

CONTRACT FOR PROFESSIONAL SERVICES
FOR
Environmental Monitoring and Consulting Services
City of Billings
Regional Landfill

THIS CONTRACT, made and entered into _____, 20_____, by and between the following:

CITY OF BILLINGS, a Municipal Corporation,
Billings, Montana 59103, hereinafter designated
the CITY

and

Tetra Tech
618 South 25th Street
P O Box 30615
Billings, Montana 59107

W I T N E S S E T H:

WHEREAS, the CITY has need for an environmental consultant and;

WHEREAS, the CITY has authority to contract for consulting environmental services, and;

WHEREAS, the CONSULTANT represents that he is qualified to perform such services, is in compliance with the Montana Statutes relating to environmental consulting and is willing to furnish such services to the CITY;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

1. CONSULTANT RIGHTS AND DUTIES: The CONSULTANT'S duties and responsibilities include the following:
 - A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the CONSULTANT'S portion of the project as defined in the scope of work and to prepare and deliver to the CITY all plans, specifications, bid documents and other material as designated herein.
 - B. Ascertain such information as may have a bearing on the work from local units of government, utility companies and private organizations and shall be authorized to procure information from other authorities besides the CITY, but shall keep the CITY advised as to the extent of these contacts and the results thereof.

- C. Prepare and present such information as may be pertinent and necessary, in order for the CITY to pass critical judgment on the features of the work. The CONSULTANT shall make changes, amendments or revisions in the detail of the work as may be required by the CITY. When alternates are being considered, the CITY shall have the right of selection.
- D. CONSULTANTS work shall be in accordance with the standards of sound engineering and present CITY, State and National standards and policies currently in use in the locality where the work is performed.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. To perform professional services in connection with the project and will serve as the CITY's representative in those phases of the project to which this agreement applies.
- G. Where federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- H. Submit an estimated progress schedule as to time and costs at the beginning of the work, and regular progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the CONSULTANT. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- I. The CITY shall have the right of review and examination of the CONSULTANT's work and records pertaining to this project accounting at all times.
- J. Name a Task Director who shall be the liaison between the CITY and the CONSULTANT. For this project the Task Director designated is Mr. Jeff Rice of Tetra Tech.

2. CITY RIGHTS AND DUTIES: The CITY's duties are set forth as follows:

- A. To furnish all labor, materials, equipment, supplies and incidentals necessary to conduct and complete the CITY's portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the CONSULTANT and the CITY. For this project the Task Director designated is Ms. Barbara Butler.
- C. The CITY will be responsible for bid advertising, opening and review.
- D. The CITY will be responsible for providing an employee knowledgeable with landfill operations to accompany Tetra Tech during the methane monitoring events to assist with locating changes in culverts and accessing City buildings.

3. SCOPE OF WORK: The CONSULTANT shall perform the work covered by this agreement which includes:

Task 1: Update the Groundwater and Methane Monitoring Sampling and Analysis Plans (SAP)

Prior to all sampling events, Tetra Tech will review and update (if needed) the groundwater and methane monitoring SAPs. The revised SAPs will be submitted to the CITY for review and approval prior to submittal to the MDEQ Solid Waste Program for their review and approval. Additionally, both monitoring programs will be reviewed to ensure that regulatory requirements are met.

Task 2: Environmental Contingency Consulting Services

Tetra Tech will provide environmental consulting services for environmental issues that might arise during the contract period. These consulting services may include responses to Montana Department of Environmental Quality requests, additional sampling or monitoring requests, or additional environmental issues. These

services will be conducted on an as requested basis. Additionally, due to the age of the dedicated submersible bladder pumps installed in the monitor wells it is anticipated that pumps will need to be replaced.

Task 3: Semi-Annual Groundwater Monitoring

Tetra Tech will conduct three years of semi-annual groundwater monitoring events (with an option for two additional years) in accordance with Tetra Tech’s Standard Operating Procedures and in accordance with the “Revised Groundwater Sampling and Analysis Plan, Billings Regional Landfill” dated January 2013. This task includes sample collection, laboratory analyses, statistical analyses, hydrogeological interpretation of groundwater data and reporting. All field and laboratory testing procedures shall follow the performance standards for groundwater monitoring under the Montana Solid Waste management regulations (ARM 17.50, Sub-Chapter 13). A report presenting field and laboratory procedures, sampling results, statistical analyses and data interpretations will be prepared for City and State review within 90 days of completing each semi-annual groundwater sampling event. The report will include a continuing comparison of test results with an analysis update.

Task 4: Perform Quarterly Methane Monitoring

Tetra Tech will conduct three years of quarterly methane monitoring (with an option for two additional years) in accordance with Tetra Tech's Standard Operating Procedures and the “Landfill Gas Monitoring Plan City of Billings Regional Landfill, Revised September 2011”. This work will be conducted in compliance with the requirements outlined under ARM 17.50, Sub-Chapter 11. Data collected during the methane monitoring will be presented in a report to the City following each event.

Task 5: Hazardous Waste Operations and Emergency Response (HAZWOPER) Training Services

Tetra Tech will conduct two eight hour Hazardous Waste Operations and Emergency Response (HAZWOPER) training courses each year of this contract in compliance with Title 29, Code of Federal Regulations Part 1900.120. The two training courses will cover the same topics and will be conducted within one to two weeks of each other to allow the landfill to adjust employee schedules for all staff needing the course to attend.

- 4. DESIGN PHASE COMPLETION: The completion date for the CONSULTANT's work through final design shall be:

Task 1: Revise Groundwater and Methane SAP	April 1, 2017
Task 2: Environmental Consulting	January 31, 2017
Task 3: Semi-Annual Groundwater Monitoring	April 1, 2017
Task 4: Methane Monitoring	April 1, 2017
Task 5: HAZWOPR Training	April 1, 2017

There is an option to extend this contract for an additional two years should both CITY and CONSULTANT agree.

The established completion dates shall not be extended because of any unwarranted delays attributed to the CONSULTANT, but may be extended by the CITY in the event of a delay attributed to the CITY or because of unavoidable delays due to severe weather, street conditions, or by any natural catastrophe or governmental action or conditions beyond the control of the CONSULTANT.

Delays affecting the completion of the work within the time specified for the completion by more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the CONSULTANT is behind on this Contract due to no fault of the CITY, then the CONSULTANT hereby acknowledges the right of the CITY to withhold future Contracts to the CONSULTANT in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

- 5. PAYMENT: The work of the CONSULTANT as outlined in the scope of work, shall be accomplished on an actual time and materials basis in accordance with the cost estimate presented in Attachment A.

Extra services of the CONSULTANT will be paid only with written prior authorization by the CITY.

6. **EMPLOYMENT:** The CONSULTANT warrants that he has not employed or retained any company or persons, other than a bona fide employee, working solely for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any commission, percentage, brokerage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the CITY shall have the right to annul this Contract without liability, or at its discretion to deduct from the consultant fee, or otherwise recover the full amount of such commission, percentage, brokerage fee, gift or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required by the CONSULTANT shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may arise under the Workman's Compensation Act on behalf of said employees or other persons while so engaged and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 23, United States Code, and all regulations promulgated there under.

The CONSULTANT shall comply with all provisions of Equal Employment Opportunity (EEO) and Disadvantaged Business Act (DBA - Minority and Women's Business Enterprises), and the CITY's implementation plan of this act.

7. **DECLARATION OF NO FINANCIAL INTEREST:** The CONSULTANT hereby declares that the CONSULTANT's partners, principal shareholders, officers and professional engineers assigned to or otherwise working on the projects or in any way associated with CONSULTANT does not own any equitable or legal rights to property within the project, whether public or private, or have any interest either directly or indirectly in the project except for the remuneration provided herein: None.
8. **SUCCESSORS AND ASSIGNS:** This agreement and all of the covenants hereof shall insure to the benefit of and be binding upon the CITY and the CONSULTANT respectively and his partners, successors, assigns and legal representatives. Neither the CITY nor the CONSULTANT shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.
9. **CHANGES IN WORK:** The CONSULTANT shall make such revisions in the reports, plans, and specifications which have been completed, approved and accepted by the CITY as are necessary to correct the CONSULTANT's errors or omissions when required to do so by the CITY, without additional compensation therefore.

Any change in the scope of work as stated in this Contract for whatever reason, will be negotiated between the CITY and the CONSULTANT and an amendment to the Contract will be issued with the appropriate change of work and Contract fee noted.

10. **LEGAL RELATIONS:** The CONSULTANT shall use reasonable care to comply with all Federal, State and local laws and ordinances applicable to the work to be done.
11. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that CONSULTANT is an independent Contractor for purposes of this Contract and is not to be considered an employee of the CITY for any purpose. CONSULTANT is not subject to the terms and provisions of the CITY's personnel policies handbook and may not be considered a CITY employee for workers' compensation or any other purpose. CONSULTANT is not authorized to represent the CITY or otherwise bind the CITY in any dealings between CONSULTANT and any third parties.

12. INDEMNITY AND INSURANCE:

- A. The CONSULTANT shall not indemnify, defend, save and hold the CITY harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the CITY occurring during the course of or as a result of the performance of the Contract.
- B. The CONSULTANT agrees to indemnify, defend and save CITY, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of CONSULTANT or its agents or employees.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the CITY and the CONSULTANT, the CONSULTANT shall indemnify, defend, save, and hold the CITY harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the CONSULTANT's or any subcontractor's wrongful or negligent acts occurring as a result from the CONSULTANT's performance pursuant to this Contract.
- D. The CONSULTANT shall maintain in good standing the insurance described in this Section. Before rendering any services under this Contract, the CONSULTANT shall furnish the CITY with proof of insurance in accordance with this Section.
- E. CONSULTANT'S aggregate liability for the claims, lawsuits, or liability as listed in 12.B and 12.C shall be limits of CONSULTANT'S insurance coverages. Neither party shall be liable for any special, incidental, indirect or consequential damages.
- F. The CONSULTANT shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$1,500,000 per accident.
 - 4. Professional liability in the amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the CITY prior to cancellation. The CITY shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

CONSULTANT shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. CONSULTANT shall maintain workers' compensation insurance coverage for all members and employees of CONSULTANT's business, except for those members who are exempted as independent CONSULTANTS under the provisions of §39-71-401, MCA.

CONSULTANT shall furnish CITY with copies showing one of the following: (1) proof of registration as a registered Contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent Contractors.

13. **TERMS AND TERMINATION OF AGREEMENT:** The right is reserved by the CITY to terminate this Contract at any time upon not less than thirty (30) days written notice to the CONSULTANT.

In the event this Contract is terminated by the CITY, the CONSULTANT shall be paid for the amount of work performed or services rendered to date of termination per the Contract fee.

In the event this Contract is terminated prior to completion, the originals of all plans shall remain the property of the CONSULTANT. All information relating to the project and prepared under the terms of the Contract, including schedules, reports, data, recommendations, exhibits, analyses, plans and specifications, shall be deemed the property of the CITY. Reproduces of all notes, reports, plans, and specifications shall be made available at the CITY's request.


14. ENDORSEMENTS: The CONSULTANT shall furnish professional stamps, statements, or other suitable means to signify responsible endorsement of work, on all drawings and reports furnished by him.
15. OWNERSHIP OF DOCUMENTS: The original tracings of all plans shall remain the property of the CONSULTANT. All information relating to the project and prepared under the terms of this Contract, including schedules, reports, data, recommendations, exhibits, analyses, plans and specifications, shall be deemed the property of the CITY. Reproduces of all notes, reports, plans and specifications shall be made available at the CITY's request.
16. PUBLIC INFORMATION: The CONSULTANT shall not issue any statements, releases or information for public dissemination without prior approval of the CITY.
17. PROPRIETARY RIGHTS: If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the CITY.
18. RECORDS: The CONSULTANT shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Contract term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the CITY and copies thereof shall be furnished if requested.
19. ATTORNEY'S FEES AND COSTS: That in the event it becomes necessary for either Party to this Contract to retain an attorney to enforce any of the terms or conditions of this Contract or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
20. LITIGATION LOCATION: The parties agree that this Contract shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the Contract or the performance of its terms.
21. ADMINISTRATION MEDIATION: Any disputes concerning the CONSULTANT's performance of the work between the CONSULTANT and the CITY shall be referred for determination to the City Administrator before commencing any legal action to resolve the same.
22. MODIFICATION AND AMENDMENTS: That any amendment or modifications of this Contract or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Contract.

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


CITY OF BILLINGS, MONTANA

Tetra Tech
CONSULTANT (Print Name Above)

By _____
THOMAS W. HANEL, MAYOR

By 
Print Name Brian McHugh
Print Title OFFICE MANAGER

APPROVED AS TO FORM:

By 
BRENT BROOKS, CITY Attorney



ATTACHMENT A

Cost Estimate

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)

	QUANTITY	RATE	TOTAL
Task 1: Update the Groundwater and Methane Monitoring Sampling and Analysis Plans and Health and Safety Plan			
Labor, per hour			
Senior Project Manager	2	\$120.00	\$240.00
Project Manager	8	\$98.00	\$784.00
Senior Technician	1	\$75.00	\$75.00
CAD Drafting	2	\$80.00	\$160.00
Clerical	2	\$50.00	\$100.00
<i>Subtotal HASP and SAP updates - per year</i>			<u>\$1,359.00</u>
TOTAL TASK 1, per year			\$1,359.00
Task 2: Environmental Contingency Consulting Services (Assumes one monitor well pump will be replaced per year)			
Senior Project Manager	1	\$120.00	\$120.00
Senior Scientist	1	\$110.00	\$110.00
Project Manager	3	\$98.00	\$294.00
Senior Technician	8	\$75.00	\$600.00
Field Technician	6	\$55.00	\$330.00
Clerical	1	\$50.00	\$50.00
Replacement pump	1	\$945.81	\$945.81
Replacement tubing (per foot estimate).	60	\$3.40	\$204.24
Replacement fittings (lump sum estimate)	1	\$50.00	\$50.00
<i>Subtotal - Environmental Contingency Consulting Services - per year</i>			<u>\$2,704.05</u>
TOTAL TASK 2, per year			\$2,704.05
Task 3: Semi-Annual Groundwater Monitoring (two events per year)			
Field Labor, per hour			
Senior Project Manager	4	\$120.00	\$480.00
Project Manager	4	\$98.00	\$392.00
Senior Technician	34	\$75.00	\$2,550.00
Field Technician	16	\$55.00	\$880.00
<i>Subtotal - Field Labor - per year</i>			<u>\$4,302.00</u>
Direct Costs			
Field Meters, per event	2	\$300.00	\$600.00
Decontamination Fluids, per event	2	\$20.00	\$40.00
Nitrogen Gas (compressed), per event	4	\$55.00	\$220.00
Disposable Pressure Filter Apparatus, per well	16	\$20.00	\$320.00
<i>Subtotal - Direct Costs - per year</i>			<u>\$1,180.00</u>

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)

	QUANTITY	RATE	TOTAL
Task 3: Semi-Annual Groundwater Monitoring (cont'd)			
Laboratory Fees est. per year (average cost for three years shown)			
Dissolved Metals, per sample	16	\$310.50	\$4,968.00
Volatile Organics, per sample	16	\$198.00	\$3,168.00
Nitrate + Nitrite as N	16	\$22.50	\$360.00
Specific Conductance	16	\$9.00	\$144.00
pH	16	\$9.00	\$144.00
Trip Blank Volatile Organics, per sample	2	\$0.00	\$0.00
Laboratory QA/QC Validation	2	\$200.00	\$400.00
Subtotal - Laboratory Fees - per year			\$9,184.00
15% Mark-up			\$1,377.60
<i>Total Laboratory Fees - per year</i>			<u>\$10,561.60</u>
Reporting/Consulting Labor, per hour			
Senior Project Manager	8	\$120.00	\$960.00
Senior Scientist	4	\$110.00	\$440.00
Project Manager	80	\$98.00	\$7,840.00
Senior Technician	4	\$75.00	\$300.00
CAD Drafting	4	\$80.00	\$320.00
Admin	4	\$55.00	\$220.00
Clerical	6	\$50.00	\$300.00
Software Maintenance fee	1	\$339.00	\$339.00
Subtotal - Reporting/Consulting Labor - per year			<u>\$10,719.00</u>
TOTAL TASK 3, per year			\$26,762.60
Task 4: Perform Quarterly Methane Monitoring (per year)			
Field Labor (per hour per year)			
Senior Project Manager	2	\$120.00	\$240.00
Senior Technician	20	\$75.00	\$1,500.00
Subtotal - Field Labor - per year			<u>\$1,740.00</u>
Direct Costs			
Field Meters, per day	4	\$75.00	\$300.00
Subtotal - Direct Costs - per year			<u>\$300.00</u>
Reporting Labor, per hour			
Senior Project Manager	2	\$120.00	\$240.00
Project Manager	4	\$98.00	\$392.00
Senior Technician	12	\$75.00	\$900.00
CAD Drafting	4	\$80.00	\$320.00
Clerical	4	\$50.00	\$200.00
Subtotal - Reporting Labor - per year			<u>\$2,052.00</u>
TOTAL TASK 4, per year			\$4,092.00

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)

	QUANTITY	RATE	TOTAL
Task 5: Annual HAZWOPER Training Class (Assumes two full day sessions per year)			
Lump Sum, per class	2	\$1,325.00	\$2,650.00
<i>Subtotal - OSHA HAZWOPER Training Services (Assumes two sessions per year)</i>			<u>\$2,650.00</u>
TOTAL TASK 5, per year			\$2,650.00

SUMMARY OF TASKS

Annual Expenses

Total Task 1: SAP Preparation	\$1,359.00
Total Task 2: Environmental Consulting	\$2,704.05
Total Task 3: Groundwater Monitoring, per year	\$26,762.60
Total Task 4: Methane Monitoring, per year	\$4,092.00
Total Task 5: HAZWOPER Training, per year	\$2,650.00

Total For 1 Year Consulting Services **\$37,567.65**

TOTAL CONTRACT VALUE FOR 3 YEARS **\$112,702.94**