

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE:** November 27, 2006

**SUBJECT:** Yew Avenue Underground Electrical Design Contract  
CVO Electrical Systems, LLC

**SUBMITTING DEPT:** Public Works

**PREPARED BY:** \_\_\_\_\_  
(Digital Signature)

**AGENDA LOCATION:** Comments/Communications ☐; Consent ☐; Committee Reports ☐  
Unfinished Business ☐; Council Action Items ☒; Public Hearing ☐; Standing Committees ☐

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**ATTACHMENTS:** CVO Electrical Systems, LLC - Professional Service Agreement

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**ANALYSIS / SUMMARY:**

This section has many trees and has historically been an area that is damaged during severe weather, resulting in power outages. This project will remove the major overhead electrical circuit with more reliable underground lines.

The level of effort to install vaults and conductor and related fusing and switching for this circuit is beyond the scope and legal authority of the City workforce. Staff proposes to retain electrical engineer Jerry Witkowski of CVO Electrical Systems, who is very familiar with our system, to prepare plans and specifications and a cost estimate suitable for bidding. The scope of work for this contract also includes support engineering services during construction. The design should be completed in time to allow construction in the summer of 2007. Estimated construction cost is approximate \$75,000.

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**RECOMMENDATION:** Waive 2<sup>nd</sup> Reading ☒: Staff recommends that City Council authorize the City Manager to execute a design contract with CVO Electrical Systems for Yew Avenue electrical underground lines not to exceed \$16,795.

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**FISCAL ANALYSIS:** This amendment will be paid from Fund 324 Electrical Capital Improvements.

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**REVIEWED BY:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)

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**COUNCIL ACTION:**

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to: \_\_\_\_\_

**COUNCIL ACTION:** \_\_\_\_\_

**CITY OF BLAINE**  
**PROFESSIONAL SERVICES AGREEMENT**

**YEW AVENUE UNDERGROUND IMPROVEMENTS**  
**ENGINEERING SERVICES**

Agreement No: S06-13

**THIS AGREEMENT** is between the City of Blaine, a municipal corporation (hereinafter referred to as "City") and CVO Electrical Systems, LLC (hereinafter referred to as "Consultant").

**W I T N E S S E T H:**

**1. SCOPE**

Consultant is to provide City with professional engineering services to prepare the design, plans specifications, and assemble contract documents, for the construction of an underground primary circuit along Yew Avenue. A more detailed description of the scope of services is attached hereto as Exhibit "A" and incorporated herein by this reference.

**2. TERM**

This Agreement shall commence on November 28, 2006 and will terminate on December 31, 2007 unless extended by separate amendment to this Agreement.

**3. COMPENSATION, INVOICING, PAYMENT**

A. City shall pay Consultant on a time and material basis not to exceed Sixteen Thousand Seven Hundred Ninety-Five and no cents (\$16,795.00) for completed work and services rendered under this Agreement. The City shall not pay Consultant separately for indirect or normal business overhead costs (e.g., office rental, office supplies, postage, telephone, fax, business insurance, office utilities, routine correspondence preparation, invoicing, or payment receipt processing and accounting).

B. Consultant shall submit monthly invoice statements to Public Works Department / 1200 Yew Avenue / Blaine, WA 98230 and shall include the following information:

1. For direct professional services:
  - a. An itemized short description of the task performed and the specific time period,
  - b. The name(s) of the corresponding person(s) performing the task,
  - c. The corresponding hourly reimbursement rate(s) of the person(s) performing the task,
  - d. The corresponding hours, to the nearest quarter of an hour, spent performing each task,
  - e. Work task subtotal cost (hours x hourly rate), and
  - f. Subtotal for direct professional services.
2. For any other direct charges:
  - a. Qualified mileage charges: A short description of the trip's purpose, date, mileage for the trip, mileage reimbursement rate, and total charge (mileage x rate).
  - b. All other charges: An itemized short description explaining the charge, the reimbursable cost, and a subtotal of all such charges.
  - c. Subtotal for indirect or other charges.
3. Any past-due amounts.
4. Uninvoiced balance remaining on each work task.
5. Total amount of the invoice.

City shall review these submitted invoices and make payment based thereon for work completed to City's satisfaction. City shall pay Consultant all undisputed amounts within 30 days of receipt of Consultant's invoice. 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 specified in the Scope of Services. City shall promptly notify Consultant of any disputed invoice amounts.

**4. RELATIONSHIP OF PARTIES**

Consultant and its personnel shall act as independent contractors and not as employees of City. As such, they have no authority to bind City or control employees of City, contractors, or other entities. This Agreement does not create a partnership or joint venture between Consultant and City.

**5. PROJECT OVERSIGHT**

Within the performance of these duties, Consultant shall work under the direction of the {Public Works Director. Consultant specifically understands that no City employee other than the Public Works Director is authorized to direct the work of Consultant unless the Public Works Director designates in writing another representative of City to provide such direction. The Public Works Director may, at any time, issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, then Consultant shall immediately notify the Public Works Director and take no further action concerning those written directions until such time as the parties have executed a written change order.

**6. LICENSE AND TAXES**

Consultant shall possess a current Blaine Business License and any regulatory license(s) required to fulfill its obligations under this Agreement. Furthermore, Consultant agrees to pay when due all taxes, assessments, levies or tariffs.

**7. INSURANCE AND HOLD HARMLESS**

Prior to and during the performance of the work covered by this Agreement, Consultant shall provide to City evidence that it has obtained and maintains in full force and effect during the term of this Agreement:

- (a) A policy of professional insurance, providing coverage of at least One Million Dollars (\$1,000,000) against professional liability for errors and omissions in connection with the work to be performed by Consultant under this Agreement;
- (b) Workers' Compensation Insurance as required by law with an all-states endorsement;
- (c) Employer's Liability Insurance (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in Washington State; and
- (d) Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles and vehicles used by or on behalf of Consultant with One Million Dollars (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of One Million Dollars (\$1,000,000).

City shall be provided thirty (30) days' written notice of any cancellation of said professional liability insurance. City shall be listed as an additional insured on policies listed in (d) above.

Consultant agrees to indemnify City, its officers, council members, employees and agents for any claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and litigation costs, arising out of claims by any third parties for property damage or bodily injury, including death, to the extent arising from the negligence or willful misconduct of Consultant, Consultant's employees, affiliated corporations, and subcontractors in connection with the project.

City agrees to indemnify Consultant from any claims, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the extent arising from the negligence or willful misconduct of City, or its employees or contractors (other than Consultant) in connection with the project.

**8. WARRANTY**

Consultant warrants that their services will conform to the standard of care applicable to the services covered by this Agreement, and that they shall be performed with the degree of skill and diligence normally employed by professional consultants performing the same or similar work.

**9. REMEDIES**

In the event of a default hereunder, or in the event that Consultant fails to perform the Project work in conformance with the standard of care set forth in Section 8, Warranty, then City may, in addition to exercising all of those rights and remedies available to it in law and equity, (i) terminate the Contract, (ii) cure any defect arising from Consultant's negligence, recklessness or willful misconduct and charge the cost of such repair back to Consultant, and/or (iii) seek specific remedial performance under the Contract at no additional cost to City. The remedies provided for herein are cumulative.

**10. GENERAL CONDITIONS**

- A. Reports and Information.** Consultant, at such times and in such forms as City may require, shall furnish City such reasonable periodic reports and documents as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Agreement.

Consultant will maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoiced amounts. All plans, drawings, reports, specifications, data, information or other documents provided to Consultant and/or prepared or assembled under this Agreement are and shall remain the sole property of City. Consultant explicitly waives all claims to propriety ownership and/or copyrights associated with any work product produced under this Agreement. Consultant shall retain all such documentation generated in conjunction with the undertaking of the Project, and Consultant shall, upon completion, termination, expiration and/or conclusion of the Project, provide same to City.

- B. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and both parties acknowledge that there are not other agreements, written or oral, that have not been fully set forth in the text of this Agreement.
- C. Amendments.** The parties hereby further agree that this Agreement cannot be amended or modified without the written concurrence of both parties.
- D. Notices.** Any notices required to be given by City to Consultant or by Consultant to City shall be in writing and delivered to the parties at the following addresses by certified mail, return receipt requested:

Blaine City Clerk  
344 H Street  
Blaine, WA 98230

CVO Electrical Systems, LLC  
1600 SW Western Blvd, Suite 160  
Corvallis, OR 97333

With a copy to:  
Blaine Public Works Director  
1200 Yew Street  
Blaine, WA 98230

- E. Waiver.** Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

- F. Compliance with State, Local and Federal Laws.** Consultant agrees to comply with all applicable local, state and federal laws in performance of all services under this Agreement.
- G. Applicable Law; Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and in the event of dispute, the venue of any action brought hereunder shall be in Whatcom County Superior Court.
- H. Attorney Fees.** The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- I. No Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by any of its subcontractors or sub-consultants.
- J. Payment of Subcontractors and Sub-Consultants.** At the time of completion of the Work, Consultant agrees to certify to City that all subcontractors and sub-consultants have been paid in full. Consultant shall be responsible for the performance of any subcontractor or sub-consultant. All such subcontractors or sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington and as are required of Consultant under this Agreement. City may, in its sole discretion, withhold final payment until receipt of such certification.
- K. Confidentiality.** Any reports, documents, questionnaires, records, computer files, information and/or data given to or prepared or assembled under this Agreement shall not be made available by Consultant to any individual or organization without prior written approval of City except as may be required by law, rule, regulation, or ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, information, data, software programs and/or computer files provided by City or other documents produced in whole or in part by Consultant under this Agreement, shall be the subject of an application for copyright by or on behalf of Consultant.
- L. Public Disclosure.** Correspondence, reports and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). Consultant agrees that in the event that such a request is filed, Consultant will promptly notify City. Consultant further agrees that it will not disclose any such requested material until at least ten (10) business days after providing notification to City. This clause shall survive the termination or expiration of this Agreement.

## **11. NONDISCRIMINATION**

Consultant shall not discriminate in employment or services to the public on the basis of sex, race, color, creed, national origin, age, marital status, physical, mental or sensory handicap except an employment action based on a bona fide occupational qualification.

## **12. ARBITRATION**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, City and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise.

City and Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and so on at all sublevels, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

## **13. TERMINATION**

- A. **For Convenience.** City may, but is not obligated to, unilaterally terminate this Contract for convenience if funds become unavailable, or if Consultant suffers a business operation discontinuity or interruption (e.g., bankruptcy, dissolution, merger, hostile takeover), or if any of the personnel that Consultant originally proffered to perform the Scope of Services changes.
- B. **For Non-Compliance.** City or Consultant may unilaterally terminate this Contract if either party fails substantially to perform, through no fault of the other, and does not commence correction within five (5) days of written notice and diligently complete the correction thereafter. Upon such termination, City will be entitled to reports showing the status of all matters upon which Consultant was advising City as of the effective date of termination.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the date and year indicated.

**CONSULTANT:**

\_\_\_\_\_  
CVO Electrical Systems, LLC

\_\_\_\_\_  
Date

**CITY OF BLAINE:**

\_\_\_\_\_  
Gary R. Tomsic  
City Manager

\_\_\_\_\_  
Date

**DEPARTMENTAL APPROVAL:**

\_\_\_\_\_  
Stephen R. Banham  
Public Works Director

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Meredith G. Riley  
Finance Director

\_\_\_\_\_  
Date

## **Exhibit A**

### **SCOPE OF SERVICES**

#### **CITY OF BLAINE**

#### **YEW AVENUE UNDERGROUND IMPROVEMENTS**

##### **Task A. Project Start-Up**

###### **Task A1 Kick-Off**

This effort will involve a fact-finding discussion with the City to learn exact project objectives. An initial phone discussion has taken place and it is believed a basic task description has been identified. It will be necessary to confirm the objective and approach prior to beginning a preliminary design. It is assumed an on site meeting is not necessary and another phone conversation can establish project responsibilities and an understanding of the specific design, submittals, review processes and schedule required.

###### **Task A2 Gather and Review City Materials and Standards Criteria**

This pre-design activity will identify and evaluate existing City design and construction methods. Our design approach is based on the assumption City CAD files will be available to establish a base map route for design.

###### **Task A3 Define Preferred Major Components**

Establish City preferred equipment, ratings and manufacturer devices to ensure the design meets all City expectations, and also identify City furnished equipment. Our objective is to prepare a design with conceptual arrangement and materials similar to the 3rd Street and Semiahmoo Loop underground projects. It will also be necessary to define operation arrangement preferences if desired to be different from the present system configuration.

##### **Task B. Circuit Route Selection**

###### **Task B1 Existing Alignment Research and Finalizing Route**

Our present understanding is that the City has installed a ductbank of six 3" conduits approximately 4000' along the east side of Yew Avenue from pole 15006 to south of the Pipeline Road intersection. These conduits must be extended approximately 500' to near the City Shop vicinity to intercept the existing underground system. Vaults must be inserted at appropriate locations along the route and it is assumed three to four vaults will be required. We anticipate making use of mapping information from the Border Patrol project conduit installation to establish the design route. If licensed field surveying becomes necessary it will be handled separately as an amendment to this agreement.

##### **Task C. Circuit Design**

###### **Task C1 Develop Design Criteria**

Applicable project design criteria obtained from Tasks A and B will be documented to summarize the selected materials and arrangement of the circuit design. Design loading, clearances, interfaces and construction code compliance requirements will be included. The cable type and component selections will be based on reliability, construction/maintenance costs, feeder arrangement and loading expectations, and system component uniformity.

###### **Task C2 Evaluate Soil Characteristics**

It is assumed a geotechnical investigation is not necessary to determine sloping, vault support and backfilling requirements, and will not be performed to evaluate subsurface excavation conditions for the vault and underground circuit installation.

**Task C3 Identify Other Utility Alignments**

We will investigate applicable existing and proposed City, adjoining, and independent agency utilities that parallel or cross the circuit route. We will attempt to show and describe such systems on the plan drawings to alert the contractor and mitigate interference.

**Task C4 Perform Design Calculations**

The necessary electrical and construction calculations will be performed, including cable loading; cable pull and installation calculations to determine pulling friction, maximum bending radius and cable strength. Maximum safe pulling lengths will be calculated to determine vault and splicing terminals as appropriate.

**Task C5 Design Circuit Layout and Construction Unit Assemblies**

Design of the circuit layout will be based on City standards, switching requirements, materials, and components unique to this application. Line routing will accommodate tap and service requirements, facility locations and alignments, with appropriate ductbank and vault placement to satisfy initial and future needs.

The facility locations will be identified by the stationing system presently used on City maps. Equipment stations and materials required for construction will be identified and detail assembly drawings will be prepared to describe line construction methods. These will include construction unit assembly detail drawings, details for interconnection with the existing City system, vault assembly layouts, and miscellaneous construction details. The details will identify vault site plans, cable terminations and splice details, vault entrance and racking arrangements, and vault cable loop layouts. Drawings will be prepared in AutoCAD.

**Task C7 City Review and Revisions**

Although City involvement will occur throughout the entire project, a 90-percent completion package, including any necessary staking sheets or construction instructions, and technical specifications will be assembled and submitted for review, scheduled to take place during an on-site meeting.

During this visit and after a joint review of the design, we will assist the City with preliminary staking of the circuit route to identify the line route and facility locations.

Review comments will be incorporated into the final design as appropriate and the project will then be considered ready for contract document assembly.

**Task C8 Prepare Construction Cost Estimate**

Based on the completed design we will provide an Engineer's Construction Cost Estimate.

**Task D. Document Assembly**

**Task D1 Prepare Technical Specifications**

Equipment procurement and construction technical specification requirements and instructions will be prepared for each aspect of the work to be constructed.

**Task D2 Prepare Legal, Proposal and Contract Forms**

A bidding document will be prepared consisting of: an invitation to bid, bidders instructions, a proposal section, bidder's experience form, bid bond, contract forms and conditions of the contract. We assume this document will be based on language used from the City's most recent electrical underground project with necessary modifications inserted. The proposal section will contain specific itemizations to establish unit construction costs.

**Task D3 Assemble Contract Documents**

Upon completion of the final design, technical specifications, and other various bidding requirements, the contract document will be assembled. The construction work will be described in one complete contract document. The document will contain all bidding requirements, contract forms, technical specifications, drawings and construction instructions. Twelve copies of the bidding contract document will be published, bound and issued to the City for distribution.



**Task D4 Assist with Bidding Process and Prebid Meeting**

We will assist the City with preparation of a preferred bidders list. It is assumed the City will prepare the bid advertisement notice, notify prospective bidders and conduct a pre-bid meeting.

**Task D5 Assist with Contract Procurement**

After bids have been received, we will assist the City with review of the proposals through a spreadsheet evaluation process for pricing, conformance, exceptions, clarity, references and ability to perform.

Following the evaluations an award recommendation will be suggested.

**Task E. Service During Construction**

**Task E1 Perform Final Staking**

We will assist the City in performing final staking of the circuit route to sufficiently identify the line route and facility locations. This effort can be performed prior to but during the same site visit as the Pre-Construction Meeting described in Task E2.

**Task E2 Coordinate Pre-Construction Meeting**

Upon contract award and successful selection of a contractor, we will assist the City with a pre-construction meeting and project walk-through to review all construction requirements to ensure that the contractor is completely familiar with each aspect of the project and construction expectations.

**Task E3 Perform Periodic Inspection**

It is assumed the City will perform inspection and that periodic inspection by the engineer is not required. However, we will be available to respond to contractor questions that arise in the field during construction.