

**RESOLUTION NO. R23-10**

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN INDEPENDENT CONTRACTOR SERVICE CONTRACT WITH ADVANCED PUMP AND EQUIPMENT, INC.**

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

Section 1: Approval. The Independent Contractor Service Contract by and between the City of Laurel and Advanced Pump and Equipment, Inc., a copy attached hereto and incorporated herein, is hereby approved.


Section 2: Execution. The Mayor is hereby given authority to execute the Independent Contractor Service Contract with Advanced Pump and Equipment, Inc. on behalf of the City.

Introduced at a regular meeting of the City Council on the 14<sup>th</sup> day of February, 2023, by Council Member Klose.

PASSED and APPROVED by the City Council of the City of Laurel the 14<sup>th</sup> day of February, 2023.

APPROVED by the Mayor the 14<sup>th</sup> day of February, 2023.

CITY OF LAUREL

  
\_\_\_\_\_  
Dave Waggoner, Mayor

ATTEST:

  
\_\_\_\_\_  
Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michele L. Braukmann, Civil City Attorney



## **INDEPENDENT CONTRACTOR SERVICE CONTRACT**

This Contract is made and entered into this 14 day of February 2023, 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 Advanced Pump & Equipment, Inc., a contractor licensed to conduct business in the State of Montana, whose address is 81 Gold Miner Lane, Unit A, Belgrade, MT 59714, hereinafter referred to as "Contractor".

### **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 January 12, 2023, 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.
- 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 eighteen thousand seven hundred and fifty dollars and thirty six cents (\$18,750.36) 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**

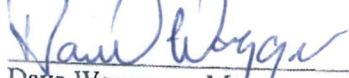
Each provision, section, or subsection of this Contract shall stand separate and independent of every other. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this contract to be invalid, the remaining provisions, sections, and subsections of this 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 14<sup>th</sup> DAY OF FEBRUARY 2023.


CITY OF LAUREL

  
\_\_\_\_\_  
Dave Waggoner, Mayor

ATTEST:

  
\_\_\_\_\_  
Kelly Strecker, Clerk/Treasurer

CONTRACTOR

  
\_\_\_\_\_  
Advanced Pump & Equipment, Inc.

Employer Identification Number

20-3082738



Advanced Pump & Equipment, Inc.  
 81 Gold Miner Lane, Unit A  
 Belgrade MT 59714  
 United States

**Quote**  
 #ESTAPE1131  
 1/12/2023

**Bill To**

City of Laurel  
 P. O. Box 10  
 Laurel MT 59044  
 United States

**TOTAL**

**\$18,750.36**

Expires: 2/11/2023

<b>Expires</b>	<b>Exp. Close</b>	<b>Project</b>	<b>Sales Rep</b>	<b>Shipping Method</b>
2/11/2023	1/12/2023		Higgs, Bryant	

<b>Item</b>	<b>Quantity</b>	<b>Sales Rate</b>	<b>Sales Amount</b>
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LAUREL LIFT PANEL-V1	1	\$17,750.355	\$17,750.36
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MMC1X025L-483-LA-ICM-A15L-CH-U4-SW-PLC6E-HG4  
 C-VZW-CUSTOM

- \* UL508A Listed Outdoor Use: NEMA 3R
- Enclosed Industrial Control Panel
- U.L. File Number: NITW.E210861
- ISO 9001 File Number: 1694007

- \* Free-Standing Steel Electrical Enclosure:
- Est. Dimensions: 42"H x 36"W x 12"D
- Lockable Dead Front
- NEMA 3R Filter Fan Cooling

- \* 100A Main Panel Disconnect:
- UL489 Service Entrance Rated
- Thru-Door Pistol On/Off Handle

- \* Logic Controller Package:
- IDEC PLC6e Platform
- 4.3" Color Touchscreen HMI
- Display, Monitor, Control Sensors
- Complete System Calibration
- Timed Safeties and Fault Logging
- Hand/Off/Auto Selector, Illuminated
- Power & Fault Indicator Lamps

- \* (1) 24HP ATL Start Circuit
- Manual Motor Protector

- \* (1) 11HP ATL Start Circuit
- Manual Motor Protector

- \* Standard Panel Accessories:
- Standard Lightning Arrestor; UL1449
- Sensor Field Wiring terminal Strip
- Color Wiring Schematic per UL508A

- \* Specification Additional Accessories:
- External Alarm Beacon
- Cabinet Heater
- Hour Meters
- Motor Current Transmitters
- Aneroid Bellows Level Sensor

- \* Wireless 4G Cellular Modem Package:
- Remote Monitoring and Control of HMI
- Receive E-mail or Text Fault Alerts
- Change Set-Points from Smart Device
- 90 Day Free Trial - Standard Price is \$480 Per Year



ESTAPE1131



Advanced Pump & Equipment, Inc.  
 81 Gold Miner Lane, Unit A  
 Belgrade MT 59714  
 United States

**Quote**  
 #ESTAPE1131  
 1/12/2023

Item	Quantity	Sales Rate	Sales Amount
** ESTIMATED FREIGHT ** - Actual Freight Will be Billed When Invoicing.	1	\$1,000.00	\$1,000.00
			<b>Subtotal</b> \$18,750.36
			<b>Tax Total (0%)</b> \$0.00
			<b>Total</b> \$18,750.36

GENERAL NOTES:  
 (1) Estimated Lead Time: 6-8 Weeks (After Receipt of Order)  
 \* Unless Otherwise Indicated \*  
 (2) Sales Tax is NOT Included in Quote  
 \* Will be Charged When Applicable \*  
 (3) Freight is NOT Included in Quote (Unless Otherwise Indicated)  
 \* Will be Billed at Time of Invoicing \*  
 (4) Labor is NOT Included in Quote (Unless Otherwise Indicated)  
 (5) Quote is Only for Items Listed  
 \* Any Additional Materials are NOT Included \*

To accept this quotation, sign and return:

**PAYMENT TERMS**

The price is firm if order is placed within the date of expiration of proposal and providing release to order and ship "when ready" is given within 90 days. Changes in net cost will be included in the remaining payments on a prorated basis. Applicable taxes will be added in each payment. A 1.5% per month late charge will be applied to past due accounts. Any alternate terms or requests for such should be addressed prior to the bid.

**Payment Terms for Secured Orders:**

For purchasers with evidence of an acceptable payment bond indemnifying APE that is presented within 15 days of the order: APE will invoice 100% upon completion of manufacturing to be paid according to schedule below:  
 90% - due 30 days after equipment manufacture is complete, ready for shipment AND prior to Start-up Services;  
 5% - Upon successful Start-up Services, not to exceed 60 days after invoice/equipment manufacture;  
 5% - Upon delivery of O&M manuals.

**Monthly Progress Billing to be included with Monthly Pay Request (if acceptable) :**

Terms of payment will be Net 30 days subject to 1.5% per month late charge for past due accounts. Invoicing will be monthly, based upon the percentage of work completed during the billing period, and will be submitted to the Purchaser each month by an agreed upon date. The invoiced amount will reflect the value of the percentage of completion accomplished during the billing period for each of three (3) categories: Engineering/Submittals, Materials Stored at APE/Delivery, and Start-up. APE will determine the percentage of completion accomplished for each month. The Purchaser may require substantiation, which will be limited to photocopies of material packing slips and photographs of Equipment, unless additional charges are accepted. The Purchaser or their agent may visit the APE facilities at their expense for substantiation. Shipment will not be made unless account is current.

**Milestone Progress Payments for Unsecured Orders:**

The Billing Schedule for projects without protection indemnifying APE against loss are as follows:

- 20% - due 10 days after receipt of order;
- 40% - due 10 days after approval of submittals;
- 35% - due at time of shipment AND prior to Start-up Services;
- 5% - Upon acceptance of APE supplied equipment, not to exceed 45 days after delivery. O&M manuals will not be supplied until account is paid in full

**Public Works or Prevailing Wage Certified Payroll:**

If this is a public works, prevailing wage, or PLA agreement project requiring certified payroll please contact our office for a revised quote. The revised quote will include the additional labor costs not quoted on the original quote.



ESTAPE1131