



CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of October, 2020, 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 **ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S)**, of 4050 Garden View Drive, Suite 200, Grand Forks, North Dakota 58201, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH:

WHEREAS, the **CITY** proposes to conduct water and wastewater rate studies and 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 four years, from the execution of this **AGREEMENT**.



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 \$226,673.

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 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, 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, 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 standard of care for all services performed or furnished by **CONSULTANT** under this **AGREEMENT** will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

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 Ryan Graf and the Project Manager for **CITY** designated is Jennifer Duray.



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. The **CONSULTANT** shall retain a nonexclusive royalty-free license to use all documents and information created by the **CONSULTANT**
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

**Advanced Engineering and
Environmental Services, Inc. (AE2S)
 CONSULTANT**

By _____
WILLIAM A. COLE, MAYOR

By _____

Print Name _____

Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, CITY Attorney



“Exhibit A”



City of Billings, Montana
 FY22/23 and FY24/25 Water and Wastewater Rate Study
 Proposed Scope and Fee Estimate

September 28, 2020

Task Description	Phase 1 - FY22/23 Rate and SDF Analysis				Phase 2 - FY24/25 Rate and SDF Analysis				
	Budget Hours (All Labor Categories)	Labor Fees	Expenses	Total AEZS Fee	Budget Hours (All Labor Categories)	Labor Fees	Expenses	Total AEZS Fee	Total AEZS Fee
	2020/2021	2020/2021	2020/2021	2020/2021	2022/2023	2022/2023	2022/2023	2022/2023	2022/2023
Task 1 Project Administration, Data Collection, and Kickoff									
1.1 Project Administration	13	\$2,076		\$2,076	13	\$2,201		\$2,201	\$4,277
1.2 Weekly Communications with Client (@1.5 hr/week)	20	\$3,838		\$3,838	20	\$4,068		\$4,068	\$7,906
1.3 Information Request and Data Review	12	\$1,354		\$1,354	16	\$2,228		\$2,228	\$3,582
Task 1 Subtotal	45	\$7,268	\$0	\$7,268	49	\$8,497	\$0	\$8,497	\$15,765
Task 2 Water Cost of Service Analysis and Water Rate Update									
2.1 Kickoff Meeting (Virtual)	10	\$1,778		\$1,778	10	\$1,885		\$1,885	\$3,663
Task 2 Subtotal	10	\$1,778	\$0	\$1,778	10	\$1,885	\$0	\$1,885	\$3,663
Task 3 Water Cost of Service Analysis and Water Rate Update									
3.1 Review and Update COSA Assumptions	50	\$8,884		\$8,884	24	\$3,986		\$3,986	\$12,870
3.2 Review Water Depot / Resale User Rates	10	\$1,692		\$1,692	0	\$0		\$0	\$1,692
3.3 Update Retail/Resale Model	44	\$5,736		\$5,736	44	\$6,080		\$6,080	\$11,816
3.4 Residential Rate Design	20	\$2,672		\$2,672	0	\$0		\$0	\$2,672
3.5 Incorporate Probabilistic Revenue Forecasting	18	\$2,290		\$2,290	20	\$2,815		\$2,815	\$5,105
3.6 Review/Verify Results	9	\$1,644		\$1,644	9	\$1,743		\$1,743	\$3,387
3.7 Residential Bill Comparison	2	\$374		\$374	2	\$396		\$396	\$770
3.8 Sensitivity Analysis, Regional Comparison	8	\$1,140		\$1,140	8	\$1,208		\$1,208	\$2,348
3.9 Preparation for Progress Meeting #1	4	\$655		\$655	4	\$694		\$694	\$1,349
3.10 Progress Meeting #1 - Review Draft Retail and Resale Water Rates (Virtual Meeting)	7	\$1,034		\$1,034	7	\$1,096		\$1,096	\$2,130
Task 3 Subtotal	172	\$26,121	\$0	\$26,121	118	\$18,019	\$0	\$18,019	\$44,140
Task 4 Wastewater Cost of Service Analysis and Wastewater Rate Update									
4.1 Review and Update COSA Assumptions	28	\$4,152		\$4,152	28	\$4,401		\$4,401	\$8,553
4.2 Update Model - Wastewater Retail	44	\$5,332		\$5,332	44	\$5,652		\$5,652	\$10,984
4.3 Update Model - Wastewater Wholesale	40	\$5,960		\$5,960	40	\$6,318		\$6,318	\$12,278
4.4 Review Wastewater Rate Structure & Policies: FOG, High Strength, Septage	22	\$3,460		\$3,460	0	\$0		\$0	\$3,460
4.5 Review/Verify Results	9	\$1,644		\$1,644	10	\$1,596		\$1,596	\$3,240
4.6 Sensitivity Analysis, Regional Comparison	8	\$1,140		\$1,140	6	\$1,001		\$1,001	\$2,141
4.7 Preparation for Progress Meeting #2	4	\$655		\$655	4	\$694		\$694	\$1,349
4.8 Progress Meeting #2 - Review Draft Wastewater Retail and Wholesale Rates (Virtual Meeting)	3	\$468		\$468	3	\$496		\$496	\$964
Task 4 Subtotal	158	\$22,811	\$0	\$22,811	135	\$20,158	\$0	\$20,158	\$42,969
Task 5 Water SDF Review									
5.1 Data Review	10	\$1,320		\$1,320	14	\$2,175		\$2,175	\$3,495
5.2 Update SDF Water Model/Calculation	30	\$3,450		\$3,450	30	\$3,657		\$3,657	\$7,107
Task 5 Subtotal	40	\$4,770	\$0	\$4,770	44	\$5,832	\$0	\$5,832	\$10,602



“Exhibit A”

Task 6 Wastewater SDF Review									
6.1 Data Review	20	\$2,640		\$2,640	20	\$2,798		\$2,798	\$5,438
6.2 Update SDF Wastewater Retail Model/Calculation	26	\$2,718		\$2,718	26	\$2,881		\$2,881	\$5,599
6.3 Update SDF Lockwood Model/Calculation	14	\$1,882		\$1,882	14	\$1,995		\$1,995	\$3,877
6.4 Review/Verify Results	8	\$1,294		\$1,294	8	\$1,372		\$1,372	\$2,666
6.5 Stakeholder Communications (if necessary)	6	\$928		\$928	6	\$984		\$984	\$1,912
6.6 Preparation for Progress Meeting #3	3	\$379		\$379	3	\$402		\$402	\$781
6.7 Progress Meeting #3 - Review Draft SDF Recommendations (Virtual Meeting)	2	\$281		\$281	2	\$298		\$298	\$579
Task 6 Subtotal	79	\$10,122	\$0	\$10,122	79	\$10,729	\$0	\$10,729	\$20,851
Task 7 Documentation and Presentation of Results									
7.1 Preparation of Reports	0	\$0		\$0	0	\$0		\$0	\$0
7.1.1 Technical Memo - Water Rate Study	26	\$4,944		\$4,944	24	\$4,740		\$4,740	\$9,684
7.1.2 Technical Memo - Wastewater Retail Rate Study	26	\$3,164		\$3,164	24	\$2,854		\$2,854	\$6,018
7.1.3 Technical Memo - Wastewater Lockwood Summary	14	\$1,988		\$1,988	12	\$1,607		\$1,607	\$3,595
7.1.4 Technical Memo - Wastewater Phillips 66 Summary	14	\$1,988		\$1,988	12	\$1,607		\$1,607	\$3,595
7.1.5 Technical Memo - Wastewater ExxonMobil Summary	14	\$1,988		\$1,988	12	\$1,607		\$1,607	\$3,595
7.1.6 Technical Memo - Water/Wastewater SDF Report	26	\$3,504		\$3,504	24	\$3,214		\$3,214	\$6,718
7.2 Preparation of Final Results Presentation	14	\$2,254		\$2,254	14	\$2,389		\$2,389	\$4,643
7.3 Progress Meeting #4 - Review Draft Reports (Virtual Meeting)	3	\$468		\$468	3	\$496		\$496	\$964
7.4 Preparation of Final Reports	10	\$1,142	\$100	\$1,242	10	\$1,211	\$100	\$1,311	\$2,553
Task 7 Subtotal	147	\$21,440	\$100	\$21,540	135	\$19,724	\$100	\$19,824	\$41,364
Task 8 Stakeholder Meetings									
8.1 Meet with Impact Fee Advisory Committee	6	\$758		\$758	6	\$803		\$803	\$1,561
8.2 Meet with Phillips 66	6	\$758		\$758	6	\$803		\$803	\$1,561
8.3 Meet with Lockwood	6	\$758		\$758	6	\$803		\$803	\$1,561
8.4 Meet with ExxonMobil	6	\$758		\$758	6	\$803		\$803	\$1,561
8.5 Travel Associated with 8.1 - 8.4	12	\$2,196	\$1,500	\$3,696	12	\$2,328	\$1,500	\$3,828	\$7,524
8.6 Conference Call with Billings Heights	4	\$740		\$740	2	\$388		\$388	\$1,128
Task 8 Subtotal	40	\$5,968	\$1,500	\$7,468	38	\$5,930	\$1,500	\$7,430	\$14,898
Task 9 Recommended Services									
9.1 Model Modernization and Updates	144	\$19,680		\$19,680	0	\$0		\$0	\$19,680
9.2 Regulatory Affordability Analysis	0	\$0		\$0	84	\$12,741		\$12,741	\$12,741
Task 9 Subtotal	144	\$19,680	\$0	\$19,680	84	\$12,741	\$0	\$12,741	\$32,421
TOTAL PROJECT HOURS/EXPENSES	835	\$119,958	\$1,600	\$121,558	692	\$103,515	\$1,600	\$105,115	\$226,673