

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality, (hereinafter referred to as the State), and Broadwater County, (hereinafter referred to as the "Contractor"), for the purpose of delegating to the Contractor, pursuant to Section 76-4-104, MCA, the authority to review certain water supply, wastewater, solid waste, and stormwater systems in subdivisions. The Contractor will review subdivision applications for completeness; determine whether certain systems, which are identified in 3.1.4.4 and Attachment A, comply with the Sanitation in the Subdivisions Act, the Montana Water Quality Act, and applicable administrative rules and Circulars; and make a recommendation for approval to the State or deny the application. The purpose of this Contract is also to provide reimbursement to the Contractor for performing site evaluations and related services for subdivisions, pursuant to ARM 17.36.804. The Parties specifically agree it is not their intent that any provision of this Contract is a cessation or waiver of any of the Contractor's regulatory authority, including that set forth in Section 50-2-116, MCA. The Parties, in consideration of mutual covenants and stipulations described below, hereby agree as follows:

## **1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1. Contract Term.** This Contract shall take effect on upon signature of both parties, and terminate on June 30, 2023, unless terminated earlier in accordance with the terms of this Contract. In no event is this Contract binding on the State unless the State's authorized representative has signed it. The State's authorized signatory for this Contract is the Contracts Officer for the Department of Environmental Quality.

**1.2. Contract Renewal.** The State may renew this Contract under its then-existing terms and conditions, subject to potential cost adjustments described below in Section 2, in 2 year intervals, or any other interval that is advantageous to the State.

## **2. COST/PRICE ADJUSTMENTS**

**2.1. Cost Adjustments by change in ARM 17.36.804.** Contractor will be reimbursed at rates established in ARM 17.36.804.

## **3. SERVICES AND/OR SUPPLIES**

**3.1.** Contractor agrees to:

**3.1.1. Preapplication Meeting.** Contractor shall hold a preapplication meeting with the applicant if requested by the applicant. Contractor shall schedule the requested meeting within 30 days of receiving the request from the applicant.

**3.1.2. Initial Receipt of Application and General Requirements.** Contractor shall date stamp at least the first page of the application so the State can accurately enter the application into its database for tracking purposes. Contractor shall send a copy of the first two pages of the application along with fees to the State. The State shall email the Contractor an EQ number. All information received from the applicant must be date stamped by the Contractor for tracking purposes. Contractor shall send to the State electronic versions of all the Contractor's correspondence, denials, and recommendations related to each application.

**3.1.3. Completeness Review.** Contractor shall review all subdivision applications for completeness using forms approved by the State. Pursuant to the requirements of Section 76-4-114(3)(b), MCA, and Section 3.1.5.1 of this Contract, Contractor shall determine whether the application contains the elements to allow for review and shall notify the applicant and the State of the Contractor's determination.

**3.1.4. Compliance Review.** For complete applications, Contractor shall perform a

detailed review of the water supply, wastewater, stormwater, and solid waste systems identified in Attachment A of this Contract. The purpose of the detailed review shall be for the Contractor to determine whether the systems proposed in the application comply with Sections 76-4-101 et seq., MCA (“Sanitation in Subdivisions Act”); Sections 75-5-101 et seq., MCA (“Montana Water Quality Act”); Sections 17.36.101 through 17.36.805 and Sections 17.30, subchapters 5 and 7 of the Administrative Rules of Montana (“ARM”), and the applicable Circulars promulgated pursuant to the Acts.

**3.1.4.1.** Contractor review of wastewater systems must include review for compliance with the non-degradation requirements of the Water Quality Act and the state non-degradation rules.

**3.1.4.2.** Contractor may not perform compliance review of water supply, wastewater, stormwater, or solid waste systems other than those identified in Section 3.1.4.4 and Attachment A of this Contract.

**3.1.4.3.** Contractor shall review the environmental assessment information provided by the applicant and shall be available to consult with the State regarding the completeness and accuracy of such information.

**3.1.4.4.** Contractor shall perform compliance review, pursuant to Section 3.1.6 only for the systems indicated in Attachment A. Contractor review authority under this Contract does not extend to public systems or those required by state laws, rules, or Circulars to be submitted by a Professional Engineer.

**3.1.5. Time for Review.**

**3.1.5.1.** Within 15 days of receipt of the application, Contractor shall provide notification to the applicant and the State stating the application contains or does not contain all of the elements necessary for review in accordance with Section 76-4-114(3)(b), MCA.

**3.1.5.2.** Within 5 days of determining that the application is complete for review in accordance with Sections 3.1.3 and 3.1.5.1, Contractor shall forward to the State information relating to waivers and deviations, design documents related to public systems, any system not reviewable by Contractor, and any system the Contractor chooses not to review.

**3.1.5.3.** Within 30 days of notifying the applicant that the application is complete for review in accordance with Sections 3.1.3 and 3.1.5.1, Contractor shall do one of the following:

- (1) determine that the application does not comply with state laws, rules, or Circulars and issue a denial to the applicant;
- (2) notify the applicant that the Contractor needs an extension not to exceed 30 days to complete its review of the application, pursuant to the requirements of Section 76-4-114(5), MCA; or
- (3) submit to the State a final recommendation for approval of the application, together with the Contractor’s completed and signed review of the application and all materials required by this Section.

**3.1.5.4.** If the applicant resubmits a corrected application within 30 days after the date of a denial letter issued in accordance with Section 3.1.5.3(1), Contractor shall review the corrected application within 30 days.

- 3.1.5.5.** If the applicant resubmits a corrected application more than 30 days after the date of a denial letter issued in accordance with Section 3.1.5.3(1), Contractor shall review the corrected application within 45 days.
- 3.1.6. Contents of Contractor Submittals to the State.** Contractor shall submit to the State the following materials regarding applications for subdivisions:
- 3.1.6.1.** A completed application form signed by the owner and any information attached to the form;
  - 3.1.6.2.** Copies of all correspondence and other documents regarding the application. The documentation must provide adequate evidence that the plans and specifications for the application are in compliance with all applicable state laws, rules, and Circulars;
  - 3.1.6.3.** The review fee and the subdivision review fee calculation form with the components you expect reimbursement on highlighted, or use attachment B;
  - 3.1.6.4.** A completed and signed subdivision review checklist, in a form approved by the State, together with calculations, notes, and any other relevant information that provides adequate evidence that Contractor has reviewed the application to ensure compliance with appropriate design standards;
  - 3.1.6.5.** A completed and signed non-significance determination checklist and all supporting documentation;
  - 3.1.6.6.** A certification, in a form approved by the State, stating that, based upon Contractor's review of the application under applicable state laws, rules, and Circulars, the identified systems either do or do not comply with the applicable state requirements; and
  - 3.1.6.7.** If Contractor recommends approval of a subdivision application, a completed and signed certificate of subdivision approval.
  - 3.1.6.8.** A copy of the water well sample sheet with the GWIC identification number written on it should be placed in the front of the file so the State can enter water quality data and then forward it to GWIC.
- 3.1.7. Waivers and Deviations.** If, for any water supply, wastewater, stormwater, or solid waste systems proposed in an application regardless of whether the system is designated for Contractor review in Attachment A, the plans and specifications for the application would require a waiver from the State subdivision rules or a deviation from the requirements of the State Circulars, Contractor shall notify the applicant of the required fee(s) and, upon receipt of those fees, prepare or have the applicant prepare a waiver/deviation request in a format approved by the State, together with a justification for the waiver/deviation from the applicant and Contractor's recommendation.
- 3.1.7.1.** Contractor shall submit the waiver/deviation request to the State, along with appropriate fees, within 5 days of the Contractor's determination that the application is complete for review in accordance with Sections 3.1.3 and 3.1.5.1. The State shall respond to the waiver/deviation request within 20 days of the State's receipt of the request. Contractor may extend the time for review of the application while waiting for the State's response to a waiver/deviation request.
  - 3.1.7.2.** Contractor may not recommend approval of a subdivision application until all necessary waiver/deviation requests have been approved by the State.
- 3.1.8. The State Consultation.** Upon request of the Contractor, the State agrees to

provide consultation to Contractor regarding the subject matter of this Contract.

**3.1.9. Site Evaluations.** Contractor shall perform site evaluations and related services for subdivisions, pursuant to ARM 17.36.804(3), as mutually agreed by Contractor and the State.

**3.1.10. Revised Lot Layout Review.** Contractor may perform the review of minor changes to a certificate of subdivision approval made through a revised lot layout document. Changes made through the revised lot layout may not affect the conditions of a certificate of subdivision approval. Unless otherwise provided by the State rules, only the following changes may be made through the revised lot layout procedure:

**3.1.10.1.** Relocations of water or wastewater systems, provided that the changes comply with Title 76, chapter 4, part 1, MCA; Title 17, chapter 36, ARM; and all related rules and regulations, for example:

- (1) moving the location of a well or cistern within the lot boundaries provided the new location meets setback requirements and will not adversely change the quality, quantity and dependability of the water supply;
- (2) moving the location of the wastewater treatment system within the lot boundaries provided the new wastewater treatment system and mixing zone location meet setback requirements, site evaluation criteria and the wastewater system is sufficient in terms of capacity and dependability;
- (3) moving the location of the stormwater facilities.

**3.1.10.2.** Changes to water or wastewater systems that do not significantly affect the approval statement of the subdivision, for example:

- (1) replacing distribution piping with gravelless trenches or vice versa in accordance with Circular DEQ-4,
- (2) replacing a standard trench system with a pressure-dosed system that is designed according to Circular DEQ-4 and reviewed by the certified reviewer,
- (3) replacing a previously approved system with a similar system designed in accordance with the current version of Circular DEQ-4,
- (4) replacing components in a previously approved system with similar components that meet criteria in Circular DEQ-4, and
- (5) adding a water or wastewater treatment system that provides greater treatment than the approved system provided the approved system is installed and used as a redundant system and the new treatment system does not interfere with the operation of the approved system,
- (6) installing any Level 2 system in place of any other Level 2 system through the revised lot layout process as long as no other facilities are changing,
- (7) approving changes to sizes of approved systems unless there is a limitation on the ground that cannot be overcome. If the Certificate of Subdivision Approval is for a 3 bedroom home the Contractor may issue a permit for a larger home unless there are limitation caused by the soils,

slope etc.

**3.1.10.3.** The revised lot layout document must be submitted to the State.

**3.2.** The State oversight of the Contractor's review of subdivision applications shall be limited to the following:

**3.2.1.** The State shall determine, by reviewing the Contractor review checklist or by other means, whether the Contractor has conducted a completeness review of the application and whether the Contractor has completed compliance review of all systems designated in Section 3.1.4.4 and Attachment A. If the State determines that the Contractor has not conducted a completeness review or has not reviewed all designated systems, the State may either return the application to the Contractor for further review or may itself complete the review. If the Contractor fails to conduct any part of the review required under this Contract within the timeframes established in Section 3.1.5, the State reserve the right to withhold the portion of the fee applicable to that portion of the review.

**3.2.2.** The State may check the accuracy of the Contractor's review of subdivision applications, for purposes of determining Contractor's compliance with the reviewer qualification and performance standards set out in Section 4. The State accuracy checks shall be limited to 10% of the applications submitted to the State by Contractor, except that the State may also review an application upon the Contractor's request, or when the State has reason to question the Contractor's determination for a particular submittal. If the State identifies possible errors or discrepancies in the Contractor's review of a specific application, the State shall consult with the Contractor's reviewer. If, after consultation with the Contractor, the State does not agree with the Contractor's determination regarding an application's compliance with applicable state laws, rules, and Circulars, the State may, prior to the expiration of the review period for the application, modify the Contractor's determination regarding the state requirements.

**3.2.3.** In addition to or instead of checking Contractor's review of applications during the review period, the State may conduct an annual audit of a representative sample of applications reviewed by Contractor, for purposes of determining Contractor's compliance with the reviewer qualification and performance standards set out in Section 4.

#### **4. KEY PERSONNEL; REVIEWER QUALIFICATIONS AND PERFORMANCE STANDARDS**

**4.1.** Contractor review of subdivisions under this Contract may be performed only by persons approved by the State in accordance with Section 4.2. In the event the State-approved reviewer becomes unavailable to work under this Contract, Contractor shall immediately notify the State. Contractor may not use a substitute until the State has approved the substitute in writing, which approval shall be deemed a part of this Contract.

**4.2.** Minimum qualifications. Contractor reviewers must meet the qualifications set out in the most current version of ARM 17.36.116.

**4.3.** Training. The State may require Contractor reviewers to comply with training and examination requirements as necessary to ensure that reviewers are qualified to accurately review the systems identified in Attachment A.

**4.4.** Performance standards. Contractor's review of subdivision applications must demonstrate a consistent and accurate level of performance in evaluating whether systems identified in Attachment A comply with applicable state laws, rules, and Circulars. Contractor

must also ensure that documentation in applications is complete, accurate, and adequately demonstrates that the application complies with applicable state laws, rules, and Circulars.

**4.5. Remedies.** If the Contractor fails to meet the performance standards set out in Section 4.4 above, the State may, after consultation with Contractor, issue a written determination that the Contractor reviewer is not qualified to review subdivisions under this Contract. If disqualification of the reviewer results in the Contractor lacking a qualified person to review subdivisions, then the State may terminate this Contract pursuant to Section 14.

## **5. CONSIDERATION/PAYMENT**

**5.1.** In consideration of services rendered pursuant to the Contract, the State agrees to reimburse Contractor, on a quarterly basis, the fees set out in the most current version of ARM 17.36.804 for the subdivisions that Contractor reviews, and for site evaluations and related services. The State will not reimburse Contractor for any component of a review not performed by Contractor.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1.** Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of work under this Contract, and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.

**6.2.** The State, the Legislative Auditor, the Legislative Fiscal Analyst, and the Comptroller General of the United States, or their authorized representatives, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section 17 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records under paragraph 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records.

**6.3.** Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph 6.1 to any of the agencies referred to in paragraph 6.2.

**6.4.** Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

**6.5.** All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party, whichever is later. Contractor may not destroy any records without first offering the records to the State.

**6.6.** In the event that an audit shows that Contractor has not complied with federal or State laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after the State receives the audit report.

## **7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

In accordance with §18-4-141, MCA, the Contractor may not assign, transfer, or subcontract any portion of this Contract without the State's prior written consent. Any subcontracting of services under this Contract must be done in a competitive manner and ensure that subcontractor rates are justified

and documented in accordance of Level IV of the Executive Schedule (<http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>). Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this Contract.

## 8. REQUIRED INSURANCE

**8.1. General Requirements.** The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, and/or its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission by Contractor, and/or its agents, employees, assigns, or subcontractors.

**8.2. Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain for bodily injury, personal injury, and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

**8.3. Specific Requirements for Automobile Liability.** The Contractor shall purchase and maintain coverage for bodily injury and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

**8.4. Certificate of Insurance/Endorsements.** A certificate of insurance was received by the State prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect by Contractor for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 14 of this Contract.

**8.5.** Participation by a local government in a risk-sharing pool authorized by §2-9-211, MCA, that offers the required coverages shall meet the insurance requirements of this Contract.

**8.6. Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**8.7. Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A-, indicating compliance with the required coverage, was received by the State prior to execution of this Contract. Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times. Failure of Contractor to comply with this requirement may result in termination per Section 14 of this Contract.

## 9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA.

Proof of compliance must be in the form of workers' compensation insurance, an independent Contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to the Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

## **10. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, State, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

## **11. RETIRED STATE EMPLOYEE REQUIRED EMPLOYER REPORTING**

In accordance with ARM 2.43.2114, State agencies are required to file employee reports with the Montana Public Employee Retirement Administration (MPERA). The employee reports required under ARM 2.43.2114 include a working retiree report covering Montana's Public Employees' Retirement System (PERS) retirees performing work in a PERS-covered position as an employee, an independent Contractor, or through an employee leasing arrangement, or a temporary service Contractor. ARM 2.43.2114(6)(a) requires the State to include the social security number of employees and workers in the employer report. Contractor's staff assigned to perform work under this Contract will be asked to provide a social security number.

The purpose of collecting the social security number of an individual hired as an independent Contractor or through a professional employer arrangement, an employee leasing agreement, or a temporary service Contractor is to determine whether the individual is a retiree. Determining an individual's status as a retiree will determine whether the State must make employer contributions into the public employee retirement system for retirees who return to work in a PERS-covered position as required by Section 19-3-1113, MCA.

## **12. CONFLICT OF INTEREST**

**12.1.** For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors, is a "public employee" for the purposes of this Section. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections §2-2-104, §2-2-105, §2-2-121, and §2-2-201, MCA.

**12.2.** If the State discovers that an employee of Contractor or subcontractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.



**13. DISCLOSURE**

**13.1.** Contractor shall notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

**13.2.** Contractor certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Contractor further certifies that no former employee of the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of the State or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was "directly involved", as defined in §2-2-201, MCA, during employment. Contractor further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to the submission of the solicitation request which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

**14. CONTRACT TERMINATION**

**14.1. Termination for Cause with Notice to Cure Requirement.** Either party may terminate this Contract in whole or in part for failure of the other party to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving the other party written notice identifying items not performed. The written notice must demand performance of the items not performed within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**14.2. Reduction of Funding.** In accordance with §18-4-313(4), MCA, the State must terminate this Contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Contract in a subsequent fiscal period. If the State or federal government funds are not appropriated or otherwise made available through the State budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this Contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**14.3.** Any termination of this Contract is subject to the exception that Section 6, relating to retention of and access to records, remain in effect.

**14.4. Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

**14.4.1.** products or services furnished fail to conform to any requirement;

**14.4.2.** failure to submit any report required by this Contract;

**14.4.3.** failure to perform any of the other terms and conditions of this Contract, including, but not limited to beginning work under this Contract without prior State approval; or

**14.4.4.** financial inability to perform its obligations under this Contract.

**14.5. Event of Breach by State.** The State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**14.6. Non-termination Actions in Event of Breach** Upon a material breach by either party, the non-breaching party may treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its non-termination remedies under this Contract, at law or in equity.

## **15. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5 day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **16. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **17. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the State's liaison and the Contractor's liaison.

**Kevin Smith** will be the liaison for the State.

Water Quality Division

PO Box 200901

Helena MT 59620-0901

Telephone: 406-444-1277

E-mail: Ksmith@mt.gov@mt.gov

**Shawn Rowland**, will be the liaisons for the Contractor.  
515 Broadwater Street, Townsend, MT 59644  
Telephone: 406-266-9209  
E-mail: [sanitarian@co.broadwater.mt.us](mailto:sanitarian@co.broadwater.mt.us)

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

**18. INTERPRETATION OF LAW, REGULATIONS AND CHOICE OF VENUE**

**18.1.** Interpretations of State laws and regulations relating to subdivision review are the sole responsibility of the State. Contractor laws and regulations pertaining to subdivision review will be interpreted solely by Contractor. This Contract is governed by the laws of Montana.

**18.2.** In accordance with §18-1-401, MCA, Montana law governs this Contract. If there is a dispute under this Contract the Parties will meet in person and attempt to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree that prior to resorting to litigation they will attempt to settle the dispute by nonbinding mediation administered by a neutral mediator agreed to by the parties.

Both parties waive objection to personal jurisdiction in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Any litigation concerning this bid, proposal, or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

**19. SCOPE, AMENDMENT AND INTERPRETATION**

**19.1. Contract.** This Contract consists of 12 numbered pages and Attachments A & B.

**19.2. Entire Contract.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**20. EXECUTION**

The parties through their authorized agents have executed this Contract on the dates set out below.

**BROADWATER COUNTY HEALTH DEPARTMENT**

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
MIKE DELGER, Broadwater County Commission Chair  
Broadwater County Commissioners  
515 Broadwater Street  
Townsend, MT 59644

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
VICKI J. WOODROW, Contracts Officer  
Centralized Services Division  
Financial Services Bureau  
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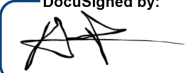
Helena, MT 59620-0901

Approved as to Legal Content:

06/17/2021

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DATE

BY:

DocuSigned by:  


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44FB114E7B72459  
Aaron Pettis, DEQ Attorney

ATTACHMENT A

Water Supply Systems

- Individual, and shared wells, cisterns
- Non-public water systems with 5 or fewer connections that are not required to be designed by a professional engineer.
- Connections to existing municipal or **County Water/Sewer Districts public systems**

Wastewater Systems

- Standard absorption trench systems
- Sand-lined absorption trench systems
- Gravelless absorption trench systems
- At-grade absorption trench systems
- Pressure distribution systems
- Sand mound systems
- Intermittent sand filter systems
- Level II Systems
- Wastewater systems less than 2,500 gpd that are not required to be designed by a professional engineer.
- Multiple User Wastewater that are not required to be designed by a professional engineer.
- Evapotranspiration and evapotranspiration absorption systems
- Connections to existing municipal or **County Water/Sewer Districts public systems**

Stormwater

- Stormwater systems (ARM 17.36.310) that are not required to be designed by a professional engineer.

Solid Waste

- Off-site disposal

Revised Modifications

- Revised lot layouts modifications

**Subdivision Review Fee Calculation Checklist for EQ#**

<i>TYPE OF LOTS</i> Lot fee dispersement \$35 to County/lot & rest to DEQ assuming contract review, then 80%non-lot fees to County IF we reviewed that item.	Unit	Unit Cost	Number of Units	Total	Contract?	County	DEQ
Subdivision lot fee	lot/parcel	\$160		0		0	0
Condo unit-Trailer court-RV campground lot fee	unit/space	\$60		0		0	0
Resubmittal lot fee-previously approved lot/boundaries not changed	lot/parcel	\$90		0		0	0
<b>WATER SUPPLY SYSTEM</b>							0
Individual or shared water supply system (existing/proposed)	unit	\$110		0		0	0
Multi-user water system	each*	\$400		0		0	0
*plus \$130 per hour for review in excess of 4 hours	hour	\$130	If Required	To be invoiced		0	
extension of existing system	Lineal foot	\$0.30		0		0	0
connection to approved existing distribution system	Lot/unit	\$90		0		0	0
<b>Public water system</b>							0
DEQ 1 or DEQ 3 Water System	component	Per ARM 17.38.106		To be invoiced		0	
Connection to System(per 17.36.106)	Lot/Unit	\$90		0		0	0
<b>WASTEWATER TREATMENT SYSTEM</b>							0
Existing WWT systems	Unit	\$90		0		0	0
New gravity few system	drainfield	\$120		0		0	0
New pressure-dosed, elevated sand mound, ET system, intermittent sand filter, ETA system, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	Design*	\$240		0		0	0
	drainfield	\$60		0		0	0
*plus \$130 per hour for review in excess of 2 hours	hour	\$130	If Required	To be Invoiced			
Gray water reuse, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation systems, experimental systems	unit	\$120		0		0	0
*plus \$130 per hour for review in excess of 2 hours	hour	\$130	If Required	To be invoiced			
New multiple user wastewater system (nonpublic)	Unit*	Per Type Above					0
*plus \$130 per hour for review in excess of 4 hours	Hour	\$130	If Required	To be invoiced			
New collection system	Lineal foot	\$0.30		0		0	0
Connection to new multi-user system	lot/unit	\$90		0		0	0
Public wastewater system per DEQ-2 or DEQ-4	component	Per ARM 17.38.106		To be invoiced	No	0	
Connection to System(per 17.38.106)	Lot/unit	\$90		0		0	0
<b>OTHER</b>							0
Review of Revised Lot Layout Document	lot	\$160		0		0	0
Deviation from Circular	Request*	\$250		0	No	0	0
*plus \$130 per hour for review in excess of two hours	hour	\$130	If Required	To be invoiced	No	0	
Waiver from Rules	request*	\$250		0	No	0	0
*plus \$130 per hour for review in excess of two hours	hour	\$130	If Required	To be invoiced	No	0	
Reissuance of original approval statement	request	\$70		0		0	0
<b>Nondegradation determinations/categorical exemption reviews</b>							0
individual/shared	drainfield	\$70		0		0	0
*plus \$130 per hour for review in excess of 2 hours	hour	\$130	If Required	To be invoiced			
multiple-user	lot/structure	\$40		0		0	0
*plus \$130 per hour for review in excess of 2 hours	hour	\$130	If Required	To be invoiced			
public	drainfield	Per ARM 17.38.106		To be invoiced	No		
Source Specific Mixing Zone Request	Drainfield	\$250		0		0	0
<b>Stormwater Review</b>							0
Simplified DEQ-8 Review	project	\$130		0		0	0
Standard DEQ-8 Review	project	\$220		0		0	0
	lot	\$50		0		0	0
*plus \$130 per hour for review in excess of 30 minutes	hour	\$130	If Required	To be invoiced			
Preparation of environmental impact statements/EAS		actual	If Required	To be invoiced	No		
<b>TOTAL REVIEW FEE DUE</b>				0			0
Fee Dispersement (CONTRACT as noted above)						0	0
Fee Dispersement (NON-CONTRACT = \$35/site eval)							
Minus Check # for 0				=Total due		0	