**THIS CONTRACT** is entered into between the State of Montana, Department of Environmental Quality, (State), and City/Town/Town of [CITY/TOWN/TOWN NAME], (City/Town), collectively the Parties, for the purpose of providing plan and specification review of extensions or alterations as authorized by §75-6-121(1)(b), Montana Code Annotated (MCA) (2021) and implementing Administrative Rules of Montana (ARM).

# EFFECTIVE DATE, DURATION, AND RENEWAL

* 1. **Contract Term**.This Contract’s initial term is from the date of contract execution, with effective date being the date of the latter of two signatures, through insert date, unless terminated earlier as provided in this Contract. This Contract is not binding on the State unless the State's authorized representative, the Agency Procurement Officer for the Department of Environmental Quality, or their designee, has signed it.
	2. **Contract Renewal**. The State may renew this Contract under its then-existing terms and conditions, subject to potential adjustments to fees described in paragraph 1.3, in 1-year intervals, or any other interval that is advantageous to the State. This Contract, including any renewals, may not exceed a total of 7 years
	3. Cost increases under this Contract will be as determined under approved changes in ARM 17.38.106 as defined in Section 5.

# SCOPE

* 1. This Contract constitutes delegation of review for extensions or alterations of existing public water and sewer systems, as those terms are defined by §75-6-102, MCA, that involve 50 or fewer connections, as provided by §75-6-121(1)(b), MCA. This Contract may not be construed as a delegation of any other authority, including review of small systems under §75-6-121(1)(a), MCA, or of subdivision review under §76-4-104(3), MCA, or ARM 17.36.116.
	2. An approval by City/Town under Section 3.6 of this Contract may be used to satisfy the requirements of §76-4-131, MCA. However, nothing in this Contract may be construed as altering or obviating the subdivision review processes established under §76-4, MCA, and the associated administrative rules in ARM 17.36, including §§76-4-125(1)(d) and -127, MCA.
	3. Review of extensions or alterations to community systems under this Contract shall be limited to those parts of public water supply systems addressed in Chapters 6 and 8 of Circular DEQ-1, and those parts of public sewage systems addressed in Chapters 30 and 40 of DEQ-2.
	4. ARM 17.38.101(17) states that a public water supply review that is part of a subdivision has to be reviewed under the subdivision rules. Specifically, reviews for extensions or alterations of existing public water and sewer systems under this Contract must be conducted in accordance with §76-4-121, MCA. Construction of water and sewer facilities to a property is not allowed unless a Certificate of Subdivision Approval (COSA) has been issued (§76-4-114, MCA), an MFE has been filed (§76-4-127, MCA), or the subdivision qualifies for an exemption under§76-4-125, MCA. This provision also applies to a flushing device that needs to be located out of the Right of Way.

# REQUIRED SERVICES

* 1. City/Town agrees to perform detailed plan and specification review of extensions and alterations of community public water supply and sewage systems that involve 50 or fewer connections (collectively referred to as “public systems”) for compliance with the public water supply laws as follows:
		1. Perform plan and specification review for public systems described in 2.1 above within the City/Town limits, except for public systems that have been designed by City/Town or its agents. All reviews performed under this Contract must comply with the following laws: §75-6, MCA, ARM 17.38, and DEQ Circulars 1 and 2. Based on availability and agreement between the applicant and City/Town, electronic processing of plan and specification reviews is acceptable.
		2. Ensure that the proposed public system(s) plans and specifications are submitted directly to City/Town for review. Upon receipt of each submittal, City/Town will contact DEQ to obtain the required tracking number.
		3. Develop and implement procedures to record and track all plans and specifications submitted to City/Town for review and approval.
		4. Maintain records as required in paragraph (2) of Section 6.5 of the Contract. Records may include, as applicable, a checklist of specific design standards applied to each review, calculations, notes, correspondence, documentation of the rationale for decisions, and any other relevant information.
		5. Provide a written report to the applicant within timeframes established in ARM 17.38.101. The report shall contain the results of the review and itemize any deficiencies in the submittal, including references to relevant sections of the design standards.
		6. Provide the State with written waiver or deviation requests whenever the applicant requests a deviation pursuant to ARM 17.38.101(4)(j). All waiver or deviation requests must be approved by the State in writing, prior to City/Town approval, and must be submitted in the State’s standard format, including supporting justification from the applicant and a recommendation from the review engineer.
		7. Provide the applicant with a written approval letter and a set of approved plans and specifications when the proposed improvements comply with all applicable State laws, rules, and design standards.
		8. Ensure that approved plans and specifications are stamped as being approved and signed and dated by the person issuing the approval.
		9. Upon completion of the project, provide the State with a certification letter and a complete set of certified “as-built” drawings as defined under ARM 17.38.101(14).

# COMPETENCIES

* 1. The City/Town must ensure that all reviews are performed by a professional engineer (PE) who has the following qualifications:
		1. Is licensed in the State of Montana as defined by the Board of Professional Engineers and Land Surveyors under §37-67-301, MCA;
		2. Meets the education and experience requirements as described under §37-67-323, MCA.
		3. Is an employee of or contractor to the City/Town.
	2. Has one year of relevant work experience in permitting, design, or review of engineering plans and specifications with public water or wastewater systems .A professional engineer may not conduct the review of any application where the engineer completed the engineering design, or had any contribution to the design, for the owner.

# CONSIDERATION/PAYMENT

* 1. In consideration of services rendered under this Contract, the State agrees to reimburse City/Town, on a quarterly basis, 90% of the fees set out in the most current version of ARM 17.38.106 for applications reviewed by City/Town, and for site evaluations and related services. The State will not reimburse City/Town for any component of a review not performed by City/Town. The current fee schedule is included as Attachment A to the contract. Any future change in the ARM-defined fee will be updated through a written modification to the Contract mutually agreed upon by the Parties.
	2. The State understands and acknowledges that the City/Town is responsible for all costs of administering the Required Services under this Contract, including staff salaries and benefits, transportation costs, and internal administrative expenses and that the fees agreed to in paragraph 5.1 for completing the required services under this Contract will be used to partially offset those costs.
	3. City/Town shall submit a billing statement listing all reviews completed under this Contract on a quarterly basis at the end of March, June, September, and December throughout the term of this contract and any modifications.
	4. Under 17-8-242, MCA, the State shall reimburse City/Town within 30 days after receipt of each billing statement, contingent upon the following:
		1. Payment for questioned costs may be withheld pending resolution and may require rebilling by City/Town or submittal of additional documentation, including any records required to be kept by City/Town;
		2. The State may withhold payment if City/Town has not performed the work as defined under the Contract. Such withholding cannot be greater than the additional costs to the State caused by City/Town lack of performance.

# ACCOUNTING, AUDIT AND RETENTION OF RECORDS

* 1. City/Town 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 consistent with generally accepted accounting principles (GAAP).
	2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, or their authorized representatives, have the right of access to accounting records of City/Town for purposes of inspections, audit, excerpts, or transcripts of funds received and expended by City/Town pursuant to this Contract. City/Town shall maintain the records at the address of its liaison in Section 16 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 City/Town retains the records under paragraph 6.5. This Contract may be terminated by the State upon any refusal of City/Town to allow access to such records.
	3. City/Town 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.
	4. Audits conducted under this section must be consistent 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.
	5. All books, records, reports, accounting, and other documents maintained by City/Town 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. City/Town may not destroy any records without first offering the records to the State.
	6. If an audit shows that City/Town 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, City/Town must correct the areas of non - compliance within six months after the State receives the audit report.

# ASSIGNMENT, TRANSFER

# The Parties agree there will be no assignment or transfer of this Agreement, or of any interest in this Agreement.

# HOLD HARMLESS, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

* 1. Each party shall be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent required by law, and shall indemnify and hold the other party harmless from any such liability.
	2. City/Town shall ensure professional engineers are covered for professional liability to cover errors and omissions related to their review of public water supply applications in the amount of $1.5 million per occurrence to indemnify the State for City/Town’s wrongful or negligent acts or omissions, or those of its officers, agents, or employees.
	3. Each party shall provide the other party with a certificate of insurance upon request.

# COMPLIANCE WITH WORKERS' COMPENSATION ACT

# City/Town shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana consistent with Sections 39-71-401, 405, and 417, Montana Code Annotated. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither City/Town nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal.

1. **COMPLIANCE WITH LAWS**

City/Town 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. City/Town 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.1. 111-148, 124 Stat. 119]. Under 49-3-207, MCA, and Executive Order No. 04-2016 City/Town 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.

# RETIRED STATE EMPLOYEE REQUIRED EMPLOYER REPORTING

Under 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. City/Town’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.

# CONFLICT OF INTEREST

* 1. For the purposes of the Montana Code of Ethics, City/Town and each of its employees and subcontractors, is a "public employee" for the purposes of this Section. As such, City/Town 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, 105, 121,131 and 201, Montana Code Annotated.
	2. If the State discovers that an employee of City/Town or subcontractor is in violation of this Section, the State may, after consulting with City/Town, terminate this Contract or take other appropriate measures to address the conflict and City/Town 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.

# DISCLOSURE

* 1. City/Town 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.

City/Town 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. City/Town 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 Section 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 Section 2-2-201, MCA, during employment. City/Town 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.

# CONTRACT TERMINATION

* 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 a 60-day written notice to cure and the demanded performance is not completed.
	2. **Termination for Convenience.** Either Party may, by written notice to the other Party, terminate this Contract without cause and without incurring liability in the event the services are no longer required. Written notice must be provided 30-days before the effective date of termination. The State shall ensure transfer of any outstanding fees to City/Town no later than 15 days after the effective date of termination. Should the State initiate termination, the City/Town shall turn over any plans and specs to the State as of the date of termination, regardless of their status.

Neither Party shall be liable to the other for any additional 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. Both Parties shall be responsible for ensuring that owners are made aware that plans and specifications must be delivered directly to the State after the effective date of termination.

* 1. **Reduction of Funding**. Under Section 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 City/Town the date the State's termination shall take effect. The State shall not be liable to City/Town for any payment that would have been payable had the Contract not been terminated under this provision. State shall be liable to City/Town only for the payment, or prorated portion of that payment, owed to City/Town up to the date the State's termination takes effect. This is City/Town’s sole remedy. The State shall not be liable to City/Town 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.
	2. Any termination of this Contract is subject to the exception that Section 4, relating to retention of and access to records, remain in effect.
	3. **Event of Breach by City/Town**.Any one or more of the following City/Town acts or omissions constitute an event of material breach under this Contract:
		1. products or services furnished fail to conform to any requirement,
		2. failure to submit any report required by this Contract,
		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 and breaching Section 17.1 **Technical or contractual Problems** obligations; or
		4. financial inability to perform its obligations under this Contract.
	4. **Event of Breach by State**. The State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.
	5. **Actions in Event of Breach**. Upon a material breach by either party, the non-breaching party must provide a notice to cure as described in section 12.1 and, if not cured within 60 days may;
		1. terminate this Contract as stated in section 12, and pursue any of its remedies under this Contract, at law or in equity; or
		2. treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law or in equity.

# 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.

# 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 any appropriate remedies for any future breach. Neither party may assert the defense of waiver in these situations.

# CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State’s prior written consent. In DEQ’s discretion, products or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at City/Town’s expense.

# LIAISON AND SERVICE OF NOTICES

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

**The PWS Section Supervisor** will be the liaison for the State

Water Quality Division

PO Box 200901

Helena MT 59620-0901

Telephone: 406-755-8956

E-mail:DEQ-EOC@mt.gov

**Name** will be the liaisons for the City/Town

City/Town Name

Address

Telephone

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

* 1. **Notifications**. The State and City/Town liaisons may be changed by written notice to the other party. Any notices, requests, or complaints must first be directed to the liaisons of record in writing. Written notifications may be sent by via certified/return receipt mail or email. All notifications will be effective upon receipt; either by the date the certified mail is signed for or the received date of the email.

# MEETINGS

* 1. **Technical or Contractual Problems**. City/Town shall meet with the State's liaison, or other personnel to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by City/Town and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise; such meetings will be coordinated by the State. For general status updates, the State shall make every attempt to provide City/Town a minimum of three full working-day’s-notice of meeting date, time, location, and means (teleconference or virtual meeting). Meetings to discuss urgent matters will be arranged on an as-needed basis. In DEQ’s discretion, City/Town’s consistent failure to participate in problem resolution meetings, City/Town’s missing or rescheduling two consecutive meetings, or City/Town’s failure to make a good faith effort to resolve problems may result in termination of the Contract.

# TRANSITION ASSISTANCE

If this Contract is not renewed at the end of the original term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, City/Town must provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay City/Town for any resources utilized in performing such transition assistance at the most current contract rates. If there are no established Contract rates, then the rate must be mutually agreed upon. If the State terminates a project, or this Contract for cause, then the State may offset the cost of paying City/Town for the additional resources City/Town utilized in providing transition assistance with any damages the State may have sustained as a result of City/Town’s breach.

# CHOICE OF LAW AND VENUE

Under Section 18-1-401, MCA, Montana law governs this Contract. If there is a dispute under this Contract, the Parties will meet and attempt to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree that before resorting to litigation, they will attempt to settle the dispute by nonbinding mediation through a mutually agreed upon neutral mediator.

For any litigation regarding this Contract, both parties waive objection to personal jurisdiction. Venue will only be in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Each party must pay its own costs and attorney fees.

# SCOPE, ENTIRE AMENDMENT, AND INTERPRETATION

* 1. **Contract**. This Contract consists of 9 numbered pages and Attachment A.
	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 writing, signed by the parties.

# WAIVER

The waiver or failure to enforce any provision of this contract will not operate as a waiver of any future breach of that provision or any other provision.

# EXECUTION

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

**CITY/TOWN**

 BY:

DATE NAME, Title

Address

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

 BY:

DATE VICKI J. WOODROW, Contracts Officer

Fiscal Services

Metcalf Building, Room 213

PO Box 200901

Helena, MT 59620-0901

Approved as to Legal Content:

 BY:

DATE DEQ Attorney