



City of Ketchum

November 24, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

**Recommendation to Approve Contract #20567,
Comprehensive Service Agreement with Banyan Technology, Inc.**

Recommendation and Summary

Staff recommends the council approve Contract #20567, a Comprehensive Service Agreement with Banyan Technology, Inc. and adopt the following motion:

"I move to approve Contract #20567, a Comprehensive Service Agreement with Banyan Technology, Inc. for \$9,527.00 and authorize Mayor Bradshaw to sign the agreement."

The reasons for the recommendation are as follows:

Under this agreement, Banyan Technology, Inc. will provide the following:

- Periodic site visits for SCADA system monitoring and updates
- 24/7 telephone support
- Backup media of all programs
- Priority onsite response to troubleshoot and repair failures
- Discounted hourly rates for services outside of the agreement

Introduction and History

The wastewater treatment facility is controlled by a complex Supervisory Control and Data Acquisition (SCADA) system. The SCADA system is configured to coordinate various equipment activities and treatment processes throughout the entire facility. Functions of the facility are monitored, recorded, and displayed to a central location where wastewater staff can direct the effective treatment of the city's wastewater. The SCADA system notifies the on-call operator when there is a mechanical failure, treatment processes are out of acceptable parameters, or an intrusion has occurred at the treatment plant.

Analysis

The SCADA system is developed and maintained by an outside contractor.

- Banyan Technology, Inc. has provided the technical and programming support of the Wastewater SCADA system for the past 17 years, the last 14 through an annual service contract.

- Throughout the past 17 years, Banyan Technology, Inc. has flawlessly fulfilled all the terms of the service contracts.

Financial Impact

The cost of this service agreement is \$9,527.00. This is an operational expense which will be shared with the Sun Valley Water and Sewer District based on the operational flow split between the City and the District. Payment for the agreement will come out of the Professional Services budget line item of the Wastewater Fund.

Attachments:

Banyan Technologies Comprehensive Service Agreement
Banyan Contract Terms and Conditions
Banyan Technologies Rate Schedule



Comprehensive Service Agreement

THIS AGREEMENT entered into this 1st day of November, 2020 between City Of Ketchum Waste Water Treatment Plant hereinafter referred to as the “CLIENT” and Banyan Technology Inc., hereinafter referred to as “Banyan”.

WITNESSETH:

WHEREAS, BANYAN intends to offer CLIENT comprehensive support for their existing PLC’s and HMI SCADA system.

NOW, THEREFORE, the CLIENT and BANYAN in consideration of their mutual covenants herein agree in respect as set forth below.

CLIENT INFORMATION AND RESPONSIBILITIES

The CLIENT will furnish to BANYAN, as required for performance of BANYAN’s services, data prepared by or services of others without limitation, all of which BANYAN may use and rely upon in performing services under this Agreement.

The CLIENT will arrange for access to and make provisions for BANYAN to enter upon public and private property as required for BANYAN to perform services under this Agreement.

The CLIENT will provide a toll free telephone number or IP connection which will enable BANYAN the ability to access the SCADA system from anywhere within the 48 contiguous states.

The CLIENT shall maintain the necessary spare parts needed to repair the system in the event of a failure.

SERVICES TO BE PERFORMED BY BANYAN AND BILLING RATES TO BE PAID BY CLIENT

1. BANYAN will conduct periodic project visits to access system status and report to the CLIENT any problems that need to be addressed. Visits may be used to conduct training and make system modifications at owner’s discretion. Banyan to spend up to an average 6 hours per month (including travel time) during the contract period.
2. BANYAN will provide 24/7 telephone support to CLIENT to assist in resolving system problems.
3. BANYAN will maintain backup media of all programs necessary to restore any part of the system in the event of a failure.
4. BANYAN will provide priority onsite response to trouble-shoot and repair failures within the SCADA system. CLIENT will receive discounted hourly rates for trouble-shooting and programming services. (See attached rate sheet.)
5. All repairs and maintenance shall be consistent with the International Standards and Practices for Design and Construction of Telecommunications as adopted by the city.

The lump sum cost of the above outlined services from 11/1/2020 to 11/1/2021 shall be \$ 9,527.00

The Notice to Proceed, by the Client, verbal or written, constitutes acceptance of this Agreement. THE ATTACHED “TERMS AND CONDITIONS” ARE PART OF THIS AGREEMENT. THE CLIENT AGREES TO SAID TERMS AND CONDITIONS.

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

CLIENT:

BANYAN:

By (signature)

Banyan Technology
TERMS AND CONDITIONS

GENERAL

Banyan shall provide for CLIENT control systems programming and design services in all phases of the Project to which this Agreement applies. These services will include Control Systems Representative for the Project, providing professional consultation and advice in accordance with generally accepted professional practices for the intended use of the Project and makes no other **WARRANTY EITHER**

EXPRESSED OR IMPLIED.

Banyan shall not be responsible for acts or omissions of any party involved in the services covered by this Agreement other than their own or for failure of any contractor or subcontractor to construct any item in accordance with recommendations issued by Banyan.

Banyan has not been retained to have control over Contractor(s) work nor shall Banyan have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, Banyan can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

OPINIONS OF COST

Since Banyan has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Banyan's opinions of probable Total Project Costs and Construction Costs provided for herein are to be made on the basis of Banyan's experience and qualifications and represent Banyan's best judgment as an experienced and qualified control systems integrator, familiar with the construction industry; but Banyan cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Banyan. If the CLIENT wishes greater assurance as to Total Project or Construction Costs, CLIENT shall employ an independent cost estimator. Banyan's services to modify the Project to bring the Construction Costs within any limitation established by the CLIENT will be considered Additional Services and paid for as such by the CLIENT.

REUSE OF DOCUMENTS

All documents and magnetic media including Drawings and Specifications prepared or furnished by Banyan pursuant to this Agreement are instruments of service in respect of the Project and Banyan shall retain an ownership and property interest therein whether or not the Project is completed. Any reuse without written verification or adaptation by Banyan for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to Banyan.

CONTROLLING LAW

This Agreement is to be governed by the law of the State of Idaho, principal place of business of Banyan Technology.

SUCCESSORS AND ASSIGNS

CLIENT and Banyan each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and Banyan are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CLIENT and Banyan, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and Banyan and not for the benefit of any other party.

TIMES OF PAYMENTS

Banyan shall submit monthly statements for services rendered and for Reimbursable Expenses incurred. CLIENT shall make prompt monthly payments. If CLIENT fails to make any payment due Banyan for services and expenses within sixty (60) days after receipt of Banyan's statement therefor, the amounts due Banyan will be increased at the rate of 1% per month from said tenth day, and in addition, Banyan may, after giving ten days' written notice to CLIENT, suspend services under this Agreement until Banyan has been paid in full all amounts due for services, expenses and charges.

TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If this Agreement is terminated by either party, Banyan will be paid for services rendered and for Reimbursable Expenses incurred to the date of such termination plus an allowance for demobilization costs as determined by Banyan. Furthermore, the CLIENT will be reimbursed for any unused prepaid amount of the Agreement.

MEDIATION BEFORE LITIGATION

No action or lawsuit shall commence nor recourse to a judicial forum be made (hereinafter "litigation") until CLIENT, Banyan, and/or other Parties of Real Interest have commenced, participated in and concluded nonbinding mediation, pursuant to the rules of mediation.

LEGAL FEES

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses, including attorney's fees as may be set by the Court.

EXTENT OF AGREEMENT

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



Rate Schedule Effective January 01, 2020

PLC Programming/HMI Programming/Field Service

Our hourly rates for custom PLC programming, Design, Telephone and Field Support are \$ 125.00 per hour. After hour, weekend, and holiday rates will be billed at \$ 150.00 per hour with a 4 hour minimum.

Travel Time

Travel time is based on the travel time from our field service technician's current location to and from your location, and billed at the appropriate hourly rate. Mileage to and from your location will be billed at the rate of 65 cents per mile. Air travel, hotel, and meals will be billed at cost plus 15%.

Rates and Services for Contract Customers

Banyan offers discounted rates for "Contract Customers." A "Contract Customer" is defined as a person or organization that commits to a service agreement with Banyan and guarantees payment of the negotiated fee annually. Since each organization's needs are different, agreements with Banyan Technology Inc. will differ. The annual fee is determined by the services you choose and the size of your system. As a contract customer you will get:

- 24 hour/7 days per week service/support commitment for on-site and telephone support.
- Priority Response Time - your issues are taken care of before non-contract customers.
- HMI software, training, reporting, and onsite trouble-shooting services outside of the agreement are billed at a discounted rate of \$ 105.00/hour, with no increase in rates for after hours service calls.
- PLC Programming services are also billed at a discounted rate of \$ 105.00/hour, with no increase in rates for after hours programming.