

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF BILLINGS AND COUNTY WATER DISTRICT OF BILLINGS HEIGHTS
FOR
COST SHARING OF W.O. 24-41 HEIGHTS WATER DISTRICT CONSOLIDATION
STUDY

1. Parties

This MEMORANDUM OF AGREEMENT (“MOA”) is made and entered into this , 2024, (“Effective Date”) by and between the CITY OF BILLINGS (“CITY”), a municipal corporation incorporated and organized under the laws of the State of Montana, (“CITY”) and the COUNTY WATER DISTRICT OF BILLINGS HEIGHTS (“CWDBH”), a county water district incorporated and organized under the laws of the State of Montana. The CITY and CWDBH are collectively referred to as the “Parties” and each is a “Party”.

2. Purpose

The purpose of this MOA is to memorialize the mutual understanding of the Parties regarding the funding of CITY W.O. 24-41 Heights Water District Consolidation Study (the “Project”), which is intended to obtain a credible, non-biased feasibility analysis and concept plan that may form the basis for possible future consolidation of CITY and CWDBH water services. The actual terms and process of consolidation, if any, are beyond the scope of, and not covered by, this MOA.

3. Underlying Principles.

- a. Execution of this MOA for preliminary feasibility analysis of consolidation in no way implies support for or an obligation to approve, facilitate, or participate financially or otherwise in a consolidation of the Parties.
- b. Participation in this MOA and the Project is voluntary, and any Party may withdraw at any time from this MOA by providing written notice to the other Party pursuant to the notice requirements set forth herein. Participation in this MOA and the Project does not imply endorsement or commitment to implement the recommendations of the Project.
- c. The Project will be carried out in an inclusive manner that encourages voluntary participation by the Parties executing this MOA.
- d. Execution of this MOA or participation in the activities contemplated by this MOA in no way waives any legal or contractual rights of participating Parties.
- e. CWDBH’s governing board must approve any final decisions related to its water rights, water contracts, resource plans, infrastructure, or other

similar decisions resulting from this MOA, the Project, or any activities contemplated by this MOA.

- f. Execution of this MOA in no way limits the ability of the Parties to pursue individual projects, plans, contracts, or agreements. However, projects, plans, contracts, or agreements undertaken that are over \$1,000,000.00 in contract value undertaken by CWDBH will be discussed with the City of Billings prior to execution as this may affect the feasibility analysis of consolidation.

4. Scope of Work

The scope of work of the Project is defined by the Engineering Services Agreement with Morrison Maierle (“Consultant”), which shall be drafted consistent with W.O. 24-41.

5. Project Cooperation

- a. Services to be rendered by the CITY include:
 - i. Coordinating meetings with the Consultant, CWDBH, and CITY.
 - ii. Drafting, reviewing, and negotiating the Engineering Services Agreement between the Consultant and CITY in W.O. 24-41.
 - iii. Executing Engineering Services Agreement with Consultant.
 - iv. Administering and reviewing the Project invoices.
 - v. Invoicing the CWDBH for the equal share of costs.
 - vi. Providing any available records, reports, and past and current studies to the Consultant.

- b. Services to be rendered by the CWDBH include:
 - i. Attending meetings with the Consultant and the CITY.
 - ii. Reviewing the scope and fee of the Engineering Services Agreement between the Consultant and CITY.
 - iii. Reviewing the Project invoices and provide comments to CITY or otherwise dispute Project invoices. CWDBH shall have fourteen (14) days from receipt of an invoice to review the invoices and provide comments to the CITY regarding the invoice.
 - iv. Paying their share of invoiced fees to the CITY within thirty (30) days of date of receipt of invoiced fees; provided, however, that if CWDBH provides comments as allowed under Subsection 5.b.iii., then the payment deadline runs from the day the CITY provides a satisfactory response that addresses CWDBH’s comments or disputes.
 - v. Reviewing and providing feedback of deliverables from the Consultant in a timely manner. For purposes of this clause, “timely manner” shall mean either within the deadline allowed in the Engineering Services Agreement between the Consultant and the City or, in the absence of such deadline, within thirty (30) days of CWDBH’s receipt of such deliverables.

- vi. Providing any available records, reports, and past and current studies to the Consultant.

6. Cost Sharing

The total Project fees for the Project shall not exceed Two Hundred Thousand and no/100 Dollars (\$200,000.00), which shall be split equally between the CITY and CWDBH.

CITY agrees contribute up to \$100,000 for the Project fees. The CITY will pay in full all invoices from the Consultant. Thereafter, the CITY will invoice CWDBH for one-half (1/2) of the amount the CITY paid for each invoice from the Consultant, subject to the limitation set forth in the paragraph below.

CWDBH agrees to contribute up to \$100,000 for the Project fees. In no event shall the fees paid by CWDBH exceed \$100,000.00.

7. Communications Strategy

The Parties shall, to the extent possible, shall maintain open and transparent communication regarding the activities contemplated by this MOA and the Project. At a minimum all written communications, including without limitation all electronic written communications such as emails, texts, or messenges, for the Project will be sent to the following Parties for the CITY and CWDBH:

CITY

Travis Harris

Louis Engels

CWDBH

Frank Ewalt

Ming Cabrera

Jeff Essman

Bo Anderson

Travis Harris will communicate directly with the Consultant on behalf of both the CITY and CWDBH; provided, however, that Travis Harris is not and shall not be deemed to be an agent of CWDBH, either actual or ostensible, and has no authority whatsoever to bind CWDBH in any way and the Consultant shall have no right to rely on Travis Harris as an agent of CWDBH.

Frank Ewalt will communicate directly with CWDBH board regarding project updates.

8. No Partnership

Nothing in this MOA is intended, or shall be deemed, to constitute a partnership or joint venture between the CITY and CWDBH. This MOA is merely the convenient means for establishing the terms necessary for recompensing the CITY for CWDBH's equal share of expenses for W.O. 24-41.

9. Limitations.

Execution of this MOA does not in any way imply support for or an obligation to support, approve, or participate in any consolidation of the CITY and CWDBH. No Party to this MOA is bound to any financial contribution related to these studies or participation in this or a related Project, except as might be otherwise provided in separate agreements.

10. Disputes.

In the event of a dispute between the Parties over the meaning of this MOA, the Parties shall first meet to attempt to resolve the matter for the least expense practicable.

11. Jurisdiction and Venue

This MOA shall be construed in accordance with the laws of Montana and the Parties agree that venue shall be in Yellowstone County, 13th Judicial District Court of the State of Montana.

12. Mutual Indemnification

CITY shall defend, indemnify, and hold CWDBH, its officers, agents, and employees, harmless from and against any and all liability, loss, expense (including attorney's fees), or claims for injury or damages arising out of the performance of this MOA only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or the result from the negligent, reckless, or intentional acts or omissions of CITY, its officers, agents, or employees.

CWDBH shall defend, indemnify, and hold CITY, its officers, agents, and employees, harmless from and against any and all liability, loss, expense (including attorney's fees), or claims for injury or damages arising out of the performance of this MOA only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or the result from the negligent, reckless, or intentional acts or omissions of CWDBH, its officers, agents, or employees.

13. Governing Law

This MOA will be deemed a contract under the laws of the State of Montana and for all purposes shall be interpreted in accordance with such laws.

14. Nonwaiver.

The failure of either party at any time to enforce a provision of this MOA shall in no way constitute a waiver of the provision, nor in any way affect the validity of the MOA or any part hereof, or the right of either party thereafter to enforce each and every provision hereof.

15. Severability

Any provision of this MOA decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this MOA.

16. Amendment

This MOA shall only be amended, modified, or changed in writing, executed by authorized representatives of the Parties, with the same formality as this MOA was executed.

17. Term and Termination

This MOA shall commence on the Effective Date and continue for the period of completion of the Project or by June 30, 2025, if not extended by mutual agreement. Either CITY or CWDBH may terminate its participation in the MOA by providing written notice to the other Party by certified mail, return receipt to the following addresses, below. Both Parties will be equally responsible for the Project fees prior and up to the date of notice of termination received by the nonterminating Party.

CITY:
City of Billings - Public Works
2224 Montana Avenue
Billings, MT 59101
Attn: Travis Harris
harrist@billingsmt.gov

CWDBH:
Name: _____
Address: _____
Phone: _____
Email: _____

IN WITNESS WHERE OF, the PARTIESPARTIES have caused this MOA to be duly executed and effective as of the above date.

COUNTY WATER DISTRICT OF BILLING :

CITY OF BILLINGS:

By: _____

By: _____

(Name) (Authorized Signature)

MAYOR