



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 12/21/2023

File ID: TMP-3702

Department: Water Pollution Control

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and United Controls Corporation for Professional and Technical Services for Consulting, Installation, Repair, Maintenance and Support Services for the City's SCADA and Control Panels, Project No. 71-24-SP07.

Resolution No.

Finance Information:

Account Number: 6020-76-00000-526000-00000000

City Cost Amount: Not to Exceed \$150,000.00

Total Cost: Not to Exceed \$150,000.00

Special Circumstances: N/A

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below) N/A

Address: N/A

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

RESOLUTION NO. 23-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement between the City of Huntsville and United Controls Corporation in a total Not to Exceed (NTE) Ceiling Price of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) for Professional and Technical Services for Consulting, Installation, Repair, Maintenance, and Support Services for the City's SCADA and Control Panels, Project No. 71-24-SP07, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between City of Huntsville and United Controls Corporation for Professional and Technical Services for Consulting, Installation, Repair, Maintenance, and Support Services for the City's SCADA and Control Panels, Project No. 71-24-SP07," consisting of a total of fifteen (15) pages, plus four (4) additional pages consisting of Attachments 1-3, and the date of December 21, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 21st day of December, 2023.

President or President Pro Tem of the City
Council of the City of Huntsville, Alabama

APPROVED this the 21st day of December, 2023.

Mayor of the City of
Huntsville, Alabama

AGREEMENT BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
UNITED CONTROLS CORPORATION
FOR
PROFESSIONAL AND TECHNICAL SERVICES FOR
CONSULTING, INSTALLATION, REPAIR, MAINTENANCE AND
SUPPORT SERVICES FOR THE CITY'S SCADA AND CONTROL
PANELS

Project ID Number 71-24-SP07
December 21, 2023

President or President Pro Tem of
the City Council of the City of
Huntsville, AL
Date: December 21, 2023

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AGREEMENT BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
UNITED CONTROLS CORPORATION
FOR
PROFESSIONAL AND TECHNICAL SERVICES FOR
CONSULTING, INSTALLATION, REPAIR, MAINTENANCE AND
SUPPORT SERVICES FOR THE CITY'S SCADA AND CONTROL
PANELS

Project ID Number 71-24-SP07

THIS AGREEMENT made as of the 21st day of December in the year 2023, by and between the CITY OF HUNTSVILLE, ALABAMA (hereinafter called OWNER), and UNITED CONTROLS CORPORATION, (hereinafter called REPRESENTATIVE).

WITNESSETH, for the considerations hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE REPRESENTATIVE

The OWNER hereby engages the REPRESENTATIVE, and the REPRESENTATIVE hereby accepts the engagement to provide general engineering and consultation as a representative of the OWNER to include the following:

- 1.1 Professional engineering services for professional and technical services including consulting, installation, repair, maintenance and support services for the City's SCADA and control panels, as further described in ARTICLE 2, and hereinafter called PROJECT.
- 1.2 The REPRESENTATIVE further represents to the OWNER that the REPRESENTATIVE will maintain all necessary licenses, certifications, permits or other authorizations necessary to act as REPRESENTATIVES for the PROJECT until the REPRESENTATIVE's remaining duties hereunder have been satisfied. The REPRESENTATIVE shall assign only qualified personnel to perform any service concerning the PROJECT. All services rendered by the REPRESENTATIVE for the PROJECT shall be performed by or under the immediate supervision of experienced and qualified professionals licensed, certified, and registered as appropriate in the State of Alabama possessing the expertise in the discipline of the service being rendered. The REPRESENTATIVE assumes full responsibility to the OWNER for the negligent acts, errors and omissions of its consultants or others employed or retained by the REPRESENTATIVE in connection with the PROJECT.
- 1.3 Execution of this Agreement by the REPRESENTATIVE constitutes a representation that the REPRESENTATIVE has become familiar with the PROJECT site and the local conditions under which the PROJECT is to be implemented.

ARTICLE 2 –SERVICES OF THE REPRESENTATIVE

- 2.1 REPRESENTATIVE shall provide for OWNER professional services for professional and technical services including consulting, installation, repair, maintenance and support services for the City's SCADA and control panels.
- 2.2 These services shall include consultation and advice as outlined herein and further described in the SCOPE OF SERVICES, ATTACHMENT 1.
- 2.3 The REPRESENTATIVE shall serve as the OWNER's professional representative in those portions of the PROJECT to which this Agreement applies and shall consult with and advise the OWNER during the performance of these services.
- 2.4 The REPRESENTATIVE shall incorporate into its design, and into its final work products, the requirements contained within the OWNER's engineering standards, standard specifications, and design manuals referenced in ATTACHMENT 2
- 2.5 The REPRESENTATIVE shall promptly correct, or have corrected, any errors, omissions, deficiencies or conflicts in the REPRESENTATIVE's work product or that of his sub-contractors/sub-consultants, without additional compensation for time, reproduction or distribution.
- 2.6 A valid City of Huntsville license shall be maintained throughout the term of this contract. Additionally, the firm shall be required to obtain and pay for all other federal, state or local permits, licenses, and fees which may be necessary or required in order to perform the work detailed herein.

ARTICLE 3 - CONSTRUCTION ADMINISTRATION SERVICES

OMITTED

ARTICLE 4 - ADDITIONAL SERVICES

OMITTED

ARTICLE 5 - RESPONSIBILITIES OF OWNER

The OWNER, without cost to the REPRESENTATIVE, will perform the following in a timely manner so as not to delay the services of the REPRESENTATIVE:

- 5.1 Assist REPRESENTATIVE by placing at REPRESENTATIVE's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- 5.2 Provide all criteria and full information as to OWNER's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations. The OWNER shall also furnish copies of all design and construction standards, which OWNER will require to be included in the drawings and specifications.
- 5.3 Assist the REPRESENTATIVE as necessary in acquiring access to and making all provisions for the REPRESENTATIVE to enter upon public and private lands as required for the REPRESENTATIVE to perform the work under this agreement.

- 5.4** Designate in writing a person to act as the OWNER's representative with respect to the work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decision with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by REPRESENTATIVE, obtain advice of an attorney, insurance counselor and other consultants as OWNER determines appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of REPRESENTATIVE.
- 5.5** When requested by the REPRESENTATIVE, the OWNER will intercede on the REPRESENTATIVE's behalf when data from, or reviewed by third parties is not on schedule through no fault of the REPRESENTATIVE.

ARTICLE 6 - PERIOD OF SERVICES

- 6.1** The REPRESENTATIVE shall commence services pursuant to this agreement as of December 22, 2023. The final completion date for the completion of design services as outlined in Article 2 shall be December 22, 2024.

The REPRESENTATIVE shall perform these services with reasonable diligence and expediency consistent with sound professional practices. The REPRESENTATIVE shall include in his schedule an allowance for time required for OWNER's review of submissions and for approvals of authorities having jurisdiction over the PROJECT. When approved by the OWNER, the schedule shall not be exceeded by the REPRESENTATIVE, except for cause.

If the REPRESENTATIVE becomes aware of delays due to time allowances for review and approval being exceeded, delay by the OWNER, the OWNER's consultants, or any other reason beyond the REPRESENTATIVE's control, which may result in the schedule of performance of the REPRESENTATIVE's services not being met, the REPRESENTATIVE shall promptly notify the OWNER. If the OWNER becomes aware of any delays or other causes that will affect the REPRESENTATIVE's schedule, the OWNER shall promptly notify the REPRESENTATIVE. In either event, the REPRESENTATIVE's schedule for performance of its services shall be equitably adjusted.

ARTICLE 7 - PAYMENT TO THE REPRESENTATIVE

7.1 BASIC SERVICES

The OWNER shall compensate the REPRESENTATIVE for services rendered pursuant to this Agreement, excepting those services described as Additional Services in Article 4 of this Agreement, by payment of the NOT TO EXCEED CEILING PRICE OF ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) for design services as described in Article 2. Additional services of the ENGINEER as described in Article 4, if any, shall be compensated on an hourly basis in accordance with Attachment 5.

7.2 REIMBURSABLE EXPENSES - OMITTED

7.3 NOT TO EXCEED (NTE) CEILING PRICE

The City of Huntsville (COH) will not be obligated to pay the REPRESENTATIVE any amount in excess of the NTE ceiling price as per Attachment "1", and the REPRESENTATIVE shall

not be obligated to continue performance if to do so would exceed the NTE ceiling price set forth in the referenced attachment, unless and until the COH notifies the REPRESENTATIVE in writing that the NTE ceiling price has been increase and specifies in the notice a revised NTE ceiling that shall constitute the NTE ceiling price for performance under this contract. NTE ceiling price will increase will be done by a written unilateral change order to the contract issued by the City that will not require the REPRESENTATIVE's approval. When and to the extent that the NTE ceiling price set forth in the referenced attachment has been increased, any hours expended and material costs incurred by the REPRESENTATIVE in excess of the NTE ceiling price before the increase shall be allowable in the same extent as if the hours expended and material costs had been incurred after the increase in the NTE ceiling price.

7.4 EFFECTIVE DATE

This contract shall have no force or effect unless and until it is executed by the OWNER and the REPRESENTATIVE and a properly executed copy is mailed to the REPRESENTATIVE with a notice to proceed (NTP). If a NTP is not issued within sixty (60) days commencing from the last date of execution of this CONTRACT by the OWNER and the REPRESENTATIVE, then this CONTRACT shall be NULL AND VOID, the OWNER will not be obligated to any payment to the REPRESENTATIVE and the REPRESENTATIVE will not be obligated to perform any work under said CONTRACT.

PAYMENT SUMMARY

Professional and Technical Services for Consulting, Installation, Repair, Maintenance, and Support Services for the City's SCADA and control panels – NOT TO EXCEED CEILING PRICE OF \$ 150,000.00

TOTAL CONTRACT AMOUNT: **\$ 150,000.00**

ARTICLE 8 - GENERAL PAYMENT PROCEDURE

8.1 INVOICES

8.1.1 The REPRESENTATIVE shall submit monthly invoices to the Administrative Officer in the Water Pollution Control Department, for the basic services described under Articles 2 and 4 for the design of the PROJECT. Invoices must include the City of Huntsville project name and number, dates of services, contract amount, previous billings and current billing. Additionally, invoices for services that are not contracted for as "lump sum" in Article 4 must also be itemized and include, as a minimum, a description of each task performed, the amount of time utilized performing each task, the name(s) of personnel who performed the task and the cost for each specific task. Along with each invoice, the REPRESENTATIVE must submit a consultant progress report in the format shown in Attachment 6 hereto. No payment will be made without the consultant progress report completed and attached. Monthly progress reports shall be submitted monthly even if no request for payment is made. If services under Article 4 are included in the invoice for additional services not included under the lump sum provisions, or services billed as time and material, the classification and hours of such persons rendering the services shall be attached to the invoice.

8.1.2 The signature of the REPRESENTATIVE on the invoice shall constitute the REPRESENTATIVE's representation to the OWNER that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the

invoice have been reasonably incurred, that all obligations of the REPRESENTATIVE covered by prior invoices have been paid in full, and that, to the best of the REPRESENTATIVE's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the REPRESENTATIVE the payment of any portion thereof should be withheld. Submission of the REPRESENTATIVE's invoice for final payment and reimbursement shall further constitute the REPRESENTATIVE's representation to the OWNER that, upon receipt from the OWNER of the amount invoiced, all obligations of the REPRESENTATIVE to others, including its consultants, incurred in connection with the PROJECT, have been paid in full. REPRESENTATIVE must designate on Attachment 6 – Progress Report in the appropriate space provided that such action has been completed.

8.2 TIME FOR PAYMENT

The OWNER shall make payment for services in Articles 2 and 4 within 60 days of receipt of valid invoice.

8.3 OWNER'S RIGHT TO WITHHOLD PAYMENT

In the event the OWNER becomes credibly informed that any representations of the REPRESENTATIVE, provided pursuant to Article 8.1.2, are wholly or partially inaccurate, the OWNER may withhold payment of sums then or in the future otherwise due to the REPRESENTATIVE until the inaccuracy, and the cause thereof, is corrected to the OWNER's reasonable satisfaction. Additionally, failure by the REPRESENTATIVE to supply substantiating records shall be reason to exclude related costs from the amounts which might otherwise be payable by the OWNER to the REPRESENTATIVE.

8.4 REIMBURSABLE EXPENSES

8.4.1 In addition to the requirements set forth in 8.1 above, invoices for reimbursable expenses shall include such documentation as the OWNER may require. Reasonable expenses are limited to the following expenses:

- (a) Transportation outside the immediate Huntsville area (50 mile radius) approved in advance by the OWNER in writing and incurred in connection with the PROJECT; (Per Department of Treasury, Internal Revenue Service Publication 1542, Per Diem Rates, for travel within the continental United States). Refer to website: www.irs.gov/pub/irs-pdf/p1542.pdf for more information.
- (b) Charges for long-distance communications;
- (c) Fees paid for securing approval of authorities having jurisdiction over the PROJECT,
- (d) Actual costs of reproduction for items in excess of those included in the required services;
- (e) Postage and handling charges incurred for drawings, specifications and other documents.

8.4.2 The REPRESENTATIVE shall set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and shall bill expenses at actual cost or prevailing rate and without the addition of administrative charge, any multiple or surcharge.

8.5 W-9 TAXPAYER FORM

All REPRESENTATIVES are required to submit a Federal Tax Form W-9 to City of Huntsville at the time a contract is awarded. No payments of invoices can be made until this W-9 Tax

Form has been properly submitted. A copy of the W-9 Tax Form can be requested from the OWNER or at the following website: www.irs.ustreas.gov/pub/irs-pdf/fw9.pdf

ARTICLE 9 - GENERAL CONSIDERATIONS

9.1 GENERAL

OWNER and REPRESENTATIVE agree that the following sections and provisions shall apply to the work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.

9.2 CANCELLATION OF WORK

This agreement may be canceled by either party in the event of default or violation of any of the provisions of this Agreement by the other party, by written notice delivered to the address of record by registered mail giving ten (10) days advance notice of the intention to cancel. In the event of cancellation of this Agreement, REPRESENTATIVE shall be paid for all work performed to date of cancellation, less any loss, damage, or liability incurred by reason of default of REPRESENTATIVE and all records, data, parameters, design calculations and other information collected or obtained in the performance of this Agreement shall be delivered to the OWNER.

9.3 TERMINATION FOR CAUSE

This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

9.4 TERMINATION BY THE OWNER WITHOUT CAUSE

The OWNER may terminate this Agreement without cause upon seven (7) days written notice to the REPRESENTATIVE. In the event of such a termination without cause, the REPRESENTATIVE shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the REPRESENTATIVE shall promptly submit to the OWNER its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 8.1.

ARTICLE 10 - INDEMNITY AND INSURANCE

10.1 INSURANCE

The REPRESENTATIVE shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The REPRESENTATIVE shall procure and maintain for the duration of the job until final acceptance by the OWNER, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the REPRESENTATIVE, his agents, representatives, employees or subcontractor.

10.2 MINIMUM SCOPE OF INSURANCE:

A. General Liability:

Insurance shall be written on an "occurrence" basis. Claims-made coverage will be accepted only on an exception basis after the OWNER's approval. The same insurance company should write General Liability Coverage and OWNERs REPRESENTATIVEs Protective Insurance.

B. Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Explosion, Collapse and Underground
Broad Form Property Damage

C. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage shall be maintained for a discovery and reporting period of no less than five (5) years after completion of the professional services and Certificates of Insurance shall be submitted to the OWNER on a yearly basis during this time frame. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered engineers or engineering firms contracting in the State of Alabama. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject PROJECT. The professional liability insurance shall contain contractual liability coverage.

D. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

E. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. "Waivers of Subrogation" in favor of the OWNER shall be endorsed to Workers' Compensation Insurance.

F. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

10.3 MINIMUM LIMITS OF INSURANCE:

A. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit
\$ 2,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

B. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 500,000 Per Claim - Land Surveyors
\$ 1,000,000 Per Claim - Other Professionals

C. Automobile Liability:

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

D. Workers' Compensation:

As required by the State of Alabama Statute. The coverage should include waiver of subrogation.

E. Employers Liability:

\$ 1,000,000 Bodily Injury by Accident or Disease
\$ 1,000,000 Policy Limit by Disease

10.4 OTHER INSURANCE PROVISIONS:

The OWNER is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the OWNER's best interest. If the insurance requirements are not adjusted by the OWNER prior to the OWNER's release of specifications with regard to the PROJECT in question, then the minimum limits shall apply. The City of Huntsville/OWNER shall be named on the policies of general liability and automobile insurance and on the certificate of insurance as an Additional Insured. Additional Insured status on the Commercial General Liability policy shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent and coverage shall be afforded on a primary basis. Liability is not necessarily limited to the minimum amounts of insurance required herein, especially where other insurance coverage is available.

The policies are to contain, or be endorsed to contain, the following provisions:

A. All Coverage:

The REPRESENTATIVE is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewal or materially changed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the OWNER. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the OWNER.

10.5 ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers authorized by the State of Alabama with an A. M. Best rating of A-V or better.

10.6 VERIFICATION OF COVERAGE:

The OWNER shall be indicated as a Certificate Holder and the REPRESENTATIVE shall

furnish the OWNER with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must be an original signature. Certificates signed using digital signatures will not be accepted unless accompanied by a written statement from the insurance/surety company indicating that their electronic signature is intended as their signature. All certificates are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time.

10.7 CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE REPRESENTATIVE:

The REPRESENTATIVE shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant showing insurance of the same type or types and to the extent of the coverage set forth in this Article 10.

10.8 HOLD HARMLESS AGREEMENT:

A. Professional Liability Exposures:

The REPRESENTATIVE, to the fullest extent permitted by law, shall indemnify and hold harmless the OWNER, its elected and appointed officials, employees, agents, and representatives against all claims, damages, losses, judgments and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, caused by any negligent act, error or omission of the REPRESENTATIVE or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this paragraph.

To the fullest extent permitted by law, the REPRESENTATIVE shall defend, protect, indemnify, and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the REPRESENTATIVE has reason to believe the use of a required design, process or product is an infringement of a patent, the REPRESENTATIVE shall be responsible for such loss unless such information is promptly given to the OWNER

B. Other Than Professional Liability:

The REPRESENTATIVE agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, judgments, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom actually or allegedly caused by the REPRESENTATIVE or the REPRESENTATIVE's consultants, subcontractors, or

suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the OWNER nor the REPRESENTATIVE shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

ARTICLE 11- MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW

This Agreement shall be governed by the law of the State of Alabama.

11.2 INTENT AND INTERPRETATION

11.2.1 The intent of this contract is to require complete, correct and timely execution of the work. Any work that may be required, implied or inferred by the contract documents, or any one or more of them, as necessary to produce the intended result shall be provided by the REPRESENTATIVE.

11.2.2 This contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one contract document shall be considered as required by the contract.

11.2.3 When a word, term or phrase is used in this contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the engineering industry; and third, if there is no generally accepted meaning in the engineering industry, according to its common and customary usage.

11.2.4 The words "include", "includes", or "including", as used in this contract, shall be deemed to be followed by the phrase, "without limitation".

11.2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this contract.

11.2.6 Words or terms used as nouns in this contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

11.3 TIME IS OF THE ESSENCE

Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The REPRESENTATIVE understands and acknowledges that time is of the essence in completion of the PROJECT and that the OWNER will incur damages if the PROJECT is not completed on time.

11.4 SUCCESSORS AND ASSIGNS

The REPRESENTATIVE shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the OWNER. Subject to the provisions of the immediately preceding sentence, the OWNER and the REPRESENTATIVE, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal

representatives of such other party with respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be party hereof, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and REPRESENTATIVE.

11.5 NO THIRD-PARTY BENEFICIARIES

This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor of, any third party, against the OWNER or the REPRESENTATIVE.

11.6 INTELLECTUAL PROPERTY/ CONFIDENTIALITY

All information, documents, and electronic media, computer source code furnished by the OWNER to the REPRESENTATIVE belong to the OWNER, are considered proprietary and confidential, unless otherwise indicated by the OWNER, and are furnished solely for use on the OWNER's PROJECT. Such information, documents, and electronic media, computer source code shall be kept confidential by the REPRESENTATIVE, shall only be released as necessary to meet official regulatory requirements in connection with the PROJECT, and shall not be used by the REPRESENTATIVE on any other PROJECT or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. This Section 11.6 shall survive the expiration of this Agreement.

11.7 NOTICES

Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by facsimile to 256-883-3682, or is sent by U.S. Mail, postage prepaid to City of Huntsville Water Pollution Control, P. O. Box 308 (35804), 1800 Vermont Road (35802), Huntsville, AL. All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by facsimile, shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

11.8 FEDERAL IMMIGRATION LAW

By signing this Agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

11.9 STRICT COMPLIANCE

No failure of the OWNER to insist upon strict compliance by the REPRESENTATIVE with any provision of this Contract for Professional Services shall operate to release, waive, discharge, modify, change or affect any of the REPRESENTATIVE's obligations.

11.10 WAIVER

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

11.11 SEVERABILITY

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

11.12 ETHICS

The REPRESENTATIVE shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the PROJECT. The REPRESENTATIVE shall not confer on any governmental, public or quasi-public official having any authority or influence over the PROJECT any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The REPRESENTATIVE shall not, without the express written permission of the OWNER, engage or recommend to the OWNER engagement of any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the REPRESENTATIVE, OWNER or PROJECT in which the REPRESENTATIVE has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the REPRESENTATIVE or in which any consultant, trade contractor, subcontractor, or supplier of the REPRESENTATIVE has a direct or indirect proprietary or other pecuniary interest. Without prior notification and written approval of the OWNER, the REPRESENTATIVE and the REPRESENTATIVE'S sub-consultants shall not offer services to the OWNER'S contractor.

11.13 STANDARD OF CARE

The engineering professionals performing work on this contract shall perform the services with the professional skill and care ordinarily provided by a competent engineering professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineering professional.

11.14 ENTIRE AGREEMENT

This Agreement represents the entire agreement between the OWNER and the REPRESENTATIVE and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both OWNER and REPRESENTATIVE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

REPRESENTATIVE:

**OWNER:
CITY OF HUNTSVILLE**

BY: _____

BY: _____
Tommy Battle

TITLE: _____

TITLE: _____
Mayor

ATTEST: _____

ATTEST: _____

Given under my hand this _____ day

Given under my hand this _____ day

Of _____, 2023.

Of _____, 2023.

Notary Public

Notary Public

My commission expires _____

My commission expires _____

ATTACHMENT 1-SCOPE OF SERVICES

(Refer to letter from Chris Gray to Randall Stewart and attachments).



Huntsville Water Pollution Control
 1800 Vermont Road
 Huntsville, AL 35802

United Controls Corporation is pleased to offer our services for the following work:

- Control panel assembly and testing (including incidental components)
- Installation assistance with control panels and instrumentation
- On site start-up, configuration, and testing assistance as needed
- Troubleshooting and repairs (if needed)

The typical categories that would be used for service are listed below along with their rate from UCC's 2023 Standard Service Rate Schedule:

Senior Systems Engineer	\$185
Systems Analyst	\$155
Technician	\$125
Programmer	\$125
AutoCAD Drafter	\$90
Incidental Materials	Cost + 15%

United Controls Corporation proposes to provide the listed services at these rates (plus incidental material costs) for a maximum amount of \$150,000 for 1 year. Please let me know if you have any questions.

Thanks,

Chris Gray
 Vice President – Senior Systems Engineer
 United Controls Corporation
 29835 Old Hwy 20
 Madison, AL 35756
cgray@ucc-scada.com
 (256) 971 – 6144 X.205

ATTACHMENT 2 - ALABAMA IMMIGRATION ACT - REPORT OF OWNERSHIP FORM
CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM

A. General Information. Please provide the following information:

- Legal name(s): United Controls Corporation, Inc.
- Doing business as (if applicable): _____
- City of Huntsville current taxpayer identification number (if available): 1015
 (Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

B. Type of Ownership. Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable:

Type of Ownership (<i>check appropriate box</i>)	Entity I. D. Number ¹	Formation Documents (if required see footnote 2 below) ²	Immigration Law Applies	Individuals Who Must Be Verified Under Immigration Law
<input type="checkbox"/> Individual or Sole Proprietorship	Not Applicable	Not Applicable	Yes	Each individual or sole proprietor
<input type="checkbox"/> Partnership	Not Applicable	See Paragraph C	Yes	Each partner if an individual
<input type="checkbox"/> Limited Partnership	Number: _____	Formation Documents (See Paragraph C)	Yes	Each general partner if an individual
<input type="checkbox"/> Limited Liability Partnership (LLP)	Number: _____	Formation Documents (See Paragraph C)	No, <u>unless not a Registered LLP</u>	Each partner of a Non-Registered LLP if an individual
<input type="checkbox"/> Limited Liability Company (LLC) (Single Member)	Number: _____	Formation Documents	Yes	Sole member if an individual
<input type="checkbox"/> LLC (Multi-Member)	Number: _____	Formation Documents	No	Not Applicable
<input checked="" type="checkbox"/> Corporation	Number: <u>000-056-265</u>	Formation Documents	No	Not Applicable
<input type="checkbox"/> Other, please explain:	Number: _____ (if a filing entity under state law)	To be determined	To be determined	To be determined

C. Immigration Law. Please note that each owner who is an individual, as identified in the last column of the chart above, must provide proof of U.S. Citizenship or lawful alien presence in accordance with Ala. Act 2011-535 by completing the applicable forms, as provided by the City. In the case of a partnership whose partners must be verified, you are requested to please provide a copy of the Partnership Agreement or other appropriate documentation evidencing the names of each individual who is a partner in the partnership, unless such information is available by searching the Alabama Secretary of State's website and an Entity I.D. Number has been provided.

¹ **Entity I.D. Numbers.** If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at: www.sos.state.al.us/, under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

² **Formation Documents.** Formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents of the entity, as recorded in the probate records of the applicable county and state of formation, **are not required unless:** (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

ATTACHMENT 3
CITY OF HUNTSVILLE STANDARDS AND DESIGN GUIDES

1. City of Huntsville Design and Acceptance Manual for Force Mains and Pump Stations, 2011.