

**BROKEN ARROW MUNICIPAL AUTHORITY
PROFESSIONAL SERVICES AGREEMENT
FOR THE SUPPORT SERVICES FOR THE
HAYNES ON-CALL SUPPORT SERVICES FOR
THE VERDIGRIS RIVER WATER TREATMENT PLANT**

1. Professional Service Provider:

- a. Name: Haynes Equipment Company
- b. Telephone No: 918-832-1580
- c. Address: 817 W. Elgin Street, Broken Arrow, OK 74012

2. Project Title and Location: This Service Contract with Haynes, Equipment Company is for telemetry, SCADA Equipment and Support Services is an on-call contract which includes needs of telemetry and SCADA control equipment, repair/replacement units and parts, repair services, and factory service telemetry items, and the planning, implementation, maintenance, and support of Telemetry and Supervisory Control and Data Acquisition (SCADA) devices for five (5) years conducted at the Verdigris River Water Treatment Plant.

3. Contract for: Providing professional services associated with public works projects for the Broken Arrow Municipal Authority. Professional services to include providing System Inspection Service, Personnel Training, Technical Phone Support and related support services. The Professional Service Provider shall perform all duties, responsibilities and requirements set out in Attachment A hereto. The Professional Service Provider agrees that this professional service shall be treated as an important service to the Authority and also agrees to commit the time necessary to perform the professional services in a professional manner.

4. Compensation: Professional Service Provider shall be compensated in accordance with attached rate schedule and the total compensation under this contract is Not to Exceed Thirty-Five Thousand Five Hundred and No/100 (\$35,500.00) for the entire Scope of the Professional Services rendered, costs per year for the 5-year contract period is Not to Exceed Seven Thousand One Hundred and No/100 (\$7,100.00). The parties agree that the Professional Service Provider's position is not a traditional City employee position; therefore, the foregoing constitutes all the benefits and other forms of compensation due the Professional Service Provider, acting in the role of an independent contractor, and therefore ineligible for all other benefits paid to regular full-time City employees. The Professional Service Provider shall be responsible for his own vehicle expenses and any other indirect costs incurred in fulfilling the stated contract requirements. The Professional Service Provider agrees to abide by and comply with all of the City's Administrative Policies.

5. Invoicing and Payment: The Professional Service Provider shall submit invoices requesting payment for services rendered to the Authority monthly in accordance with actual progress of the work on each work item. The invoices shall be in a format satisfactory to the Authority. Payment will be made within 30 days following the invoice.

Authority and Professional Service Provider both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Authority must verbally confirm any new or changed bank transfer or mailing instructions by calling Professional Service Provider and speaking with Professional Service Provider's accounts receivable contact before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

6. Time for Performance: These duties, responsibilities and requirements shall begin upon the execution of this Contract and shall be completed within twelve (12) consecutive calendar months after the date the Notice to Proceed is issued. The Authority will issue a Notice to Proceed for each item of work identified under this agreement, following mutual agreement between the Professional Service Provider and the Authority on the hours required for the work item.

7. Insurance: The Professional Service Provider shall acquire all insurance policies required for professional liability insurance, general liability, auto insurance, workers' compensation and/or health insurance. The Professional Service Provider shall provide proof of general liability and professional liability insurance coverage to the Authority on or before the effective date of this Agreement.

During the performance of the services under this Professional Services Contract, the Professional Service Provider shall maintain the insurance coverage required below and the Authority shall be named as an Additional Insured on each required policy:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate;
- (2) Automobile Liability Insurance, with a combined single limit of not less than \$1,000,000 for each person, not less than \$1,000,000 for each accident and not less than \$1,000,000 for property damage; and
- (3) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

8. Warranties:

- (1) **Limited Warranty for Materials.** Professional Service Provider warrants to Authority that for a period of twelve months from the date of delivery of the Materials specified in Attachment A to this Agreement, (the "Warranty Period"), that the Materials manufactured by Professional Service Provider, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Professional Service Provider, will materially conform to Professional Service Provider's specifications for such Materials set forth in

Professional Service Provider's proposal, or, in the absence of such a proposal, such specifications as have been provided by Authority to Professional Service Provider and accepted in writing by Professional Service Provider, at the time of the order and will be free from material defects in material and workmanship (this "Limited Warranty"). Authority shall notify Professional Service Provider promptly in writing of any claims within the Warranty Period and provide Professional Service Provider with an opportunity to inspect and test the Materials or service claimed to fail to meet this Limited Warranty. Authority shall provide Professional Service Provider with a copy of the original invoice for the product or service, and prepay all freight charges to return any Materials to Professional Service Provider's factory, or other facility designated by Professional Service Provider. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Professional Service Provider shall, at its option and in its sole discretion, either: (a) accept return of the defective Materials and furnish replacement Materials; (b) furnish replacement parts for the defective Materials; (c) repair the defective Materials; or (d) accept return of the defective Materials and return payments made, or issue credits for, such defective Materials. If Professional Service Provider determines that any warranty claim is not, in fact, covered by this Limited Warranty, Authority shall pay Professional Service Provider its then customary charges for any additionally required service or products.

- (2) **Limited Warranty for Services.** Professional Service Provider further warrants that all Services performed hereunder, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "Limited Warranty for Services"); this Limited Warranty for Services shall survive for 30 days following Professional Service Provider's completion of the Services (the "Service Warranty Period"). In the event of a warranty claim under this Limited Warranty for Services, Authority shall inform Professional Service Provider promptly in writing of the details of the claim within the Service Warranty Period. Professional Service Provider's liability under any service warranty is limited (in Professional Service Provider's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Professional Service Provider determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Authority shall pay Professional Service Provider its then customary charges for all services performed by Professional Service Provider.
- (3) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 8(1) and 8(2), PROFESSIONAL SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE MATERIALS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- (4) Professional Service Provider does not warrant against, and in no event shall Professional Service Provider be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Professional Service Provider), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Authority. In no event shall Professional Service Provider be liable for any Materials repaired or altered by someone other than Professional Service Provider other than pursuant to written authorization by Professional Service Provider.
- (5) THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF PROFESSIONAL SERVICE PROVIDER WITH RESPECT TO ANY DEFECTIVE MATERIALS AND SERVICES. PROFESSIONAL SERVICE PROVIDER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE MATERIALS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE AUTHORITY'S SOLE AND EXCLUSIVE REMEDY AND PROFESSIONAL SERVICE PROVIDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.

In no event shall Authority be entitled to claim under the above Limited Warranties if Authority is in breach of its obligations, including but not limited to payment, hereunder.

9. Indemnification: The Professional Services Provider agrees to defend, indemnify, and hold harmless the Authority, and its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by the negligent or intentional acts, errors, or omissions of The Professional Services Provider, its agents or employees.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL PROFESSIONAL SERVICE PROVIDER'S OBLIGATION TO THE AUTHORITY EXTEND TO INDIRECT, INCIDENTAL, PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFIT, NOR SHALL PROFESSIONAL SERVICE PROVIDER'S OBLIGATION TO AUTHORITY EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID OR TO BE PAID TO PROFESSIONAL SERVICE PROVIDER UNDER THIS AGREEMENT WITH RESPECT TO MATERIALS OR SERVICES WHICH ARE CLAIMED TO BE DEFECTIVE.

10. Confidentiality: If Professional Service Provider discloses or grants Authority access to

any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Authority will not use or disclose any such information to any other person or company at any time, without Professional Service Provider's prior written consent, unless such information is required to be disclosed pursuant to law. Professional Service Provider shall notify Authority of what information Professional Service Provider deems confidential at the time Service Providers provides such information to Authority. In the event that Authority and Professional Service Provider have entered into a separate confidentiality agreement ("Confidentiality Agreement"), the terms and conditions of such agreement shall take precedence over the terms of this paragraph.

11. Immigration Compliance: The Professional Service Provider shall comply in all respects with all immigration-related laws, statutes, ordinances and regulations including without limitation, the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and the Oklahoma Taxpayer and Citizen Protection Act of 2007 (Oklahoma HB 1804) and any successor laws, ordinances or regulations (collectively, the Immigration Laws”).

12. Governing Documents: The parties agree to perform this contract in strict accordance with the clauses, provisions, and the documents identified as follows, all of which are made part of this contract. In the event of conflict, these documents shall be interpreted in the following order:

- a. This Contract
- b. Attachment A to this Contract
- c. Duly Authorized Amendments arising out of this Contract

13. Electronic Signatures:

The Parties agree this transaction may be completed by electronic means and an electronic signature on this Contract will be given the same legal effect as a handwritten signature and cannot be denied enforceability solely because is it in electronic form. If the Professional Services Provider signs this Contract electronically and/or submits documents electronically, the Professional Services Provider agrees to comply with the Authority’s requirements for submission of electronically signed and/or submitted documents.

14. Governing Law: This agreement shall be governed by the laws of the State of Oklahoma and venue for any action concerning this Agreement shall be in the District Court of Tulsa County, Oklahoma.

15. Entirety of Agreement: The foregoing Professional Services Contract supersedes all previous negotiations and may not be modified except by a written order executed by the parties hereto.

16. Effective Date: This Contract is effective shall be effective upon signature of both parties.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives on the dates set forth below.

Broken Arrow Municipal Authority:

Professional Service Provider:
Haynes Equipment Company

By: Michael Spurgeon
Michael Spurgeon, General Manager
Date: 1/21/2025

By: [Signature]
Tony Moraska
Title: PRESIDENT

Attest: Curtis Green
Secretary [Seal]
Date: 1/21/2025



Date: 1/16/2025

Attest: [Signature]
By: Luke Dixon
Title: SALOS & APPLICATIONS

Date: 1/16/2025

Approved as to form:

D. Graham Parker
Assistant City Attorney



VERIFICATIONS

State of Oklahoma)
) §
County of Oklahoma)

Before me, a Notary Public, on this 16th day of January 2025, personally appeared Tony Moraska & Luke Dixon, known to me to be the representatives of Haynes Equipment Company to be the identical person who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

[Signature]
Notary Public

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ATTACHMENT A

SP - 1.0 SCOPE OF THE PROJECT:

1.1. Providing Professional Support Services associated with the Telemetry, SCADA Equipment and Support Services for the Verdigris River Water Treatment Plant. Work performed under the contract shall be performed on a not to exceed contract as requested by the Authority.

SP - 2.0 SERVICES OF THE AUTHORITY: THE AUTHORITY WILL:

2.1. Furnish to Professional Service Provider all data in its possession, and needed engineering guidance as necessary, for the service provider to complete the contract requirements.

2.2. Designate in writing a person to act as its representative in respect to the work to be performed under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this agreement.

2.3. The Water Plant Staff will be responsible for supplying tools, ladders, lifts, or other equipment required to execute the maintenance function. Site personnel will be solely responsible for ensuring that all maintenance procedures are performed in accordance with all applicable safety regulations

SP - 3.0 SCOPE OF SERVICES: THE PROFESSIONAL SERVICE PROVIDER SHALL:

3.1 System Inspection Service - Upon arrival, the Haynes SCADA Technician will meet with designated plant personnel to review the planned scope of work for the inspection and obtain agreement prior to proceeding. A Haynes SCADA Technician will perform a scheduled comprehensive Inspection Service of the VRWTP SCADA System. During the visit, the Haynes SCADA Technician will perform an inspection of all hardware and operating parameters to determine system operational status and make preventive maintenance recommendations. Upon completion of the service, the Haynes SCADA Technician will meet with designated plant personnel to review the findings of the inspection, and discuss any problems, corrective actions or recommendations.

3.2 Operator Training – Telemetry, SCADA Systems. To support proper operation of the system, Haynes will provide a training session with actual hands-on time to achieve a significant level of competence and confidence with the equipment. Any materials for operations will be provided in a training binder that will be available to plant staff. Operator training will be performed in conjunction with the system inspection service.

3.3 24/7 Technical Phone Support – Plant Staff is provided access to Haynes’ Service Hotline, with Haynes SCADA Support on full-time rotation to provide 24/7 availability to live technical support. The Plant Staff’s call is given priority over non-contracted customers. In addition to technical support via email and fax, technical response to calls is provided within 4-hours of receipt. If the problem cannot be resolved over the telephone, Plant Staff can request a Haynes Service Representative to visit the site location, which can be scheduled and provided at contract service rates. Where possible, Haynes can use remote modem access to troubleshoot and resolve problems.

3.4 The Planned Work will be billed at the rates attached herein and will include all costs associated with the performance of the work, including any support and supervision cost required from the Professional Service Provider. Costs for this work per year for the 5-year contract period is Not to Exceed Seven Thousand One Hundred and No/100 (\$7,100.00) with a breakdown as follows:

Service	Qty	Cost
System Inspection Service	5 visits	\$18,000.00
Refresher Training	5 visits	\$7,500.00
24/7 Technical Support	5 years	\$10,000.00
Total Contract Cost		\$35,500.00

[END OF ATTACHMENT A]