

**BROADWATER COUNTY COMMISSIONERS**  
**515 Broadway, Townsend**

**Dec 27, 2021 Monday**

**Meetings are held at the Flynn Building (old Opportunity Bank)**  
**416 Broadway**

**Agenda, documents, Official Meetings Minutes and videos of Commission meetings are available and at <https://www.broadwatercountymt.com>**

Broadwater County is no longer using youtube.com to live stream meetings  
Now you can go to the [www.broadwatercountymt.com](http://www.broadwatercountymt.com) to view  
Official agendas are posted in the Courthouse (1<sup>st</sup> Floor Bulletin Board)  
and in the window of the Flynn Building

- 10:00 AM Public Comment on any subject not on the agenda, and that the Commission has jurisdiction over / Approval of the Minutes / Certificate of Survey Review
- 10:00 AM Discussion and Decision Montana Distributors and Janssen Opioids Settlement MOU
- 10:05 AM Discussion and Decision Disadvantaged Business Enterprise Program
- 10:10 AM Discussion and Decision Update on Ross Gulch Road

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*Public comment period will be at the beginning of each meeting. Mail & Items for Discussion and/or signature may occur as time allows during the meeting. Issues and times are subject to change.*  
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Items for Discussion / Action / Review / Signature – Consent Agenda

- ✓ Certificate of Survey review
- ✓ Claims/Payroll/minutes
- ✓ County Audit / Budget –
- ✓ Mail – ongoing grants, task orders
- ✓ Correspondence – support letters
  - ✓ Management – on-going advisory board appointments

Debi Randolph 406-266-9270 and 406-980-2050  
Darrel Folkvord 406-266-9272 and 406-980-1213  
Mike Delger Chair 406-266-9271 and 406-521-0834  
E-mail [commissioners@co.broadwater.mt.us](mailto:commissioners@co.broadwater.mt.us)

**MONTANA DISTRIBUTORS' AND JANSSEN OPIOIDS  
SETTLEMENT MEMORANDUM OF UNDERSTANDING**

**(“MOU”)**

WHEREAS the people of the State of Montana and its communities have been harmed by serious and substantial wrongdoing committed by certain entities within the Pharmaceutical Supply Chain; and,

WHEREAS the State of Montana, through the State’s Attorney’s Office of the Montana Attorney General, and certain litigating cities and counties, through their elected representatives and counsel, are separately engaged in litigation seeking to hold manufacturers, distributors, and others in the Pharmaceutical Supply Chain accountable for the harms caused by their wrongdoing; and,

WHEREAS the State of Montana and Montana’s cities and counties (hereafter Local Governments) share a common desire to abate and remediate the impacts of that wrongdoing throughout the State of Montana and to maximize the resources devoted to combatting the opioid crisis; and,

WHEREAS researchers and clinicians in Montana and elsewhere have now built a substantial body of evidence demonstrating which opioid abatement strategies work and which do not and there are public health leaders in the State and at the local level with expertise in addiction and substance use available to guide determinations for the use of any settlement funds; and,

WHEREAS recently the State of Montana agreed to join a settlement agreement process (hereafter Settlement Agreements) which, if finalized, will resolve litigation against certain specific defendants in the Pharmaceutical Supply Chain, namely the opioid distributors McKesson Corporation, Cardinal Health,

Inc., and Amerisource Bergen Corporation and also Janssen and the related entities listed in the Section I. 32 of the Janssen Settlement Agreement<sup>1</sup> (hereafter the Opioid Settlement Defendants) for harms caused by their wrongdoing that require – with limited exception-- that all settlement funds be used for forward-looking remediation and abatement of opioid associated harms; and

WHEREAS maximum monetary payments available to the State of Montana and its Local Governments depend upon maximum Local Government participation in the Settlement Agreements and in this Memorandum of Understanding (MOU);

NOW THEREFORE the State of Montana and its Local Governments, subject to completing any additional documents needed to effectuate their agreement, enter into this MOU for the allocation, management, and use of the proceeds of the Settlement Agreements: (a) to develop a fair and transparent process for making decisions based on medical and scientific evidence concerning where and how to spend the funds from the Settlement Agreements to effectuate forward-looking abatement strategies and to supplement rather than replace existing spending; (b) to establish a dedicated Montana Abatement Trust with representation that reflects the public health expertise and diversity of affected communities when allocating settlement funds that meets the requirements of Section V.E.2d. of the Settlement Agreements; and (c) to provide a framework for equitable distribution of funds from the Settlement Agreements among all participating Local Governments within the

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<sup>1</sup> “Janssen” means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

State of Montana that agree to be bound by this MOU and forego pursuing separate litigation against any of the settling defendants named above.

## **A. DEFINITIONS AND DESCRIPTIONS**

1. “The State” shall mean the State of Montana acting through the Attorney General.

2. “Participating Local Governments” shall mean any Montana county or city that has chosen to participate in this MOU and the Settlement Agreements, including execution of all documents required to effectuate the Settlement Agreements and this MOU.

3. “The Parties” shall mean the State of Montana and the Participating Local Governments.

4. “Settlement Agreements” shall mean the Distributor Settlement Agreement dated as of July 21, 2021, and the Janssen Settlement Agreement dated as of July 21, 2021.

5. “Settlement Funds” shall mean all monetary amounts obtained through the Settlement Agreements as defined herein, according to the allocation percentage to the State provided for in Section F of the Settlement Agreements, and as determined by the Settlement Fund Administrator.

6. The “Settlement Funds Administrator” shall mean the person or entity in I. MMM of the Definitions section of the Settlement Agreements chosen by the settling defendants and the national plaintiffs’ enforcement committee to determine the proper allocation of funds from the Settlement Agreements to each

participating state and to manage the distribution of the Settlement Funds to all participating states.

7. “Opioid Remediation” as defined or referenced in the Settlement Agreements shall include care, treatment, and other forward-looking programs and expenditures for Approved Purposes, including: to (1) address the misuse and abuse of prescription opioid products, (2) treat or mitigate opioid misuse or related disorders, or (3) mitigate other injuries or harms resulting from the overprescribing of opioids, including diversion and the misuse or abuse of Fentanyl or Fentanyl-containing products or substances. Opioid Remediation efforts shall involve evidence-based strategies, programming, and services used to: expand the availability of treatment for individuals affected by opioid use or polysubstance use disorders; develop, promote, and provide opioid-related or polysubstance use prevention strategies; provide opioid-related or polysubstance use avoidance and awareness education; decrease the oversupply of licit and illicit opioids, including Fentanyl or products or substances containing Fentanyl; support recovery through addiction services performed by qualified and appropriately licensed providers of persons suffering from opioid-related use disorder, polysubstance abuse, or chronic-pain patients and others who suffer from or are at substantial risk of opioid abuse or dependency; and support for law enforcements addressing the impact of opioid-related substance abuse in the communities they serve, including misuse or illicit use of heroin and/or Fentanyl. Exhibit E in the Settlements Agreements provides a non-exhaustive list of expenditures that qualify as Opioid Remediation. Qualifying expenditures may include reasonably related administrative expenses.

8. “Approved Purposes” shall mean forward-looking strategies, programming, and services to abate the opioid epidemic as identified by the terms of the Settlement Agreements.

9. “Opioid Settlement Defendants” shall mean McKesson Corporation, Cardinal Health Inc., Amerisource Bergen Corporation, and Janssen and their related entities and affiliates as delineated in the Settlement Agreements.

## **B. MONTANA ABATEMENT REGIONS**

1. Local and regional use of Opioid Settlement Funds shall be implemented through Abatement Regions and the Local Governments within those regions. The Abatement Regions shall comprise nine Metropolitan Abatement Regions—consisting of the nine Montana counties with populations exceeding 30,000—and five Multi-County Abatement Regions—utilizing the five existing Health Planning Regions established by the Montana Department of Public Health and Human Services. *See Montana Abatement Regions Map, attached as Exhibit A.*

2. The Nine Metropolitan Regions having populations of 30,000 or more are Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Silver Bow, Ravalli, and Lake Counties, provided they participate in this Agreement. Each of the nine Metropolitan Regions have consolidated city-county health departments with substantial public health expertise that can serve as the lead or co-lead agencies within their respective regions for administration and use of settlement funds.

3. The Multi-County Abatement Regions derived from the five existing Montana Department of Health and Human Services Health Planning Regions exclude any local governments not participating in this MOU and the Settlement Agreements. The five Multi-County Abatement Regions also exclude the nine Metropolitan Regions and all Local Governments within the nine Metropolitan Regions. *See Exhibit A.*

4. All the Metropolitan Regions that agree to the Settlement Agreements and this MOU as well as all the constituent Participating Local Governments comprising a Multi-County Abatement Region that have chosen to enter into this MOU and the Settlement Agreements shall be treated as Participating Abatement Regions. For the sake of clarification, any county or city listed in the MOU Abatement Region Allocation, attached as Exhibit B<sup>2</sup>, within a Multi-County Region that does not enter into this MOU and the Settlement Agreements shall not be included in the Abatement Region where it is geographically located and shall not be entitled to receive any funds from the Settlement. Rather, the share(s) of the funds that a nonparticipating city or county would be allocated according to Exhibit B shall instead be allocated to the Abatement Trust.

### **C. THE MONTANA ABATEMENT TRUST**

1. The Attorney General shall create a private, non-profit Abatement Trust (“Trust”) with an Advisory Committee (“Committee”), as required by the Settlement Agreements for the purpose of receiving and disbursing Settlement Funds allocated to the Abatement Trust and to Participating Abatement Regions,

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<sup>2</sup> Exhibit B of this MOU is comprised of the Montana Local Governments listed in Exhibit G of the Settlement Agreements.

Participating Local Governments and to the State of Montana for Opioid Remediation and Approved Purposes, which are to be distributed as set forth in this MOU, in the Settlement Agreements, and in the documents establishing the Trust.

2. The Trust shall be governed by the Advisory Committee consisting of ten voting members and an Executive Director appointed by the Attorney General who will only vote in the event of a tie.

3. The ten voting members of the Advisory Committee shall provide equal representation between the State and local governments as follows: three members chosen by the Metropolitan Regions, two members chosen by the Multi-County Regions, two members chosen by the Director of the Department of Health and Human Services (DPHHS), and three members chosen by the Attorney General.

4. At least one of the ten members of the Committee shall be a law-enforcement representative from the Montana Department of Justice's Division of Criminal Investigation (DCI) and/or Montana Highway Patrol (MHP). One of the ten members of the Advisory Committee may be, but is not required to be, a family member of a person who had or has suffered from opioid use disorder. All other Committee members must come from the fields of medicine, public health, mental health, or addiction.

5. Committee terms will be three years and initially staggered. Committee members may serve more than one term. In the first year, two members from the Metropolitan Regions and one member from the Multi-County Regions will have a one-year term, one member representing the Department of

Health and Human Services and one member representing the Attorney General will have two-year terms, and the remaining members will have three-year terms. Six members of the Committee shall constitute a quorum. Unless the Committee determines otherwise, the Metropolitan and Multi-County Abatement Regions shall determine for themselves how to choose their member representatives. No Committee member shall receive compensation but may be reimbursed for reasonable costs expended for work on the Committee.

6. To provide for health security and reduce expense, members of the Committee shall participate in meetings by telephone or video conference at least every three months, except, if feasible, one annual in-person meeting per year shall be set by consensus of the Committee. If a member of the Committee is unable to attend in-person or remotely, s/he may designate a proxy. A quorum exists if six members are voting in-person, remotely, or by proxy.

7. In all votes of the Committee, a measure shall pass if a quorum is present and the measure receives the affirmative votes from a majority of those Committee members voting. The Executive Director may vote to break a tie.

8. The Attorney General shall appoint the Executive Director at his/her discretion from a list of three candidates provided to the Attorney General by the Committee. If the Attorney General finds all three candidates to be unsatisfactory, the Attorney General may reject all three candidates and request that the Committee provide three new persons to select from.

9. In choosing candidates to be submitted to the Attorney General, with the exception of the one member who is a family member of a victim of the opioid

crisis, if applicable, and representative(s) from DCI and/or MHP, the Committee shall seek candidates with at least six years of experience in issues related to addiction, mental health, and/or public health and who have management experience in those fields.

10. The Executive Director shall serve as an *ex officio*, non-voting member of the Committee unless there is a tie vote, in which case the Executive Director may cast the tie breaking vote.

11. The Attorney General shall set a date for a first in-person meeting of the Committee. Once the Abatement Regions, the Attorney General, and the Director of the Department of Health and Human Services have designated their respective members of the Committee, the Attorney General shall designate an Interim Executive Director to conduct the meeting and other scheduled meetings until a permanent Executive Director can be named.

12. At the first meeting the Committee shall develop written guidelines for receiving input from the State of Montana, Abatement Regions, Local Governments, and others regarding how the opioid crisis is affecting their jurisdictions or communities and their respective abatement needs. These written guidelines shall provide procedures for Regions and Local Governments or communities to develop and submit proposals for distribution of funds from the Abatement Trust for Opioid Remediation programs for the Regions and/or throughout Montana.

13. The Committee shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute

resolution provisions, in accordance with the terms of this MOU and Montana law. It shall not have rulemaking authority under Montana law. The Committee shall utilize the legal advice and assistance of the State's Attorney's Office and legal counsel for the Local Governments and Regions, who will work collaboratively to draft and finalize necessary bylaws, procedures and other governing documents with the goal of minimizing red tape and maximizing the efficient flow of funds to abate the opioid problem.

14. The Committee shall be responsible for accounting of all Opioid Funds it distributes. The Committee shall be responsible for releasing Opioid Funds in accordance with Approved Purposes, the Settlement Agreements, and this MOU and, with the help of the State's Attorney's Office and Local Government counsel, shall develop policies and procedures for the release and oversight of such funds.

15. The Committee may also require outcome related data from any Party or Local Government that receives Opioid Funds and may publish such outcome related data. In determining which outcome related data may be required, the Committee shall work with all Parties, Regions, and Local Governments to identify appropriate data sets and develop reasonable procedures for collecting such data sets so that the administrative burden does not outweigh the benefit of producing such outcome related data.

16. The Committee shall facilitate collaboration between the State, Regions, and Participating Local Governments regarding sharing information related to abating the opioid crisis in Montana.

**D. ALLOCATION OF AND USE OF SETTLEMENT PAYMENTS TO THE STATE**

1. According to the terms of the Settlement Agreements, when all requirements of the Settlement Agreements have been met to allow direct payments of Settlement Funds to the State of Montana, Local Governments, and Abatement Regions the Settlement Fund Administrator will determine the total amount of Settlement Funds to allocate and pay to the State of Montana, including base payments and incentive payments.

2. The funds from the Settlement Agreements for the State of Montana shall be direct-deposited into three separate funds: the State of Montana Fund, the Abatement Trust, and the Local Government Fund.

3. Of the total paid to the State of Montana, including incentive payments:

- a. Fifteen percent (15%) shall be allocated to directly to the State of Montana Fund;
- b. Seventy percent (70%) shall be allocated directly to the Abatement Trust, from which funds may be disbursed from the Trust, with approval of the Advisory Committee, for Opioid Remediation at the State, Regional, or Local Government levels; and,
- c. Fifteen percent (15%) shall be allocated directly to the Local Government Fund.

4. The Settlement Funds allocated to the State of Montana Fund shall be used by the State for Approved Purposes as determined by a separate committee

made up of representatives from the Attorney General and the Montana Department of Health and Human Services.

5. The Settlement Funds allocated to the Abatement Trust shall be paid into the Abatement Trust for Approved Purposes administered by the Advisory Committee and Executive Director as described herein.

6. The Abatement Trust, administered by the Advisory Committee, shall be designated the lead single point of contact for Montana's communications with the Settlement Fund Administrator. As lead agency it shall have primary responsibility for evaluating and distributing funds for evidence based Opioid Remediation proposals and programs for opioid-related substance abuse disorder services.

7. Of the amount apportioned to the Abatement Trust for Opioid Remediation as outlined in 3(b) above, eighty percent (80%) shall be allocated to the Participating Abatement Regions according to the Subdivision Allocation Percentages in Exhibit B, on the assumption that all Subdivisions within each region become Participating Subdivisions. The allocation of 80% of the Abatement Trust to the Participating Abatement Regions, however, does not change the calculation of attorneys' fees for Outside Counsel for Local Governments described in Section E below. That calculation, which is set forth in the Settlement Agreements Exhibit R, is based on dividing and allocating the total settlement funds received by the State, half to the State and half to Local Governments. Attorneys' fees are then calculated by multiplying the Local Government half

times the allocation percentage in Exhibit B to determine amount allocated to their respective Local Governments upon which the attorneys' fees is based.

8. Amounts apportioned to the Local Government Fund shall be distributed to Participating Local Governments included on Exhibit B per the Subdivision or Local Government Allocation Percentage listed in Exhibit B. No Non-Participating Local Government will receive any amount from the Settlement Funds allocated to the State of Montana, regardless of whether such Local Government is included on Exhibit B. Rather, any funds allocated to the Local Government Fund for Non-Participating Local Governments shall be transferred to the Abatement Trust for Approved Purposes by the Region in which that Non-Participating Local Government is geographically located.

9. Each Abatement Region shall create its own governance structure for the administration, management, and use of Opioid Remediation funds to ensure all Participating Local Governments within that Region have input and equitable representation regarding regional Opioid Remediation administration and decisions, including representation on the Montana Opioid Abatement Trust Committee, and selection of projects to be funded from the Region's share. That governance structure shall include designation of a fiscal agent within the Region to receive and distribute Settlement Funds allocated to it.

10. All Participating Abatement Regions shall have the responsibility to make decisions about planning, budgeting, and disbursement of funds for projects that will equitably and appropriately serve the needs of the entire Region and be

consistent with this MOU and the Settlement Agreements' definition and description of appropriate Opioid Remediation and Approved Purposes.

11. The Trust Committee and all the Regions shall be guided by the recognition that budgeting for operating expenditures should be conservative and carefully limited to ensure that the maximum funds are preserved for forward-looking abatement of the opioid epidemic and the prevention of future opioid-related addiction and substance misuse. In recognition of these core principles, the Committee and the Regions shall endeavor to assure the funds are disbursed only to support evidence-based Opioid Remediation for opioid-related substance abuse/misuse abatement, education, and prevention efforts as described in detail in this MOU and the Settlement Agreements.

12. Funds from the Abatement Trust may also be expended by the Trust for statewide programs, innovation, research, and education. Any statewide programs funded from the Trust would be only as directed by an affirmative majority vote of the Committee. Expenditures for these purposes may also be funded by the Trust with funds received from either the State of Montana's share (as directed by the Attorney General in consultation with DPHHS) or from sources other than Opioid Settlement Funds as provided for below.

13. Participating Abatement Regions may collaborate with other Participating Abatement Regions to submit joint proposals to be paid for from the Regional Shares of two or more Participating Abatement Regions for the use of those Regions.

14. Disbursements for proposed Opioid Remediation programs and services to Participating Abatement Regions shall be reviewed by the Committee to determine whether the proposed disbursements meet the criteria for Opioid Remediation and Approved Purposes.

15. The Trust and any entities receiving Opioid Remediation funds shall operate in a transparent manner. Meetings shall follow Montana constitutional and statutory law and be open and all documents shall be public to the same extent they would be if the Trust were a public, governmental entity. All operations of the Trust and all entities receiving Trust Funds shall, with respect to the receipt and use of such funds, be subject to audit. The bylaws of the Trust regarding governance of the Committee, as adopted by the Committee, may clarify any other provisions in this MOU, except this subsection. Rather, the substantive portion of this subsection shall be restated in the bylaws.

16. The Trust's financial resources shall be invested through the Montana Board of Investments to assure the Trust's investments are appropriate, prudent, and consistent with best practices for investments of public funds. The investment policy shall be designed to meet the Trust's long-term and short-term goals.

17. Any other matter concerning the allocation, management, and use of Settlement Funds from the Settlement Agreements not covered by this MOU, shall be controlled by the terms of the Settlement Agreements.

## **E. ATTORNEYS' FEES AND COSTS**

1. The Settlement Agreements each provide very substantial separate funds for payment of fees for both outside counsel for litigating local

governments and outside counsel for litigating states such as Montana. If any Settlement is insufficient to cover the fee obligations owed to outside counsel representing the State of Montana and to outside counsel representing Local Governments (collectively, “Outside Counsel”), the deficiencies may be covered as set forth in further detail below.

2. Regarding attorneys’ fees for local governments that filed suit, United States District Judge Dan Polster who is responsible for the MultiDistrict Litigation (MDL 2804) *IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION*, on August 6, 2021 (Docket No. 3804) notified:

... all eligible participants to the July 21, 2021 Settlement Agreements, and ... their private counsel, that a contingent fee in excess of 15% of the participant’s award under the Settlement Agreements is presumptively unreasonable. Accordingly, the Court caps all applicable contingent fee agreements at 15%.

3. As such, total attorney fees to outside counsel collected from the Settlement Agreement attorney fee funds and the Montana Back Stop shall be capped at a 15% contingency fee of the amount allocated to their respective governmental entities.

4. Fees claimed and collected for common benefit work under the Settlement Agreements shall be calculated pursuant to the specific requirements of Exhibit R to the Settlement Agreements and shall not be utilized to reduce fees otherwise recoverable from the Montana Attorney Fee Back Stop Fund.

5. The State of Montana and Litigating Local Governments shall first seek to have their attorneys’ fees and expenses paid through the attorneys’ fee funds created by the Settlement Agreements. The Local Governments litigating in

the MDL proceeding in the Northern District of Ohio, the Honorable Judge Dan Polster presiding, shall endeavor to obtain the maximum recovery from the Settlement Agreements attorney fee fund. In addition, as a means of covering any deficiencies in paying Outside Counsel, a supplemental Montana Attorney Fee Back-Stop Fund shall be established.

6. The Montana Attorney Fee Back-Stop Fund shall be funded by 5.5% of the total settlement funds paid to the State of Montana. The Mathematical Model described in Exhibit R of the Settlement Agreements for calculation of attorneys' fees provides that each Settling State shall attribute 50% of the settlement funds it receives to its Local Governments. Therefore, Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Attorney General's Back-Stop Sub-fund and fifty percent (50%) to the Litigating Local Government Attorney Fee Back Stop Sub-fund. The Attorney General's Fund shall be used in the Attorney General's sole discretion to (a) reimburse the State of Montana for opioid-related investigation and litigation costs; (b) offset the costs of the legal and administrative burdens imposed upon the Attorney General's Office by the Settlement Agreements as well as future settlements or disbursements by bankruptcy courts; and (3) for approved remediation or abatement purposes including, without limitation, the development of plans or projects whereby the State of Montana and the Local Governments may pool their respective recoveries and resources to fund efficient and effective statewide or regional abatement programs or strategies.

The remaining Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund for payment of Outside Counsel attorneys' fees incurred by Participating Local Governments. As provided above, fifty percent (50%) of the total settlements funds the State receives from these settlements shall be attributed to Local Governments. The amount upon which the fees for Litigating Local Government Attorneys shall be based is calculated by multiplying the fifty percent Local Government share of all settlement funds by the allocation percentage for each respective Litigating Local Government as listed in Exhibit B to this MOU.

7. Outside Counsel for Litigating Local Governments may apply to the Montana Attorney Fee Back-Stop Fund only after applying to any contingency fee fund created pursuant to the Settlement Agreements.

8. Subject to the 15% cap, above, Outside Counsel for Litigating Local Governments may apply to the Montana Attorney Fee Back-Stop Fund for only a shortfall, that is, the difference between what their fee agreements would entitle them to minus what they have already collected from any contingency fee fund created pursuant to the Settlement Agreements. Payments out of the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund shall be fairly allocated by a neutral committee consisting of one representative from each Litigating Local Government.

9. Any funds remaining in the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund in excess of the amounts needed to cover the

fees and litigation expenses to Outside Counsel for Litigating Local Governments shall revert to the allocations described in Section (D).

10. Payments to Outside Counsel shall be made from the Montana Attorney Fee Back-Stop Fund in the same percentages and over the same period of time as the national Contingency Fee Fund for each settlement. The Attorneys' Fees and Costs schedule for the Settling Distributors is listed in the Exhibit R §(II)(A)(1) of the Distributor Settlement Agreement. The Attorneys' Fees and Costs schedule for Janssen is listed in Exhibit R §(II)(A)(1) of the Janssen Settlement Agreement.

**F. INSTRUCTIONS FOR SIGNING THIS MOU AND THE SIGN-ON FORMS.**

You have already received a NOTICE relating to the Settlement Agreements. To join this MOU and to execute sign-on forms for the Settlement Agreement you must FIRST go to the national settlement website at <https://nationalopioidsettlement.com/> in order to register.

SECOND, once you are at the website please register your Local Government, county or city. Registration will only take a minute. This requires knowing who is authorized to sign-on the Settlements for your Local Government and an email address to which the sign-on form will be sent. With that information you can register your Local Government using the registration code

in the NOTICE you have received. If you do not register, your Local Government will not receive the sign-on form for the Settlements electronically.

DATED this 26th day of November, 2021.

MONTANA ATTORNEY GENERAL



Austin Knudsen  
Montana Attorney General



*Exhibit B*

DRAFT - 8/13/2021  
Subject to Revision

MT1	Anaconda-Deer Lodge County, Montana	1.4480190514%
MT2	Beaverhead County, Montana	0.6841480225%
MT3	Big Horn County, Montana	0.8504903609%
MT4	Billings City, Montana	9.1331142413%
MT5	Blaine County, Montana	0.3691094337%
MT6	Bozeman City, Montana	2.0161886507%
MT7	Broadwater County, Montana	0.4143251264%
MT8	Butte-Silver Bow, Montana	5.6101260434%
MT9	Carbon County, Montana	0.7105360522%
MT10	Carter County, Montana	0.0374679104%
MT11	Cascade County, Montana	3.8993050480%
MT12	Chouteau County, Montana	0.4053063424%
MT13	Custer County, Montana	1.5139056450%
MT14	Daniels County, Montana	0.1787602908%
MT15	Dawson County, Montana	0.7800682133%
MT16	Fallon County, Montana	0.1543582011%
MT17	Fergus County, Montana	0.8667027669%
MT18	Flathead County, Montana	8.0141785369%
MT19	Gallatin County, Montana	4.0205572717%
MT20	Garfield County, Montana	0.0398838599%
MT21	Glacier County, Montana	1.5230709367%
MT22	Golden Valley County, Montana	0.0264303648%
MT23	Granite County, Montana	0.1831398237%
MT24	Great Falls City, Montana	4.3577779784%
MT25	Helena City, Montana	1.7360655042%
MT26	Hill County, Montana	1.8438532922%
MT27	Jefferson County, Montana	0.7770843087%
MT28	Judith Basin County, Montana	0.0614804228%
MT29	Kalispell City, Montana	2.4735432710%
MT30	Lake County, Montana	3.6175099064%
MT31	Lewis and Clark County, Montana	4.9326712334%
MT32	Liberty County, Montana	0.1210395973%
MT33	Lincoln County, Montana	2.1915597624%
MT34	Madison County, Montana	0.5498047673%
MT35	McCone County, Montana	0.0823035394%
MT36	Meagher County, Montana	0.0912086373%
MT37	Mineral County, Montana	0.7546909914%
MT38	Missoula City, Montana	4.4312558575%
MT39	Missoula County, Montana	8.0272833629%
MT40	Musselshell County, Montana	0.3895510594%
MT41	Park County, Montana	2.0831835653%
MT42	Petroleum County, Montana	0.0144742922%
MT43	Phillips County, Montana	0.2085622347%
MT44	Pondera County, Montana	0.4003873948%
MT45	Powder River County, Montana	0.1504386452%
MT46	Powell County, Montana	0.8872723490%
MT47	Prairie County, Montana	0.0572069653%
MT48	Ravalli County, Montana	3.6906819270%

MT49	Richland County, Montana	0.7541525281%
MT50	Roosevelt County, Montana	0.8182976782%
MT51	Rosebud County, Montana	0.5641981949%
MT52	Sanders County, Montana	1.0679134558%
MT53	Sheridan County, Montana	0.2700355225%
MT54	Stillwater County, Montana	0.5055604014%
MT55	Sweet Grass County, Montana	0.2836540766%
MT56	Teton County, Montana	0.5735903832%
MT57	Toole County, Montana	0.3258040487%
MT58	Treasure County, Montana	0.0226554138%
MT59	Valley County, Montana	0.5598291268%
MT60	Wheatland County, Montana	0.0720998508%
MT61	Wibaux County, Montana	0.0630373047%
MT62	Yellowstone County, Montana	7.3090889550%

The undersigned, a duly appointed representative of the following agency:

**Broadwater County, Montana**  
(agency name)

agrees to and accepts the Unified Certification Program (UCP), as outlined in the Montana Department of Transportation DBE Program and required by 49 CFR §26.81. By this agreement and acceptance, the above-named agency will ensure that:

- This agency will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR §26 on the basis of race, color, sex or national origin.
- This agency will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.
- Each financial assistance agreement this agency sign with a DOT operating administration (or a primary recipient) will include the following assurance:

“The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contracts or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient’s DBE Program, as required by 49 CFR §26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as approved for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)”
- Each contract this agency signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR § 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”
- And this agency will accept all DBEs certified by MDT as certified for participation in this agency’s DBE Program.

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Darrel Folkvord, Commissioner  
Broadwater County Commission

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(Dated)

# DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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**Townsend Airport Improvements  
Broadwater County & the City of Townsend, Montana  
&  
The City of Townsend, MT**



*prepared by*  
**Robert Peccia & Associates  
3147 Saddle Drive  
P.O. Box 5653  
Helena, Montana 59601**

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**TOWNSEND AIRPORT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
49 CFR PART 26**

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**BROADWATER COUNTY & THE CITY OF TOWNSEND & THE  
CITY OF TOWNSEND  
DBE PROGRAM 49 CFR PART 26**

**POLICY STATEMENT**

**Section 26.1, 26.23 Objectives/Policy Statement**

**Broadwater County, Montana and the City of Townsend, Montana**, owner and sponsor of the **Townsend Airport**, have established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. **Broadwater County & the City of Townsend** has/will receive Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, **Broadwater County & the City of Townsend** has/will sign an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of **Broadwater County & the City of Townsend** to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

**Broadwater County Commissioner, Darrel Folkvord, 515 Broadway Street Townsend, Montana 59644, 406-266-9272, [commissioners@co.broadwater.mt.us](mailto:commissioners@co.broadwater.mt.us)**, has been designated as the DBE Liaison Officer. In that capacity, the Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded

the same priority as compliance with all other legal obligations incurred by **Broadwater County & the City of Townsend** in its financial assistance agreements with the Department of Transportation.

**Broadwater County & the City of Townsend** has disseminated this policy statement to the **County and City Commissions** and all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **Broadwater County & the City of Townsend** DOT-assisted contracts.

This distribution is accomplished through Legal Advertisements and public posting of *draft* DBE programs and goals soliciting comments, direct coordination / consultation with registered DBE participants through the Montana Department of Transportation Civil Rights, through inclusion of mandatory contract language within all contract bid and qualification solicitations (legal advertisement), and within any resulting contracts to perform work.

---

Darrel Folkvord, Commissioner  
*Broadwater County*

---

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are elaborated in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

**Broadwater County & the City of Townsend** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

**Broadwater County & the City of Townsend** will use terms in this program that have their meanings defined in Part 26, §26.5.

### **Section 26.7 Non-discrimination Requirements**

**Broadwater County & the City of Townsend** will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, **Broadwater County & the City of Townsend** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11

**Broadwater County & the City of Townsend** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FAA Civil Rights as follows:

**Broadwater County & the City of Townsend** will transmit to FAA Civil Rights annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. **Broadwater County & the City of Townsend** will similarly report the required information about DBE firms. All reporting will be

done through FAA Civil Rights Connect official reporting system, or another format acceptable to FAA Civil Rights as instructed thereby.

Bidders List: 26.11(c)

**Broadwater County & the City of Townsend** will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on **Broadwater County & the City of Townsend** DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s):

- ***Attachment 3 – Bidder’s List Collection Form***

**Section 26.13 Federal Financial Assistance Agreement**

**Broadwater County & the City of Townsend** has/will sign the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement **Broadwater County & the City of Townsend** signs with a DOT operating administration (or a primary recipient) will include the following assurance:

**Broadwater County & the City of Townsend** shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. **Broadwater County & the City of Townsend** shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The **Broadwater County & the City of Townsend** DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [*Recipient*] of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: **Broadwater County & the City of Townsend** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

**Broadwater County & the City of Townsend** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. **Broadwater County & the City of Townsend** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **Broadwater County & the City of Townsend** is in compliance with it and Part 26. **Broadwater County & the City of Townsend** will continue to carry out this program until all funds from DOT financial assistance have been expended. **Broadwater County & the City of Townsend** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this DBE Program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for **Broadwater County & the City of Townsend**:

**Darrel Folkvord, *Commissioner***  
***Broadwater County***  
***515 Broadway Street***  
***Townsend, MT 59644***  
***406-266-9272***  
**[commissioners@co.broadwater.mt.us](mailto:commissioners@co.broadwater.mt.us)**

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that **Broadwater County & the City of Townsend** complies with all provisions of 49 CFR Part 26. DBELO has direct, independent access to the **Broadwater County & the City of Townsend Commission** concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 2** of this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. The DBELO's primary resource is the engineering representative, Robert Peccia and Associates of Helena, Montana. The DBELO also has County employees at their disposal on an as needed basis to assist in the administration of the program.

Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall multi-year goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE contract provisions are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes **Broadwater County & the City of Townsend's** progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises **Broadwater County & the City of Townsend** on DBE matters and achievements.
9. Chairs the DBE Advisory Committee.
10. Determines Contractor compliance with good faith efforts for any race conscious goals.
11. Assists in providing DBE's with information and assistance in preparing bids, obtaining bonding, and insurance. **Broadwater County & the City of Townsend** relies on MDT to aid in support services for certified DBE's.
12. Participates in DBE training seminars directly or indirectly through consultant services contracted / provided. **Broadwater County & the City of Townsend** relies on MDT to aid in DBE training services.
13. Assists in providing outreach to DBE's and community organizations to advise them of opportunities. **Broadwater County & the City of Townsend** relies on MDT to aid in support services and utilizes MDT's online DBE Quote Request service as part of each project advertisement.
14. Utilizes MDT's updated directory on certified DBE's.

## **Section 26.27 DBE Financial Institutions**

It is the policy of **Broadwater County & the City of Townsend** to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The Montana Department of Transportation's database of certified DBE firms was searched, and eight DBE accounting / payroll institutions were found to be registered in the State of Montana that provide some form of accounting, payroll, or financial services. Additional investigation regarding availability for DBE financial institutions will be completed as part of each goal methodology to determine if **Broadwater County & the City of Townsend** can make use of any registered DBE financial institutions. Prime Contractors will also be encouraged to use DBE owned or controlled financial institutions if they are needed by any Contractor.

## **Section 26.29 Prompt Payment Mechanisms**

**Broadwater County & the City of Townsend** requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, **Broadwater County & the City of Townsend** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from **Broadwater County & the City of Townsend**.

**Broadwater County & the City of Townsend** ensures prompt and full payment of retainage from prime contractor to the subcontractor within a maximum of 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, **Broadwater County & the City of Townsend** has selected the following method to comply with this requirement:

**Broadwater County & the City of Townsend** will hold retainage from prime contractor and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and include a contract clause obligating the prime contractor to pay all retainage owed to any subcontractor for satisfactory completion of the accepted work within 30 days after the payment to the prime contractor.

To implement this measure, **Broadwater County & the City of Townsend** includes the following clause from the FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

90-06 Partial payments. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

- a. From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

- (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

- (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of

the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment*.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

### **Section 26.31      Directory**

**Broadwater County & the City of Townsend** is a non-certifying member of the Montana Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

**Broadwater County & the City of Townsend** uses the State of Montana Department of Transportation (MDT) DBE directory, maintained by the State.

The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists the firm's name, address, telephone number, date of most recent certification, the type of work the firm has been certified to perform as a DBE, and the corresponding NAICS code(s). MDT Civil Rights staff updates the Directory daily.

The Directory may be found at: <https://app.mdt.mt.gov/dbe/dbe/search>

### **Section 26.33      Over-concentration**

**Broadwater County & the City of Townsend** has not identified that over-concentration exists in the types of work that DBEs perform.

**Section 26.35 Business Development Programs**

**Broadwater County & the City of Townsend** has not established a business development program.

**Section 26.37 Monitoring and Enforcement Mechanisms**

**Broadwater County & the City of Townsend** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in **Broadwater County & the City of Townsend's** DBE program.

1) Monitoring Payments to DBE's and Non-DBE's

**Broadwater County & the City of Townsend** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring will be accomplished through discussions of pay requests at the preconstruction conference regarding typical billing cycles and direct contact with subcontractors verifying receipt of interim and final payments.

**Broadwater County & the City of Townsend** required prime contractors to maintain records and documents of payments to subcontractors, including DBE's, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **Broadwater County & the City of Townsend's** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of **Broadwater County & the City of Townsend** or the DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

**Broadwater County & the City of Townsend** proactively reviews contract payments to subcontractors including DBE's not less than quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amount reported to **Broadwater County & the City of Townsend** by the prime contractor.

2) Prompt Payment Dispute Resolution

**Broadwater County & the City of Townsend** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29. Weekly Reports will be issued documenting estimated percentage completed for each work item, including unsatisfactorily completed work items, and corrective actions required. Weekly Reports will be distributed

to all interested parties including **Broadwater County & the City of Townsend**, the Contractor, subcontractors, and the DOT.

**Broadwater County & the City of Townsend** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- Alternative Dispute Resolution (ADR) – **Broadwater County & the City of Townsend** shall include the following contract clause:

If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the RPR in writing of their intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the RPR is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the RPR has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit a written claim to the RPR who will present it to the Owner for consideration in accordance with local laws or ordinances.

- A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **Seven (7)** days from the receipt of each payment the prime contractor receives from **Broadwater County & the City of Townsend**. The prime contractor agrees further to return retainage payments to each subcontractor within **Seven (7)** days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of **Broadwater County & the City of Townsend**. This clause applies to both DBE and non-DBE subcontractors.

### 3. Prompt Payment Complaints

Complaints by subcontractors regarding prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contracting the prime contractor directly, regarding payment or unable to resolve payment discrepancies with the prime contractor, subcontractor should contact any representative of **Broadwater County & the City of Townsend Commission**, the **Broadwater County & the City of Townsend Attorney**, and / or the on-site engineering representative (resident project representative).
- If filing a prompt payment complaint with the DBELO does not result in a timely and meaningful action by **Broadwater County & the City of Townsend** to resolve prompt payment disputes, affected subcontractor may contact the FAA Helena Airport District Office.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### 4. Enforcement Actions for Noncompliance of Participants

**Broadwater County & the City of Townsend** will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bonds to assure payment for labor and materials in the execution of the work provided for in the contract;
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime;
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
- Other penalties for failure to comply, up to and including contract termination.

**Broadwater County & the City of Townsend** will actively implement the enforcement actions detailed above.

5. Monitoring Contracts and Work Sites

**Broadwater County & the City of Townsend** reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBE's at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBE's to which the work was committed. Work site monitoring is performed by a Resident Project Representative (RPR) Engineering Consultant. Contracting records are reviewed also reviewed by the DBELO and an Engineering Consultant. **Broadwater County & the City of Townsend** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

**Section 26.39 Fostering Small Business Participation.**

**Broadwater County & the City of Townsend** has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

**Broadwater County & the City of Townsend's** small business program element is incorporated as **Attachment 10** to this DBE Program.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 Set-asides or Quotas**

**Broadwater County & the City of Townsend** does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

**Broadwater County & the City of Townsend** will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period, as specified in 49 CFR Part 26.45. In accordance with Section 26.45(f), **Broadwater County & the City of Townsend** will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below and posted to the website of the Federal Aviation Administration.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>Northwest Mountain</b>	<b>August 1, 2020 (2021/2022/2023)</b>	<b>August 1, 2022 (2024/2025/2026)</b>

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If **Broadwater County & the City of Townsend** does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and **Broadwater County & the City of Townsend** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. **Broadwater County & the City of Townsend** will use the Montana Department of Transportation DBE Directory and Census Bureau Data as a method to determine the base figure. **Broadwater County & the City of Townsend** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. **Broadwater County & the City of Townsend** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Broadwater County & the City of Townsend market.

In establishing the overall goal, **Broadwater County & the City of Townsend** will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and **Broadwater County & the City**

of **Townsend's** efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to **Broadwater County & the City of Townsend's** goal setting process, and it will occur before **Broadwater County & the City of Townsend** are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. **Broadwater County & the City of Townsend** will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f) (4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, **Broadwater County & the City of Townsend** will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on **Broadwater County & the City of Townsend's** website and will be distributed to MDT Civil Rights for their distribution to interested parties. If the proposed goal changes following review by the FAA, the revised goal will be distributed / made available through those same publications / distributions. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours, location(s) for inspection, electronically made available, and that DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend beyond the August 1<sup>st</sup> deadline.**

The Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

**Broadwater County & the City of Townsend** will begin using our overall goal on October 1 of the reporting period, unless other instructions have been received from the DOT/FAA.

### Project Goals

If permitted or required by the FAA Administrator **Broadwater County & the City of Townsend** will express overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a

projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### Prior Operating Administration Concurrent

**Broadwater County & the City of Townsend** understands that prior FAA/DOT concurrence with the overall goal is not required. However, if the FAA/DOT review suggests that the overall goal has not been correctly calculated or that the method employed by **Broadwater County & the City of Townsend** for calculating goals is inadequate, FAA/DOT may, after consulting with **Broadwater County & the City of Townsend**, adjust the overall goal or require that the goal be adjusted by **Broadwater County & the City of Townsend**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT/FAA will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5 – Overall Goal Calculations** of this program.

#### **Section 26.47 Failure to meet overall goals.**

**Broadwater County & the City of Townsend** cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless **Broadwater County & the City of Townsend** fails to administer its DBE program in good faith.

**Broadwater County & the City of Townsend** understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

**Broadwater County & the City of Townsend** understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully the goal for the new fiscal year;

(3) **Broadwater County & the City of Townsend** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA/DOT upon request.

### **Section 26.51(a-c) Means Recipients Use to Meet Overall Goals - Breakout of Estimated Race-Neutral & Race-Conscious Participation**

**Broadwater County & the City of Townsend** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of Montana Department of Transportation DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 5 – Overall Goal Calculations** to this program.

**Broadwater County & the City of Townsend** will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBE's and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

### **Section 26.51(d-g) Contract Goals**

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work).

Contract goals will be expressed as a percentage of the total amount of DOT-assisted contract.

## **Section 26.53 Good Faith Efforts Procedures**

### Demonstration of good faith efforts (26.53(a) & (c))

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive.

**Broadwater County & the City of Townsend** will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

### Information to be submitted (§26.53(b))

In all solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see **Attachment 6** of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

- (3) We will require that the bidder/offeror present the information required by paragraph (b) (2) of this section: *responsive*.

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration (26.53(d))

Within seven (7) business days of being informed by **Broadwater County & the City of Townsend** that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: **Broadwater County Attorney: Cory Swanson, 515 Broadway Street, Townsend, MT 59644, CSwason@co.broadwater.mt.us, (406)-266-9226.**

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBE's to supply labor or materials include all contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of **Broadwater County & the City of Townsend**. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if **Broadwater County & the City of Townsend** agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to **Broadwater County & the City of Townsend** its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **Broadwater County & the City of Townsend**, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise **Broadwater County & the City of Townsend** and the contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why **Broadwater County & the City of**

**Townsend** should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's Proposal / Letter of Intent response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of **Broadwater County & the City of Townsend** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

**Broadwater County & the City of Townsend** will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If **Broadwater County & the City of Townsend** requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. **Broadwater County & the City of Townsend** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, **Broadwater County & the City of Townsend** will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### **Section 26.55 Counting DBE Participation**

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

**Broadwater County & the City of Townsend** will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. **Broadwater County & the City of Townsend** will make our certification decisions based on Montana Department of Transportation acceptance, which is based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact the *DBE Program Specialists (Maghan Strachan and Maggie Metzger)* at the **Montana Department of Transportation Civil Rights office, P.O. Box 201001, Helena, MT 59620-1001, 406-444-0841 or 406-444-6337 (1-800-335-7592)**, respectively.

<https://www.mdt.mt.gov/business/contracting/civil/contact.shtml>

The Uniform Certification Application form and documentation requirements are found in **Attachment 8** to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

**Broadwater County & the City of Townsend** is a member of the Montana United Certification Program (UCP) administered by Montana Department of Transportation (MDT). The UCP will meet all of the requirements of this section.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to [Recipient]**

**Broadwater County & the City of Townsend** understands that if it fails to comply with any requirement of this part, **Broadwater County & the City of Townsend** may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

**Broadwater County & the City of Townsend** will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any provision of Federal or state law, **Broadwater County & the City of Townsend** will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

**Broadwater County & the City of Townsend**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured

by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

**ATTACHMENT 1**

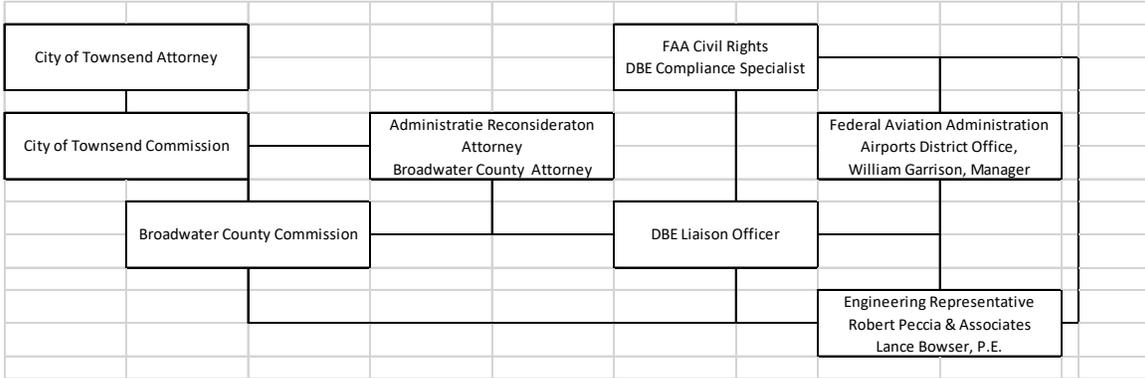
**49 CFR Regulations**

Hereby incorporated by reference:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

**ATTACHMENT 2**

**Organizational Chart**





**ATTACHMENT 4**

**Montana Department of Transportation DBE Directory**

Hereby incorporated by reference:  
<https://app.mdt.mt.gov/dbe/dbe/search>

## **ATTACHMENT 5**

### **Overall Goal Calculations**

Overall goal calculations have been separately submitted and are updated every three years in accordance with 49 CFR Part 26.45.

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts – Forms 1 & 2**

*Forms 1 and 2 will be provided as part of the solicitation documents when establishing a Race Conscious goal requirement.*

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ Bidder/offeror has met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ Bidder/offeror has not met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and will submit documentation demonstrating good faith efforts.

Legal Name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

*\*Percentage is to be used only in negotiated procurements, including design-build contracts*

*\*\*For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative Date: \_\_\_\_\_

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

\_\_\_\_\_  
Signature of DBE's Authorized Representative Date: \_\_\_\_\_

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void.**

(Please use a copy of this page for each DBE subcontractor. Staple additional pages into this booklet)

## **Attachment 7**

### **DBE Monitoring and Enforcement Mechanisms**

**Broadwater County & the City of Townsend** has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to MCA 27-1-311

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 8**

**DBE Certification Application Form**

Hereby incorporated by reference:

<http://www.mdt.mt.gov/other/webdata/external/civilrights/forms/DOT-DBE-Certification-Application.pdf>

**ATTACHMENT 9**

**Montana Department of Transportation UCP Agreement**

Hereby incorporated by reference:

<http://www.mdt.mt.gov/other/webdata/external/civilrights/dbe/ucp-approval.pdf>

## ATTACHMENT 10

### Small Business Element

#### 1. Objective/Strategies

As part of this program element **Broadwater County & the City of Townsend** will include, but are not limited to, the following strategies:

- 1) On prime contracts not having DBE contract goals, encourage the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved. This effort will include inclusion of all DBE contract provisions regardless of size of contract, letters of intent with proposals, monitoring DBE usage for all contracts (regardless of size), and utilization of MDT on-line quote request submission for all contracts to expand visibility of all sized projects by DBE's and small businesses.
- (2) Identifying alternative acquisition strategies and structuring procurements to help ensure the ability of small businesses, including DBEs, to compete for and perform prime contracts. This may include items such as arranging solicitations, times for the presentation of bids, quantities, and delivery schedules in ways that facilitates DBE, and other small business participation. This will include efforts to un-bundle very large and multi-faceted projects into separate bid schedules.
- (3) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

#### 2. Definition

- DBE firms are eligible as part of this Small Business element, as **Broadwater County & the City of Townsend** does not have a micro-Small Business Program element in place.
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
- Personal Net Worth standards— should be consistent with 49 CFR Part 26 thresholds.

#### 3. Verification

**Broadwater County & the City of Townsend** will diligently attempt to minimize fraud and abuse in the Small Business element of its DBE program by verifying program eligibility of firms. **Broadwater County & the City of Townsend** will rely on MDT and Contractor / Subcontractor certifications for verification purposes of the Small Business element. MDT has recently (01/2017) implemented a more formal Small Business Enterprise application project. However, at this time, a SBE directory is not available.

#### **4. Monitoring/Record Keeping**

**Broadwater County & the City of Townsend** will monitor the Small Business Element through DBE Reporting, Bidders Lists, and Letter(s) of Intent.

#### **5. Implementation Timeline**

**Broadwater County & the City of Townsend** will implement the Small Business Element as part of all DOT assisted contract proposals, bidding opportunity's, and contract agreements, following The FAA's approval of this program and multi-year goal.

#### **6. Assurance**

**Broadwater County & the City of Townsend** assures the following:

- (1) The program is authorized under state law;
- (2) Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- (3) No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- (4) Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- (5) The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

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