
LETTER OF AGREEMENT

THIS Letter of Agreement is made and entered into this ____ day of _____, 2018 by and between Missoula County Airport Authority (“MCAA”) and the City of Missoula (“the City”).

RECITALS

1. The Missoula County Airport Authority owns and operates the Missoula International Airport (the “Airport”), a commercial service airport, pursuant to Title 67, Chapter 11, Montana Code Annotated;
2. The City of Missoula is a municipality with self-governing powers pursuant to Title 7, Montana Code Annotated;
3. On April 30, 1985, MCAA and the City entered into a Contract Agreement whereby the City agreed to furnish sewage services to MCAA limited to a maximum of the projected average daily flows from the airport of 29,750 gallons per day and MCAA agreed to consent to an annexation of that portion of the airport connected to the City sewer system, upon certain conditions (“1985 Agreement”);
4. On October 17, 2002, the City, MCAA and Missoula County entered into an Interlocal Agreement Regarding Participation by the Airport Authority in the Mullan Road Corridor Sanitary Sewer Project (“2002 Agreement”);
5. The City has approached MCAA and indicated that it desires to annex MCAA property currently connected to the city sewer system and requests MCAA’s consent to annex all other MCAA property;
6. The City imposes a “Development Impact Fee” on new development in connection with and as a condition of the issuance of a building permit. Development Impact Fees are defined as one time charges applied to development in order to defray the cost of public services and/or facilities. See City of Missoula Municipal Code § 15.66.010 et seq;
7. MCAA is subject to Federal Aviation Administration (“FAA”) regulations. The FAA prohibits MCAA from paying impact fees “that exceed the value of services or facilities provided to the airport.” See FAA Order 5190.6B § 15.13(k);
8. MCAA will agree to annexation upon the City’s written agreement to certain conditions as set forth below;

NOW THEREFORE in consideration of the mutual covenants and promises contained herein, MCAA and the City agree as follows:

1. Annexation. MCAA agrees to consent to annexation of all real property it currently holds title to.
 - a. At the time the City adopts a formal resolution of intention to annex or extend the boundaries of the City to include all MCAA’s real property, MCAA hereby consents to said annexation and waives any right or protest to said annexation proceedings.

- b. MCAA and the City agree that all terms and conditions contained in the 1985 Agreement and the 2002 Agreement are still valid and in effect;
 - c. The City agrees that upon annexation, MCAA will retain its separate identity and autonomy as the governing body of the Airport pursuant to Title 67, Chapter 11, Montana Code Annotated and Missoula County Resolution 80-183 and 2005-033.
- 2. Impact Fees. The City agrees that it will not assess Development Impact Fees for development on any real property owned by MCAA,. This provision applies to all impact fees currently assessed pursuant to the City's Municipal Code §§ 15.66.010 et seq. and to any future Development Impact Fees the City may assess that exceed the value of services or facilities provided to the airport.
- 3. Zoning. MCAA has established its own development guidelines which comply with its FAA grant assurances, FAA regulations and Homeland Security Administration regulations. As such, the City agrees that MCAA is exempt from City zoning regulations as follows:
 - a. Parcel and building standards as set forth in the City's Municipal Code Table 20.20-2, or any similarly enacted standards which would apply to MCAA annexed property;
 - b. Minimum setbacks as set forth in the City's Municipal Code § 20.20.040 or any similarly enacted standards which would apply to MCAA annexed property;
 - c. Parking regulations as set forth in the City's Municipal Code Chapter 20.60 or any similarly enacted standards which would apply to MCAA annexed property;
 - d. Landscaping regulations as set forth in the City's Municipal Code Chapter 20.65 or any similarly enacted standards which would apply to MCAA annexed property;
 - e. Sign regulations as set forth in the City's Municipal Code Chapter 20.75 or any similarly enacted standards which would apply to MCAA annexed property.
- 4. Place of Performance, Governing Law and Choice of Venue. The place of performance of this Agreement shall be in Missoula County, Montana. This Agreement shall be construed and interpreted pursuant to the laws of the State of Montana. Venue for any dispute or suit concerning this Agreement shall be in Missoula County, Montana.
- 5. Negotiation of This Agreement. The parties acknowledge that this Agreement is the result of substantial negotiations between the parties and should be construed in accordance with the fair intent and meaning of the language, considered in its entirety and not for or against either party, regardless of which party (or which party's attorney) prepared this Agreement. Each party acknowledges that it has consulted with its own attorney in connection with the negotiation of this Agreement.
- 6. Amendments. This Agreement may not be modified, altered or amended in any manner unless such modification, alteration or amendment is reduced to writing and executed by all parties to this Agreement.

7. Merger. This Agreement represents the entire agreement of the parties hereto and NO REPRESENTATIONS, EXPRESS OR IMPLIED, have been made by any party except as contained herein. This Agreement is in substitution of and supersedes any and all prior agreements, discussions, understandings or conversations between the parties, their agents and employees pertaining to this transaction.
8. Attorney Fees, Expenses and Costs. In any action brought by either party to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to costs, out of pocket expenses, expert and lay witness fees and expenses, and such reasonable attorney and paralegal fees as the court shall determine just including any such costs, out of pocket expenses and fees incurred on any appeals or in any bankruptcy proceeding.
9. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
10. Headings and Captions. The various headings, titles, subtitles, captions and numbers and the groupings of the provisions of this Agreement into separate sections and paragraphs are for the purpose of convenience only and are to be ignored in any construction of the provisions of this Agreement.
11. Waiver. The failure of Lessor or Lessee to insist upon strict performance of any of the terms, conditions, or covenants herein shall not be deemed a waiver of any rights or remedies that either may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants contained in this Agreement.
12. Successors in Interest. The terms, covenants and conditions of this Agreement apply to and are binding on the successors and assigns of the parties to this Agreement.
13. Official and Corporate Action. The parties represent and warrant that each has taken all official or corporate action necessary to authorize the execution and performance of this Agreement.

CITY OF MISSOULA

ATTEST

Martha L. Rehbein, City Clerk

John Engen, Mayor

Approved as to Form and Content:

Jim Nugent, City Attorney

MISSOULA COUNTY AIRPORT AUTHORITY

ATTEST

Matt Doucette, Board Secretary

Shane Stack, Board Chair

Cris Jensen, Airport Director

Approved as to Form and Content:

Carolynn Fagan, MCAA Legal Counsel