

**AGREEMENT  
FOR  
SEPTIC TANK PUMPING SERVICE  
(2-Year Contract)**

This Contract is by and between [NAME OF CONTRACTOR] (Contractor) and THE FLATHEAD COUNTY WATER DISTRICT NO. 1-EVERGREEN (Owner). Owner and Contractor hereby agree as follows:

**ARTICLE 1—THE WORK**

*1.01 Work*

- A. Work includes all labor, materials, equipment, services, and documentation necessary to perform the Work defined herein.
- B. The District intends to complete the pumping and disposal for the number of tanks/sizes specified in the Bid Form. The District will award a single contract to one Contractor for Schedule I tanks and a portion of the Schedule II tanks if the Contractor provides a bid for a portion of the tanks on this schedule. Provided the District receives multiple bids for Schedule II tanks, the District will award additional contracts based on the number of tanks bid by each Contractor.
- C. The Contractor shall complete all the Work as specified or indicated in the Contract Documents. The work scope for each contract will be completed after the District makes award which will be based on the bid quantity and prices provided by each Contractor. The Project is generally described as follows:

**Schedule I: 2000-Gallon & 3000 Gallon Tanks:** Only one Contractor will be awarded Schedule I work. This section will be deleted for other Contracts for Schedule II work only.

Item No.	Description	Unit	Contract Quantity
MP-1	Pumping and Disposal of 2,000 Gallon Tanks	EA	19
MP-2	Pumping and Disposal of 3,000 Gallon Tanks	EA	31

**Schedule II: 1000 Gallon Tanks:** This section will be completed based on the number and price of tanks bid by each Contractor as determined by the District.

Item No.	Description	Unit	Contract Quantity
MP-3	Pumping and Disposal of 1,000 Gallon Tanks	EA	TBD

- 2. **Completion of Condition and Safety Inspections at each tank pumped on the District provided form (Attachment A) including:**
  - **Condition of tank**
  - **Condition of lid**
  - **Condition of Outflow Baffle**
  - **Notification if any maintenance is required**
  - **Monthly progress reports on status of completed septic tanks pumped.**

3. **The Site (Site) of the Work includes property, easements, and designated work areas located throughout the unincorporated area of Evergreen.**
4. **Contractor will be given a list of tanks to be pumped during the two-year Contract. All tanks must be pumped by June 30, 2026. The Contractor is responsible for contacting respective property owners and notifying each customer of the date their tank will be pumped and inspected.**
5. **Contractor shall contact the District’s Field Supervisor if any problems or issues are encountered with any customers or in the performance of these services.**

## **ARTICLE 2—CONTRACT DOCUMENTS**

### *2.01 Intent of Contract Documents*

- A. It is the intent of the Contract Documents to describe a functionally complete work scope. The Contract Documents do not indicate or describe all the Work required to complete the Project. Additional details required to complete the services herein coordinated with Owner and Engineer if any questions arise.
- B. The District Engineer in consultation with the District’s Field Supervisor will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work under the Contract Documents. During the performance of the Work and until final payment, Contractor and Owner shall submit to Engineer all matters in question concerning the requirements of the Contract Documents or relating to the acceptability of the Work. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- C. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media versions) prepared by Engineer or its consultants.
- D. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- E. Nothing in the Contract Documents creates any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity.

### *2.02 Contract Documents Defined*

- A. The Contract Documents consist of the following documents:
  1. This Agreement.
  2. Performance bond. N/A
  3. Payment bond N/A
  4. Specifications as listed in the Specifications Table of Contents N/A
  5. Drawings as listed on the Drawing Sheet Index N/A.

6. Addenda.
7. Exhibits to this Contract (enumerated as follows):
  - a. Invitation to Bid.
  - b. Bid Form
  - c. MDEQ Pumper License
  - d. MDEQ Written Approval of Disposal Site
  - e. Certificate of Liability Insurance Accord
8. The following which may be delivered or issued on or after the Effective Date of the Contract:
  - a. Notice to Proceed (EJCDC® C-550).
  - b. Work Change Directives (EJCDC® C-940).
  - c. Change Orders (EJCDC® C-941).
  - d. Field Orders (EJCDC® C-942).

### **ARTICLE 3—DISTRICT ENGINEER**

#### *3.01 District Engineer*

- A. The District Engineer for this Project is THE DISTRICT'S ENGINEER Jeff Walla contact 406-257-5861.
- B. The primary point of contact for the project for scheduling and any issues in performing the services in this contract is THE DISTRICT'S FIELD SUPERVISOR Mark James contact 406-257-5861.

### **ARTICLE 4—CONTRACT TIMES**

#### *4.01 Contract Times*

- A. The Work will be completed by June 30, 2026 and ready for final payment after the Contractor submits his final invoice and required reporting to the District for payment.

#### *4.02 Liquidated Damages*

- A. Liquidated damages will not be assessed under this contract. However, the District reserves the right to terminate this Agreement for convenience or the Contractor's failure to complete the designated services within the specified time frames established herein.

#### *4.03 Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times or Contract Price.
- B. The contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or its subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those

for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.

- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor’s subcontractors or suppliers.

**4.04 Progress Schedules**

- A. The Contractor shall develop a pumping schedule and submit it to the District Field Supervisor for review and comment before starting Work. The contractor shall modify the schedule in accordance with the Engineer’s comments. The proposed schedule can be a simple work plan which establishes the Contractor’s anticipated efforts to progress through the services on this contract (ie. Number of tanks per week or month).
- B. The Contractor shall update and submit the progress schedule to the Field Supervisor each month. Owner may withhold payment if Contractor fails to submit the schedule. Contractor shall submit a progress report on the specific tanks pumped each month with their monthly invoicing.

**ARTICLE 5—CONTRACT PRICE**

**5.01 Payment**

- A. Owner shall pay Contractor, in accordance with the Contract Documents, at the following unit prices for each unit of Work completed:

**Schedule I: 2000-Gallon & 3000 Gallon Tanks:** Only one Contractor will be awarded Schedule I work. This section will be deleted for other Contracts for Schedule II work only.

Item No.	Description	Unit	Contract Quantity	Bid Unit Price	Bid Amount
MP-1	Pumping and Disposal of 2,000 Gallon Tanks	EA	19	\$	\$
MP-2	Pumping and Disposal of 3,000 Gallon Tanks	EA	31	\$	\$
<b>Total Amount of Schedule I Bid</b>					\$

**Schedule II: 1000 Gallon Tanks:** This section will be completed based on the number and price of tanks bid by each Contractor as determined by the District.

Item No.	Description	Unit	Contract Quantity	Bid Unit Price	Bid Amount
MP-3	Pumping and Disposal of 1,000 Gallon Tanks	EA		\$	\$
<b>Total Amount of Schedule I Bid</b>					\$

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Engineer.

**ARTICLE 6—BONDS AND INSURANCE**

6.01 Bonds N/A

6.02 Insurance

A. When Contractor delivers the signed counterparts of the Contract to Owner, Contractor shall furnish certificates, endorsements, and any other evidence of insurance requested by Owner. Insurance is to be provided by companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum A.M. Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

a. *Workers' Compensation and Employer's Liability*

<b>Workers' Compensation</b>	<b>Statutory</b>
<b>Employer's Liability</b>	
Each Accident	\$1,000,000.00
Each Employee	\$1,000,000.00
Policy Limit	\$1,000,000.00

b. *Commercial General Liability*

<b>General Aggregate</b>	<b>\$2,000,000.00</b>
<b>Products - Completed Operations Aggregate</b>	<b>\$2,000,000.00</b>
<b>Personal and Advertising Injury</b>	<b>\$1,000,000.00</b>
<b>Bodily Injury and Property Damage— Each Occurrence</b>	<b>\$5,000.00</b>

c. *Automobile Liability*

<b>Bodily Injury</b>	
Each Person	\$
Each Accident	\$
<b>Property Damage</b>	
Each Accident	\$
<b>[OR]</b>	
<b>Combined Single Limit (Bodily Injury and Property Damage)</b>	<b>\$300,000.00</b>

d. *Excess or Umbrella Liability*

Per Occurrence	\$1,000,000.00
General Aggregate	\$1,000,000.00

e.

*Contractor's Pollution Liability*

Each Occurrence/Claim	\$1,000,000.00
General Aggregate	\$1,000,000.00

- B. All Insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days after notice has been received by the purchasing policyholder. Within three days of receipt of any such notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.
- C. Automobile liability insurance provided by Contractor will be written on an occurrence basis and provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
- D. Contractor's commercial general liability policy will be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
  - 1. Products and completed operations coverage maintained for three years after final payment.
  - 2. Blanket contractual liability coverage to the extent permitted by law.
  - 3. Broad form property damage coverage; and
  - 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies will include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds will provide primary coverage for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations) on a non-contributory basis.
  - 1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  - 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance will be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. The coverage afforded must

be at least as broad as that of each and every one of the underlying policies. Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy.

- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Contractor's Means and Methods of Construction**

- A. The contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the performance of work.
- B. If professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### **7.02 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. Contractor shall maintain good discipline and order at the Site.
- C. Except as otherwise required for the safety or protection of the Work or persons or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday.

### **7.03 Other Work at the Site**

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractors shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of the Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

### **7.04 Services, Materials, and Equipment**

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for everything necessary for the performance and completion of the Work.

### **7.05 Subcontractors and Suppliers**

- A. Just as Contractor is responsible for its own acts and omissions, Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of suppliers and subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work. The Contractor's retention of a subcontractor or supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

*7.06 Licenses, Fees, and Permits*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

*7.07 Laws and Regulations; Taxes*

- A. The contractor shall give all notices required by, and shall comply with, all local, state, and federal laws and regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all resulting costs and losses, and to the fullest extent permitted by law Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all such claims, costs, losses, and damages.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes.

*7.08 Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. The Contractor will follow all District, State and Federal Safety Regulations and Requirements. Contractor acknowledges receipt of the District's Safety Policy and agrees to comply fully with the Policy in connection with performance of the Work.
- C. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- D. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work.
  - 2. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, will be remedied by Contractor at its expense (except damage or loss attributable to the fault of the Contract



Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).

- F. The Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with laws or regulations.
- G. In emergencies affecting the safety or protection of the Work or persons or property at the Site or adjacent thereto, Contractor shall act to prevent damage, injury, or loss. Contractor shall give Engineer prompt notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If the Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.09 Indemnification

- A. To the fullest extent permitted by law, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from all losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

### **ARTICLE 8—OWNER'S RESPONSIBILITIES**

#### *8.01 Responsibilities*

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through the Field Supervisor.
- B. The Owner will supply a copy of the District's Safety Policy.
- C. Owner shall make payments to Contractor as provided in this Contract.
- D. Owner shall furnish copies of any applicable Owner safety programs to Contractor.
- E. Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

### **ARTICLE 9—RESERVED**

### **ARTICLE 10—CHANGES IN THE WORK**

*10.01 Authority to Change the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

*10.02 Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive.
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.

*10.03 Work Change Directive*

- A. A Work Change Directive may be issued to the Contractor ordering an addition, deletion, or revision to the Work. A Work Change Directive will not change the Contract Price or Contract Times but is evidence that the parties expect that the modification ordered or documented by the Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on Contract Price or Contract Times.

*10.04 Field Orders*

- A. Engineers may issue a Field Order authorizing minor changes in the Work, provided that the changes do not involve an adjustment in the Contract Price or Contract Times.
- B. If the Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then Contractor shall request such adjustment before proceeding with the Work.

**ARTICLE 11—RESERVED**

**ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION**

*12.01 Claims Process*

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim must be stated in writing and submitted to the other party.

- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving notice of denial to the other party. If the receiving party does not act on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13—CORRECTION OF DEFECTIVE WORK**

### *13.01 Defective Work*

- A. Contractor warrants that the Work is not defective.
- B. Engineers have the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's warranty and guarantee on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14—PAYMENTS TO CONTRACTOR**

### *14.01 Progress Payments*

- A. The contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form acceptable to Engineer. For unit price work, the unit price breakdown in Article 5 will be used as the schedule of values.

### *14.02 Applications for Payments*

- A. The contractor shall submit signed applications for payment to the Engineer monthly, in a form acceptable to the Engineer. Contractor shall provide supporting documentation required by the Contract Documents. Owner will pay for Work completed as of the date of the application for payment.
- B. Applications for payment must be accompanied by a progress report identifying all of the septic tanks pumped during the pay period with customers addresses and the completed inspection forms.

### *14.03 Review of Applications*

- A. Within 10 days after receipt of each application for payment, Engineer will either recommend payment and present the application for payment to Owner or return the application for payment to Contractor indicating Engineer's reasons for refusing to

recommend payment. The Contractor will make the necessary corrections and may resubmit the application for payment.

- B. The Owner is entitled to impose setoffs against payment based on any claims that have been made against Owner, or any incurred costs, losses, or damages, on account of Contractor's conduct in the performance of the Work; for defective Work; or for liquidated damages that have accrued because of Contractor's failure to complete the Work.

#### 14.04 Substantial Completion

- A. When the Contractor has completed the pumping of all of the designated tanks on this project, Contractor shall request that Engineer issue a certificate of substantial completion.
- B. If Engineer considers the Work substantially complete, or upon resolution of all reasons for non-issuance of a certificate, Engineer will deliver to Owner and Contractor a certificate of substantial completion that will fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.05 Final Payment

- A. Contractor may make application for final payment after satisfactorily completing all Work, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, and other documents.
- B. The final application for payment must be accompanied (except as previously delivered) by:
  - 1. All documentation is called for in the Contract Documents.
  - 2. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects or will so pass upon final payment.
  - 3. A list of all pending claims; and
  - 4. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

#### 14.09 Waiver of Claims

- A. By making final payment, the Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding claim, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a claim.

### **ARTICLE 15—SUSPENSION OF WORK AND TERMINATION**

#### 15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or Contract Times, to the extent directly attributable to any such suspension.

*15.02 Owner May Terminate for Cause*

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety 10 days' notice that Owner is considering a declaration that Contractor is in default and the termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.
- F. If Contractor has provided a performance bond, the provisions of that bond will govern over any inconsistent provisions of Paragraph 15.02.

*15.03 Owner May Terminate for Convenience*

- A. Upon 7 days' notice to the Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for the following, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, less any setoffs, and including fair and reasonable sums for overhead and profit on such Work.
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

- B. The contractor shall not be paid for any loss of anticipated profits, or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

**15.04 Contractor May Stop Work or Terminate**

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 60 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

**ARTICLE 16—CONTRACTOR'S REPRESENTATIONS**

**16.01 Contractor Representations**

- A. Contractor makes the following representations when entering this Contract:
  - 1. Contractor has examined and carefully studied the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - 4. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

**ARTICLE 17—MISCELLANEOUS**

**17.01 Giving Notice**

- A. Whenever any provision of the Contract Documents requires the giving of notice to Owner, Engineer, or Contractor, such notice must be in writing, and delivered in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

**17.02 Cumulative Remedies**

- A. The duties and obligations expressly imposed by this Contract, and the rights and remedies expressly available to the parties under this Contract, are in addition to, and are not to be construed in any way as a limitation of, any duties, obligations, rights, or remedies otherwise imposed or available by laws or regulations, by warranty or guarantee, or by other provisions of the Contract.

**17.03 No Waiver**

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

**17.04 Survival of Obligations**

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

*17.05 Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or entering the Contract.

*17.06 Controlling Law*

- A. This Contract is to be governed by the law of the State of Montana.

- 17.07** This Contract constitutes the entire agreement between Owner and Contractor, and supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.

**Owner:**

**FLATHEAD COUNTY WATER DISTRICT NO. 1-  
EVERGREEN**

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_

Name: Cindy Murray  
*(Typed or printed)*

Title: General Manager  
*(Typed or printed)*

Designated Representative:

Name: Mark James  
*(Typed or printed)*

Title: Field Supervisor  
*(Typed or printed)*

Address: 130 Nicholson Drive  
Kalispell, MT 59901

Phone: (406) 257-5861

Email: fieldops@evergreenwaterdistrict.com

**Contractor:**

**[CONTRACTOR]**

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(Date signed)*

Name: \_\_\_\_\_  
*(Typed or printed)*

Title: \_\_\_\_\_  
*(Typed or printed)*

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Designated Representative:

Name: \_\_\_\_\_  
*(Typed or printed)*

Title: \_\_\_\_\_  
*(Typed or printed)*

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

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

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

License No.: \_\_\_\_\_

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

The Effective Date of the Contract is **[date to be inserted at the time of execution]**.

ATTACHMENTS: ATTACHMENT A – SEPTIC PUMPING FORM