

INTERLOCAL AGREEMENT

Ver. 17.0

This Interlocal Agreement ("Agreement") is between Flathead County ("County") and Lakeside County Water and Sewer District ("District"):

RECITALS

Whereas, with Flathead County's continuing population growth and the escalating number of septic tanks countywide, there is an increasing shortage of treatment options for the solid waste materials that are pumped from septic tanks which is called septage ("Septage").

Whereas, the lack of options for treating Septage is an escalating, serious health and environmental problem throughout Flathead County.

Whereas, to resolve this health and environmental problem, County intends to purchase property and construct a Septage Treatment Plant ("STP") and Biosolids Composting Facility ("BCF") where it will treat this Septage.

Whereas, even after County treats the Septage, the resulting effluent still will be "residential" strength wastewater that requires further treatment, which District is willing to do.

Whereas, County desires to transfer the residential strength effluent from its STP and BCF to District's existing Wastewater Treatment Plant ("WWTP"), where District will further treat the effluent.

Whereas, On July 25, 2023, County entered into a Sale and Purchase Agreement for 305 Wiley Dike Rd, Kalispell, Flathead County, Montana 59901 ("Proposed Property") with a proposed closing on or around September 15, 2023.

Whereas, the Proposed Property is located about 1,900 feet north of District's WWTP along Cedar Mill Road.

Whereas, the purpose of this Agreement is to set forth the parties' obligations and responsibilities arising from District's willingness to treat the effluent from County STP and BCF.

Therefore, the parties agree as follows:

1. **Easements:** At its sole expense, County shall obtain the necessary easements from the Proposed Property to the boundary of District's WWTP property. In addition, County and District shall negotiate in good faith to determine the terms and location of an easement across District's property to District's headwork facility. County shall prepare the easement location map that will be attached to the easement that the parties shall record in the Office of the Flathead County Clerk and Recorder.

2. **Amount of Effluent and District Capacity:** Upon execution of this Agreement, District shall reserve and provide wastewater capacity of 20,000 gallons per day on average for treating the effluent from County's STP and BCF upon initial startup and operation of County's STP and BCF, which County estimates will be in December 2025. In addition, District shall reserve an additional 40,000 gallons of capacity for County following approval of District's pending application with Montana Department of Environmental Quality (DEQ) for a ground water discharge permit ("DEQ Permit"). Following issuance of the DEQ Permit and District's construction of additional capacity, which it estimates will be completed by January 2027, District can provide the additional 40,000 gallons per day on average of capacity to County, for a total of 60,000 gallons per day on average.

District shall maintain this average daily capacity for County during this Agreement's duration.

If County needs more than 60,000 gallons of capacity in the future, the parties shall negotiate in good faith to reach an agreement to address this needed capacity.

3. **Connection Fee:** For the 60,000 gallons of capacity, County shall pay District \$1,833,705.28 as a connection fee ("Connection Fee"). This Connection Fee is in lieu of County paying its pro-rata share for District's upgrades to handle County's additional flow and to compensate District for reserving the capacity necessary to accept County's flow during the duration of this Agreement. This Connection Fee is calculated using \$5,654 per EDU with the total EDUs estimated by dividing the total annual average design flow of 60,000 gallons by an average flow per EDU of 185 gallons per day for a total of 324.32 EDUs.

County shall pay the \$1,833,705.28 connection fee in two installments:

- A. The first installment of \$611,235.09, which represents one-third of the Connection Fee, shall be due and payable ten days following the County's obtaining title to the Proposed Property. This payment pays for the 20,000 gallons of daily capacity District is reserving now to County. This first installment shall be

refunded to County in the event District's DEQ Permit is denied within ten days of District receiving notice of the denial.

B. The second installment of \$1,333,470.18, which represents two-thirds of the Connection Fee, shall be due and payable ten days following written notice to County that DEQ has issued the DEQ Permit to District. This payment pays for the additional 40,000 of daily capacity District shall reserve for County following issuance of DEQ Permit.

4. **Infrastructure Costs:** At its sole expense, County shall install a flow meter at a District approved location in the District's headworks for billing purposes and shall be responsible for installing, maintaining and replacing all infrastructure or other costs necessary to deliver the effluent from County's STP and BCF to the outside wall of District's WWTP headwork facility. At its sole expense, District shall treat the effluent that County delivers to District's WWTP.
5. **Monthly Billing:** On the first month following the start of County's effluent delivery to District's WWTP, and every month thereafter, District shall send County a monthly bill for the volume of effluent it treated based on the flowmeter in District's control building. County shall be billed at District's then current monthly base rate, discounted by 30% to reflect the fact that County maintains the direct connection to the treatment facility. By way of example only, at the time of this Agreement, the monthly base rate is \$30.09 per equivalent dwelling unit ("EDU") plus \$2.31 per thousand gallons; based on this rate with the 30% discount, County would pay \$21.06 per EDU plus \$2.31 per thousand gallons ($\$30.09 \times .7 = \21.06). At least every two years, District shall calibrate the flowmeter and certify the results to County as to its accuracy. From time to time, District may change its monthly base rates, in which case District shall provide County with at least 60-days written notice prior to the effective date of the rate change.

Monthly bills are due and payable upon receipt. District may add a penalty of 1.5 percent per month of the outstanding balance if payment is not received before the 25th of the month following the sending of the monthly bill. If County fails to pay the monthly bill and penalty, if any, District may serve 30 days written notice that District will refuse to accept further effluent after the 30 days expires until County cures all arrearages.

6. **County Subject to District Ordinance:** County shall comply with District's Ordinance #11-2, Article VII-Sewer Specific Regulations ("Sewer Regulations"), as amended from time to time. The current Sewer Regulations are attached as Exhibit "A."

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remainder by MCI

Handwritten signature
9-14-23

7. **Treatment Level:** County shall deliver effluent to District at no more than "residential" strength wastewater which is generally defined as:

5-Day Biochemical Oxygen Demand: no greater than 250 mg/L

Total Suspended Solids: no greater than 250 mg/L

Total Kjeldahl Nitrogen: no greater than 40 mg/L

Total Phosphorus: no greater than 7 mg/L

At least weekly, County shall test its effluent to ensure it meets this treatment level and share the test results with District. If District receives effluent that exceeds the level of residential strength wastewater, County shall pay the additional cost to treat this effluent and District may refuse to accept further effluent until it meets this requirement.

8. **Early Termination and Contingencies:** By issuing a written notice to District, County may unilaterally terminate this Agreement for any reason, or for no reason at all, within nine months of the date this Agreement. Any money County paid District shall be non-refundable except for the circumstance contained within paragraph "3" A" above.

This Agreement is contingent upon:

- A. County closing on the Proposed Property on or before December 31, 2023. If this closing fails to occur by then, this Agreement is null and void.
- B. County constructing a STP and BCF on the Proposed Property on or before December 31, 2027. If this condition fails to occur, then all obligations for either party arising on or after December 31, 2027 under this Agreement is null and void.
- C. District's DEQ Permit being granted. In the event the DEQ Permit is denied, this Agreement is null and void after District fulfills its obligation to refund under paragraph "3" "A" above.
9. **Agreement Assignability:** County may contract with a third party to manage and operate County's STP and BCF. In that event, County also may assign this Agreement to the third party in its sole discretion.
10. **Duration and Termination:** The initial term of this Agreement shall be until January 1, 2044 (roughly 20 years). After that time, the parties may agree to renew it upon mutually agreeable terms. During the initial term, the parties may terminate the Agreement only for cause following one-year written notice to the other stating specially the grounds for

termination. Prior to termination, the parties shall engage in mandatory mediation, with the mediator paid for by the party seeking to terminate.

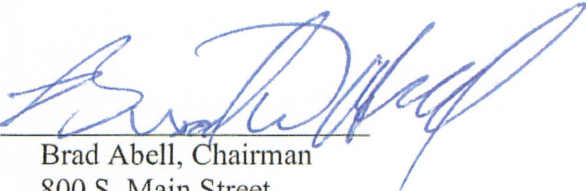
11. **Inspections**: From time to time, County may inspect District's WWTP, and District may inspect County's STP and BCF, upon reasonable notice and in the company of a representative from the other party.
12. **Notice of Material Modifications**: The parties shall communicate with one another on any improvements, additions or infrastructure modifications that may materially affect the administration of this Agreement prior to placement.
13. **Property Ownership**: Title to all real and personal property shall remain the property of current owners. The parties do not anticipate sharing in the purchase of any personal or real property. Upon termination of this Agreement, all improvements or infrastructure that County has installed on District Property shall be deemed to be District's property.
14. **Relationship Between Parties**: During the duration of this Agreement, each party shall maintain its own identity. The parties are contracting parties to an agreement and nothing more. Their relationship is not principal and agent, partnership, joint venture nor any association of any kind. No changes in governance shall be made.
15. **Indemnity**: Each party shall each indemnify or defend and hold harmless the other party, including its officials, employees, and agents, from all claims whatsoever, whether absolute or contingent, arising from the other party's breach of this Agreement or from any negligent or intentional act. This indemnification includes providing a defense and payment of all expenses including attorney's fees but shall not include claims arising solely from first party's negligent or intentional conduct.
16. **Legal Counsel and Interpretation**: District is represented by the Kalispell law firm Scott Law Firm, P.C. (Duncan Scott). County is represented by the Flathead County Attorney's Office. All parties have carefully reviewed and understand this Agreement and sign it by their own free will. No stricter construction or interpretation of this Agreement shall be applied against either party as the drafter of this Agreement.
17. **Entire Agreement and Modifications**: This Agreement constitutes the entire understanding between the parties for the contemplated transaction, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Each party understands that if a term or condition is important to them, and it is not contained in this Agreement, then the term or condition

is not enforceable against the other party. This Agreement may not be waived, amended or terminated except in a document signed by all parties.

18. **Applicable Law and Forum**: This Agreement shall be construed pursuant to Montana law. The proper forum for legal disputes shall be an appropriate Montana court.
19. **Attorney's Fees and Costs**: In the event of a dispute arising from this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees, including fees to enforce this provision.
20. **Further Assurances**: Each party, in a timely manner, shall perform any further acts and shall execute and deliver all documents that may be reasonably necessary to carry out this Agreement.
21. **Compliance with Statutory Requirements for Interlocal Agreements**: This Agreement complies with the requirements for interlocal agreements set forth in Section 7-11-101, et seq., MCA. Following execution, this Agreement shall be recorded in the Office of the Flathead County Clerk and Recorder and filed with the Montana Secretary of State pursuant to Section 7-11-107 MCA.
22. **Date of Agreement**: The date of this Agreement shall be deemed to be the date of the last signature below.

(Signatures on separate pages for each signor)

Flathead County Board of Commissioners

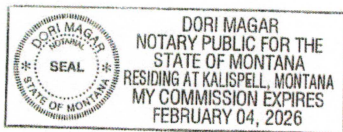
By: 
Brad Abell, Chairman
800 S. Main Street
Kalispell, MT 59901
(406) 758-5503

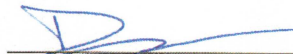
State of Montana)

: ss.

County of Flathead)


This instrument was acknowledged before me on September 14, 2023 by Brad Abell, Chairman of the Flathead County Board of Commissioners.





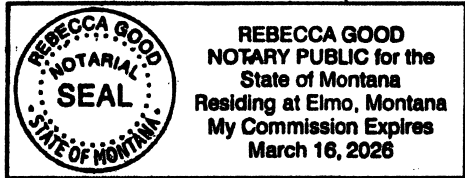
Notary Public for the State of Montana

Lakeside County Water & Sewer District

By: 
Marc Liechti, Board President
253 Bierney Creek Road
Lakeside, MT 59922
(406) 844-3881

State of Montana)
 : ss.

County of Flathead)



This instrument was acknowledged before me on September 11, 2023 by Marc Liechti,
Board President of the Lakeside County Water & Sewer District.


Notary Public for the State of Montana

Exhibit "A": District's Ordinance #11-2, Article VII-Sewer Specific Regulations (pages 23-28)