

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into by and between Broadwater County of 515 Broadway, Townsend, Montana 59644-2397, herein referred to as “Client” and Great West Engineering, Inc. of P.O. Box 4817, 2501 Belt View Drive, Helena, Montana 59601, herein referred to as “Consultant”.

The above named Consultant and the Client mutually agree as follows:

1. **Scope of Work:** Client desires Consultant to provide project management, professional engineering analysis and design, construction management, planning, grant writing and administration, and related services for various designated and undesignated public works projects within the Client’s jurisdictional area. Client further desires Consultant to act as an “on-call” County Engineer, to engage in general engineering services related to the Client’s infrastructure, in particular those activities associated with but not limited to roads, stormwater drainage, bridges, culverts, site designs, pedestrian paths, public buildings, hydraulic studies, planning services, traffic studies, environmental permitting and reviews, project funding assistance and other miscellaneous public works projects identified by the Client. Services may include but are not limited to planning, surveying, preliminary engineering reports, preliminary design, final design, public meetings, construction administration, inspection work, grant writing and/or grant administration and other technical and project development services that the Client may request on an as-needed basis (“Services”). Consultant shall perform the Services for the Client by specific Task Orders, which shall be in substantially the same form as attached Exhibit “A” and which must be signed by both parties before becoming Consultant’s responsibility.

2. **Effective Date and Time of Performance:** This Agreement takes effect upon its execution by both parties hereto and will terminate five (5) years after that date. Upon mutual written agreement by both parties, the Agreement may be extended beyond that time at one (1) year increments.

3. **Services and Materials:** The Consultant shall provide and furnish all services, materials, supplies, transportation, equipment, and supervision necessary to perform the scope of Services outlined and described for each Task Order in Exhibit “A” on a lump sum or time and material basis according to the hourly rates specified in Exhibit “B”. Both exhibits are

attached hereto and made a part of this Agreement. The Consultant shall not commence work on any Task Order until a signed letter or e-mail of Notice to Proceed is provided by the Client for such task. Consultant hereby certifies that Consultant has obtained all necessary professional licenses or certificates as specified or required by Montana law to perform the scope of Services for Client as specified in this Agreement. If Client requests Services outside Consultant's certification and/or licensure, Consultant will promptly inform Client.

4. **Compensation and Method of Payment:** The Client will pay the Consultant within thirty (30) days of receipt of an invoice or statement for Services performed. Any invoice not paid within thirty (30) days after the date of the invoice shall bear interest at the maximum allowable rate permitted by law.

Time and material invoices are based on the hourly rates set forth in Consultant's prevailing *Schedule of Billing Rates*, attached hereto as Exhibit B, which may be amended from time to time, plus expenses. Lump sum tasks will be invoiced on a percentage based on work completed to date. Services performed and costs expended by the Consultant for each Task Order shall not exceed the maximum amount authorized for the specific Task Order without additional express written authorization from the Client, unless an emergency requires the expenditure before such authorization can reasonably be obtained.

Expenses shall include out-of-pocket costs for technical, professional and clerical services; transportation; meals and lodging; laboratory tests and analyses; subcontractors; telephone; printing; copying; and binding. Expenses are billed at the actual invoice amount, and Client shall pay all governmental fees, permits and charges.

Consultant may stop work on the project and withhold delivery of all Services until Client's obligations then due and owing to Consultant are paid in full.

5. **Liaison:** Broadwater County Commission is the Client's liaison with the Consultant. Karl Yakawich, Project Manager, Great West Engineering, Inc., is the Consultant's liaison with the Client.

6. **Independent Contractor:** It is understood by the parties hereto that the Consultant is an independent contractor as that term is defined by Montana statute and current case law and as such is not an employee of the Client for purposes of federal or state taxes, social security (FICA) withholding, retirement plans or systems, worker's compensation, or any other obligation which an employer has a duty to perform on behalf of an employee under applicable federal, state, or local statutes, rules or regulations.

Consultant is and shall perform this Agreement as an independent contractor, and, as such, is responsible to the Client only as to the results to be obtained for the Services herein specified, and to the extent that the Services shall be performed in accordance with the terms of this Agreement. Consultant shall have and maintain complete control over all of its employees, being responsible for any required payroll deductions and benefits, such as, but not limited to, worker's compensation within statutory limits and unemployment insurance.

7. **Insurance:** Insurance shall be maintained by the Consultant. Prior to initiating Services on this project, Consultant shall provide the Client with a Certificate of Insurance or other documentary evidence that the attached insurance requirements will be met for the duration of this Agreement. Consultant shall provide proof of insurance to Client annually during the life of this Agreement and all extensions to it.
8. **Access to Records/Use of Documents:** The Consultant agrees to maintain reasonable records of its Services along with all records of performance and compliance with the terms of this Agreement and to allow access to these records by the Client, upon the Client's reasonable request for the same. Consultant retains ownership of all documents and work product under this Agreement, and the Client may only use such documents and work product in connection with the project. If requested, Consultant shall submit electronic copies of drawings or other information ("Electronic Files") to the Client. Consultant will remove its name, logo, and professional seals from the Electronic Files. Consultant will add a disclaimer to the Electronic Files that states; "This information shall not be altered or changed in any way, or adapted for any other purpose without Consultant's prior review and written approval. The Client and its recipients assume all risks associated with any alteration, change or adaptation of the Electronic Files, and Consultant shall not be liable for direct, indirect, incidental, or consequential damages relating to any alteration, change or adaptation."

9. **Confidentiality and Conflicts of Interest:** The Consultant agrees to hold in strict confidence any proprietary or other data, findings, results, or recommendations deemed to be confidential by the Client and treated as confidential by the Client and which have been obtained or developed by the Consultant in connection with the Services under this Agreement, unless disclosure is required by law, subpoena, or court order. Consultant warrants and agrees that Consultant does not and will not have any conflicts of interest regarding the performance of Services hereunder.
10. **Nondiscrimination:** The Consultant will not discriminate against any employee or applicant for employment relating to services to be provided hereunder on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with this project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.
11. **Subconsultants:** With the Client's approval, Consultant may retain subconsultants to perform Services.
12. **Extra work:** If the Client desires work to be performed beyond the Services described in this Agreement, the Client must authorize Extra Work by signing a written amendment. The obligation to perform the Extra Work becomes Consultant's obligation when Consultant signs the amendment.
13. **Modification and Assignability of Contract:** This Agreement may not be enlarged, modified or altered except upon written agreement signed by the parties hereto. The Consultant may not assign any rights or duties arising hereunder without the prior written consent of the Client.
14. **Termination:** Either party may, without cause and without prejudice to any other right or remedy, terminate this Agreement thirty (30) days after delivery of a written notice of termination to either party sent via certified mail to the proper address at the top of the first page of this Agreement. In the event of termination, Consultant will be paid the agreed fees for Services performed up to the date of termination and for materials which cannot be returned.

15. **Construction and Venue:** This Agreement is to be performed in the State of Montana and is made and entered into under the laws of the State of Montana and shall, in all respects, be interpreted, enforced, and governed under the internal laws (and not the conflicts of laws rules) of the State of Montana. In the event legal proceedings are commenced with regard to, arising out of or related to any provision of this Agreement, Client and Consultant agree that venue shall be in the judicial district that encompasses the (Client), within the State of Montana.

16. **Compliance with State, Federal, and Local Laws:** The Consultant shall observe and comply with federal, state, and local laws, ordinances and regulations applicable to the Services to be performed hereunder. Without limiting the generality of the foregoing, Consultant agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued thereunder, and applicable state laws and regulations enacted and adopted pursuant thereto. The Consultant shall take applicable and reasonably necessary precautions in performing the Services hereunder to prevent injury to persons or damage to property.

17. **Standard of Care:** Services provided by Consultant under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the Consultant's profession practicing contemporaneously under similar conditions in the locality of the project. Consultant makes no express or implied warranties.

18. **Client's Review of Submissions:** Client shall reasonably examine and respond to Consultant's submissions; and Client is obligated to give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any defect in the Consultant's Services.

19. **Indemnifications:** Consultant and Client shall indemnify and hold each other harmless from and against all claims, liabilities, actions, damages and expenses made by third parties related to or arising out of their respective intentional malfeasance or negligent performances in connection with the Project. Client acknowledges that Consultant is not responsible for construction means or methods and is not responsible for job site safety.

20. **Allocation of Risk:** To the maximum extent permitted by law, the Client agrees to limit the Consultant's liability for the Client's damages to the sum of \$50,000 or the Consultant's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Client waives all other damages against Consultant.
21. **Alternative Dispute Resolution:** Unresolved disputes, controversies and claims relating to performance of services shall be initially referred to mediation, prior to initiating any other adjudicatory option.
22. **Entire Agreement:** This Agreement contains the entire agreement between the parties, and no statements, promises or inducements made by either party, or agents of either party, which are not contained in this written Agreement shall be or become a part of the Agreement. This Agreement constitutes the complete and final understanding between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ___th day of October, 2020.

GREAT WEST ENGINEERING, Inc.

BOARD OF COUNTY COMMISSIONERS
BROADWATER COUNTY, MONTANA

By: _____

By: _____

William B. Lloyd, PE

Presiding Member

Title: President

By: _____

Member

By: _____

Member

Attest:

Clerk and Recorder
Broadwater County, Montana



EXHIBIT "A"
SPECIFIC TASK ORDERS

_____ 2020

Broadwater County
515 Broadway Street
Townsend, MT 59644-2397
Attn: Commissioners

Re: Task Order No. ____ - Brief Description
Broadwater County On-Call Engineering Services
Great West Engineering Project No. 1-20244

Dear Commissioners:

This letter constitutes *Task Order No. ____* to our *Agreement for Professional Services* dated October __, 2020 for the above-referenced Project. Great West’s scope of services, schedule of fees, and schedule for completion of these services (“Services”) are as follows:

See Attachment 1 - Scope of Services OR Insert scope here

As compensation for these Services, Client shall pay Great West [a lump sum amount of \$_____] or [at hourly rates according to the Schedule of Billing Rates, plus expenses, for an estimated total amount of \$_____] as determined by the *Consultant Agreement*. This amount cannot be exceeded without Client’s prior written approval.

Please have an authorized representative sign both originals of this letter and return one executed original to Great West at the following address:

Great West Engineering, Inc.
P.O. Box 4817
Helena, MT 59604

Acknowledgement. This *Task Order No. __* is agreed to by the parties, is effective as of the date of this letter, and becomes a part of the *Agreement for Professional Services* between the parties, which is dated _____.

GREAT WEST ENGINEERING, INC.

BROADWATER COUNTY

William B. Lloyd, PE

Authorized Name, Title

President

Date



**EXHIBIT B
2020 SCHEDULE OF BILLING RATES**

	<u>Hourly Rate</u>
Clerical Support.....	\$65
Project Assistant	77
Project Coordinator	88
Project Administrator	125
Ecologist	98
GIS Specialist	88
Resident Project Representative 1.....	114
Resident Project Representative 2.....	125
Designer	107
Senior Designer	120
Senior Technician/Planner	130
Senior Hydrogeologist.....	156
Engineering Tech	79
Engineer 1	113
Engineer 2	120
Engineer 3	125
Engineer 4	140-152
Engineer 5	174-185
Engineer 6.....	179

Reimbursable Expenses include but are not limited to:

Auto Mileage.....	\$.65/mile
Outside Consultants, Fees, Shipping, Supplies, Travel and Per Diem	1.10x cost

*These rates are effective **January 1, 2020**. They are subject to update in January 2021.