

**STORMWATER- INTERLOCAL AGREEMENT BETWEEN
CITY OF MISSOULA
AND MISSOULA COUNTY**

This Interlocal Agreement (Agreement) is made and entered into between the City of Missoula (the “City”) and Missoula County (the “County”). The purpose of this agreement is to define roles and responsibilities of both the County and the City for providing a conditions assessment, alternatives analysis, and improvements to the regional stormwater system in the Missoula Development Park Subdivision and Canyon Creek Village Subdivision (the Project) as well as document the intent to transfer ownership of certain park and stormwater parcels upon Project completion.

WHEREAS, the City of Missoula annexed the project area in the Missoula Development Park in 2017.

WHEREAS, in 2022 the County and Property Owners Association requested the City take ownership and maintenance responsibilities for stormwater, landscaped Boulevard, and park facilities in the project area.

WHEREAS, the City agreed to take ownership of these parcels and associated infrastructure contingent on the systems operating effectively upon transfer.

WHEREAS, it is critical to understand the condition and effectiveness of the stormwater system components so that improvements can be made before the parcels and associated infrastructure are transferred from the County to the City.

WHEREAS, the City and County each have a pre-qualified list of engineering firms capable of performing this analysis and have agreed that Herrera Environmental Engineering Consultants is best suited to perform the work.

WHEREAS, Herrera Environmental Engineering Consultants provided the County and City with an acceptable proposal for \$122,756 to perform the stormwater conditions assessment.

WHEREAS, the County has funding sources from lease agreements in the area to pay for the stormwater system conditions assessment.

WHEREAS, the County will likely have funds from land sales of unnecessary stormwater and parks facilities in the area to pay for the cost of improvements.

WHEREAS, City Public Works and Mobility Department Stormwater Division is best suited to manage the stormwater system and contract and provide routine maintenance on the stormwater system while it is being assessed and improved.

WHEREAS, the City and County have a common interest in providing a quality stormwater system.

NOW THEREFORE, based on the foregoing, and the mutual covenants and promises made herein, the parties agree as follows:

- 1. DURATION.** The duration or term of this agreement shall be THREE (3) years unless sooner terminated pursuant to section 6 of this Agreement.

- 2. ORGANIZATION, COMPOSITION AND NATURE OF ANY SEPARATE LEGAL ENTITY CREATED BY THE CONTRACT.** The parties agree that a separate legal entity is not created by this Agreement. This Agreement does not void or supersede any other existing agreements involving the parties. Both the City and the County are independent units of local government with separate governance bodies.
- 3. PURPOSE OF INTERLOCAL CONTRACT.** The purpose of this Agreement is to clearly define roles and responsibilities of both the City and County to: (1) provide a conditions assessment and alternatives analysis; (2) construct improvements for the Missoula Development Park to ensure that the stormwater system functions to accommodate the 5-year, 24-hour storm event; and (3) document the intent of the County to transfer ownership and maintenance responsibility of the Development Park's stormwater system, the Airway-Expressway Boulevard Landscaped Right-of-Way, and Kestrel Park and other park parcels to the City of Missoula. The relevant parcels are shown on the attached Exhibit A, which by this reference is made part of this Agreement, and are described below:
 - 3.1.** Parcels 4, 6, and 8 shown on Exhibit A are to be retained by the County for possible sale ("County Parcels").
 - 3.2.** Parcels 3, 5, 7, 9A, 11, and 12 are intended to be conveyed to the City pursuant to the terms of this Agreement for management by the City's Public Works and Mobility Department ("Stormwater Parcels").
 - 3.3.** Parcels 1 (east), 1 (west), 2 (east), and 2 (west) are intended to be conveyed to the City pursuant to the terms of this Agreement for management by the City's Parks and Recreation Department (together referred to as "Park Parcels").
- 4. MANNER OF COOPERATIVE UNDERTAKING AND ESTABLISHMENT OF BUDGET.** The parties are responsible for the following financial obligations:
 - 4.1.** The City is responsible for all City expenses unless otherwise provided for in this Agreement or by operation of law.
 - 4.2.** The County is responsible for all County expenses unless otherwise provided for in this Agreement or by operation of law.
 - 4.3.** The County agrees to reimburse the City for the cost of the stormwater infrastructure conditions assessment not to exceed \$122,756.
 - 4.4.** The City agrees to pay for any costs of the stormwater infrastructure conditions assessment that exceed \$122,756.
 - 4.5.** The County agrees to fund necessary and reasonable construction and maintenance actions required, as agreed upon by the City and County and based on the recommendation by Herrera Environmental Engineering Consultants, to ensure that the stormwater system functions to accommodate the 5-year, 24-hour storm event when the cost and scope of work for improvements are known.
 - 4.6.** The County agrees to assist in funding improvements to the Airway Boulevard

landscape median if funds from the County's sale of the surplus Development Park lands remain after the stormwater improvements project is funded.

- 4.7. The City agrees to submit an electronic invoice via email for project costs to the County for payment. The County agrees to review and pay the invoices within 30 days of receiving the invoices via ACH payment.
- 4.8. The County agrees to pay the invoice within 30 days of receiving the invoice.
- 4.9. Invoices will be sent to:

Missoula County Department of Land and Economic Development
Attn: Emily Brock
Email: ebrock@missoulacounty.us

And

Missoula County Department of Land and Economic Development
Attn: Flanna McClarty
Email: fmclarty@missoulacounty.us

Questions regarding ACH Payment information should be directed to:

Missoula County Department of Land and Economic Development
Attn: Flanna McClarty
Email: fmclarty@missoulacounty.us

and

Missoula County Financial Services
Attn: Michelle Denman
Email: mdenman@missoulacounty.us

5. MANAGEMENT AND ADMINISTRATION. The parties are responsible for the following management and administrative activities:

- 5.1. Each party is respectively responsible for the management of its employees.
- 5.2. The City agrees to enter a contract with Herrera Environmental Engineering Consultants to: (1) assess conditions and analyze capacity of the system; and (2) develop alternatives and recommendations for repairs, maintenance, and/or improvements to ensure that the stormwater system functions to accommodate the 5-year, 24-hour storm event.
 - Payment for services will be made by the City directly to Herrera within THIRTY (30) days of receiving an invoice.
- 5.3. The City agrees the conditions assessment will be conducted in 2023 and 2024.
- 5.4. The City agrees to provide routine maintenance and incur associated costs on (1) the

Stormwater Parcels and their associated public infrastructure including adjacent pedestrian pathways; the Airway-Expressway landscaped Right of Way; and Parcel 1 (east) and Parcel 1 (west) for the duration of this agreement. The routine maintenance shall be at the discretion of the City, and shall follow standard City protocols for determining when routine maintenance shall occur.

- 5.5. The County agrees to continue to pay electrical invoices for the duration of the Project until the Stormwater Parcels and Park Parcels, along with their associated infrastructure, water rights, utility bills and improvements are transferred to the City.
- 5.6. The County agrees to continue to provide all maintenance of Kestrel Park (Parcel 2 (east) and Parcel 2 (west)) and associated infrastructure including maintenance of adjacent pedestrian pathways until the time either parcel is transferred to the City. The maintenance shall be at the discretion of the County and shall follow standard County protocols for determining when maintenance shall occur.
- 5.7. The County agrees to receive approval from the City of Missoula Parks & Recreation Department before entering into any maintenance and management agreements with external recreation partners for Parcel 2 (east) and Parcel 2 (west).
- 5.8. The City and County agree the City and County Department of Land and Economic Development will work together to remove the blanket utility easement on Parcel 1 (east), Parcel 1 (west) and Parcel 2 (east) through a City process before ownership is transferred to the City.
- 5.9. The County agrees that the County Parcels will be sold to fund the infrastructure improvements contemplated by this agreement, such as storm water and park improvements in the area at the discretion of the County.
- 5.10. The City agrees the City Attorney will assist the County to remove all encumbrances, including park designations and any unnecessary utility easements, through an appropriate process on the County Parcels, in compliance with state law, to ensure highest and best use can occur on these parcels in the future.
- 5.11. The County agrees to seek transfer of ownership and responsibilities of Redfern 2 and Canyon Creek Village's Park parcels and their associated infrastructure to third parties. The County also agrees the City is not responsible for maintenance associated with these parcels for the duration of this agreement.

6. TRANSFER AND ACCEPTANCE

- 6.1. The County agrees to transfer ownership of the Development Park Stormwater Parcels along with all associated public infrastructure, water rights, utility accounts, and improvements when improvements have been made to ensure that the stormwater system functions to accommodate the 5-year, 24-hour storm event.
- 6.2. The County agrees to transfer ownership of the 9.69-acre parcel of Kestrel Park, Parcel 2 (east), and the Butler Creek parcels (Parcel 1 (east and west), and the Airway-

Expressway landscaped Boulevard along with all associated water rights, utility accounts, and improvements.

- 6.3. The County agrees to transfer ownership of the western 4.41-acre parcel of Kestrel Park, Parcel 2(west),, along with all associated water rights, utility accounts and improvements if DeSmet School does not successfully acquire the parcel under the provisions set forth in the recorded Option to Purchase recorded in Book 713, Page 41 in the official records of Missoula County, Montana.
- 6.4. The City agrees to accept transfer of the Stormwater Parcels and associated infrastructure when the necessary and reasonable improvements, as agreed upon by the City and County and based on the recommendation by Herrera Environmental Engineering Consultants, have been made to ensure that the stormwater system functions to accommodate the 5-year, 24-hour storm event.
- 6.5. The City Agrees to accept transfer of ownership of the Airway-Expressway Boulevard landscaped right-of-way along with all associated water rights, utility accounts, and improvements.
- 6.6. The City agrees to accept transfer of ownership of the eastern 9.69 acre parcel of Kestrel Park, Parcel 2 (east) and the Butler Creek parcels, Parcel 1 (east and west), along with all associated water rights, utility accounts, and improvements, .
- 6.7. The City agrees to accept transfer of ownership for the western 4.41 acre parcel of Kestrel Park, Parcel 2 (west), along with all associated water rights, utility accounts and improvements, if DeSmet School does not successfully acquire the parcel under the provisions set forth in recorded Option to Purchase recorded in Book 713, Page 41 in the official records of Missoula County, Montana.
7. **TERMINATION.** This agreement may be terminated by either party unilaterally prior to (1) the City and County agreeing to the improvements that must be made based on the Herrera report and (2) the County actually funding any of the agreed upon improvements by giving notice of termination in writing at least thirty (30) days prior to the date of the intended termination. After both (1) and (2) in the previous sentence have occurred, termination is only allowed through mutual agreement of the Parties.
8. **RETIREMENT SYSTEM REPORTING.** Each party is respectively responsible for any reports or payments of retirement system contributions for its employees.
9. **INDEMNIFICATION.** The City shall defend, indemnify and hold harmless the County, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the City, its employees or agents in performance of work or services.

The County shall defend, indemnify and hold harmless the City, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the County, its employees or agents in performance of work or

services.

10. FILING OF INTERLOCAL AGREEMENT. The County shall file this agreement with the Missoula County Clerk and Recorder and with the Secretary of State.

11. AUTHORIZATION TO APPROPRIATE FUNDS. In accordance with Montana Code Annotated Section 7-11-108 the City and the County may appropriate funds for the purpose of performance of this agreement and provide such personnel or services therefore as may be within its legal power to furnish.

Signed this _____ day of June, 2023

MISSOULA BOARD OF COUNTY
COMMISSIONERS

CITY OF MISSOULA

BY:

BY:

Josh Slotnick
Chair

Jordan Hess
Its: Mayor

Dave Strohmaier
Commissioner

ATTEST:

Juanita Vero
Commissioner

Marty Rehbein, City Clerk

ATTEST:

Tyler Gernant, Clerk and Recorder

EXHIBIT A