

DRAFT
INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF MISSOULA AND THE COUNTY OF MISSOULA
RELATED TO
USE OF 2018 OPEN SPACE BOND PROCEEDS

RECITALS:

WHEREAS, Missoula County as a public body is authorized pursuant to Section 76-6-109, M.C.A. of Montana’s “Open Space Land and Voluntary Conservation Easement Act” (hereinafter Open Space Act) to, among other things, issue and sell general obligation bonds in the manner and within the limitations prescribed by applicable laws of Montana for the purpose of acquiring or improving open-space land consistent with the provisions of Title 76, Chapter 6, Part 1, M.C.A., the Open Space Act; and

WHEREAS, Missoula County is authorized pursuant to Title 7, Chapter 7, Part 22, M.C.A., to issue general obligation bonds pledging the general credit of the county for that purpose upon approval of the electorate of the county, provided that such indebtedness and all other indebtedness of the county does not exceed 2.5% of the total assessed value of taxable property within the county as ascertained by the last assessment for state and county taxes; and

WHEREAS, a board of county commissioners is authorized pursuant to Section 7-7-2223, M.C.A., to call a bond election by adopting a resolution to that effect; and

WHEREAS, § 76-6-109 of the Open Space Act authorizes public bodies to make expenditures to carry out the purposes of the Open Space Act; advance or accept advances of public funds; apply for and accept grants or other assistance; give security; enter into, make and execute contracts and other instruments necessary for their powers under the Open Space Act; provide or arrange or contract for the provision, construction, maintenance, operation, or repair, of or by any person or entity, public or private, of services, privileges, work, facilities, or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land; insure or provide for insurance; demolish or dispose of property; and exercise powers jointly or cooperatively with other public bodies; and

WHEREAS, Section 76-6-104, M.C.A. defines open-space land as any land which is provided or preserved for: park or recreational purposes; conservation of land or other natural resources; historic or scenic purposes; or assisting in the shaping of the character, direction, and timing of community development; and

WHEREAS, open-space land provides significant benefits to citizens of the City of Missoula and Missoula County, including ecosystem services and values such as clean air and water, health and wellness, education, recreation, relief from congestion and overcrowding, etc., and these benefits are available to all; and

WHEREAS, the County's Growth Policy adopted by the Board of County Commissioners (the "Board") of Missoula County, Montana (the "County") in 2016 is guided by Article II, section 3 of Montana's Constitution, which provides for the inalienable right to a clean and healthful environment, and the principle that the County's natural and cultural resources make this place unique and these resources should be conserved, enhanced, and enjoyed; and

WHEREAS, Goal #1 of the County Growth Policy is to conserve vital natural resources including surface and ground water, air quality, agricultural resources, iconic landscapes, fish and wildlife species and their habitats, and native plant communities, and another goal is to promote healthy, active communities; and

WHEREAS, the County Growth Policy further states that to address Goal #1, the County will identify priority resource areas based on agricultural soils, wildlife habitat, water, scenic view sheds, and the functions of the natural environment, the County will conserve the highest priority lands and waters while allowing other public benefits such as access utilizing open space bond funding and other public funding sources, and the County will cooperate with private land trusts and landowners to facilitate voluntary conservation projects with private funding; and

WHEREAS, Goal #7 of the County Growth Policy is to sustain and promote the land- and resource-based industries of agriculture, timber, restoration, and recreation that are part of the local economy and heritage;

WHEREAS, the County Growth Policy further states that to address Goal #7, the County will support projects using public and private funding sources to conserve agricultural lands, the County will encourage forest restoration projects that result in economic activity, fuels reduction and improvements to wildlife habitat, the County will work with partners to develop and market a regional parks and trail system; and

WHEREAS, Goal #12 of the County Growth Policy is to promote healthy and active communities; and

WHEREAS, the County Growth Policy further states that to address Goal #12, the County will support development, maintenance, and expansion of trails and the County will pursue funding for trail development and maintenance; and

WHEREAS, the County adopted the 2018 Update to the Missoula County Community Wildfire Protection Plan and prioritized actions utilizing land conservation tools such as the open space bond to buffer developed areas from wildfire; and

WHEREAS, the County adopted the Missoula Area Land Use Element on June 6, 2019, which identifies open space as a value, along with the protection of open space for wildlife habitat, recreation, and agriculture; and

WHEREAS, the City of Missoula (the "City") first engaged in open space planning in the late 1960s and land use policies related to open space preservation and maintenance dating back to Missoula's first comprehensive plan, which was adopted in 1968 by the City and Missoula

County and called upon the community to “expand and equitably distribute areas for open spaces, parks, recreational and cultural facilities within the urban area and preserve mountainous areas and water courses in the Planning Area for future generations;” and

WHEREAS, the City of Missoula in 1981 passed “The City of Missoula Open Space Conservation Ordinance, to preserve significant open space land, including conservation land, parkland, trails, views and vistas, agricultural land, and urban forest, which, because of its aesthetic, scenic, recreational, historic or ecological value, it is in the public interest to preserve”; and

WHEREAS, in 2018, City and County staff worked collaboratively to complete a county-wide survey on citizens’ values and priorities related to Parks, Recreation, Open Space and Trails (PROST); and

WHEREAS, based on the results of this survey, and with citizen input through a variety of public outreach efforts, the City’s Open Space Advisory Committee (OSAC) and the County’s Open Lands Citizens Advisory Committee (OLC) approved and recommended adoption of the 2019 Missoula Urban Area Open Space Plan to the Consolidated Planning Board, the City Council (Council) and the Board; and

WHEREAS, the Consolidated Planning Board on September 17, 2019 unanimously recommended the 2019 Missoula Urban Area Open Space Plan for approval as an issue plan to respective City and County Growth Policies, the Council unanimously approved it on October 28, 2019, and the Board unanimously approved it on December 5, 2019; and

WHEREAS, the 2019 Missoula Urban Area Open Space Plan and 2006 Update of the 1995 Open Space Plan prioritizes preservation of open space lands to protect important agricultural resources and soils, scenic open space, river corridors, working lands, trail corridors, wildlife habitat, and natural resources including trees, clean water, and air quality; and

WHEREAS, the population of the City and the County continues to grow and open space conservation and the provision of lands for recreation, natural resource protection, wildlife habitat, corridors, parklands, and working lands remains as essential today as when the Open Space Act was enacted; and

WHEREAS, the 2019 Missoula Urban Area Open Space Plan is intended to become a chapter of the PROST plan and proposes prioritizing, preserving, protecting and connecting the open space system with connected corridors, anchor areas and urban green spaces and protecting conservation lands, developed parks, historic or scenic lands, agricultural lands and corridors; and

WHEREAS, open space land provides significant benefits to Missoula including ecosystem services such as clean air and water, health and wellness, education, recreation, relief from congestion and overcrowding, etc. and these benefits are available to all; and

WHEREAS, public open spaces, trails and parks are community assets that promote social equity and are available to all citizens regardless of race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or gender expression, or political ideas; and

WHEREAS, the *Our Missoula*, City Growth Policy 2035 states in implementation objective 4.2 that pursuing a new open space bond to continue the open space program is a high priority within 3-5 years from adoption of the growth policy, which was adopted in November 2015; and

WHEREAS, on July 9, 2018, a group of citizens and community organizations asked the Board to submit to the voters of Missoula County a ballot question of:

whether the Board shall be authorized to issue and sell general obligation bonds of the County in one or more series in the aggregate principal amount not to exceed Fifteen Million and No/100 Dollars (\$15,000,000.00) for the purpose of providing funds to pay costs of conserving, enjoying, and enhancing open-space land, to include providing public access to water and land; conserving agricultural lands, fish and wildlife habitat, and rivers, lakes, and streams; protecting scenic views; and making improvements to lands acquired or designated as open space that are accessible to the public, by purchasing land, easements, or other interests in land from willing landowners and paying for improvements and costs related to or serving lands acquired or designated as open space, including transaction and project costs and fees, all with citizen input, and costs associated with the sale and issuance of the bonds, which bonds shall bear interest at a rate or rates to be determined at the time of sale, be payable semiannually during a term not to exceed twenty (20) years for each series of bonds, and be subject to the County annual independent audit; and

WHEREAS, on November 6, 2018, 63% of Missoula County Voters voted in favor of the above ballot question; and

WHEREAS, the City and County are authorized to enter into interlocal agreements pursuant to the Open Space Act and Title 7, Chapter 11, Part 1, M.C.A. (the "Interlocal Cooperation Act"), to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, it is necessary and desirable that the City and the County enter into this Interlocal Agreement to set forth the limitations and procedures for the use of the proceeds of the 2018 Open Space Bonds.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article I. DEFINITIONS AND EXHIBITS.

Section 1.1 Definitions. In this Agreement, the following terms have the meanings given to them in this Section.

- (a) “Board”: the Missoula Board of County Commissioners.
- (b) “Bond” or “Open Space Bond”: the 2018 Missoula County general obligation open space bonds authorized by the electorate of Missoula County in one or more series and issued from time to time of up to \$15 million to pay the costs of the Undertakings and associated costs in furtherance of the open space bonds purpose.
- (c) “Citizen Input”: includes Parks, Recreation, Open Space, and Trails (PROST) and other citizen surveys, Board and Council adopted plans and policies, public meetings, public open houses, meetings of the City Open Space Advisory Committee (OSAC), County Open Lands Citizens Advisory Committee (OLC), Joint City/County Open-Lands-Open Space Advisory Committees and any other advising board/volunteer boards meetings that addresses or takes comments on Open Space related projects and initiatives..
- (d) “City”: the City of Missoula, Montana.
- (e) “City Jurisdictional Area”: for the purposes of this agreement, the Missoula Planning Region depicted on Exhibit A.
- (f) “City Open Space Bond Resolution”: one or more resolutions of the City Council, stating its support for the County Open Space Bond Resolution and articulating the City’s goals for expending the portion of the Bonds allocated to the City.
- (g) “City Undertakings”: collectively, the efforts described in Article II, Section 2.3.
- (h) “Costs of Issuance”: underwriter’s spread, counsel fees, financial advisory fees, rating agency fees, accounting fees, printing costs for bonds and offering documents, public approval costs, and similar costs.
- (i) “Council”: the City Council of the City of Missoula, Montana.
- (j) “County”: the County of Missoula, Montana.
- (k) County Jurisdictional Area: for the purposes of this agreement, the area outside the Missoula Planning Region including the Frenchtown/Huson, Lolo, Nine Mile, Evaro, Swan Valley, Seeley Lake, Potomac/Greenough, and Clinton/Turah Planning Regions depicted on Exhibit A.
- (l) “County Open Space Bond Resolution”: one or more resolutions of the County adopted by the Board authorizing the issuance of a specific series of Open Space Bonds and setting forth terms and conditions thereof.
- (m) “County Undertakings” means, collectively, the efforts described in Article II, Section 2.4.
- (n) “Disbursement Request”: a request for disbursement of proceeds of the Bonds made by the City and County for proceeds of the Bonds in reimbursement of eligible costs for the City Undertakings.
- (o) “Eligible Transaction Costs”: Costs of Issuance, costs of appraisal, title research, surveys and mapping, legal fees, real estate commissions and fees, title research, environment reports, baseline studies, taxes, option fees, closing costs, other approved transaction costs or costs directly related to the capital cost of any Undertaking and cost of acquisition for any Undertaking.
- (p) “Governing Body”: the Council in the case of the City and the Board in the case of the County.
- (q) “Joint City/County Open-Lands-Open Space Advisory Committees”: the combination of the City Open Space Advisory Committee and the County Open Lands Citizens Advisory

Committee operating independently under their own authorities and undertaking Committee business in a joint public meeting.

- (r) “Joint City/County Projects” means, collectively, projects that Council and Board vote to approve for Joint Open Space Bond funding.
- (s) “Lead Staff”: the person or people designated by the Governing Body of the City and County to coordinate the respective Open Space Programs and act as the Governing Body representative with respect to the implementation of the Interlocal Agreement.
- (t) “Net Proceeds”: the principal amount of the Bonds issued and accrued interest less cost of issuance and accrued interest from their dated date to the date of delivery.
- (u) “2018 Open Space Bond Account”: the account to be established by the County in accordance with Section 7 of County resolution 2018-111, dated July 9, 2018.
- (v) “Open Space Act”: Title 76, Chapter 6, Montana Code Annotated, also known as the Open-Space Land and Voluntary Conservation Easement Act.
- (w) “Open Space Plan”: the most recent Council and Board adopted plan, which provides the vision, goals, and strategies related to open space. Includes adopted land use or issue plans under Growth Policy that addresses open space as defined above. May included components of management plans, active transportation, or other plans, which promote, protect, and provide for open space.
- (x) “Open Space Project”: a project proposed for funding from the Open Space Bonds.
- (y) “Project Costs”: those costs that are allowable by Title 76, Chapter 6, Montana Code Annotated and the 2018 Open Space Bond referendum, necessary for the provision, preservation, maintenance, and management of the property as open-space land which may include the designing, acquiring, engineering, constructing, installing, equipping, furnishing, and placing into service land or improvements, and may include ancillary matters such as site preparation, assembling lots or parcels, soils tests, surveys, historical or archaeological surveys, abatement of safety hazards, initial weed treatment, planting or removing trees or other vegetation, restoring habitat, removal of junk, trash, barbed wire, demolition of structures, providing for access by the public, construction or improvement of trails and trailheads, signs, fencing and similar matters; Project Costs are a capital expenditure included in the overall capital cost of any of the Undertakings.
- (z) “Undertakings”: collectively, any City Undertaking or County Undertaking. Undertakings are meant to describe broad project categories or general approaches used to guide the prioritization of Open Space Bond funding, and include related costs incurred in furtherance of the open space undertaking.

Section 1.2 Exhibits.

Exhibit A – Maps of the Missoula County Planning Regions and Missoula Planning Region.

Exhibit B – Open Space Bond Program Administration

Exhibit C – Disbursement Request Template

Article II. PURPOSE OF THE OPEN SPACE BONDS AND USE OF PROCEEDS

Section 2.1 General Purpose of the Open Space Bonds.

- (a) Conserving, enjoying, and enhancing open-space land, to include providing public access to water and land;
- (b) Conserving agricultural lands, fish and wildlife habitat, and rivers lakes and streams;
- (c) Protecting scenic views;
- (d) Making improvements to lands acquired or designated as open space that are accessible to the public;
- (e) Paying costs of purchasing land, easements, or other interests in land from willing landowners and of improvements and costs related to or serving lands acquired or designated as open space.
- (f) Open Space Bonds may be used for eligible transaction and project costs relating to or furthering Open Space Projects and including costs of sales and issuance associated with the Bond itself.
- (g) Expenditures of Open Space Bonds are determined with citizen input, and costs associated with the sale and issuance of the bonds.

Section 2.2. Funds Available for the Open Space Bonds Undertakings.

- (a) Not to exceed one half of the Net Proceeds of the Bonds shall be allocated to the City for City Undertakings, and related Eligible Transaction Costs, Project Costs and other approved costs in the City Jurisdictional Area.
- (b) Not to exceed one half of the Net Proceeds of the Bonds shall be allocated to the County for County Undertakings, and related Eligible Transaction Costs, Project Costs and other approved costs in the County Jurisdictional Area.
- (c) The City and County may cooperate and mutually agree on jointly funded Open Space Projects in the Jurisdictional Area of the other.

Section 2.3 City Undertakings. The proceeds of the Bonds allocated to the City will be available to fund qualifying Open Space Projects and related Eligible Transaction Costs and Project Costs which are determined by the Council to meet the purposes established in the Open Space Act and the powers authorized in the November 6, 2018 Open Space General Obligation Bond Ballot more generally described herein at Article II, Section 2.1.

Lead Staff will work with the OSAC and the Council to identify, review and assess proposed Open Space Projects. The Council, with review and recommendation from OSAC, will determine funding decisions for qualified Open Space Projects.

Details of each Open Space Project will be determined as part of developing the project proposal, and will be presented to the Council, as part of the administrative record developed and presented at public meetings and public hearings, prior to approval of bond funding for an Open Space Project.

Eligible Transaction Costs and Project Costs will be outlined with more certainty as additional planning, engineering, due diligence and budgeting are developed for each Open Space Project. The City will ensure the proceeds of the Bonds are applied to Open Space Projects in a manner that accomplishes the Open Space Bonds purpose.

The City will prioritize the investment of City Open Space Bond funds within the greater Missoula Planning Region based on the five broad project categories, or “Undertakings”, detailed below in Sections 2.3(a)-(e). These five Undertakings were established by the City in

June 2018 after considering public input via the FY2019 Budget Process, 2019 PROST survey, and related adopted Plans. Approval and allocation of Open Space Bond funds for Open Space Projects tiering under any of the below described Undertakings shall include additional citizen input, using the process provided in the City's Open Space Ordinance, Title 12, Chapter 12.56 (hereinafter MMC 12.56), and as determined by Council.

(a) River Restoration and Access Undertaking

- i. Funds will be used to provide sustainable river access, riverbank restoration and mitigation of impacts from public use of rivers, including providing public access to water and land and conserving rivers, lakes and streams.
- ii. Projects carried out as part of this undertaking will meet the purpose of the Bonds by paying costs to conserve and enhance open-space land by providing public access to water, conserving fish and wildlife habitat and conserving rivers, lakes and streams, and by making improvements to land acquired or designated as open-space land, including Eligible Transaction Costs and Project Costs, all with citizen input.
- iii. Initial project to include completing analysis for capital improvements along the Clark Fork River corridor from Hellgate Canyon to Riverside Park.

(b) Acquisition of Fee Land, Easements, Conservation Easements or Other Interests in Land Undertaking

- i. Priorities include, but are not limited to: protecting anchor areas, corridors or urban green spaces; protecting wildlife habitat and wildlife movement corridors; protecting cultural and historic lands; providing access to land and water; protecting agricultural land and land in or near open space cornerstones as shown in the 2019 Missoula Urban Area Open Space Plan; acquiring lands that promote social equity by increasing the acres access and/or capacity of parks, trails and open space lands in underserved areas, as described in the 2004 Master Parks Plan and 2019 Missoula Urban Area Open Space Plan; and provide parks, trails and open space lands within a ten to twelve minute walk from any neighborhood in the Missoula Urban Area.
- ii. Projects carried out as part of this undertaking will meet multiple purposes of the Bonds including: providing funds to pay costs of conserving, enjoying, and enhancing open-space land, to include providing public access to water and land; conserving agricultural lands, fish and wildlife habitat, and rivers, lakes, and streams; protecting scenic views; and making improvements to lands acquired or designated as open space that are accessible to the public, by purchasing land, easements, or other interests in land from willing landowners and paying for improvements and costs related to or serving lands acquired or designated as open space

(c) Reforestation and Restoration of Open-Space Lands Undertaking

- i. Restore tree canopy lost to ageing and dying forests on lands designated or acquired as open-space lands, including public parks, greenways and other open space. The project will maximize the benefits of trees, including helping provide clean air and water, shade and other mitigation of impacts of climate change, and the project will focus on risk management, tree health, social equity, and habitat restoration.
- ii. Projects carried out as part of this undertaking will meet multiple purposes of the Bonds including: providing funds to pay costs of enjoying and enhancing open-space land and making improvements to lands acquired or designated as open space that are

- accessible to the public, by paying for improvements and costs related to or serving lands acquired or designated as open space
- iii. The project when approved will entail the planting of over 450 new trees on designated open-space lands.

(d) Conservation Lands Trails and Trailheads Undertaking

- i. Restore trails and trailheads, decommission or rebuild trails, add infrastructure including but not limited to maps, kiosks, signs, sanitation or other infrastructure necessary for public use.
- ii. Projects carried out as part of this undertaking will meet multiple purposes of the Bonds including: providing funds to pay costs of conserving, enjoying, and enhancing open-space land, to include providing public access to water and land; conserving agricultural lands, fish and wildlife habitat, and rivers, lakes, and streams; protecting scenic views; and making improvements to lands acquired or designated as open space that are accessible to the public, by purchasing land, easements, or other interests in land from willing landowners and paying for improvements and costs related to or serving lands acquired or designated as open space
- iii. Proposed initial projects include the Waterworks Hill Trailhead Access and Improvements project and capital improvements to primary and secondary trailheads on open space conservation lands.

(e) Trails Undertaking

- i. Acquire new land for trails or make capital improvement to new or existing trails on open-space lands that provide essential connections to open space and conservation lands. Projects will provide benefits including energy conservation, reducing traffic congestion, improved air and water quality, and social inclusion and health equity access and enjoyment to Open Space lands.
- ii. Projects carried out as part of this undertaking will meet multiple purposes of the Bonds including: providing funds to pay costs of enjoying and enhancing open-space land and making improvements to lands acquired or designated as open space that are accessible to the public, by paying for improvements and costs related to or serving lands acquired or designated as open space.

Section 2.4 County Undertakings. The proceeds of the Bonds allocated to the County will be available to fund qualifying Open Space Projects and related Eligible Transaction Costs and Project Costs which are determined by the Board to meet the purposes established in the Open Space Act and the powers authorized in the November 6, 2018 Open Space General Obligation Bond Ballot more generally described herein at Article II, Section 2.1.

Lead Staff will work with the County OLC and the Board to identify, review and assess proposed Open Space Projects. The Board, with review and recommendation from OLC, will determine funding decisions for qualified Open Space Projects.

The County will prioritize the investment of Open Space Bond funds, described herein at Section 2.2(a), in the Lolo, Clinton and Turah, Potomac/Greenough, Seeley Lake, Swan, Evaro, Frenchtown and Huson, and Ninemile Planning Regions. The County may conduct future

prioritization for the investment of Open Space Bond funds utilizing citizen input and upon the review and recommendation of OLC and the Board.

Eligible Transaction Costs and Project Costs will be outlined with more certainty as additional planning, engineering, due diligence and budgeting are developed for each Open Space Project. The County will ensure the proceeds of the Bonds are applied to Open Space Projects in a manner that accomplishes the Open Space Bonds purpose.

Section 2.5 Joint Undertakings. Nothing in this Article prohibits the Governing Bodies from cooperating and mutually agreeing to jointly fund an Open Space Project in the Jurisdictional Area of the other. Consideration and approval of joint projects will follow the processes as outlined in this Agreement in Exhibit B. The project details supporting a joint project will be presented to OSAC and OLC at either separate meetings or a Joint City/County Open-Lands-Open Space Advisory Committee Meeting. The Council and the Board will each separately determine whether to approve their portion of the Joint Open Space Project and associated Open Space Bond funding request.

Article III. OPEN SPACE PROGRAM ADMINISTRATION

Section 3.1 The City and the County will each administer its respective Open Space Programs, as described in this Agreement, including Exhibit B.

Section 3.2 The City will be responsible for the oversight and management of City Undertakings and Projects and the County will be responsible for the oversight and management of County Undertakings and Projects.

Section 3.3 Lead Staff share equally in the responsibility for Joint City/County Open-Lands-Open Space Advisory Committee Meetings and the oversight and management of any potential Joint Undertakings.

Section 3.4 The City Open Space Advisory Committee will be staffed by the City and shall be responsible for, among other things, reviewing and recommending to the Mayor and City Council specific Open Space Projects to be proposed for funding from the Open Space Bond proceeds allocated to the City, consistent with the City Undertakings, and other requirements as described in City's Open Space Ordinance, Title 12, Chapter 12.56 MMC.

Section 3.5 The County Open Lands Citizen Advisory Committee shall be staffed by the County and shall be responsible for, among other things, reviewing and recommending to the Board specific Open Space Projects to be proposed for funding from the Open Space Bonds allocated to the County.

Section 3.6 Each Advisory Committee will base its recommendations on criteria approved by its respective governing body.

Section 3.7 The Joint City/County Open-Lands-Open Space Advisory Committees will meet as needed to discuss and make recommendations to the Board and Council for funding of Joint Undertakings.

Article IV. COVENANTS AND PROCEDURES RELATED TO EXPENDITURE OF BONDS

Section 4.1 Issuance of Bonds. Bonds may be issued in separate series and in principal amounts as required to timely fund Eligible Transaction cost and Project Costs, as well as costs incurred due to sales and issuance of the Bonds, and other approved capital costs of an Undertaking. Bonds will be issued in such amounts and at such times to ensure that the Bonds can be issued and maintain their status as tax-exempt obligations.

Section 4.2 Open Space Bond Account. Upon the issuance of a series of Bonds and in accordance with the County Open Space Bond Resolution, the Board shall create and maintain an 2018 Open Space Bond Acquisition Account, as described in section 7 of the County Open Space Bond Resolution, for that series of Bonds and deposit into the account the proceeds of that series of the Open Space Bonds to pay or reimburse the County for Eligible Transaction cost and Project Costs, as well as costs incurred due to sales and issuance of the Bonds, exclusive of accrued interest or amounts to pay underwriter's discount or interest on the Bonds. The Open Space Bond Acquisition Account for each series of Bonds will be maintained separate and apart from other County funds and accounts and shall be subject to the County's annual financial audit.

Section 4.3 Land Acquired or Designated as Open Space Land. For the avoidance of doubt, the City and the County expressly acknowledge that for a project to qualify as an Open Space Project eligible for expenditure of proceeds of the Open Space Bonds, the land on which the project is located or that is served by the project must be either acquired or designated as open space land prior to disbursement of Open Space Bond funds. To the extent an Open Space Project will be constructed on or otherwise relates to land in which the City (for City Undertakings) or the County (for County Undertakings) has an interest other than a fee title interest or perpetual easement, the City and/or the County will consult with bond counsel regarding whether the proposed Open Space Project qualifies for the expenditure of proceeds of Open Space Bonds. The administrative record for each proposed Open Space Project will include information about the land related to the project, a map or maps of such land, the interest in land held by the City or County, as applicable, and the acquisition or designation of that land as open space land.

The parties also acknowledge that in certain cases, City or County staff may want to reduce the perceived risks of incurring preliminary project costs and therefore request from the Board, before the land is designated as open space land, an early determination that a proposed Open Space Project is eligible for Open Space Bond funds. In such an instance, the request will follow the process described in Exhibit B, including review by bond counsel and concurrence by the Board. The motion of the Board will indicate that expenses for incurred costs for the Open Space Project will not be disbursed until the land on which the project is located, or that is served by the project, is either acquired or designated as open space land.

To the extent a proposed Open Space project does not come to fruition and for which otherwise eligible expenses have been incurred, the City and County agree to consult bond counsel on a case-by-case basis to determine if said expenses are eligible for reimbursement.

Article V. INDEMNIFICATION

Section 5.1 City and County mutually agree that the Open Space Projects anticipated pursuant to this Interlocal Agreement will only be approved for funding from the Bonds if they are consistent with the Open Space Act, the ballot language Missoula County voters approved for the 2018 Open Space Bonds, any relevant Internal Revenue Code provisions or U.S. Treasury regulations, or any other applicable federal or state law governing the use of general obligation open space bonds.

Section 5.2 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 County, its employees or agents in connection with or arising out of or relating to this Agreement or a County Undertaking.

Section 5.3 City shall defend, indemnify and hold harmless County, its employees and agents, from all claims, liabilities, demands, 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 connection with or arising out of or relating to this Agreement or a City Undertaking.

Article VI. AMENDMENT OF AGREEMENT

Section 6.1 Request of Either Party. City or County may initiate a request to amend this Agreement by one party providing a written copy of the proposed amendment to the other party for review and consideration.

Section 6.2 Thirty Days. The Governing Body in receipt of the proposed amendment will respond in writing within 30 days to the party initiating the request to amend the Agreement; however, the recipient Governing Body need not act on a proposed amendment until the Governing Body of the requesting party has approved the amendment. The recipient Governing Body should not unreasonably deny a request if the request is consistent with goals of 2018 Open Space bond.

Section 6.3 Effective Date. Any amendment to this Agreement will become effective on the date it is approved and adopted by a majority vote of both Governing Bodies.

Article VII. MISCELLANEOUS PROVISIONS

Section 7.1 No Joint Entity Created. This Agreement does not affect responsibility of each of the parties hereto to manage its own affairs. No joint board or budget shall result from the undertakings set forth in this Agreement and no partnership or joint venture exists or shall be deemed to exist between the City and the County.

Section 7.2 Headings. The headings used herein are for convenience only and shall not be deemed relevant in resolving any question of interpretation or construction of any provision contained herein.

Section 7.3 Filing. This Agreement will be filed with the Clerk and Recorder of Missoula County and the Secretary of State of the State of Montana.

Section 7.4 Term. This Agreement remains in effect until all proceeds of the Open Space Bonds are spent, at which time it will terminate, except that Article V will continue in effect in perpetuity.

Section 7.5 Entire Agreement. The City and the County intend that the terms of this Agreement shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. The City and the County further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, arbitral, or other legal proceeding involving this Agreement.

Section 7.6 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

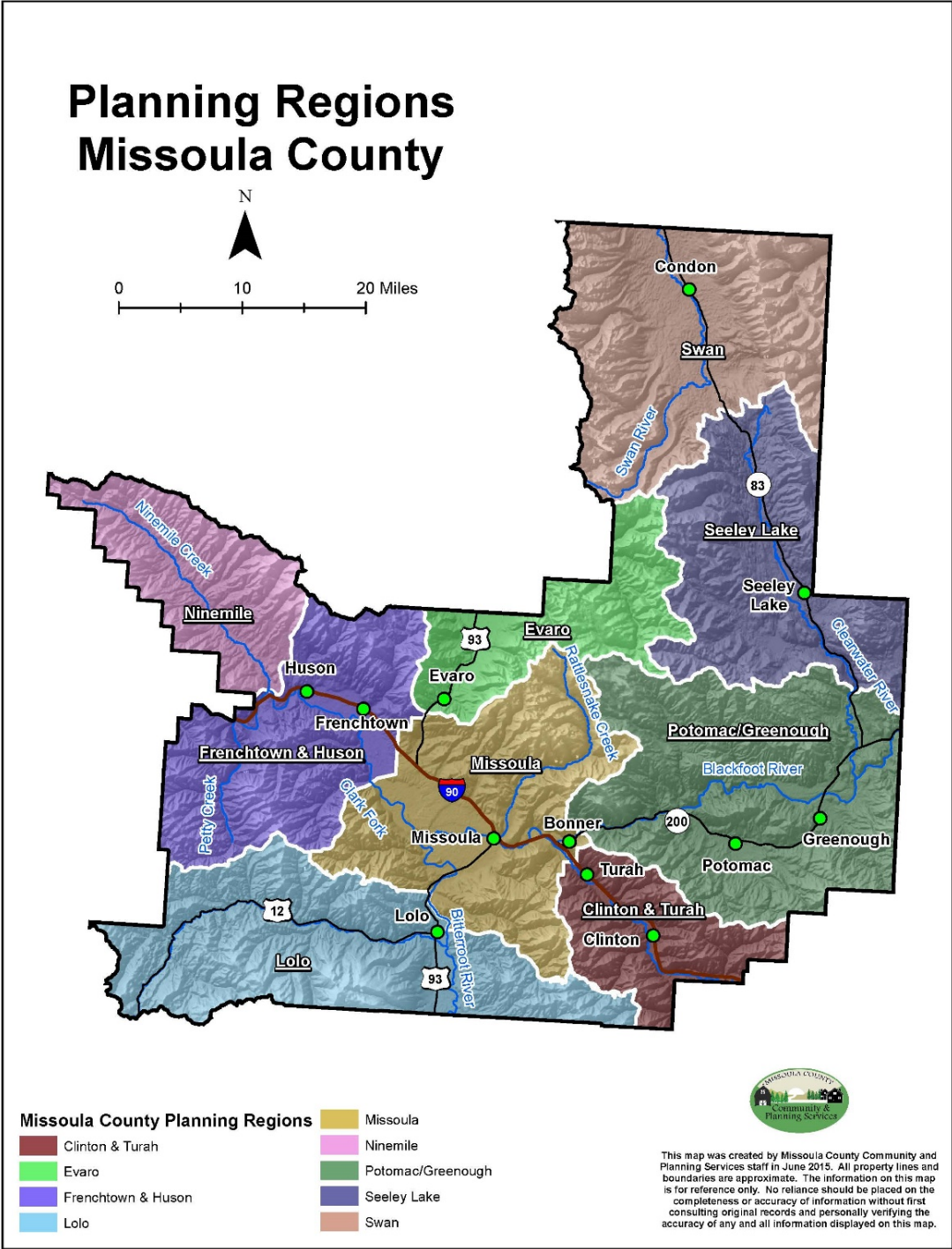
Section 7.7 Further Assurances. The City and the County will cooperate in undertaking such activities and executing all further documents necessary or appropriate to effect the transactions discussed herein. The foregoing provision shall be construed liberally to enable the City and the County to implement the terms of this Agreement without having to amend this Agreement.

Section 7.8 No Assignment. This Agreement shall not be assigned by the City or the County.

Section 7.9 Counterparts. This Agreement may be executed in counterparts, all of which, when taken together, will constitute one and the same agreement.

EXHIBIT A

MISSOULA COUNTY PLANNING REGIONS



MISSOULA PLANNING REGION - CITY JURISDICTIONAL AREA

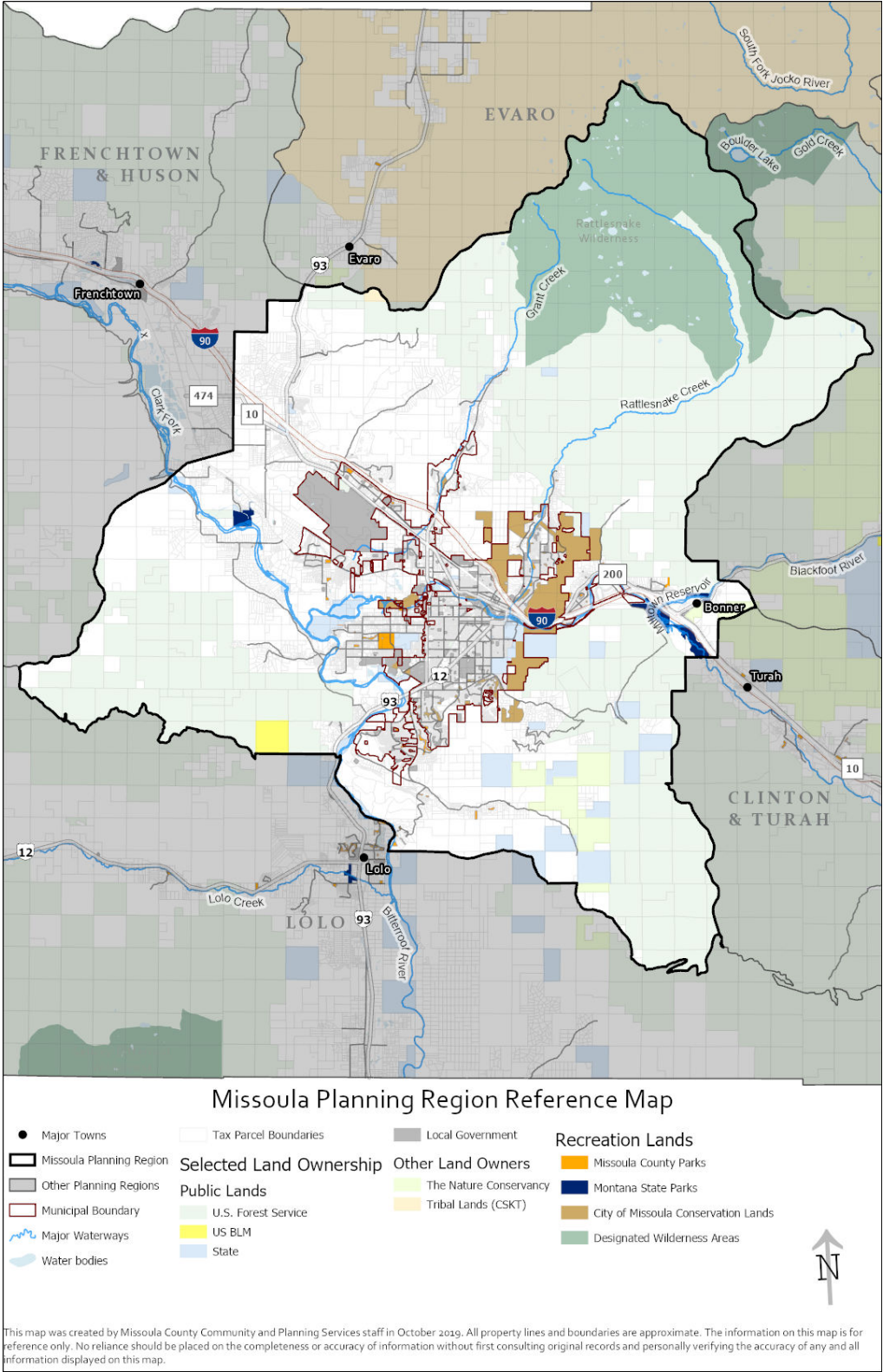


EXHIBIT B

CITY AND COUNTY OPEN SPACE BOND PROGRAM ADMINISTRATION

The following shall provide a general outline for administration of 2018 Open Space Bond Funds by the City of Missoula and Missoula County.

CITY PROJECTS

- Lead City staff works with partners, landowners, and other staff to review or prepare an Open Space Project proposal for public process specific to each Project, including Open Space Advisory Committee (OSAC) review in conformance with MMC 12.56.
- OSAC reviews and evaluates the proposed Open Space Project and provides recommendation to City Council (Council).
- The City Parks and Conservation Committee reviews the proposed Open Space Project and makes a recommendation to Council to approve or deny the project and the associated request for Open Space Bond funding, as well as a recommendation to set a public hearing.
- Council holds a public hearing and considers whether to approve the Open Space Project and the associated request for Open Space Bond funding.
- The Missoula Board of County Commissioners (Board) receives the City resolution and other requisite documents. The Board considers whether to concur with Council's approval of the Open Space Project for funding from the 2018 Open Space Bond funds. Board review of a City Open Space Project will be based on whether the Open Space Project falls within the ballot language for the Open Space Bond and is eligible for financing with proceeds of bonds in accordance with the Open Space Act.
- Prior to the County's issuance of funds to reimburse the City for incurred Open Space Project costs, the City must submit to the County a Disbursement Request, an example of which is depicted in Exhibit C, and requisite documents as per Section 4.3, along with signed City resolutions attached.

COUNTY PROJECTS

- Lead County staff works with partners, landowners, and other staff to review or prepare Level I application for a proposed Open Space Project.
- Open Lands Citizen Advisory Committee (OLC) reviews and evaluates Level I and Level II Open Space Project applications. OLC and the Board attends a site visit. OLC votes and submits recommendation on approval to Board.
- If Proposed Open Space Project is County-led rather than partnership-led, the Board receives a description of the proposed Open Space Project and considers whether to adopt a reimbursement resolution as required by Section 1.150-2 of the Internal Revenue Code. This step does not occur for partnership-led projects.

- The Board holds a public hearing on the Open Space Project and associated Open Space Bond funding request and considers whether to approve the project. If so determined, the Board subsequently approves the allocation of bond funds for the Open Space Project.
- County staff submits a claim for Open Space Bond funding equal to the amount approved by the Board.

JOINT PROJECTS

- City and County lead staff meet to discuss whether a proposed Open Space Project should be jointly funded and the amount of proposed Open Space Bond funding the City and County will each contribute to the project. If City and County staff reach the conclusion that an Open Space Project should be a joint City/County project, staff will coordinate concurrent OLC and OSAC review processes.
- OLC and OSAC hold a Joint City/County Open-Lands-Open Space Advisory Committees meeting on the proposed Joint Open Space Project proposal. A joint field trip occurs with OLC, OSAC, Board and Council invited. OSAC and OLC each recommend approval or denial of the funding proposal to its respective Governing Body.
- Board and Council hold a joint public hearing on the Joint Open Space Project proposal, and each Governing Body considers whether to approve the Joint Open Space Project and associated Open Space Bond funding request. Board and Council each sign a separate resolution.
- If the Governing Bodies disagree on whether to fund a Joint Open Space Project proposal, the public hearing may be continued and staff directed to provide additional information, seek additional matching funds or provide other information as needed.

EXHIBIT C
DISBURSEMENT REQUEST TEMPLATE
CITY OF MISSOULA, MONTANA

The City of Missoula (the "City"), a municipal corporation and political subdivision of the State of Montana, hereby certifies as follows:

- 1) The attached expenses are eligible for payment or reimbursement as Project Costs or Eligible Transaction Costs for qualified Open Space Projects as defined in the "Interlocal Agreement Between the City of Missoula and the County of Missoula Related to Open Space Acquisition and Use of 2018 Open Space Bond Proceeds" dated [_____] (the "Interlocal Agreement").
- 2) The Open Space Project for which the attached expenses were incurred is [located on, serves, furthers open space objectives, etc.] on land that was either acquired or designated as open space land.
- 3) The Open Space Project for which the attached expenses were incurred has been approved by Missoula County, Montana (the "County") pursuant to the Interlocal Agreement and Resolution [____], adopted by the Board of County Commissioners of the County on [____], 20__ and has been approved by the City pursuant to Resolution No. [____], adopted by the City Council of the City on [____]. _____
- 4) The expenses conform to the requirements of the open space bond election question passed by the voters of the County on November 6, 2018.

The City certifies that the invoice payments or reimbursements requested are eligible and in compliance with the items listed above, and understands that this certification is subject to the review and approval of the County and the County will use and rely on the information to make its determination on whether these costs are an eligible use of bond proceeds and can be paid.

Dated this _____ day of _____, 20__

City of Missoula

By _____

Mayor