

STAFF REPORT

Date Prepared: June 29, 2012

For City Council Meeting on: July 9, 2012

TO: Honorable Mayor and City Council

PREPARED BY: Paul Koch, Interim City Administrator



APPROVED BY: N/A

SUBJECT : Approval of electric rate study contract and scope of work.

SYNOPSIS: In September of 2011, City Council established a set of priorities that included the electricity rates and tier two impact on rates along with the issue of the sub-station. On December 12, 2011, City Council adopted its grouped priorities. These priorities included the concept of an electric rate study. On February 13, 2012, City Council authorized staff to seek RFQ's (Request for Qualifications) from firms to complete this work in partnership with the City. Completion of the rate study is a budgeted objective for 2012-13 in the electric department.

The City received two proposals and then representatives from the two firms were interviewed by staff and the City Council Sub-Committee on Economic Development. Due to scheduling issues, only one member of the Sub-Committee and two staff members were able to complete the interviews. The interviews were held on May 22, 2012.

As a result of the interviews, a selection of the preferred firm has been made and was acted upon by City Council. This rate study is critical to the long term operation of the Electric Department and future rates.

On June 11, 2012 City Council authorized the creation of a contract between the City of Cascade Locks and Brown and Kysar Inc. Engineers for the electric rate study. Staff, the consultant and attorneys have developed the appropriate contract and scope of work in order to complete this project by the end of 2012.

This issue comes before City Council at this time for formal action.

CITY COUNCIL OPTIONS: The City Council has the following options on this matter.

- A. Take no action on this matter at this time.
- B. Approve the recommendations as presented.

- C. Cancel the proposed work on the electric rates.
- D. Other options as may be desired by City Council.

RECOMMENDATION: That City Council, by motion, approve the proposed contract between the City of Cascade Locks and Brown and Kysar Inc. for completion of the electric rate study, approve the related scope of work and authorize the Mayor to sign the contract. This project not to exceed \$40,000 in cost.

[RECOMMENDED MOTION: I move that the City Council approve the contract and scope of work with Brown and Kysar Inc. in an amount not to exceed \$40,000 and authorize the Mayor to sign the contract.]

Legal Review and Opinion: The City Attorney was involved in the development of the proposed contract and agrees with its terms and format.

Financial review and status: The City has budgeted \$60,000 in the Electric Department budget (Materials and Services) for this project. The cost of this project, not to exceed \$40,000, will come from the approved FY 2012-13 budget that became effective as of July 1, 2012.

BACKGROUND INFORMATION:

1. The RFQ was designed to get a firm that would be willing to work with the City to design the scope of work and the cost of this work and to get the end product the City needs.
2. Current city electric use is getting close to the Tier 2 threshold and the City does not have a tier two rate structure.
3. The BPA has been encouraging the City to take over, purchase or somehow acquire a BPA substation. This acquisition needs to be studied and evaluated in order to assist the City to know what to do.
4. The Port of Cascade Locks will be a participant in this effort.
5. The estimated timeline for the project is:
 - a. July City Council approval of the scope of work and contract.
 - b. August through November, complete the work.
 - c. November 2012 preliminary review of report findings and recommendations with City Council.
6. The major elements of the scope of work are:
 - a. Analysis and comparison of current rates to cost.
 - b. Researching and integrating tier two rates into the rates structure for electric service charged by the City to customers.
 - c. Review and make recommendations regarding the sub-station issue as it affects rates and operations.
 - d. A community education and involvement component of at least two meetings..
 - e. Development of a rate structure geared toward or facilitating economic development.
7. A copy of the proposed contract is attached for City Council information.
8. A copy of the Scope of Work is attached for City Council information.

CITY OF CASCADE LOCKS
ELECTRIC RATE STUDY CONTRACT

DATE: July 9, 2012

PARTIES:	City of Cascade Locks PO Box 308 Cascade Locks, OR 97014 ("City")	Brown & Kysar Inc, PO Box 1720 Battle Ground, WA 98604 ("Professional")
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RECITALS

Professional is being engaged to provide professional Cost of Service and Retail Rate designs services for the City. Professional has been chosen by City to enter into this Contract pursuant to Ordinance No. 305 and ORS 279B.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES OF THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

- 1. Contract Period.** This Contract is effective as of the date first written above. Unless extended or terminated earlier in accordance with its terms, this Contract terminates upon completion and final acceptance of the Work by the City. Contract termination does not extinguish or prejudice City's right to enforce this Contract with respect to any default by Professional that has not been cured. This contract is applicable only to this one specific project. No portion of this contract shall extend to any other work or services between Professional and City.
- 2. Statement of Work.** Professional shall perform the work (the "Work") as set forth in the Scope of Work attached as Exhibit A, which is incorporated by reference. Professional shall perform the Work in accordance with the terms and conditions of this Contract. To the extent that the terms and conditions of this Contract and any attachments conflict, the terms and conditions of this Contract shall control.
- 3. Consideration**

 - a.** The, fixed compensation payable to Professional under this Contract, which includes in-house expenses, is \$40,000.00. Out-sourced expenses will be reimbursed only if City has authorized the out-sourced expense by written addenda. City will not pay Professional any unapproved amounts in excess of the compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Professional performs Work subject to the amendment.
 - b.** Professional shall submit monthly invoices to the City for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires City to pay and for which Professional claims reimbursement. Each invoice also shall include the total amount invoiced to date by Professional prior to the current invoice.
 - c.** City reasonably believes as of the effective date states that sufficient funds are appropriated and authorized for expenditure to finance the cost of this Contract. Professional understands and agrees that City's payment of amounts due under this Contract is contingent on such funds being appropriated and authorized. Notwithstanding the foregoing, Professional shall have all rights of a contracting party under this agreement to bring an action for compensation for services rendered.
- 4. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (Scope of Work) and Exhibit B (Required Insurance). Exhibits A and B are attached to this Contract and incorporated by this reference.
- 5. Independent Professional; Responsibility for Taxes and Withholding**

 - a.** Professional shall perform all Work as an independent professional. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not

control the means or manner of Professional's performance. Professional is responsible for determining the appropriate means and manner of performing the Work.

b. Professional understands and agrees that it is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

c. Professional is responsible for all federal or state taxes applicable to compensation or payments paid to Professional under this Contract and, unless Professional is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Professional's federal or state tax obligations. Professional is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Professional under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments

a. Professional shall not enter into any subcontracts for any of the Work required by this Contract without City's prior written consent. In addition to any other provisions City may require, Professional shall include in any permitted subcontract under this Contract provisions to ensure that City will receive the benefit of subprofessional performance as if the subprofessional were the Professional under this Contract. City's consent to any subcontract does not relieve Professional of any of its duties or obligations under this Contract.

b. This Contract is binding upon and inures to the benefit of the parties, their respective successors, and permitted assigns, if any.

c. Professional shall not assign, delegate or transfer any of its rights or obligations under this Contract without City's prior written consent.

7. No Third Party Beneficiaries. City and Professional are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of the terms of this Contract.

9. Representations and Warranties.

a. Professional's Representations and Warranties. Professional represents and warrants to City that (1) Professional has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, is a valid and binding obligation of Professional enforceable in accordance with its terms, (3) Professional has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Professional will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Professional's industry, trade or profession, (4) Professional will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, and (5) Professional prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Confidential Information.

a. Professional acknowledges that it or its employees, subprofessionals or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of City or City's clients. Any and all information provided by City and marked confidential, that becomes available to Professional or its employees, subprofessionals or agents in the performance of this Contract shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Professional's use of the Confidential Information and any Work Product (as defined below) that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Professional) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Professional's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Professional who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Professional agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Professional uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this

Contract, and to advise each of its employees, subprofessionals and agents of their obligations to keep Confidential Information confidential. Professional shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Professional shall advise City immediately in the event Professional learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Professional will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Professional against any such person. Professional agrees that, except as directed by City, Professional will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at City's request, Professional will turn over to City all documents, papers, and other matter in Professional's possession that embody Confidential Information.

c. Injunctive Relief. Professional acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 10, in addition to any other legal remedies that may be available. Professional acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

d. Security. Professional shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access to, or creating systems for any of City's computers, data, systems, personnel, or other information resources.

11. Ownership of Work Product.

a. Definitions. As used in this Section 11, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Professional Intellectual Property" means any intellectual property owned by Professional and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Professional.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Professional is required to deliver to City pursuant to the Work.

b. Original Works. All Work Product created by Professional pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Professional agree that original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Professional hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Professional shall execute further documents and instruments necessary to fully vest such rights in City. Professional forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Professional under this Contract is a derivative work based on Professional Intellectual Property, or is a compilation that includes Professional Intellectual Property, Professional hereby grants to City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Professional Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.

In the event that Work Product created by Professional under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Professional shall secure on the City's behalf and in the name of the City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.

c. Professional Intellectual Property. In the event that Work Product is Professional Intellectual Property Professional hereby grants to City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Professional Intellectual Property, and to authorize others to do the same on City's behalf.

d. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Professional shall secure on the City's behalf and in the name of the City, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare

derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

e. Limited City Indemnity. To the extent permitted by the Oregon Constitution and the Tort Claims Act, Professional shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was not specifically contemplated and agreed to by the parties.

f. Professional Use of Work Product. Professional may refer to the Work Product in its brochures or other literature that Professional utilizes for advertising or promotional purposes and, unless otherwise specified by City, may use the Work Product on other unrelated projects.

12. Indemnity.

a. GENERAL INDEMNITY. PROFESSIONAL SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST FOR ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (TOGETHER "LIABILITIES") RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF PROFESSIONAL OR ITS SUBPROFESSIONALS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT, EXCEPT THAT PROFESSIONAL IS NOT OBLIGATED TO INDEMNIFY THE CITY TO THE EXTENT THE LIABILITIES RESULT FROM OR ARISE OUT OF THE CITY'S NEGLIGENT ACTS OR OMISSIONS. IN THE EVENT THAT BOTH PARTIES ARE PARTIALLY RESPONSIBLE, INDEMNIFICATION SHOULD BE LIMITED TO EACH PARTY'S PROPORTIONAL SHARE OF FAULT OR NEGLIGENCE.

b. PROFESSIONAL INDEMNITY. PROFESSIONAL SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF PROFESSIONAL OR ITS SUBPROFESSIONALS, AGENTS OR EMPLOYEES IN THE PERFORMANCE OF THIS CONTRACT.

c. CONTROL OF DEFENSE AND SETTLEMENT. PROFESSIONAL SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER PROFESSIONAL NOR ANY ATTORNEY ENGAGED BY PROFESSIONAL SHALL DEFEND THE CLAIM IN THE NAME OF THE CITY, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE CITY OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE CITY ATTORNEY, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE CITY ATTORNEY, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE CITY, NOR SHALL PROFESSIONAL SETTLE ANY CLAIM ON BEHALF OF THE CITY WITHOUT THE APPROVAL OF THE CITY ATTORNEY. THE CITY MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE CITY DETERMINES THAT PROFESSIONAL IS PROHIBITED FROM DEFENDING THE CITY, OR IS NOT ADEQUATELY DEFENDING THE CITY'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE CITY DESIRES TO ASSUME ITS OWN DEFENSE.

13. Insurance. Professional shall maintain in effect for the duration of this Contract the insurance as set forth in attached Exhibit B.

14. Default; Remedies; Termination.

a. Default by Professional. Professional is in default under this Contract if:

(i) Professional institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(ii) Professional no longer holds a license or certificate that is required for Professional to perform its obligations under the Contract and Professional has not obtained such license or certificate within fourteen (14) calendar days after City's notice or such longer period as City may specify in the notice; or

(iii) Professional commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified or any extension thereof, or so fails to pursue the Work as to endanger Professional's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or any longer period as City may specify in the notice.

b. City's Remedies for Professional's Default. In the event Professional is in default under Section 14.a, City may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

(i) termination of this Contract under Section 14.e(ii);

- (ii) withholding all monies due for Work and Work Products that Professional has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Professional was not in default under Sections 13.a, then Professional shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 13.e(i).

c. Default by City. City is in default under this Contract if:

- (i) City fails to pay Professional any amount pursuant to the terms of this Contract, and City fails to cure the failure within thirty (30) calendar days after Professional's notice or any longer period as Professional may specify in the notice; or
- (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Contract, and the breach or default is not cured within thirty (30) calendar days after Professional's notice or any longer period as Professional may specify in the notice.

d. Professional's Remedies for City's Default. In the event City terminates the Contract under Section 14.e(i), or in the event City is in default under Section 13.c and whether or not Professional elects to exercise its right to terminate the Contract under Section 13.e(iii), Professional's sole monetary remedy is (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within legal limits, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Professional. In no event is City liable to Professional for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Professional exceed the amount due to Professional under this Section 14.d, Professional shall pay immediately any excess to City upon written demand provided in accordance with Section 20.

e. Termination.

(i) City's Right to Terminate at its Discretion. At its sole discretion, City may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by City to Professional;
- (B) Immediately upon written notice if City fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Contract is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) City's Right to Terminate for Cause. In addition to any other rights and remedies City may have under this Contract, City may terminate this Contract immediately upon written notice by City to Professional, or at such later date as City may establish in the notice, or upon expiration of the time period and with the notice as provided in Section 14.e(ii)(B) and 14.e(ii)(C) below, upon the occurrence of any of the following events:

- (A) Professional is in default under Section 14.a(i) because Professional institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (B) Professional is in default under Section 14.a(ii) because Professional no longer holds a license or certificate that is required for it to perform services under the Contract and Professional has not obtained the license or certificate within fourteen (14) calendar days after City's notice or any longer period as City may specify in such notice; or
- (C) Professional is in default under Section 13.a(iii) because Professional commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Professional's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or any longer period as City may specify in such notice.

(iii) Professional's Right to Terminate for Cause. Professional may terminate this Contract with written notice to City as provided in Sections 14.e(iii)(A) and 14.e(ii)(B) below, or at such later date as Professional may establish in the notice, upon the occurrence of the following events:

- (A) City is in default under Section 14.c(i) because City fails to pay Professional any amount pursuant to the terms of this Contract, and City fails to cure such failure within thirty (30) calendar days after Professional's notice or any longer period as Professional may specify in the notice; or
- (B) City is in default under Section 14.c(ii) because City commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or

any extension thereof, and City fails to cure the failure within thirty (30) calendar days after Professional's notice or any longer period as Professional may specify in the notice.

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, Professional shall immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Professional in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Professional shall immediately cease all activities under this Contract, unless City expressly directs otherwise in the notice of termination. Upon City's request, Professional shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

15. Records Maintenance; Access. Professional shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Professional shall maintain any other records pertinent to this Contract in a manner that clearly documents Professional's performance. Professional acknowledges and agrees that City and its duly authorized representatives shall have access to the financial records and other books, documents, papers, plans, records of shipments and payments and writings of Professional that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Professional shall retain and keep accessible all the financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or any longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Professional shall employ the same professional skill, care, and diligence as other professionals providing similar services under similar conditions to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Professional shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

17. Foreign Professional. If Professional is not domiciled in or registered to do business in the State of Oregon, Professional shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

18. Force Majeure. Neither City nor Professional shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Professional, respectively. Professional shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Time is of the Essence. Professional agrees that time is of the essence under this Contract.

20. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given under this Contract shall be given in writing, personal delivery, facsimile, or mailing the same, postage prepaid, to Professional or City at the address, number or email addresses set forth both above and below. Any communication or notice so addressed and mailed shall be effective five (5) days after sending.

Professional Contact Information

Merritt 'Buz' Ketcham PE buzk@bki.cc
Larry Stuckman PE larrys@bki.cc
Tricia Walker triciaw@bki.cc

City of Cascade Locks Contact Information

Paul Koch pkoch@cascade-locks.or.us

21. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

22. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

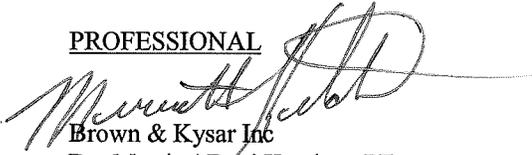
23. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Professional that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Hood River County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. PROFESSIONAL, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

24. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

25. Amendments. No amendment to this Contract is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

PROFESSIONAL, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT PROFESSIONAL HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

PROFESSIONAL



Brown & Kysar Inc

By: Merritt ' Buz' Ketcham PE

Vice President of Engineering

Federal Tax Number: 20-3745918

Oregon/State Tax Number: 1277069-1

CITY

Lance Armstrong
Mayor

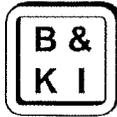


EXHIBIT A STATEMENT OF WORK

Between Brown & Kysar, Inc. ("BKI") and City of Cascade Locks ("Client"):

Project Name: Cost of Service and Rate Review Study

BKI Project No.: CL12-002

PROJECT SCOPE DESCRIPTION

The project scope is generally described as:

- Request Client data that is needed for the cost of service analysis. Schedule a project kick-off meeting to discuss historical financial and operating trends and known changes in these trends in the future. Develop a philosophy for forecasting revenues and expenses, alternatives for rate classification allocation methods.
- Analyze historical data and trends to determine future revenue requirements and capital expenditure levels. Forecast revenue, expenses, operating margins and capital expenditures for at least three years. Prepare recommendations for improvements in the rate structure that provides fair, equitable and justifiable rates to existing rate payers and encourages economic development in Cascade Locks.
- Facilitate two (2) community meetings to provide citizens with information on Electric Utility history (How did we get here?), what is the current status, and what is the plan for the future? Discuss the purpose of electric rate design and the influence that BPA (Tier 1 and now Tier 2 rates), the State of Oregon, and other agencies have on electric rates.
- Develop the content for use in an information and education campaign to inform citizens about the need to design a rate structure that is fair and equitable, that accommodates expected industry changes (i.e. energy price volatility, BPA energy and distribution/transmission service rate changes), and encourages economic growth that stimulates job creation in the City of Cascade Locks. Evaluate economic impact on Utility rates if power is purchased from BPA at transmission voltage instead of distribution voltage.
- Develop a sensitivity analysis, based on feedback from the community and the Client, of alternative rate structures and modifications to the existing rates.
- Facilitate two (2) coffee meetings to discuss rate making with citizens from the City of Cascade Locks and environs in a small group setting.
- Finalize recommendations for rate modifications that are based on the rate analysis and feedback from the community and the Client.
- Issue biweekly status report updates to the Client.
- Issue a final report that includes salient points of the cost of service analysis and rate design study. Present the report to City Council for discussion and ratification.

COST OF STUDY

BKI is proposing to provide the consulting services related to the cost of service and rate design study, as described herein, for a lump sum fee of forty-thousand dollars (\$40,000). Progress billings will be rendered on a monthly basis based on tasks performed during the month.

Task 8 – Community Meeting(s)

Facilitate town hall style meeting(s) to inform the citizens of the electric utility history, current status of the electric utility, and known challenges for future operations. Emphasize the need for a financial plan to achieve fair and equitable rates that provide the basis for the future success of the utility.

Task 9 – Rate Analysis and Design

Present a summary report of cost of service analysis and feedback from community meeting(s) to the City Council. Suggest alternative rate design philosophies to respond to major issues discussed at the community meeting(s).

Develop rate scenarios based on the results of the discussion with City Council.

Task 10 - Informal “coffee” meeting(s)

Invite community members to a coffee meeting to discuss proposed rate design scenarios. Encourage the key community members to be utility “champions” to promote community goodwill towards utility rates.

Task 11 – Final Rate Design and Report

Finalize rate design changes and prepare a report for presentation to the City Council. Based on Council comments during presentation, make appropriate edits to the Rate Design Report for City Council adoption.

Electric Cost of Service and Rate Design Study																					
		Weeks After Signed Contract																			
Milestone		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1.	Contract Administration, Periodic Status Reports																				
2.	Receipt of Requested Information																				
3.	Analyze Data																				
4.	Information & education campaign (publication as appropriate)																				
5.	Kick-off meeting																				
6.	Develop Revenue Requirements																				
7.	Cost of Service Allocation (COSA)																				
8.	Up to two "Community" Meetings																				
9.	Present COSA results to City Council/JWGED & rate analysis/design (forecasts, revenue allocation, etc.)																				
10.	Two "Coffee" Meetings																				
11.	Finalize rate design & report																				

LIMITATIONS

The following items were mentioned during preliminary meetings, but are excluded from the above scope of works:

- Valuation of the BPA substation
- Valuation or other effort related to merging the Electric Utility with another Utility.

INVOICING

Invoices will be rendered each month for the portion of work performed the preceding month. Our standard billing cycle ends on the 20th of each month. Interest at the rate of one and one-half percent (1.5%) per month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due but unpaid within 30 days from receipt of invoice. The client agrees to pay all costs of collection on unpaid balances.

Signing of this Statement of Work by BKI and Client authorizes BKI to complete the Work as described above under the terms and conditions of the City of Cascade Locks contract with an effective date of _____, 2012. The work included in this contract does not change any terms and conditions of the Master Agreement that is currently in force between BKI and the Client.

So agreed to this _____ day of _____, 2012 by:

BROWN & KY SAR, INC.

City of Cascade Locks

MERRITT Ketchum V.P. ENGR.

Print Name and Title

Print Name and Title

Signature

Signature

Date

Date

EXHIBIT B
INSURANCE REQUIREMENTS

Professional shall, at its own expense, at all times during the term of this contract, maintain in force:

1. A comprehensive general liability policy including coverage for contractual liability for obligations assumed under this contract, blanket contractual liability, products and completed operations and City's and professional's protective insurance;
2. A professional errors and omissions liability policy; and
3. A comprehensive automobile liability policy including owned and non-owned automobiles.

The coverage under each liability insurance policy shall be equal to or greater than the limits for claims made under the Oregon Tort Claims Act with minimum coverage of \$2,000,000 per occurrence (combined single limit for bodily injury and property damage claims). Provided, however, that coverage for professional errors and omissions liability may be for a minimum coverage of \$100,000. The coverage limits are subject to change in accordance with any changes in limits under the Oregon Tort Claims Act, or to the extent the City deems necessary to cover the City's liability in the absence of the Oregon Tort Claims Act.

Liability coverage shall be provided on an "occurrence" basis. "Claims made" coverage will not be acceptable, except for the coverage required by (2) above. The City shall be named as an additional insured (except for coverage required by 2 above).

Certificates of insurance acceptable to the City shall be filed with City prior to the commencement of any work by Professional. Each certificate shall state that coverage afforded under the policy cannot be cancelled or reduced in coverage until at least 30 days prior written notice has been given to City. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.