regardless of the reason or cause of the damage or loss; provided, however, should the damage or loss be caused by an intentional or negligent act of the City, the risk of such loss shall be placed on the City.

J. Contractor is responsible for any loss or damage to materials, tools, work product or other articles

used or held for use in the completion or performance of the Contract.

K. Title to all work, work product, materials and equipment covered by any payment of Contractor's compensation by City, whether directly incorporated into the Contract or not, passes to City at the time of payment, free and clear of all liens and encumbrances.

**SECTION FIVE
INDEMNITY AND INSURANCE**

Contractor shall indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees.

**SECTION SIX
COMPLIANCE WITH LAWS**

Contractor shall comply with all federal, state, local laws, ordinances, rules and regulations. Contractor shall either possess a City business license or shall purchase one, if a City Code requires a business license.

**SECTION SEVEN
NONDISCRIMINATION**

Contractor agrees that any hiring of persons as a result of this contract must be on the basis of merit and qualification and further that Contractor shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

**SECTION EIGHT
DEFAULT**

If either party fails to comply with any term or condition of this Contract at the time or in the manner provided for, the other party may, at its option, terminate this Contract 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 except for punitive damages. The Parties hereby waive their respective claims for punitive damages. 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 Contract.

**SECTION NINE
TERMINATION**

Either party may terminate the contract for their convenience upon thirty days written notice sent postage prepaid, to the addresses provided herein.

**SECTION TEN
GOVERNING LAW AND DISPUTE RESOLUTION**

The Parties agree that the laws of the State of Montana govern this Contract. The Parties agree that venue is proper within the Courts of Yellowstone County, Montana. If a dispute arises, the Parties, through a representative(s) with full authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten business days after the dispute arises. If negotiations fail, the Parties may utilize a third party mediator and equally share the costs of the mediator or file suit.

**SECTION ELEVEN
ATTORNEY FEES**

If any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either is ordered to pay, a reasonable sum for the successful party's attorney's fees and all costs charges and expenses related to the action.

**SECTION TWELVE
ENTIRE AGREEMENT**

This contract and its referenced attachment and Exhibit A contain the entire agreement and understanding of the parties and supersede any and all prior negotiations or understandings relating to this project. This contract shall not be modified, amended, or changed in any respect except through a written document signed by each party's authorized respective agents.

**SECTION THIRTEENTH
ASSIGNMENT OF RIGHTS**

The rights of each party under this Contract are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

**SECTION FOURTEEN
SEVERABILITY**

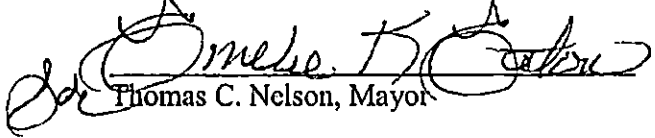
Each provision, section, or subsection of this Contract shall stand separate and independent of every other. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this contract to be invalid, the remaining provisions, sections, and subsections of this contract shall remain in full force and effect.

**SECTION FIFTEEN
PARAGRAPH HEADINGS**

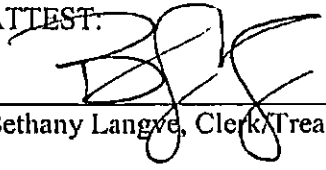
The titles to the paragraphs of this contract are solely for the convenience of the parties and shall not be used to explain, simplify, or aid in the interpretation of the provisions of this agreement.

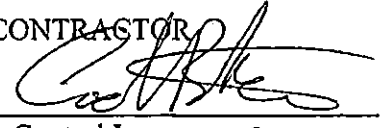
SIGNED AND AGREED BY BOTH PARTIES ON THE ^{5th CJB EKE} ~~26th~~ DAY OF ^{November CJB EKE} ~~OCTOBER~~ 2021.

CITY OF LAUREL


Thomas C. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk/Treasurer

CONTRACTOR


~~InControl Inc.~~ CJB
In Control Inc,
Employer Identification Number
41-1754685



In Control, Inc.
10350 Jamestown St. NE
Blaine, MN 55449

PROPOSAL # QP21091301-01

To: City of Laurel

Date: September 10, 2021

From: Cade Beeton

Valid: 45 days

Page: 1 of 5

Attn: Mr. Nathan Herman

Re: City of Laurel Water Treatment Plant Pre-Engineering Survey
(Time & Expense Basis)

In Control Inc. is pleased to provide our proposal for services as part of the project referenced above. This proposal is based upon discussions with Nathan Herman as well as our knowledge of the existing control system from previous work performed by In Control at the City of Laurel Water Treatment Plant (WTP). The outcome and deliverables of this project will provide In Control the proper documentation, wire labeling, backup configurations, process loop descriptions, system diagrams and understanding of the existing control system in order to safely and efficiently upgrade the plant in the future.

It is the position and recommendation of the In Control Engineering Team that this Pre-Engineering Survey, documentation, wire labeling and the necessary reverse engineering of the existing system be completed prior to a system upgrade. This will reduce the risk and time associated with upgrading to the future system. It is the intent of In Control to incorporate our proven standards and programming as much as possible on an upgraded control system to provide effective and efficient operation of the City of Laurel WTP for decades to come.

It is the expectation of In Control that the City of Laurel provide timely responses to requests for data, photos of equipment, review of documents, providing feedback and any other information that In Control may require during the execution of this work.

Proposed Services

Item 1 - Master Planning and Onsite Survey

In Control will perform the following items. These services will be performed under the direction and in coordination with the City of Laurel WTP Personnel to have as little disturbance as possible to plant operations.

A. Master Planning

1. A project team consisting of (1) engineer and up to (2) technicians will be assigned to the project.
2. Engineering review meetings will be conducted on a weekly or bi-weekly basis as required.

B. Onsite Services and Onsite Survey

1. Panel and field wiring will be traced to wire destinations and wire labels will be installed.
2. As Found configurations of PLC's, Radios, Switches, etc. will be documented.
3. Model numbers, serial numbers and other pertinent information from existing equipment will be gathered for documentation purposes.
4. Project Team will work with plant personnel to power down panels and systems to see and document how other panels and systems are affected.
5. Project Team will work with plant personnel to document process diagrams, process loop descriptions and sequence of operation detailing system functions and operation.
6. Project Team will work with plant personnel in identifying modes and programs that are still operational as well as those that are no longer operational so they can be eliminated early on.
7. Project Team will work with plant personnel in defining what the changeover plan looks like.

Item 2 - Professional Engineering and Deliverables

In Control will perform the following items and provide the following Deliverables.

A. Professional Engineering

1. The drawings and documentation that currently exist in the O&M manuals provided will be combined with the Onsite Survey to understand and document the existing control system.
2. The existing drawings and documentation will be redlined for any discrepancies in the current state of the system and changes will be documented.
3. The PLC and SCADA systems will be reverse engineered as needed and documented.
4. Control panels or systems that don't have adequate documentation or information may be passed on to the In Control Design Team to provide adequate drawings and documentation.
5. Existing panels and equipment to be documented include:

- A. Clearwell Panel
- B. Filter Control Panel
- C. High Service Pump Panel
- D. High Service Expansion Panel
- E. Low Service Pump Panel
- F. Remote PLC's
- G. Data Concentrator
- H. SCADA System Hardware

B. Deliverables

1. Wire labeling installed in listed panels and documented in new and/or existing documentation.
2. Documentation of process diagrams, process loop descriptions and sequence of operations.
3. Documentation of all communications and communication protocols from system to system.
4. As Found configurations of PLC's, Radios, Switches, etc. will be taken and documented.
5. Model numbers, serial numbers and other pertinent information will also be documented.

2021 Rate Schedule

(effective January 1, 2021)

Professional Engineering Service

Base rate of \$185.00/hour

Sr. Engineer Service

Base rate of \$178.00/hour

Engineering Service

Base rate of \$146.00/hour

CAD and Drafting Services

Base rate of \$110.00/hour

Production Service

Base rate of \$72.00/hour

Integration Consulting Service

Base rate of \$235.00/hour

Scheduled Field Service and Phone Service

Base rate of \$146.00/hour (Minimum Billing for Job Site Visit is \$500.00, Minimum Billing for Phone is 1 hour).

Emergency Service

Emergency Service is billed for unscheduled work, which requires immediate attention, at 1.5 x the base rate, and 2.0 x the base rate on Saturdays, Sundays, holidays, and outside extended business hours (7:00AM-7:00PM) during the workweek.

Overtime

Overtime is billed for any work that exceeds 12 hours per day and is billed for unscheduled work on Saturdays at 1.5 x the base rate, and 2.0 x the base rate on Sundays and holidays.

Travel Expenses

Mileage is billed at \$0.75/mile. Other travel expenses including airfare, rental car, and living expenses are billed at cost. Meals are charged at \$55/day.

Proposal Summary

The price for this Pre-Engineering Survey on a Time and Expense schedule with standard In Control rates is a Not-To-Exceed price of \$50,000.00 USD.

TERMS: Services will be billed on a monthly basis as services are rendered with standard terms of net 30 days.

Thank you in advance for the consideration of our offer and for the opportunity to work together. Should you have any questions regarding this proposal, please contact me directly at your convenience. I look forward to hearing from you soon to secure and coordinate this project.

Best Regards,

Cade Beeton
Technical Sales Engineer
Mobile: 406.661.4795
Office: 763.783.9500
E-Mail: cade.beeton@incontrol.net

ACCEPTANCE: To accept this proposal please return a signed copy with purchase order. Thank you!

Signature: *Emelie A. Eaton*

Print Name: Emelie A Eaton

Title: City Council Chair

Purchase Order: B2110

Date: 10/12/2021

Proposal Number: QP21091301-01

Standard Terms and Conditions of Sale

These terms and conditions are in effect between the party ("Purchaser") issuing the purchase order ("Order") and In Control, Inc. ("In Control").

1. **ACCEPTANCE** - Acceptance of this Order will be in writing within 30 days of Order receipt, subject to approval of the Purchaser's credit by In Control and compliance with the acceptance criteria set forth herein. Upon acceptance, this Order will constitute the entire agreement between In Control and Purchaser, supersede all prior negotiations and discussions, and may not be modified or terminated except in writing signed by both Purchaser and In Control.
2. **TERMINATION** - Notification of termination of this Order shall be made in writing with 14 days notice. If Purchaser terminates this Order at no fault of In Control, Purchaser shall pay for services rendered at In Control's published rates, reimbursable expenses, and equipment ordered through the date of termination. This payment will also include a fee of 10% of the Order value to cover the expense of terminating the contract.
3. **ATTORNEY FEES** - If either party commences or is made a party to an action or proceeding to enforce or interpret this Order, the prevailing party in such action or proceeding will be entitled to recover from the other party all reasonable attorneys' fees, costs and expenses incurred in connection with such action or proceeding or any appeal or enforcement of any judgment.
4. **INDEMNIFICATION** - Purchaser will indemnify and hold harmless In Control from and against any and all claims, actions, proceedings, costs, expenses, losses and liability, including all reasonable attorneys' fees, costs and expenses, arising out of or in connection with or relating to any goods or services not furnished by In Control pursuant to this Order, including without limitation all product liability claims and any claims involving personal injury, death or property damage. The obligations set forth in this Section will survive the termination or fulfillment of this Order.
5. **LIMITATIONS OF LIABILITY** - In no event will In Control be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power. In particular, unless otherwise agreed to in writing between the Purchaser and In Control, In Control will not accept liquidated damages.
6. **FORCE MAJEURE** - In no event shall In Control be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, supply chain disruptions, accidents, acts of war or terrorism, civil or military disturbances, health crises, nuclear or natural catastrophes or acts of God, and interruptions of utilities, communications or computer services. It being understood that In Control shall use all commercially reasonable efforts to resume performance as soon as practicable under the circumstances.
7. **WARRANTY** - In Control warrants that the goods and services furnished will be of good quality, free from defects in material, design and workmanship will conform to the specifications and drawings and be suitable for their intended purpose. This warranty will be in force for eighteen (18) months after shipment or twelve (12) months from startup, whichever is shorter. Any remaining allotments for Purchaser or end owner/engineer-initiated changes and call-back expire with the warranty period and are not refundable. In Control reserves the right to terminate warranty should the Purchaser's account be in arrears.
8. **TRANSPORTATION** - Unless otherwise specified, all deliveries from In Control will be F.O.B. factory, freight prepaid.
9. **ESCALATION** - This Order is conditioned upon the ability of In Control to complete the work at present prices for material and at the existing scale of wages for labor. If In Control is, at any time during the term of the Order, unable to complete the work at the present prices and wages, then the Order sum shall be equitably adjusted by change order to compensate In Control for significant price increases, where a significant price increase is defined as a change of 10% or more between the date of quote and the date of applicable work.
10. **PAYMENT TERMS** - The payment terms are due upon invoice receipt. Any balance remaining over 31 days beyond the invoice date will be subject to a 2.0% monthly service fee until paid. Debit or credit card payment is accepted and subject to a 3.0% surcharge of the payment amount. Should a payment default occur In Control reserves the right to stop all work, including but not limited to startup of equipment. All reasonable attempts will be made between both parties to resolve the disputed portions of any invoice within the payment terms.
Order value will be invoiced in full upon shipment unless specific terms are described in the proposal. No retainage is allowed.
11. **NONWAIVER** - The failure by In Control to enforce at any time, or for any period of time, any of the provisions hereof will not be a waiver of such provisions nor the right of In Control thereafter to enforce each and every such provision.
12. **REMEDIES** - Remedies herein reserved to In Control will be cumulative and in addition to any other or further remedies provided in law or equity.