



ENVIRONMENTAL SCIENCE ASSOCIATES PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (Agreement) is made and entered into effective the date last signed below, by and between Environmental Science Associates (hereinafter ESA), a California corporation, and City of Algona (Client). In consideration of the undertakings and agreements hereinafter set forth, the parties agree as follows:

1. Services

The specific professional services (Services) to be performed by ESA on behalf of Client are described in the attached proposal dated February 2, 2021 attached to this Agreement as Exhibit A (Proposal). Client and ESA may amend the services only through a written Change Order executed by both parties. All Services authorized by Change Order referencing this Agreement shall be subject to the terms of this Agreement except as otherwise modified in writing by mutual consent. ESA reserves the right to refuse to accept any proposed Change Order tendered by Client. Any schedule requirements applicable to ESA's Services shall be set forth in Exhibit A, or any Change Order. The Services in Exhibit A and the budget for those Services reflect ESA's best professional judgment and are based on the information provided by Client concerning the proposed Project's nature and location as appropriate, ESA's knowledge of and experience with the public agencies likely to become involved, the environmental sensitivity of the Property, and the extent of likely controversy concerning the Project. Client understands that ESA cannot provide a guarantee of the maximum cost and time required to complete the Services called for under this Agreement due to circumstances beyond our control, including approvals by public agencies or third parties. For Services including licensed professionals, such as civil engineers and landscape architects, State regulations and codes require consideration of public interests and may affect the services required as a project progresses. ESA cannot provide a guarantee that any proposed project that is the subject of the services to be required pursuant to this Agreement will be approved or permitted. ESA's obligations to perform the Services are specifically subject to the issuance of all permits, licenses, approvals, or other documents required to enable ESA to perform the Services.

COVID-19: The parties acknowledge the ongoing COVID-19 pandemic and agree that schedule or cost impacts may occur as a result of reasonable safety measures or governmental response to the pandemic. To the extent that there are cost or schedule impacts

resulting from the COVID-19 pandemic that were unknown at the time of contract execution, ESA shall submit a change order for an equitable adjustment due to cost or schedule impacts related to the COVID-19.

2. Compensation for Services

The method of payment by Client, whether on a firm fixed price, a time and materials basis, or a cost plus fixed fee, together with the applicable rate schedule shall be set forth in Exhibit B or any Change Order agreed to by ESA and Client. Client agrees to pay all sales, use, excise, gross receipts, or other taxes imposed upon the services rendered by ESA; any taxes shall be added to the total compensation due ESA. Where the method of payment is on a time and materials basis, ESA shall, upon request, furnish to Client a proposed budget for the Services specified. ESA shall not invoice Client for amounts in excess of the specified budget without first obtaining Client's authorization by letter or email. However, Client acknowledges that, notwithstanding any contrary language, ESA's budget shall not be construed as a "guaranteed maximum price" to perform the described Services. ESA reserves the right to revise its rate schedule annually to reflect changes in its operating costs.

3. Invoices and Payments

Invoices shall be submitted no less than monthly. Any unpaid balances shall draw interest at one and one-half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, commencing thirty (30) days after date of invoice. All invoices not contested in writing within fifteen (15) business days of receipt are deemed accepted by Client as true and accurate, and Client thereafter waives any objection to ESA's invoices, which are payable in full.

The method of payment is on a time and materials basis. Invoices shall provide the following information: (i) total number of hours worked in performing the Services, (ii) total labor costs, and (iii) listing of reimbursable expenses itemized by type of charge. Any additional documentation required, or time and materials spent compiling information beyond that

supplied by the invoice, is considered additional effort and will be billed to Client.

The method of payment is on a fixed price/lump sum basis. Monthly invoices shall be for the percent of the total fixed price that corresponds with the estimated percent of work completed (technical percent complete) during the prior month, less previous billings.

Client agrees that ESA is not obligated to begin work on any Phase described in the Proposal until Client has deposited with ESA the full fee for that Phase.

Client agrees that ESA is not obligated to begin work until Client has deposited the sum of [Click or tap here to enter text.](#) with ESA. Client will pay ESA’s monthly invoices pursuant to Section 3. ESA will apply the retainer to its final invoice. If the balance of the retainer is insufficient to pay ESA’s final invoice, Client will pay the balance pursuant to Section 3 of the Agreement. ESA will promptly return to Client the unused part of the retainer, if any, at the end of services.

All payments should be remitted to Environmental Science Associates, P.O. Box 92170, Elk Grove, Illinois 60009.

4. Term

This Agreement shall become effective as of the last date executed by both parties below and the initial term shall be for the period of performance only; unless otherwise extended in writing.

5. Compliance with Laws and Professional Standards

ESA shall perform the Services in accordance with prevailing professional standards and ethics, and in compliance with valid and applicable governmental laws, rules, and regulations. If ESA believes that compliance with Client’s directions could violate applicable professional standards or ethics, or applicable governmental laws, rules, or regulations, then ESA shall so advise Client. Client and ESA shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing a solution, either party may terminate this Agreement in accordance with Paragraph 16.

6. Standard of Care

The Services will be performed on behalf of and solely for the exclusive use of Client and for no others **except where federal or state law mandates oversight by a federal or state agency.** The Services performed by ESA shall be conducted with that level of skill and care ordinarily exercised by members of the same profession providing similar services in the same locale acting under similar circumstances and conditions at the time services are rendered. EXCEPT AS SET FORTH HEREIN, ESA MAKES NO OTHER

REPRESENTATION, GUARANTEE, OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE, CONCERNING ANY OF THE SERVICES WHICH MAY BE FURNISHED BY ESA TO CLIENT.

7. Deliverables

All deliverables, including, but not limited to, any and all reports, drawings, plans, designs and specifications prepared by ESA hereunder, shall become Client’s property upon final payment for ESA’s Services. ESA shall retain copies of all deliverables for its files. Except in the case of a program Environmental Impact Report or master or a programmatic Environmental Impact Statement or unless expressly stated by ESA to the contrary, Client acknowledges that such deliverables are not intended or represented to be suitable for reuse by Client or others on any extension of the project or on any other project. Reuse of the deliverables by Client or third parties without the opportunity for adaptation by ESA and absent ESA’s written consent, shall be at the Client’s sole risk.

8. ESA Insurance

ESA shall maintain, during the term of this Agreement, at least the following insurance coverage:

Coverage	Limits
(a) Worker’s Compensation Coverage A	Statutory
(b) Employer’s Liability Coverage B	\$100,000
(c) Commercial General Liability	\$1,000,000 each occurrence
(d) Comprehensive Automobile Liability (Combined single limit)	\$1,000,000 each occurrence
(e) Professional Liability	\$1,000,000 per claim \$1,000,000 aggregate

Insurance described in (c) and (d) shall cover Client as an additional insured. All insurance coverage described above shall provide for thirty (30) days prior notice to Client of cancellation in coverage. Certificates

of insurance evidencing insurance required under this Paragraph will be provided at the request of Client.

Upon request, ESA shall furnish copies of insurance certificates evidencing that it maintains at least the above insurance coverage.

9. Limitation of ESA's Liability to Client

ESA and Client have discussed the risks and rewards associated with this project as well as ESA's fee for services. ESA and Client agree to allocate certain risks so that, to the fullest extent permitted by law, except for circumstances caused by willful misconduct of ESA, all claims for damages of any kind arising out of the Services furnished under this Agreement and any Change Orders to this Agreement, including attorney's fees and costs, asserted against ESA by Client, Client's members, Client's architects, Client's contractors, subcontractors, engineers, and agents, including claims against ESA's directors, officers, shareholders, employees, and agents, are limited to the greater of (i) **\$50,000**; or (ii) **the total invoiced dollar value of the Services provided by ESA under this Agreement**. ESA is not responsible for any special, incidental, indirect, or consequential damages (including loss of profits) incurred by Client as a result of ESA's performance or nonperformance of Services. Said limitation shall apply regardless of the legal basis for the claim, including, but not limited to, claims based on breach of contract, professional or ordinary negligence, or breach of warranty. Client agrees to defend and indemnify ESA against any claim, demand, or lawsuit by any third party for damages in excess of the amount set forth in this **LIMITATION OF ESA's LIABILITY TO CLIENT** provision.

10. ESA's Indemnification of Client

Except as limited by Paragraph 9, ESA shall indemnify and hold harmless Client and its directors, officers, employees, and agents from and against any and all losses, damages, claims, liability, and costs and expenses incidental thereto (including costs of defense, settlement, and reasonable attorney's fees) which any or all of them may hereafter incur, be responsible for, or pay out as a result of bodily injuries (including death) to any person, or damage (including loss of use) to any property (public or private), or contamination of or adverse effects on the environment, to the extent caused by (i) the negligent acts, negligent omissions, or willful

misconduct of ESA in the performance of the Services; or (ii) ESA's breach of this Agreement.

11. Client's Indemnification of ESA

Client shall defend, indemnify, and hold harmless ESA and its shareholders, directors, officers, employees, and agents from and against any and all losses, damages, claims, liability, and costs and expenses incidental thereto (including costs of defense, settlement, and reasonable attorney fees) which any or all of them may hereafter incur, be responsible for, or pay out as a result of bodily injuries (including death) to any person, or damage (including loss of use) to any property (public or private), or contamination of or adverse effects on the environment, arising out of or which are connected with (i) negligent acts, negligent omissions, or willful misconduct of Client or Client's employees, agents, contractors, or subcontractors, or (ii) Client's breach of this Agreement.

12. Required Disclosures by Client

(a) Client shall provide ESA all information that is known or readily accessible to Client that may be reasonable and/or necessary for completion of the Services by ESA.

(b) ESA shall indicate to Client the information needed for rendering the Services. To the extent that ESA is required to rely solely upon information provided by Client, without the opportunity for ESA to appropriately validate the accuracy and reliability of such information, Client agrees to waive any claim against ESA and to indemnify and hold harmless ESA from and against any and all claims, damages, losses, liability, and expenses, including attorney's fees, that may arise from errors, omissions, or inaccuracies in existing information provided to ESA by Client or others.

(c) Prior to the commencement of the Services on a Project, or at any time thereafter when new information becomes available to Client, Client will provide prompt, full, and complete disclosure to ESA of known or potential hazardous conditions or risks to the health or safety of ESA's employees, agents, and subcontractors that may be encountered at the Project site or in connection with the performance of the Services.

13. Modifications to Work

Client or ESA may request modifications or changes in the scope of Services to be performed under a Change Order. Any changes that are mutually agreed

upon shall be incorporated into a written modification to the Change Order signed by both ESA and Client.

14. Force Majeure

Neither the Client nor ESA shall hold the other responsible for damages or delays in performance caused by Force Majeure or other events beyond the control of the other party and that could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure shall include, but not necessarily be limited to, adverse weather conditions, floods, war, riot, civil unrest, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, loss of permits, and failure to obtain permits; court orders; acts of God; and acts, orders, laws, or regulations of any governmental agency. Should such acts or events occur, the parties to this Agreement shall mutually agree on the terms and conditions upon which the Services may be continued. Failing achievement of such an agreement, either party may terminate this Agreement in accordance with Paragraph 16.

15. Project Delays

If ESA is delayed at any time in the progress of the Services for any specific activity under this Agreement (i) by an act, failure to act, or neglect of Client or Client's employees or any other party, (ii) by changes in the scope of Services, or (iii) by delay authorized by Client and agreed to by ESA, then the time for completion shall be extended and an equitable adjustment made to the compensation if delays caused by any of the above events result in additional costs to ESA. Failing achievement of such a revision, ESA may terminate this Agreement in accordance with Paragraph 16.

16. Termination

(a) This Agreement may be terminated by either party upon thirty (30) days written notice (i) should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the terminating party, or (ii) whenever the right to terminate is otherwise provided in this Agreement.

(b) If Client fails to make payment to ESA for the Services, ESA may, upon fourteen (14) days written notice to Client, suspend performance of the Services under this Agreement. In the event of suspension of the Services, ESA shall have no liability to Client for delay or damage incurred by Client because of such suspension of the Services. In addition, any affected schedule shall be extended for the same period as services were suspended.

(c) Irrespective of which party shall effect termination or the cause therefore, Client shall, within

thirty (30) days of termination, compensate ESA for Services performed and for costs incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, modifying schedules, and reassigning personnel.

17. Legal Proceedings

(a) In the event that legal action is brought by either party against the other, each party shall bear its own legal costs and expenses for bringing and maintaining any such action.

(b) Client shall be responsible for and pay ESA at its prevailing rates for all time spent by ESA employees in connection with any court, administrative, or other legal proceedings with a third party arising from or relating to Services provided under this Agreement, regardless of whether or not ESA is subpoenaed to appear at such proceedings by Client or any third party. This provision does not apply where ESA is a party to the same proceeding or proceedings in which ESA is required to indemnify Client pursuant to this Agreement.

18. Site Access and Control

Client grants to ESA the right of entry to the Project site by ESA, its employees, agents, and subcontractors to perform the Services. If Client does not own the Project site, Client warrants and represents to ESA that Client has the authority and permission of the owner and occupant of the Project site to grant this right of entry to ESA.

19. Client Representative

Client shall designate a person to act as Client's representative with respect to the Services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Client's policies and decisions with respect to ESA's Services for the Project.

20. Notices

Notice under this Agreement may be given by personal delivery, by U.S. Mail, by overnight delivery, by facsimile, or by email at the addresses listed below. Notice shall be effective on the date received. The party sending notice has the burden of proving receipt.

To Client:	City of Algona
Attention:	Jimmy Griess
Address:	200 Washington Blvd
City:	Algona, WA 98001
Email:	Jimmyg@algonawa.gov

To ESA: Environmental Science Associates
Attention: Jessica Redman
Address: 5309 Shilshole Avenue NW, Suite
200
City: Seattle, WA 98107
Email: jredman@esassoc.com

21. Independent Contractor

ESA shall have the status of an independent contractor, not that of an agent or employee. ESA shall be solely responsible for the compensation, benefits, contributions, and taxes, if any, of its employees, agents, and subcontractors.

22. Entire Agreement

This Agreement, together with any Exhibits hereto, including but not limited to the following:

- Exhibit A Proposal
- Exhibit B Compensation Schedule

constitutes the entire understanding and agreement between the parties relating to the Services provided by ESA to Client and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the Services. This Agreement may be amended only by a written instrument signed by each party.

23. Precedence

This Agreement shall take precedence over any inconsistent or contradictory provisions contained in any Client-issued purchase order, requisition, notice to proceed, or like document regarding the Services. In the event of a conflict between the terms or conditions of this Agreement and those of any Work Order, the terms and conditions of this Agreement shall control.

24. Governing Law

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the state where the services are performed, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction.

25. Assignment, Successors, and Assigns

This Agreement shall not be assigned by either party without first obtaining the written consent of the other party; this consent shall not be unreasonably withheld, provided, however, that ESA shall have the right to assign this Agreement to any of its subsidiaries. This Agreement shall be binding upon and inure to the

benefit of the parties and their respective successors and assigns.

26. Survival

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and ESA shall survive the completion of Services hereunder and the termination of this Agreement.

27. Waiver of Contract Breach

The waiver by one party of any breach of this Agreement, or the failure by one party to enforce at any time, or for any period of time, any of the terms and conditions of this Agreement, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement, and shall not be construed to be a waiver of any other provision, except for the particular instance.

28. Dispute Resolution

If any dispute arises out of or relates to this Agreement, or the breach thereof, then said dispute will first be referred to a panel consisting of at least one representative of ESA and at least one representative of Client having authority to enter into agreements to settle the dispute. The panel will engage in any conference or discussion deemed appropriate under the circumstances to arrive at a settlement of the dispute. If the dispute cannot be settled through direct discussions by the panel representatives of the parties, the parties agree then to submit the matter to mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.

In the event mediation fails to resolve the dispute within ninety (90) days, or a longer time if agreed to by ESA and Client, ESA and Client agree that the dispute shall be resolved by binding arbitration Construction Industry Arbitration Rules of the American Arbitration Association. The cost of the arbitration shall be borne equally by each party or in such other manner as deemed equitable by the arbitrator. The arbitrator shall be agreed upon by the parties within ten (10) days of the demand for arbitration. In the event the parties cannot agree on the selection of a referee, any party may petition the state court in the county in which the project is located for the appointment of a qualified retired judge as the referee. Unless otherwise agreed by the parties, the reference proceeding shall be held in the county where the project is located.

The decision of the arbitrator shall be final and may be enforced by the prevailing party in any court of law.

Client and ESA hereby mutually waive their right to a court or jury trial.

IN WITNESS THEREOF, the parties hereto have executed this Agreement by their duly authorized agents as of the day and year first above written.

Client: **CITY OF ALGONA**

ENVIRONMENTAL SCIENCE ASSOCIATES

By: _____
(Signature) (Date)

By: _____
(Signature) (Date)

Name: Click or tap here to enter text.
(Printed Name)

Name: Margaret Clancy
(Printed Name)

Title: Click or tap here to enter text.

Title: Vice President

EXHIBIT A
PROPOSAL DATED FEBRUARY 2, 2021 FOR CITY OF ALGONA ON-CALL WETLAND AND
STREAM REVIEW SUPPORT SERVICES



SCOPE OF WORK

Project Description

Environmental Science Associates (ESA) is pleased to submit this scope and budget estimate for on-call review services regarding wetlands and streams within the City of Algona (City), per the City's request. The goal of this work is to assist the City in evaluating the effects of various development projects on wetlands, streams, and their buffers and to ensure compliance with the Algona Municipal Code (AMC) Chapter 16.18 – Critical Areas. This scope of work describes technical services to be completed by ESA to support the City with review services in 2021. This scope only relates to review services for wetlands and streams. Review of other critical areas regulated under AMC, including critical aquifer recharge areas and geologically hazardous areas, are not included under this scope.

Wetland and Stream Review Support Services

ESA will conduct office review, field assessment, and verification of environmental documentations submitted in support of residential and commercial development applications submitted to the City on an as-needed basis. ESA would complete work under this scope on a time and materials basis up to a Not to Exceed maximum of \$67,100. Each review would constitute a separate task order. The specific scope of each review would vary depending on the nature of the project, but would generally follow the approach specified herein. Before commencing each review, ESA will confirm the scope and provide an estimated budget to the City to facilitate the City's ability to charge the applicant appropriately. Budgets will be developed using the attached rate sheet. ESA will not begin review until the City approves the scope and estimated budget and issues a notice to proceed (NTP) for the task.

Documentation to be reviewed may include but not be limited to critical areas reports, wetland delineation reports, stream assessments, ordinary high water mark delineation reports, habitat assessment reports, and mitigation and monitoring reports. In general, for each review, ESA will consult existing sources of information including City, King County, Washington state, and federal mapping of critical areas. An ESA ecologist will then conduct a site visit, if warranted. Following document review, office review, and site visit, ESA will produce a technical memorandum summarizing the results of our review and field inspection. The memorandum will summarize the extent to which the documentation accurately characterizes site conditions regarding the presence or absence of critical areas, their boundaries, and their categorization (wetland category, stream type, etc.). If reviewed documents include a critical areas impact analysis or mitigation plan, ESA will comment on the accuracy of anticipated impacts and determine if the proposed mitigation is in compliance with AMC Chapter 16.18. Task 1 — Review Support for South King County Solid Waste and Recycling Facility Application

It is our understanding the City review of the King County Solid Waste Facility Application began last year under a contract with another firm and will continue in 2021. Under this task, ESA will perform the general review services discussed above, but specifically for the King County Solid Waste Facility application. As part of

this task, ESA will also participate in meetings with the City, King County, and regulatory agencies, as requested by the City.

Deliverables:

- A technical memorandum summarizing findings and compliance with the City’s critical areas code. If the application is determined to be incompliant with City code, general recommendations on how compliance could be met will be provided.

Assumptions:

- City will provide development application materials as hard copy or electronic files to ESA.
- City will provide at least a week’s notice for ESA attendance at meetings scheduled for the field or with the City
- City will coordinate with the applicant directly.

Schedule:

- ESA will provide the City a technical memorandum within 3 weeks of notice to proceed.

Cost Estimate

ESA would complete work under Task 1 on a time and materials basis up to a Not to Exceed maximum of \$29,000. Remaining funds under this contract will be allocated to additional review requests from the City during the contract period.

Task	Task Name	Estimated Cost
1	Review Support for South King County Solid Waste and Recycling Facility Application	\$31,150
	Additional wetland and stream review requests	\$35,500
	Reimbursable Expenses	\$452
	Total	\$67,102

Please see the attachment for a breakdown of hours and rate sheet.

EXHIBIT B
COMPENSATION SCHEDULE



Project Title: City of Algona On-Call

Date Quoted: February 1, 2021

Classification	NW Region Rate
Admin Assistant	\$ 85.00
Biologist I	\$ 105.00
Biologist II	\$ 120.00
Biologist III	\$ 150.00
Biologist IV	\$ 160.00
Biologist V	\$ 230.00
Cultural Resource Specialist I	\$ 95.00
Cultural Resource Specialist II	\$ 120.00
Cultural Resource Specialist III	\$ 130.00
Editor	\$ 155.00
Engineer I	\$ 110.00
Engineer II	\$ 130.00
Engineer III	\$ 155.00
Engineer IV	\$ 175.00
Engineer V	\$ 230.00
Engineer VI	\$ 275.00
Environmental Scientist I	\$ 95.00
Environmental Scientist II	\$ 105.00
Environmental Scientist III	\$ 135.00
Environmental Scientist IV	\$ 160.00
Environmental Scientist V	\$ 230.00
Environmental Technician	\$ 90.00
GIS Analyst	\$ 105.00
GIS/Geospatial Services Manager	\$ 145.00
Landscape Designer/Architect I	\$ 105.00
Landscape Designer/Architect II	\$ 115.00
Landscape Designer/Architect III	\$ 140.00
Landscape Designer/Architect IV	\$ 160.00
Landscape Designer/Architect V	\$ 180.00
Planner I	\$ 95.00
Planner II	\$ 105.00
Planner III	\$ 130.00
Planner IV	\$ 160.00
Planner V	\$ 200.00
Regional Business Group Director	\$ 230.00
Regional Director	\$ 285.00
Senior Admin Assistant	\$ 125.00
Senior GIS Analyst	\$ 160.00
Software Developer	\$ 225.00

Direct Expenses	Rate
Mileage	Federal Rate
Plotter	\$25 per page
Camera	\$20 per day
Trimble GPS	\$50 per day
Drone	Task order specific

