

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana **The Department of Environmental Quality**, (hereinafter referred to as DEQ), and **Lewis And Clark County**, (hereinafter referred to as the "County"). This Contract is entered into for the purpose of delegating to the County, pursuant to Section 76-4-104, MCA, the authority to review certain water supply, wastewater, solid waste and stormwater systems in subdivisions. The County will review subdivision applications for completeness and to determine whether certain systems, which are identified in 4.1.3.4 and Attachment A comply with the Sanitation in Subdivisions Act, the Montana Water Quality Act, and applicable administrative rules and Circulars. The purpose of this Agreement is also to provide reimbursement to the County 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 Agreement is a cessation or waiver of any of the counties 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:

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

1.1. Contract Term. This Contract shall take effect on **July 1, 2015** and terminate on **June 30, 2017**, unless terminated earlier in accordance with the terms of this Contract.

1.2. Contract Renewal. This Contract may, upon mutual agreement between the parties and according to the terms of the existing Contract, be renewed in **2 year intervals**, or another interval that is advantageous to DEQ. This Contract may not exceed any time limits imposed by statute.

3. COST/PRICE ADJUSTMENTS

3.1. Cost Adjustments by change in ARM 17.36.804. County will be reimbursed at rates established in ARM 17.36.804.

4. SERVICES AND/OR SUPPLIES

4.1. County agrees to:

4.1.1. Initial Receipt of Application and General Requirements. County shall **date stamp at least the first page of the application so DEQ can accurately enter the application into its database for tracking purposes. County shall send a copy of the first two pages of the application along with fees to DEQ. County shall check for waivers or deviations and forward these to DEQ within 5 working days.** DEQ shall email the County an EQ number. All information received from the applicant must be date stamped by the County for tracking purposes. County shall notify DEQ by email when County denies and receives additional information. County shall send to DEQ electronic versions of all denial letters and approvals.

4.1.2. Completeness Review. County shall review all subdivision applications for completeness using forms approved by DEQ. If a subdivision application is incomplete, County shall submit a denial letter to the applicant. The letter must contain the results of the County's review and must specify any deficiencies in the application with references to sections of applicable rules and design standards. If the application is incomplete the County shall submit a denial letter to the applicant

and send DEQ both an electronic & a hard copy of the denial letter.

4.1.3. Compliance Review. For complete applications, County shall perform a detailed review of the water supply, wastewater, stormwater, and solid waste systems identified in Attachment A of this Agreement. The purpose of the detailed review shall be for the County 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.

4.1.3.1. County review of wastewater systems must include review for compliance with the nondegradation requirements of the Water Quality Act and the state nondegradation rules.

4.1.3.2. County may not perform compliance review of water supply, wastewater, stormwater, or solid waste systems other than those identified in Section 4.1.3.4 and Attachment A of this Agreement.

4.1.3.3. County shall review the environmental assessment information provided by the applicant and shall be available to consult with DEQ regarding the completeness and accuracy of such information.

4.1.3.4. County shall perform compliance review, pursuant to Section 4.1.5 only for the systems indicated in Attachment A. County review authority under this Agreement does not extend to public systems or those required by state laws, rules, or Circulars, to be submitted by a Professional Engineer.

4.1.4. Time for Review. Within 45 days of its receipt of a subdivision application, County shall either:

4.1.4.1. determine that the application is incomplete and issue a notice to the applicant; or

4.1.4.2. submit to DEQ the County's completed and signed review of the application, with all materials required by this Section.

4.1.4.3. If the subdivision includes public systems, any system not reviewable by County, or any system the County chooses not to review, County shall send the appropriate materials to DEQ for review within 5 days of receipt by County.

4.1.5. Contents of County Submittals to DEQ. County shall submit to DEQ the following materials regarding applications for subdivisions:

4.1.5.1. A completed application form signed by the owner and any information attached to the form;

4.1.5.2. Copies of all correspondence and other documents regarding the proposed subdivision. The documentation must provide adequate evidence that the plans and specifications for the proposed subdivision are in compliance with all applicable state laws, rules and Circulars;

4.1.5.3. The review fee and the subdivision review fee calculation form;

4.1.5.4. A completed and signed subdivision review checklist, in a form approved by DEQ, together with calculations, notes, and any other relevant information that provides adequate evidence that County has reviewed the application to ensure compliance with appropriate design standards;

4.1.5.5. A completed and signed nonsignificance determination checklist and all supporting documentation;

4.1.5.6. A certification, in a form approved by DEQ, stating that, based upon County'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

4.1.5.7. If County recommends approval of a subdivision application, a

completed and signed certificate of subdivision approval.

4.1.5.8. 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 DEQ can enter water quality data and then forward it to GWIC.

4.1.6. **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 County review in Attachment A, the plans and specifications for the proposed subdivision would require a waiver from the DEQ subdivision rules or a deviation from the requirements of the DEQ Circulars, County 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 DEQ, together with a justification for the waiver/deviation from the applicant and County's recommendation.

4.1.6.1. County shall submit the waiver/deviation request to DEQ within 20 days of the County's receipt of the request and appropriate fees. DEQ shall respond to the waiver/deviation request within 20 days of DEQ's receipt of the request.

4.1.6.2. County may not recommend approval of a subdivision application until all necessary waiver/deviation requests have been approved by DEQ.

4.1.7. **DEQ Consultation.** Upon request of the County, DEQ agrees to provide consultation to County regarding the subject matter of this agreement.

4.1.8. **Site Evaluations.** County shall perform site evaluations and related services for subdivisions, pursuant to ARM 17.36.804(3), as mutually agreed by County and DEQ.

4.1.9. **Revised Lot Layout Review.** County may perform the review of minor changes to a certificate of subdivision approval made through a revised lot layout document. Unless otherwise provided by DEQ rules, only the following changes may be made through the revised lot layout procedure:

4.1.9.1. 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 separation distances 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 location meets separation distances and site evaluation criteria, and the wastewater system is sufficient in terms of capacity and dependability.

4.1.9.2. 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

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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 can not be overcome. If the Certificate of Subdivision Approval is for a 3 bedroom home the County may issue a permit for a larger home unless there are limitation caused by the soils, slope etc.

4.1.9.3. The revised lot layout document must be submitted to the Department and filed with the Clerk and Recorder within 30 days of approval.

4.2. DEQ oversight of the County's review of subdivision applications shall be limited to the following:

4.2.1. DEQ shall determine, by reviewing the County review checklist or by other means, whether the County has conducted a completeness review of the application and whether the County has completed compliance review of all systems designated in Section 4.1.3.4 and Attachment A. If DEQ determines that the County has not conducted a completeness review or has not reviewed all designated systems, DEQ may either return the application to the County for further review or may itself complete the review. If the County fails to conduct any part of the review required under this Agreement within the **45-day** review period for the application, DEQ shall withhold the portion of the fee applicable to that portion of the review.

4.2.2. DEQ may, during the **55-day** review period, check the accuracy of the County's review of subdivision applications, for purposes of determining County's compliance with the reviewer qualification and performance standards set out in Section 5. DEQ accuracy checks shall be limited to 10% of the applications submitted to DEQ by County, except that DEQ may also review an application upon the County's request, or when DEQ has reason to question the County's determination for a particular submittal. If DEQ identifies possible errors or discrepancies in the County's review of a specific application, DEQ shall consult with the County's reviewer. If, after consultation with the County, DEQ does not agree with the County's determination regarding an application's compliance with applicable state laws, rules and Circulars, DEQ may, prior to the expiration of the review period for the application, modify the County determination regarding the state requirements.

4.2.3. In addition to or instead of checking County's review of applications during the review period, DEQ may conduct an annual audit of a representative sample of applications reviewed by County, for purposes of determining County's compliance with the reviewer qualification and performance standards set out in Section 5.

5. KEY PERSONNEL; REVIEWER QUALIFICATIONS AND PERFORMANCE STANDARDS

5.1. County review of subdivisions under this Agreement may be performed only by **Frank Preskar, RS** or by another person approved by DEQ. In the event a DEQ-approved reviewer becomes unavailable to work under this Agreement, County shall immediately notify DEQ of the fact and shall name a proposed substitute, along with justification in sufficient detail to allow DEQ to evaluate the ability of the substitute. County may not use a substitute until DEQ has approved the substitute in writing, which approval shall be deemed a part of this Agreement.

5.2. Minimum qualifications. County reviewers must meet the qualifications set out in ARM 17.36.116, to include:

- 5.2.1. Registered sanitarian or registered professional engineer;
- 5.2.2. Pass, with a score of at least 90%, the current written exam administered by the DEQ; and
- 5.2.3. Minimum of 1 year's experience performing subdivision review as provided in ARM 17.36.116(2)(b).

5.3. Training. DEQ may require County 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.

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

5.5. Remedies. If the County fails to meet the performance standards set out in Section 5.4 above, DEQ may, after consultation with County, issue a written determination that the County reviewer is not qualified to review subdivisions under this Agreement. If disqualification of the reviewer results in the County lacking a qualified person to review subdivisions, then the DEQ may terminate this Agreement pursuant to Section 15.

6. CONSIDERATION/PAYMENT

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

7. ACCESS AND RETENTION OF RECORDS

7.1. Access to Records. The County agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Montana Code Annotated § 18-1-118.)

7.2. Retention Period. The County agrees to create and retain records supporting the services performed by the County listed in section 4.1 for a period of eight years after either the completion date of this Contract or the conclusion of any claim, litigation or exception relating to this Contract taken by the State of Montana or a third party.

8. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The County may not assign, transfer or subcontract any portion of this Contract without the express written consent of DEQ. The County shall be responsible to DEQ 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 the County. No contractual relationships exist between any subcontractor and DEQ.

9. HOLD HARMLESS/INDEMNIFICATION & INSURANCE COVERAGE

Each party agrees to 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 agrees to indemnify and hold the other party harmless from any such liability.

Each party agrees to maintain reasonable coverage for such liabilities, either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other party upon request.

10. REQUIRED INSURANCE

10.1. General Requirements. The County 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 County, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2. Specific Requirements for Commercial General Liability.

The County shall purchase and maintain coverage 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 County or its officers, agents, representatives, assigns or subcontractors.

10.3. Certificate of Insurance/Endorsements.

A certificate of insurance from an insurer with a Best's rating of no less than B++, indicating compliance with the required coverages, was received by the Department of Environmental Quality prior to execution of this Contract. The County must notify DEQ immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. DEQ reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither the County nor its employees are employees of DEQ. County and any subcontractor must comply with the provisions of the Montana Workers' Compensation Act while performing work for DEQ in accordance with sections 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 County's exemption, or documentation of corporate officer status. This insurance or exemption must be valid for the entire term of the Contract. If the insurance or exemption used as proof of compliance expires during the term of this Contract or a renewal, County shall immediately send proof of current insurance/exemption.

12. COMPLIANCE WITH LAWS

The County and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, 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. Any subletting or subcontracting by the County subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the County agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

13. CONFLICT OF INTEREST

For the purposes of the Montana Code of Ethics, County and each of its employees and subcontractors is a "public employee" for the purposes of this Contract. As such, County 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.

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

14. DISCLOSURE

County agrees to notify DEQ 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

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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.

County 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 of Montana in the last two years prior to the effective date of this Contract. County further certifies that, pursuant to §2-2-105(3), MCA, no former employee of DEQ, 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 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 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. County 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 effective date of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

15. CONTRACT TERMINATION

15.1. Termination for Cause with Notice to Cure Requirement. DEQ may terminate this Contract for failure of the County to perform any of the services, duties, or conditions contained in this Contract after giving the County written notice of the stated failure. The written notice must demand performance of the stated failure 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.

15.2. Reduction of Funding. The County understands and agrees that DEQ, as a state agency, is dependent upon state appropriations for its funding; and that actions by the Montana Legislature may preclude funding this Contract through the completion date stated in Section 2. Should such a contingency occur, the parties agree that DEQ may set a new completion date, depending upon the funding remaining available for services rendered and expenses incurred to 5:00 pm of the revised completion date.

16. LIAISON AND SERVICE OF NOTICES

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

Barbara Kingery will be the liaison for DEQ.
Permitting & Compliance Division
PO Box 200901
Helena MT 59620-0901
Telephone: 406-444-5368
Fax: 406-444-1923
E-mail: bkingery@mt.gov

Frank Preskar RS will be the liaison for the County.
316 N Park RM 230, Helena MT 59623
Telephone: 406-447-8356 - Fax: 406-447-8398
E-mail: Fpreskar@lccountymt.gov

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

17. INTERPRETATION OF LAW, REGULATIONS AND CHOICE OF VENUE

17.1. Interpretations of state laws and regulations relating to subdivision review are the sole responsibility of DEQ. County laws and regulations pertaining to subdivision review will be interpreted solely by County. This Agreement is governed by the laws of Montana.

17.2. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this 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. (See Mont. Code Ann. § 18-1-401.)

18. SCOPE, AMENDMENT AND INTERPRETATION

18.1. Contract. This Contract consists of 8 numbered pages and an Attachment A.

18.2. Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

19. EXECUTION

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

Lewis And Clark County

DATE

BY:

Andy Hunthausen, Chairman
Lewis and Clark County Commissioners
316 N Park Ave
Helena MT 59623

Federal Employer's ID No.: 81-6001383

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

06/17/15
DATE

BY:

Vicki J. Woodrow
VICKI J. WOODROW, Contracts Officer

Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

6-8-15
DATE

BY:

Paul Nicol
Paul Nicol, DEQ Attorney

ATTACHMENT A

Water supply systems

- ☒ Individual, and shared wells, cisterns
- ☐ Nonengineered water supplies, Multiple user wells, cisterns 5 or less connections
- ☐ Connections to existing municipal 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
- ☐ Nonengineered wastewater systems Multiple user 5 or less connections or less than 2,500 gpd
- ☒ Evapotranspiration and evapotranspiration absorption systems
- ☐ Connections to existing municipal public systems

Stormwater

- ☒ Nonengineered stormwater systems (ARM 17.36.310)

Solid Waste

- ☒ Off-site disposal

Revised Modifications

- ☒ Revised lot layouts modifications