

Interlocal 145

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF MISSOULA  
AND  
THE EAST MISSOULA COUNTY SEWER DISTRICT  
WITH RESPECT TO THE DESIGN, CONSTRUCTION, OPERATION AND  
MAINTENANCE OF SANITARY SEWER SERVICES TO PORTIONS OF THE EAST  
MISSOULA AREA OF MISSOULA COUNTY, MONTANA**

**WHEREAS**, the City of Missoula (hereinafter called City), Missoula County and the East Missoula County Sewer District located upstream from Missoula's sole source aquifer have expressed a concern for the protection of the Missoula Valley sole source aquifer and have been engaged in cooperative water quality planning projects since this sole source designation was received; and

**WHEREAS**, in March 1996 the Missoula Valley Water Quality District of the Missoula City-County Health Department completed a study titled "Evaluation of Unsewered Areas in Missoula, Montana" that has documented a significant water quality problem in the East Missoula area of Missoula County and that has given the area a high priority for water quality improvements; and

**WHEREAS**, it has been determined that connection to a municipal sanitary sewer system would serve to mitigate the problem; and

**WHEREAS**, the East Missoula area is a residential and commercial urbanized area contiguous to the Missoula City limits that is not currently served by a public sanitary sewer system; and

**WHEREAS**, the East Missoula County Sewer District (hereinafter District) is a county sewer or water district, validly organized pursuant to Title 7, Chapter 13, Parts 21 and 22. The District was incorporated on January 4, 1993 and is located within the boundaries of Missoula County, a political subdivision of the State of Montana the boundaries of which are more particularly described on Exhibit A; and

**WHEREAS**, a significant portion of the District is within the City of Missoula 1984 Wastewater Facility Service Plan area and all of the District is included within the City's 1999 proposed Wastewater Facility Service Plan area; and

**WHEREAS**, the District has approached the City with a willingness to finance and construct municipal sanitary sewer mains as well as collector systems and on-site improvements (hereafter Improvements) to serve existing and future development within the District; and

**WHEREAS**, the District has determined the most cost efficient plan for providing sanitary sewer treatment services to the properties in the District is the utilization of the City's sanitary sewer system and treatment facility and to enter into a contract for services with the City for the operation and maintenance of the Improvements upon completion of construction; and

**WHEREAS**, the District's plan for extending and constructing the Improvements consists of interceptor mains, lift stations, laterals, collectors, and service lines (hereinafter Project) as shown on Exhibit A; and

**WHEREAS**, the District has applied for and received a variety of grant packages for assistance with the financial burden of extending the sanitary sewer mains, collector systems and on-site improvements to serve the properties within the District; and

**WHEREAS**, the District desires to finance the public portion of the Project under a Federal Rural Utilities Service Grant (RUS), Community Development Block Grant (CDBG), interim financing via a Sewer Revolving Fund (SRF) Loan, and a long-term loan from RUS evidenced by the District's Sewer System Revenue Bond; and

**WHEREAS**, the District is in the process of finalizing plans and cost estimates for the Project to extend sanitary sewer mains, collectors and on-site services for each property included within the District boundary; and

**WHEREAS**, the most cost efficient plan for providing sanitary sewer services to the properties in the District is the utilization of the City's sanitary sewer system and treatment facility; and

**WHEREAS**, the City's policy of providing sewer service to properties outside the boundaries of the City pursuant to Title 7, Chapter 13, Montana Code Annotated (MCA) require that such served property consent to annexation as authorized by Section 7-13-4314 MCA; and

**WHEREAS**, the District is requesting a delay of City annexation pursuant to sanitary sewer connection petitions under the Project for the approximate length of the term of the financing allowing current home owners to pay off a substantial portion or all of the financing by the time they commence paying municipal property taxes; and

**WHEREAS**, pursuant to Title 7, Chapter 13 of the MCA, the City has the authority to furnish sanitary sewer services outside the city limits, as well as the authority to enter into contracts for sanitary sewer service with each real property owner outside the municipal boundary as the property owner connects its building to the sanitary sewer system. Pursuant to Title 7, Chapter 11 MCA the City has the authority to enter into interlocal agreements for the extension of sanitary sewer and other city services; and

**WHEREAS**, the City and District agree that it is in the best interests of the public for the Improvements constructed under the Project to become the responsibility of and eventually be owned by the City, which owns and operates the Missoula wastewater treatment facility to which the Project sewer lines will be connected; and

**WHEREAS**, the District financing requires the District to maintain ownership of the Project for the term of the Grant/Loan, but does not preclude the District contracting for the operation and maintenance of the Project with the City; and

**WHEREAS**, utilization of the City's contracts for sanitary sewer, pursuant to city policy, authorized by Section 7-13-4314 MCA, require that each contract for sewer include a petition for annexation, a waiver of protest to municipal annexation, a yes vote in accordance with any constitutional initiative for voting on taxes and fees or other legislation of a similar nature to the assessment of all city taxes and fees including sanitary sewer use fees in the same manner as applied throughout the municipality; and

**WHEREAS**, in the public interest, health and safety for providing municipal sanitary sewer service and protecting the ground water in the East Missoula area, the City has hereby agreed to provide treatment facilities, operation and maintenance of the Project, and to assume ownership of the Project upon retirement of the District's indebtedness, and the District hereby agrees to finance the improvements as hereafter defined, all subject to the respective terms and conditions as set forth in this Agreement.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Missoula and the East Missoula County Sewer District, each a public agency of the State of Montana, that:

Pursuant to MCA 7-11-104, the City and District agree it is to their mutual advantage to adopt this Interlocal Agreement as follows:

#### **Section 1: Recitals**

The District is a county sewer district organized pursuant to Title 7, Chapter 13, Parts 21 and 22. The District was incorporated on January 4, 1993 and is located within the boundaries of Missoula County, a political subdivision of the State of Montana as shown on Exhibit A attached hereto and made a part hereof by reference. The District lies adjacent to the exterior boundaries of the City of Missoula, a municipality of the State of Montana. This Agreement is applicable to the District boundary described herein. Future expansions of the District will require negotiation of a separate interlocal agreement with the City of Missoula.

#### **Section 2: Purpose**

It is the purpose of this Agreement to delineate the responsibilities between the District and City with respect to the financing, construction, ownership, operation and maintenance of the Project, a description of which is shown on Exhibit A (the Project Facilities).

#### **Section 3: Administration**

- 3.01. No separate legal entity is established by this Agreement.
- 3.02. The District and County will administer the funding established for the Project including the extension of the mains, collector systems and on-site improvements that are part of the public system, including, but not limited to, pursuing and administering a RUS Grant, CDBG, SRF Loan, RUS Loan and collecting assessments and other charges sufficient to cover any District administrative costs and to pay any District indebtedness.

## **Section 4: Design and Construction of Project**

4.01 Project Engineer. The District intends to enter into a contract with Neil Consultants, Inc. of Helena, Montana, for the purpose of designing and preparing plans and specifications for the Project, overseeing construction and final certification. The RUS concurs with the appointment of Neil Consultants, Inc. as the engineer for the RUS Grant and Loan proposed to finance the Project. The District and District Engineer shall be responsible for the preparation of the plans and specifications for the Project; submitting them for review by all appropriate state, local and federal agencies; obtaining all necessary approvals of the plans and specifications; and preparing and publishing the invitations to bid and the notice(s) thereof for publication in accordance with the provisions of the RUS funding agencies.

4.02 Award of Bid and Construction of Project. The District shall advertise and solicit bids for the construction of the Project. The City Public Works Department shall review the bids and mutually approve award of the contract. The District shall award and enter into the contract for provision of materials and construction of the Project with the lowest responsible bidder(s) in accordance with the provisions of Sections 7-12-2131 through 7-12-2140, MCA. The District will be responsible for administering all construction and provision of material contract(s) throughout the construction of the Project and ensuring completion of the Project in accordance with the requirements of the RUS, funding agencies and the City.

In addition to fulfilling all the requirements of the funding agencies and City during construction of the Project, the District or District Engineer shall:

4.02.a Obtain all necessary easements and permits for the construction of the Project;

4.02.b Obtain and maintain liability insurance in the name of the District for the Project during construction; and

4.02.c Be responsible for ensuring compliance of all terms and conditions imposed by the RUS, funding agencies and City with respect to the Project. In no event shall the costs of such compliance be deemed to be an expense or liability of the City payable from its general fund or its sanitary sewer systems fund.

4.03 The District's Construction Contractor. The District contractor constructing the Project shall be licensed according to Missoula Municipal Code Chapter 13.16, and shall obtain all necessary City permits required to construct the main extension, collector system and on-site improvements. The required permits consist of:

4.03.a Sanitary sewer main construction \$100 for the first 50 lineal feet and 25¢ per each additional lineal foot.

4.03.b Sanitary sewer stub from the main to the property line \$100 each.

- 4.03.c Sanitary sewer connection from the main or stub to the structure \$100 each.
- 4.04 Sanitary Sewer Easements. The District shall assure that the sanitary sewer lateral line extension from East Broadway Street and the Project are constructed within public rights-of-way or on land either owned by the District or subject to an appropriate acceptable sewer easement approved by the City, granting the District, and their successors and assigns the right to construct, repair, replace and maintain the sanitary sewer extension lines.
- 4.05 Bid Specifications. The bid specifications shall be submitted to the City for the City's review and approval for the Project, including review and approval of the design of the Project. The City retains the right to increase the capacity of the District's sewer facility to serve properties outside the District. The City will pay the incremental cost to increase sewer capacity. All construction must comply with City standards for such construction projects. The City will perform periodic inspection of the Project to assure compliance with City regulations.
- 4.06 Construction Phasing. The District may phase construction of the sewer main and improvements and enter into construction agreements for each phase.
- 4.07 Construction Phase Completion & Acceptance. Upon completion of each phase of construction of the mains and acceptance by the City Engineer, the City will assume responsibility for the operation, maintenance and replacement of the mains as outlined in Section 5 of this agreement. The City shall allow service connections in accordance with City regulations upon its acceptance of the sewer main and as set forth in this Agreement. All service connections will require obtaining necessary permits, payments of city fees and city inspections.
- 4.08 City Representative. The City Engineer or his designee shall coordinate and consult with the District Engineer in fulfilling the City's obligations under this agreement.

## **Section 5: Operation, Control and Ownership of Project**

- 5.01. Ownership of the Project. The District will maintain ownership of the Project for as long as any indebtedness remains outstanding on the Project. The City acknowledges the existence and continuation of the District and its responsibility in regard to the debt for the life of the indebtedness.

The City will own additional sewer main installations within the District that are beyond the scope of the Project.

- 5.02. Transfer of Ownership. Within thirty (30) days of the retirement of the District's indebtedness for the Project or 20 years from the date the last phase of the Project is accepted by the City Engineer, the District will convey all right, title and interest in the Project to the City, and from such date, the District shall have no ownership interest in

the Project. The City agrees to operate, maintain, repair and replace the Project as may be required during and after the term of the District's ownership. All persons or properties receiving sewer services shall be deemed to be customers of the City. City shall be authorized to collect operation and maintenance fees from such customers pursuant to 7-13-4206, MCA.

- 5.03. Sewer Connections. Neither the City nor the District shall be responsible for the individual sewer service lines, which consist of a sewer line from a building or structure to the main. The individual sewer service line, at the time of connection remains under the ownership and will be maintained by the real property owner.
- 5.04. Method of Transferring Easements. If any portion of the Project is constructed on land owned by the District or other owners of real properties, the District shall at the time it transfers its interest in the Project to the City, shall also convey to the City an appropriate easement for construction, repair, and maintenance of any portion of the Project located upon private properties.
- 5.05. Compliance with Terms of Financing. The District understands that it is to comply with all requirements imposed as a condition of obtaining financing through Federal or State funds as evidenced by a bond purchase agreement or some other document, rule or regulation, for any duties or responsibilities with respect to the Project.
- 5.06. Extension of Facilities Beyond District Boundary and Protection of Capacity. The City reserves the right to extend the facilities constructed by the District to serve properties outside the boundary of the District as long as it is no expense to the District. The City retains full ownership of any extended facilities. The City hereby agrees to protect the sewer capacity units reserved for the District under Section 7 of this agreement for sole use of the District.
- 5.07. Operation and Maintenance. The District hereby authorizes the City and the City hereby agrees to operate, maintain, construct, repair, and replace the Project facilities in the same way it operates, maintains, constructs, repairs and replaces the City's municipal sanitary sewer system.
- 5.08. Authorization for Access. The District hereby authorizes the City to access any easements held by the District necessary for construction, repair, replacement, maintenance and installation of the Project Facilities.
- 5.09. Control of Project Facilities. The City retains control of all operations and activities related to and affecting the Project Facilities. These activities include, but are not limited to:
  - 5.09.a Overseeing compliance with Missoula Municipal Code 12.24 regarding excavations, 13.04 regarding sewer regulations, 13.06 regarding industrial wastewater, and 13.08 sewer service charges.

- 5.09.b Requiring City licensed excavation contractors to perform any work on the mains, laterals and service lines.
- 5.09.c Issuing permits, collecting permit and appropriate connection fees, and performing inspections for all work on the mains, laterals and service lines.
- 5.09.d Reviewing and authorizing all requests to connect to the sanitary sewer.

#### **Section 6: Furnishing of Municipal Sanitary Sewer Services**

The estimated number of existing and projected single capacity units to be located within the District for up to a 20-year planning period ending the year 2019 is 1,000 units. The City hereby agrees to furnish sanitary sewer services to the District for the real properties located within the District boundary for the Project as above described. It is contemplated that this service will be provided through a lateral sanitary sewer line extension, which will connect to the East Broadway Street trunk line. Nothing in this Interlocal Agreement shall obligate the City to pay the costs of right-of-way acquisition, engineering, construction and other building costs for the sewer line extension from the East Broadway Street trunk line to the District boundary.

#### **Section 7: Sanitary Sewer Connections**

Upon approval by the City Engineer's Office of the design and construction of the Project mains, the acceptance of the sewer mains by City, and payment by the District of the connection permits and Sewer Development Fees, the District and individual property owners within the District boundary will be given permission to connect up to 1,000 sanitary sewer capacity units (Capacity Units) within the District boundary to the municipal sanitary sewer system via the trunk line in East Broadway Street.

As of the date of this agreement each household, business and parcel (if there is no household or business on the parcel) within the District boundaries is guaranteed the right to connect to the sewer in accordance with City regulations. Households and parcels with no improvements shall receive one (1) of the one thousand (1,000) Capacity Units. Businesses will be allocated Capacity Units based on the table below. Properties connecting immediately to the Project may take advantage of the \$350 Sewer Development Fee as described and restricted in Section 8.03.d. Future additional units connecting after the initial construction project up to the 1,000 Capacity Unit total shall pay the Sewer Development Fee and any other city fees as they exist at the time of application for connection.

A Capacity Unit (source document Missoula City Ordinance No. 2588 adopted 12/7/87) is determined by the size of the water meter serving the unit or facility connecting to the sewer. The Capacity Units are determined by either the water meter size, the water line size or by the number of family units and/or property use as follows:

<b>Water Meter Size</b>	<b>Capacity Unit</b>	<b>Example of a Typical Facility for Each</b>
5/8 x 3/4"	1.0	Single-Family Dwelling
3/4"	1.5	Duplex Dwelling
1"	2.5	Tri-plex Dwelling

1.5"	5.0	Multi-family (figured at 150 gals per day per family)
2"	8.0	Multi-family or Light Commercial (Restaurant or hospital)
3"	15.0	Commercial (Laundry or food processing)
4"	25.0	Heavy Commercial (Dentist or car wash)
6"	50.0	Light Industrial (Heavy equipment repair)
8"	90.0	Heavy Industrial (Bottling Co.)

The District agrees to submit to the City Engineer's office complete plans and specifications for the extension of sewer mains to the Project properties for approval, prior to the time that the plans are submitted to the State of Montana Department of Environmental Quality for approval. The plans shall take into consideration the City's policies that connections to the trunk line are kept to a minimum, and that each structure has a separate connection to the sewer.

### **Section 8: Individual Property Connection Permits, Contracts and Fees**

The following information is provided to assist individual property owners with cost and lump sum payment planning for estimating excavation permit costs, entering into contracts for sanitary sewer connections and paying connection fees. Permit fees may change in the future. Properties connecting to the sewer system shall pay excavation fees that are in effect at the time of connection.

- 8.01. Permits. Excavation contractors licensed and bonded to perform utility work in Missoula as required under Chapter 13.16 of the Missoula Municipal Code shall obtain the excavation permits necessary to perform the construction of individual sewer service lines. Section 4.03 outlines the cost for various permits including individual services lines.
- 8.02. Sanitary Sewer Connection Contracts. Real property owners shall enter into a sanitary sewer connection contract (Sewer Contract) with the City for provision of sanitary sewer prior to connection of the property building(s) to the sanitary sewer mains and collectors installed under the Project. The cost for executing a Sewer Contract is currently \$25 per contract. The scope and requirements of the Sewer Contracts is described in Section 12 of this Agreement.
- 8.03. Sewer Development Fees. The District or individual real property owners may pay the sanitary Sewer Development Fees applicable to new connections. The current Sewer Development Fee is calculated at \$350 per sewer capacity unit as described in Section 7 of this agreement.
  - 8.03.a The District proposes to pay a lump sum for the sanitary Sewer Development Fees on behalf of properties that have executed a Sewer Contract with the City prior to the lump sum payment to be made to the City. Each property covered by a Sewer Contract will receive the benefit of a single-family Sewer Development Fee paid by the District. Any properties within the District not included within the Lump Sum payment must pay the Sewer Development Fee upon connection subject to the grace period described under 8.03.d of this section.



- 8.03.b Any property included within the District's Lump Sum Payment will pay any additional Sewer Development Fees for the number of additional Capacity Units applicable to the property as described in Section 7.
- 8.03.c Any property not included in the District's Lump Sum Payment will pay the appropriate Sewer Development Fees for the number of Capacity Units applicable to the property as described in Section 7.
- 8.03.d Properties entering into a Sewer Contract during a period of two (2) years following the City Engineer's acceptance date of each phase of the Project or December 31, 2004, whichever occurs first shall be charged the current \$350 per capacity unit Sewer Development Fee. Any of the remaining properties within the District's construction phases delaying connection until after the grace period shall pay the full Sewer Development Fee in effect at the time of connection. This benefit is non-refundable and non-transferable from the benefited parcel.

### **Section 9: Maintenance**

Upon completion and acceptance by the City of construction and the City approval of access to the sanitary sewer mains constructed in easements and rights-of-way, maintenance, replacement and repair of the mains servicing the Project shall become and remain the sole responsibility of the City. Property owners in the District will be responsible for the maintenance and repair of the individual service lines connecting their property to the sanitary sewer main.

### **Section 10: Insurance**

The District shall carry, maintain, and deposit proof with the City of property damage insurance on the Project in amounts sufficient to replace the Project. The District shall hold the City free and harmless from all claims, damages, suits or causes of action resulting from injuries to persons or property in the performance of its duties under this agreement. City shall carry, maintain, and deposit proof of its liability insurance with the District.

### **Section 11: Assessment Collection**

The District is responsible for the assessment of and collection of assessments and fees required or necessary to pay the District's obligation for the Project and any administrative expenses of the District.

### **Section 12: Rates and Annexation**

12.01. Property owners within the District, connecting an individual property, will execute Sewer Contracts agreeing to the following:

- 12.01.a The number of connections authorized per parcel.


- 12.01.b Pay to the City uniform charges, rates and fees for sanitary sewer services as are established by the City in accordance with Montana law.
- 12.01.c Waive the right to protest municipal annexation.
- 12.01.d Petition to annex in accordance with this interlocal agreement
- 12.01.e A yes vote under the contract regarding the assessment of municipal taxes and fees after annexation the same as is assessed to all other property within the municipal boundary.
- 12.01.f Certify that the District assessments owed by the property are paid and current.
- 12.02. The City hereby agrees that it will not, in reliance on such agreement and petition, undertake or proceed with annexation of the property subject to those agreements until January 1, 2024 or the retirement of the project bonds, whichever comes first.
- 12.03. However, the City reserves its right to utilize all other methods of annexation as allowed under Montana Law including the petition method of annexation as long as any petition method annexation is not related to the Contract Sewer petitions generated under this Project. The purpose of this reservation is to protect the right of real property owners to seek inclusion in the City's boundary for purposes other than those related to the extension of sanitary sewer under this Project.
- 12.04. The District, by signing this Agreement, does not waive the rights of individuals in the District to protest annexation pursuant to State law for any instances that do not involve Contract Sewer petition annexations.

### **Section 13: Termination**

- 13.01. This Agreement shall become effective upon approval by the Council of the City of Missoula and the Trustees of the District. This Agreement shall remain in full force and effect as stated unless terminated according to the provisions of this Section.
- 13.02. This Agreement may be terminated prior to commencing construction by mutual written consent of the parties hereto.


IN WITNESS WHEREOF, the City of Missoula and the District have caused this instrument to be duly executed by their proper officers on the 10<sup>th</sup> day of January, 2000.

**EAST MISSOULA COUNTY SEWER DISTRICT**

  
\_\_\_\_\_  
Jack Ballas, Chairman of the Board

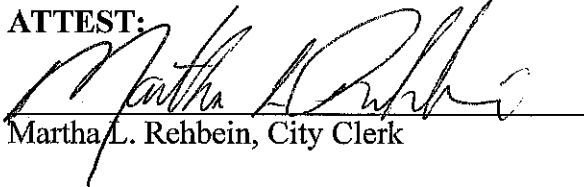
Authorized by Board Resolution, dated January 12, 2000.

Approved as to form and content:

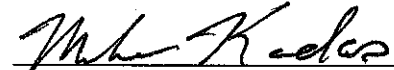
  
M. Richard Gebhardt, District Counsel

**CITY OF MISSOULA**

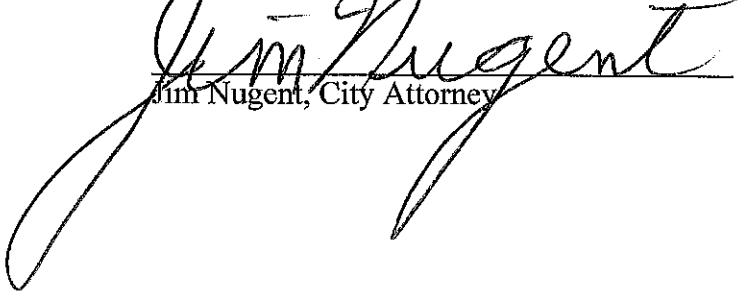
**ATTEST:**

  
Martha L. Rehbein, City Clerk

**BY:**

  
Mike Kadas, Mayor

Approved as to form and content

  
Jim Nugent, City Attorney

(SEAL)

RESOLUTION NO. 00-01

A RESOLUTION TO APPROVE  
INTERLOCAL AGREEMENT  
WITH THE CITY OF MISSOULA

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BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE EAST MISSOULA COUNTY  
SEWER DISTRICT:

I

That it is the intention of the Trustees of the East Missoula  
County Sewer District, to enter into an agreement for interlocal  
sanitary services with the City of Missoula

II

That the parties have reached tentative agreement on the terms  
and conditions established for the provision of such sanitary  
services.

III

That the agreement appears in the best interests of the  
persons served by the District;

IV

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of  
the East Missoula County Sewer District hereby authorizes the  
Chairman of the District to execute all necessary documents and  
agreements approving the interlocal agreement with the City of  
Missoula and as presented to the Board of Trustees this date.

PASSED AND ADOPTED this 12th day of January, 2000.

Ayes 4 Nays \_\_\_\_\_ Abstentions \_\_\_\_\_

Ballas

Nichols

Stephens

Martin

Jack Ballas  
Chairman, Board of Trustees

Attest:

S. L. Paul

Clerk-Secretary