



CITY OF BISBEE PUBLIC WORKS DEPARTMENT

Professional Services Agreement Wastewater Operator Grade IV

THIS AGREEMENT is made and entered into this 28th day of June, 2018 by and between CITY OF BISBEE, hereinafter referred to as the "City", and Jim Doyle, hereinafter referred to as the "Consultant".

I. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Consultant shall provide services as a Wastewater Operator Grade IV and Collections Grade II, all material, labor and transportation as more specifically described in Exhibit "A" Scope of Services.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration for the performance of the services described in Attachment "A" the City shall pay the Consultant \$100 per hour, not to exceed \$2,500 per week. Compensation shall cover travel time as well as work time at the plant.

The City will pay the Consultant following the submission of itemized invoices(s) for the services and material rendered. No payment shall be issued prior to receipt of material or service and correct invoicing. Each invoice must bear written certification by an authorized City representative confirming the services and material for which payment is requested have been performed and received. The City agrees to pay all properly documented invoices, for accepted work and material within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery, mail or e-mail.

The designated recipients for such notices, invoices and payments are as follows:

Consultant: Jim Doyle
201 Stone Ave.
Tucson, AZ 85743
520/419-1378

City: City of Bisbee
Robert Smith
City Manager
1415 Melody Lane, Bldg. G, Bisbee, AZ 85603
rsmith@cityofbisbee.com
520-432-6014

III. DURATION AND RENEWAL

The Consultant shall not commence any billable work or provide any material or services under this Agreement until Consultant receives written notice from the City Manager to proceed. It is understood that the Consultant's work is temporary, on a week to week basis, until the City can find someone or some entity that can permanently operate the City's wastewater treatment facility. As such, the City can terminate this Agreement upon seven (7) days written notice.

IV. TERMINATION

A. The City may cancel this Agreement without penalty or further obligation pursuant to A.R.S. §

38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes, at any time while the Agreement or any extension of the Agreement is in effect any employee of, or Consultant to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the City is received by the parties to this Agreement, unless the notice specifies a later time.

- B. This Agreement may also be terminated at any time by mutual written consent.
- C. The City reserves the right to cancel the whole or any part of this Agreement due to failure of the Consultant to carry out any term, promise or condition of the Agreement. The City will issue a written ten (10) day notice of default to the Consultant for acting or failing to act any of the following, in the opinion of the City:
 - 1. Consultant provides personnel who do not meet the requirements of the Agreement;
 - 2. Consultant fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
 - 3. Consultant attempts to impose on the City personnel, materials, products, or workmanship that is not of an acceptable quality;
 - 4. Consultant fails to furnish the required service and/or product within the time stipulated in the Agreement;
 - 5. Consultant fails to make progress in the performance of the requirements of the Agreement and/or gives the City a positive indication that consultant will not or cannot perform to the requirements of the Agreement.

V. ENFORCEMENT, LAWS AND ORDINANCES

This agreement shall be enforced under the laws of the State of Arizona. Consultant must comply with all applicable federal, state, and local laws, ordinances, and regulations. Consultant shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant.

VI. INDEPENDENT CONSULTANT

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

The Consultant is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

VII. MODIFICATIONS

This Agreement may only be modified by a written amendment signed by the City and the Consultant.

VIII. WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

IX. INDEMNIFICATION

To the fullest extent permitted by law, Consultant agrees to indemnify, and hold harmless the City of Bisbee, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including

but not limited to attorney's fees, reasonable court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Consultant, or anyone for whose acts Consultant may be liable. The City of Bisbee reserves the right, but not the obligation, to participate in defense without relieving Consultant of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

X. INSURANCE

This position shall be structured as a Temporary, Part Time Position, not to exceed 19 weeks of employment with the City. City's Insurance through Southwest Risk shall be provided to cover the position.

XI. MISCELLANEOUS PROVISIONS

A. No assignment of this Agreement or sub-agreement shall be made by the Consultant with any other party for furnishing any of the services herein contracted for without the advance written approval of the Public Works Department. All sub-consultants shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-agreement and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-agreement, as if the sub-consultant were the Consultant referred to herein. The Consultant is responsible for Agreement performance whether or not sub-consultants are used.

B. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information must be referred to the City.

C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value, and which are created under this Agreement shall be the property of the City and shall not be used by the Consultant or any other person except with the prior written permission of the City.

D. This Agreement is subject to the provisions of A.R.S. §38-511.

E. The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable Federal regulations under the Act.

XII. LEGAL ARIZONA WORKERS ACT COMPLIANCE

Consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Consultant's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Consultant shall further ensure that each sub-consultant who performs any work for the Consultant under this Agreement likewise complies with the State and Federal Immigration Laws.

The City shall have the right at any time to inspect the books and records of the Consultant and any sub-consultant in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Consultant's or any sub-consultant's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed

to be a material breach of this Agreement subjecting the Consultant to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-consultant, and the sub-agreement is suspended or terminated as a result, the Consultant shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the sub-agreement or retain a replacement sub-consultant, (subject to City approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

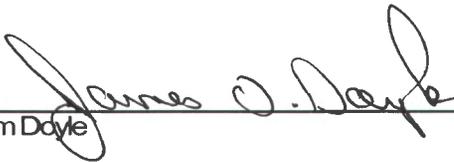
The Consultant shall advise each sub-consultant of the City's rights, and the sub-consultant's obligations, under this Section by including a provision in each sub-agreement substantially in the following form:

"The sub-consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal laws applicable to the sub-consultant's employee and the requirements of A.R.S. § 23-214(A). The sub-consultant further agrees that the City may inspect the sub-consultant's books and records to insure that the sub-consultant is in compliance with these requirements. Any breach of this paragraph by the sub-consultant will be deemed to be a material breach of this Agreement subjecting the sub-consultant to penalties up to and including suspension or termination of this Agreement."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Consultant. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Consultant's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Consultant shall be entitled to an extension of time, but not costs.

This Agreement represents the entire agreement between the CITY and the CONSULTANT relating to this requirement and shall prevail over any and all previous verbal and written agreements.

CONSULTANT:



Jim Doyle

APPROVED BY:



David Smith, Mayor Date 7/19/18

ATTEST:



Ashlee Coronado, City Clerk Date 7-9-18

APPROVED AS TO FORM:



Britt Hanson, City Attorney for 7.5.18
Date

Exhibit "A" Scope of Services and Fee

Mr. Doyle shall:

- 1. Provide compliant operational coverage of the Bisbee waste water plant and collections system for a period not to exceed 19 weeks, meeting all local, state and federal requirements for compliant operation of the facility.**
- 2. Provide consultation services and recommendation on decision making related to:**
 - a. Plant configuration, repair, operation and maintenance**
 - b. Necessary equipment for compliant operation**
 - c. Necessary process/procedure/operation/reporting/coordination changes**
 - d. Best Management Practices**
- 3. Provide procurement assistance/recommendation for any required material/supplies/equipment or improvement of the plant, its operation or enhancements necessary to meet local, state or federal regulatory requirements. Such procurement will be within City of Bisbee budget limitations and via approved City of Bisbee procurement controls.**

Mr. Doyle's Fee

- 1. Door to Door, Mr. Doyle shall be paid \$100 per hour for his service.**
- 2. Travel time is estimated a 4 hours per day**
- 3. Work time per day is estimated at 3 hours per day**
- 4. Work week is estimated at 3 days per week**
- 5. Mr. Doyle's weekly Fee shall not exceed \$2,500 per week, unless approved in advance, in writing by the City Manager.**