



## **CONSULTANT AGREEMENT**

**THIS AGREEMENT** is made and entered into this 8th day of December, 2014, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**CITY**,” and HDR Engineering Inc., of 1715 South Reserve Street, Missoula, MT 59801, hereinafter referred to as “**CONSULTANT**.”

### **WITNESSETH:**

**WHEREAS**, the **CITY** and the six other largest cities in Montana (Missoula, Great Falls, Bozeman, Helena, Butte, and Kalispell) are working with Montana Department of Environmental Quality (MDEQ) on a two year program to develop a new State of Montana MS4 stormwater general permit and a stormwater manual to meet our common needs. The seven cities and MDEQ are forming an MS4 storm water working group for this purpose. The City desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

**WHEREAS**, the **CITY** has authority to contract for such services, and;

**WHEREAS**, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

- 1. PURPOSE:** **CITY** agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
- 2. TERM:** This **AGREEMENT** shall be for a period of 2 years, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for one year by mutual agreement of both parties, in writing, thirty (30) days prior to termination.



3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$119,900.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the Consultant will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

4. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent Contractor for purposes of this **AGREEMENT** 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.

5. **INDEMNITY AND INSURANCE:**

- A. 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.
- B. The Consultant shall not indemnify, defend, save and hold Billings 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 Billings occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Consultant, the Consultant shall indemnify, defend, save, and hold Billings 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 **AGREEMENT**.
- D. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.



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. 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.



6. **AGREEMENTS OF CONSULTANT:** As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. **AGREEMENTS OF CITY:**

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the City of Billings' portion of the project as designated in the scope of work.

B. Name a Project Manager who shall be the liaison between the Consultant and the City of Billings. For this project, the Project Manager for **CONSULTANT** designated is Amanda McInnis and the Project Manager for **CITY** designated is David Mumford.



## 8. NONDISCRIMINATION:

- A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
  - B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
  - C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
  - D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.
  - E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.



10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Section 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this **AGREEMENT**, any person having any such interest. Until the property is acquired by the **CITY** or excluded from its project by resolution of its governing body, the **CONSULTANT** and any employees of the **CONSULTANT**, so long as they are employed by the **CONSULTANT**, will not acquire any such interests and will not, for their own account or for other than the **CITY**, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure 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.
13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.



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

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

16. **ENDORSEMENTS:** The CONSULTANT shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this AGREEMENT, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the CITY. Reproducibles of all notes, reports, and plans shall be made available at the CITY'S request.
18. **PUBLIC INFORMATION:** The CONSULTANT shall not issue any statements, releases, or information for public dissemination without prior written approval of the CITY.
19. **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.
20. **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 AGREEMENT 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.
21. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this AGREEMENT to retain an attorney to enforce any of the terms or conditions of the AGREEMENT 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.



22. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** 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 **AGREEMENT** or the performance of its terms.

23. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** 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 **AGREEMENT**.

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

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**CONSULTANT (Print Name Above)**

By \_\_\_\_\_  
**Thomas W. Hanel, Mayor**

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, CITY Attorney**



## **Exhibit A Stormwater Regulatory Issues Assistance**

### **Background**

The seven largest cities in Montana (Billings, Missoula, Great Falls, Bozeman, Helena, Butte, and Kalispell) are working with MDEQ on a two year program to develop a new MS4 general permit and a stormwater manual to meet their common needs. The seven cities and MDEQ are forming an MS4 storm water working group for this purpose. Emerging issues include a definition of state waters, groundwater discharge applicability of the rules, monitoring requirements, management reporting details, new total maximum daily loads (TMDLs), TMDL implementation plans, and equity issues with the Counties.

This work plan is focused on providing these Cities with technical input and support to understand the implications of regulatory initiatives and the potential impacts on their stormwater utilities. The initial work effort includes three areas:

- **Task No. 1 Technical Memos**
- **Task No. 2 MS4 Stormwater Working Group Conference Calls and Meetings.**  
Participate in conference calls and meeting with the MS4 storm water working group.
- **Task No. 3 Extra Meetings and On-Call Services**

### **Work Plan**

The following work plan outlines an approach to the initial task orders.

#### **Task No. 1 Technical Memos**

Formulate technical memoranda as requested by the Cities' MS4 storm water working group. Each bulleted item below will have a separate memorandum. These memoranda will be prepared and formatted consistently to allow inclusion in a statewide stormwater manual, if one is developed, later. A preliminary outline of the Memoranda is as follows:

- Development of State Waters Definition and Applicability to Dechlorination Permits
- Develop SWPPP for MS4 Cities.
- Development of Statement of Groundwater Applicability.



- Sampling/Monitoring/Reporting Requirements
  - Review current MS4 monitoring and reporting requirement and compare with other Region 8 states' requirements and other rural states as appropriate.
  - Consider improving requirements as necessary to best capture stormwater quality information.
- Minimum Control Measures 1 and 2—Public Education and Outreach/Public Involvement and Participation
  - Prepare draft permit language and provide comment and/or suggest alternative language.
  - Develop a table of target pollutants and public activities targets.
  - Develop Training for Staff.
- Minimum Control Measure 3-Illicit Discharge
  - Prepare draft permit language and provide comment and/or suggest alternative language.
  - Draft IDDE Corrective Action Plan/Enforcement Response.
  - Draft IDDE Training documents for City Staff.
- Minimum Control Measure 4-Construction Site Stormwater
  - Prepare draft permit language and provide comment and/or suggest alternative language.
  - Construction Site Plan Review Checklist.
  - Draft Construction Site Violation Corrective Action Plan/Enforcement Response.
  - Draft Construction Site Visit Checklist.
  - Develop Construction Site SOPs, inspection frequency memo.
- Minimum Control Measure 5-Post Construction BMPs
  - Prepare draft permit language and provide comment and/or suggest alternative language.
  - Review and provide comment on EPAs draft memorandum.
- Minimum Control Measure 6-Pollution Prevention Good Housekeeping
  - Prepare draft permit language and provide comment and/or suggest alternative language.
  - Develop preliminary list of “high priority” municipal facilities for each City.
  - Develop training module for field staff.



- Reporting Requirements
  - Review current reporting and requirements and consider better/more efficient ways to report MS4 progress on implementing their programs.
  - Review other states' reporting requirement.
  
- Construction Site SWPP Evaluation
  - Review current NOI/NOT process and suggest alternatives for better implementation.
  - Consider electronic submission.

#### **Cities' Responsibilities:**

- Provide written review comments on draft Technical Memorandum work product.

#### **Deliverables:**

- Draft and final Technical Memoranda.

### **Task No. 2 MS4 Stormwater Working Group Conference Calls and Meetings**

**MS4 Stormwater Working Group Conference Calls.** Participate in periodic conference calls with the Working Group to discuss more detailed technical issues as needed. Assume 12 conference calls.

#### **MS4 Stormwater Working Group Meetings.**

- Attend 14 in-person Stormwater Working Group meetings and provide technical assistance as requested.
- Attend the first kick off meeting.
- Assist the MS4 storm water working group and the facilitator with formulating prioritized agendas for the monthly meetings.

#### **Cities Responsibilities:**

- Attend conference calls and meetings.
- Review meeting minutes.



### **Deliverables:**

- Participation in the in-person meetings and in conference calls as requested within the time allotted

### **Task No. 3 Extra Meetings and On-Call Services**

**Extra Meetings or Calls with Cities.** Participate in any additional Meetings or Conference Calls not covered in Task No. 2.

**On-Call Services.** Complete miscellaneous tasks as directed by Working Group.

### **Budget Resources:**

- Professional staff hours:
  - Technical Memoranda: Estimate 10 tech memos, estimate 50 hours per memo; 500 staff hours.
  - Conference Calls and Meetings: 14 meetings, 12 conference calls, estimate 8 hours per meeting and 2 hours per conference call, 136 staff hours.
  - Extra Meetings and On-Call Services: Assume 160 staff hours.
- Direct costs for travel to meetings: 14 meetings, \$100 per meeting (auto miles only, no meals or hotel)
- Total budget: \$119,900