



**INTERLOCAL AGREEMENT**

(7.0)

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 pumped from septic tanks and portable toilets, 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, on September 14, 2023, the parties entered an Interlocal Agreement ("First Interlocal Agreement") whereby, in general, the County would build, own and operate a Septage Receiving and Treatment Facility ("SRTF") that would treat the Septage to residential strength and then deliver it District, for further treatment.

*Whereas*, since entering the First Interlocal Agreement, both parties have concluded that a more efficient construction and operational model for SRTF is for the County to pass through to District SRTF funding and District itself would build, own and operate SRTF.

*Whereas*, the purpose of this Agreement is to set forth the parties' obligations and responsibilities arising from the County funding and the District's willingness to receive and treat Septage and portable restroom waste.

Therefore, the parties agree as follows:

1. **First Interlocal Agreement Terminated**: This Agreement replaces the First Interlocal Agreement, which is hereby terminated.
2. **County Direct Payments to District**: County shall pay District the following direct payments on the following conditions:
  - A. \$611,235.09 for reserving 60,000 gallons of capacity as required below for this Agreement ("Capacity Reservation Fee"). The County has delivered this payment to District as set forth in the First Interlocal Agreement.
  - B. \$3,541,920.00 for septage and wastewater treatment project expenses paid within 30 days of the date of this Agreement. Funds must be used for septage and wastewater treatment project expenses.

- C. \$7,083,840.00 for septage and wastewater treatment project expenses will be available for draws once the District has a fully executed construction contract for Phase 2 of the SRTF.
- D. \$3,541,920.00 for septage and wastewater treatment project expenses paid within 30 days following written notice to County that SRTF is fully operational and has accepted and treated septage.

3. **County Reimbursable Payments to District:** County shall pay District the following reimbursable amounts on the following conditions:

- A. \$188,000.00 for reimbursement for preliminary engineering. This funding must be spent by December 31, 2024 and District shall meet all DNRC-ARPA Third-Party Subrecipient Memorandum terms and conditions.
- B. \$1,000,000.00 for reimbursement for either preliminary engineering or final engineering. These funds may not be spent on construction expenses. This funding must be spent by EPA/WMCC's deadline and District shall meet all EPA/WMCC Third-Party Subrecipient Memorandum terms and conditions.

At the time of signing this Agreement, County has not received the grant contract for this funding through the EPA and Western Montana Conservation Commission (WMCC). Upon County's receipt of this grant contract, District shall execute a third-party subrecipient memorandum with the County that contains the same terms and conditions required by the EPA and WMCC grant contract.

If, for any reason, County fails to receive this \$1,000,000.00, or the funds cannot be utilized, or the funding is provided directly to the District, County's obligation to pay this \$1,000,000.00 is terminated.

- C. \$7,600,000.00 for reimbursement for any project-related expenses. District must obligate this funding by December 31, 2024, and spend it by December 31, 2026 and District shall meet all ARPA Pass-Through Subrecipient Memorandum terms and conditions.

For all reimbursement payments, District shall pay invoices and submit requests to the County for reimbursement. County shall use best efforts to pay the reimbursement invoices within 60 days of receiving of a complete and approved reimbursement request, that meets the compliance with subrecipient terms and conditions. All reimbursement-based funding must meet Treasury requirements and deadlines. Any requirement for County to meet subrecipient agreement terms and conditions means the District must meet the same terms and conditions as if

District was a party to the agreement itself.

A summary of the parties' payment amounts and conditions is set forth in Exhibit "A."

4. **Additional Documents for Execution:** Upon execution of this Agreement, the parties also shall execute the following documents, incorporated by reference:
  - A. ARPA Pass-Through Subrecipient Memorandum attached as Exhibit "B."
  - B. DNRC APRA Third-Party Subrecipient Memorandum attached as Exhibit "C."
5. **Permits:** District shall obtain all required and necessary project permits, including a DEQ discharge permit, by December 31, 2024. Although not anticipated, if the DEQ groundwater discharge permit is denied or delayed, District, at its sole expense, shall utilize available land to build an additional storage pond and for land application as needed to accept and discharge the 60,000 gallons per day capacity reservation set forth below.

If the District fails to obtain the DEQ discharge permit or obtain DEQ approval for the additional storage pond by December 31, 2024, County may provide written notice of default to District pursuant to Section 15 below and seek reimbursement of funds pursuant to Section 16 below.

This section and deadlines may be modified in writing by both parties based on the timeline and results of the DEQ discharge permit.

6. **Federal Procurement Practices:** In constructing SRTF, District shall follow all federal procurement practices and District shall review 2CFR Part 200 Subpart D, as this section describes the requirements most applicable to local government.
7. **County to Pave Road:** As part of the SRTF expansion, County shall reconstruct and pave approximately 550 feet of Somers Stage Road in Kalispell, MT. At its expense, District shall develop and provide roadway reconstruction plans in accordance with County's Minimum Standards for Design and Construction for County's review and approval. At its expense, County shall undertake and complete the roadway reconstruction work, which the parties estimate in good faith will cost about \$104,166.00 and will be completed by December 31, 2026.
8. **Construction Completion Deadline:** District shall complete construction of SRTF by December 31, 2026. The District and the County will remain unified throughout this project and may extend this deadline by mutual written agreement. To the extent that the District's obligation to complete construction by the deadline is delayed by unforeseen circumstances outside of the District's

control, the deadline may be extended (upon written consent by County, which shall not be unreasonably withheld), provided that District demonstrates: (a) the unforeseen circumstances are outside the control of the District and could not be prevented by appropriate precautions; (b) District is diligently attempting to work around or mitigate the unforeseen circumstances; and (c) District has promptly notified the County of the occurrence of the unforeseen circumstances. As used here, “complete construction” means SRTF is operational and accepting and treating Septage and portable restroom waste.

9. **Funding Contingencies and Conditions:** If District fails to comply with a funding contingency or condition set forth in this Agreement, County’s obligation to make that payment and all future payments under this Agreement is terminated and County may terminate its remaining obligations under this Agreement by providing written notice to District pursuant to Section 15 below and seek reimbursement of funds pursuant to Section 16 below.
10. **Capacity Reservation:** The District will accept both septage and portable restroom waste in addition to wastewater generated by the District’s operations. In the first year of SRTF operation, District shall reserve and provide treatment capacity for 20,000 gallons per day on average for the SRTF. On year two and thereafter through the duration of this Agreement, District shall reserve a total of 60,000 gallons per day on average of capacity for this waste for the SRTF. These reservation amounts are “Capacity Reservations” and the consideration for this reserve is County’s payment of \$611,235.09. District shall not limit or cap the total amount of Septage and portable restroom waste accepted and treated at the SRTF to less than the Capacity Reservations at the time.
11. **District to Pay for Infrastructure Costs:** At its sole expense, District shall complete all SRTF upgrades, capital improvements, expansions, operations, and any other work as necessary to meet its Capacity Reservations.
12. **SRTF Use:** District shall use the SRTF for the intended purpose for the duration of this agreement.
13. **Tipping Fees:** District shall accept and treat Septage and portable restroom waste charging a fee (“Tipping Fee”). During preliminary and final SRTF design, District shall reach out to local septage pumpers for design feedback, which shall be considered in the final design.

To establish the initial Tipping Fee amount, District shall consult with local septage pumpers about a reasonable amount, but it may not exceed \$95.00 per 1,000 gallons of Septage accepted and treated. In addition, the County must approve in writing this initial Tipping Fee, which approval shall not be unreasonably withheld.

After the initial Tipping Fee amount is established, all subsequent increases are regulated by state law--Section 7-13-2275 MCA--which provides in relevant part:

...

- (5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.
- (6) (a) If the establishment of or change in rates, fees, or charges proposed by a regional authority requires the authority to hold a public hearing pursuant to 75-6-326 and requires an increase to the rates, fees, or charges imposed by the district greater than the increase provided in subsection (5) of this section, the board shall:
  - (i) mail notice of the public hearing to be held by the authority to all customers of the district system at least 15 days prior to the public hearing; and
  - (ii) provide notification of the change to customers of the district system on whom the increased rates, fees, or charges will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.
- (b) The district is not required to hold a public hearing on the increase.

If the District proposes a Tipping Fee increase in excess of 5%, in addition to comply with Section 7-13-2275 MCA, it shall provide written notice of the proposed increase to the County. During the first three years of SRTF operation, County must approve in writing all proposed rate increases. For the duration of this Agreement, District shall work in good faith to keep tipping fees stable and affordable for area septic pumpers to utilize the SRTF. Any increases to the tipping fees will be based on actual operating expenditures and inflation. In no event shall District charge Tipping Fees that exceed 100% of the actual operating expenditures calculated to process 1,000 gallons.

- 14. **Duration and Term:** The initial term of this Agreement shall be from the date of this Agreement until January 1, 2044 (roughly 20 years). After that time, the parties may renew it upon mutually agreeable terms.

15. **Termination**: Upon a party's ("Non-Breaching Party") knowledge of a material breach or other violation of this Agreement by the other party to this Agreement ("Breaching Party"), the Non-Breaching Party shall notify the Breaching Party in writing and provide 30 days to cure the breach or end the violation. If the Breaching Party does not cure the breach or end the violation within 30 days, the Non-Breaching Party may terminate this Agreement.
16. **Effect of Termination**: If District is the Breaching Party and County terminates this Agreement prior to SRTF becoming fully operational, District shall reimburse the County for all direct payments received under Section 2 of this Agreement and District's obligations as a third-party subrecipient shall survive termination. If District is the Breaching Party and County terminates this Agreement after SRTF commences operations but prior to January 1, 2044, District shall, within 60 days, reimburse the County for all: 1) direct payments received under Section 2 of this Agreement prorated for the period of time SRTF was operational prior to termination; and 2) road paving costs advanced by County pursuant to Section 7 of this Agreement.
17. **District Reporting**: During SRTF design and construction, District shall provide County with quarterly reports in a form acceptable to County that details the expenditure of funding set forth in this Agreement.  
  
Once SRTF is accepting and treating Septage, District shall provide the County with annual reports providing the volumes of Septage accepted and treated over the prior year and provide information on the current Tipping Fees and detailed justification for rate increases, if any. The annual reports shall detail all items that significantly affect Tipping Fees and provide the current cost basis for District to process Septage in a cost per 1,000 gallons.
18. **Relationship Between Parties**: For 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 unless explicitly provided for herein.
19. **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.
20. **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

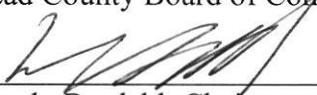
Agreement and sign it by their own free will. No stricter construction or interpretation of this Agreement shall be applied against either party as the drafter of this Agreement.

21. **Material Terms**: Each item contained in this Agreement is a material term. Failure to perform any obligation contained here, no matter how small, shall be considered a material breach of this Agreement. Any time periods or deadlines set forth herein are to be considered essential and material to the Agreement.
22. **Non-Waiver**: In the event either party chooses to not avail itself of any particular recourse or rights provided by this Agreement, such decision shall not be interpreted as a waiver of any such rights.
23. **Notice**: Any call for notice to the other party of this Agreement shall be satisfied by mailing the notice to the mailing address and in the name of the individual (or their respective successor, if any) signing this Agreement below for their respective agencies. Notice shall be complete upon the date of mailing.
24. **Entire Agreement and Modifications**: This Agreement and referenced memorandums and exhibits constitute 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.
25. **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.
26. **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.
27. **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.
28. **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.

29. **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)*

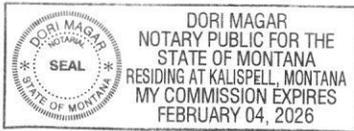
Flathead County Board of Commissioners

By: 

Randy Brodehl, Chairman  
800 S. Main Street  
Kalispell, MT 59901  
(406) 758-5503

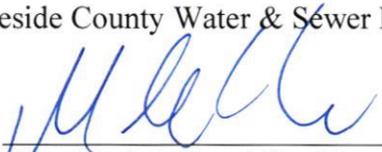
State of Montana     )  
                                  : ss.  
County of Flathead    )

This instrument was acknowledged before me on March 19, 2024 by Randy Brodehl, Chairman of the Flathead County Board of Commissioners.



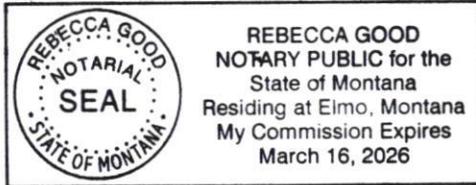
  
Notary Public for the State of Montana

Lakeside County Water & Sewer District

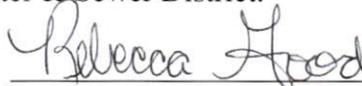
By: 

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 March 19, 2024 by Marc Liechti, Board President of the Lakeside County Water & Sewer District.



Notary Public for the State of Montana

Exhibits:

- A: Septage Receiving and Treatment Facility (SRTF) Project Funding Descriptions
- B: ARPA Pass-Through Subrecipient Memorandum
- C: DNRC APRA Third-Party Subrecipient Memorandum

## Exhibit A

Flathead County (County) and Lakeside County Water and Sewer District (District)

### Septage Receiving and Treatment Facility (SRTF) Project Funding Descriptions

Funding Name	Amount	Date District will Receive Funding	Reimbursement Based	Funding Terms	Funding Returned to County if SRTF is not Operational by Agreed Deadline
Capacity Reservation Fee	\$611,235.09	Paid to District September 2023	No	Quarterly Reports to County	Yes
Somers Road Reconstruction	\$104,166.00 (Total cost estimated to construct 550 ft of paved County roadway)	Not Applicable – County will complete work	No	None	Yes, only if road paving has already been completed
DNRC ARPA Funding	\$188,000.00	Reimbursement Based – District will receive funds as allowable project expenses are incurred, documented and submitted for reimbursement. Based on agency approval and funding.	Yes	DNRC APRA Third-Party Subrecipient Memorandum	No

Funding Name	Amount	Date District will Receive Funding	Reimbursement Based	Funding Terms	Funding Returned to County if SRTF is not Operational by Agreed Deadline
County ARPA Funding	\$7,600,000.00	Reimbursement Based – District will receive funds as allowable project expenses are incurred, documented and submitted for reimbursement. Based on agency approval and funding.	Yes	ARPA Pass -Through Subrecipient Memorandum	No
EPA/WMCC Funding	\$1,000,000.00  *Tentative – at time of agreement no formal contract is in place for this funding	Reimbursement Based – District will receive funds as allowable project expenses are incurred, documented and submitted for reimbursement. Based on agency approval and funding.	Yes	EPA/WMCC Third-Party Subrecipient Memorandum  *agreement to be signed once a contract is received from EPA/WMCC	To be determined based on the terms of the forthcoming funding agreement
Additional County Contribution	\$14,167,680.00	3 payments:  \$3,541,920.00 paid to District within 30 days of agreement execution  \$7,083,840.00 available to District for draws once District has executed SRTF Phase 2 construction contract  \$3,541,920.00 paid to District within 30 days of project completion/SRTF is accepting and treating septage	No	Quarterly Reports to County	Yes

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## Flathead County

### ARPA Pass -Through Subrecipient Memorandum

#### Memorandum of Agreement Between Pass-Through Subrecipient and Subrecipient

This Agreement is entered into by Flathead County, the pass-through subrecipient, and Lakeside County Water and Sewer District, the subrecipient, (collectively, "Subrecipients"). Flathead County is the recipient of ARPA funding through State and Local Fiscal Recovery Fund (SLFRF) for the Lakeside County Water and Sewer District Septage Receiving and Treatment Facility. This Agreement between Flathead County and the Lakeside County Water and Sewer District will enable them to enhance cooperation implementing the ARPA award where Flathead County has determined that collaborating with Lakeside County Water and Sewer District can provide operational efficiencies for county-wide septage treatment.

#### Section 1: Purpose

- 1.1 Flathead County is required to enter into a contract with the Lakeside County Water and Sewer District specifying the terms and conditions of the subrecipient award. The purpose of this Agreement is to establish procurement, reporting, audit, and other requirements to grant funds to the subrecipient for the Septage Receiving and Treatment Facility. Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (2021) ("ARPA") establishes the Coronavirus State Fiscal Recovery Fund and the State and Local Fiscal Recovery Fund (SLFRF). SLFRF funds may be used to make necessary investments in water and sewer infrastructure.

#### Section 2: Pass-Through Subrecipient Role

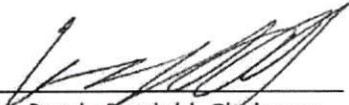
- 2.1 Flathead County is administering SLFRF funds awarded by the Legislature to ensure that the funds are used according to the intent of the Legislature and according to the federal ARPA directives. Flathead County constitutes a "pass-through" entity as defined under 2 CFR § 2000. Any awards granted by Flathead County constitute a subaward of SLFRF funds. Flathead County shall comply with all federal ARPA SLFRF requirements pursuant to 2 CFR § 200 and all state and local laws, statutes, rules, and ordinances. The pass-through subrecipient recognizes that being a pass-through entity does not exempt it from these requirements.
- 2.2 Any agreement between Flathead County and subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget.
- 2.3 Financial Agreement  
\$7,600,000 will be subject to the requirements with respect to a reimbursable grant agreement.

#### Section 3: Subrecipient Role

- 3.1 The subrecipient is responsible for all terms and conditions in CFDA 21.027 and is required to follow all state and annual audit requirements.

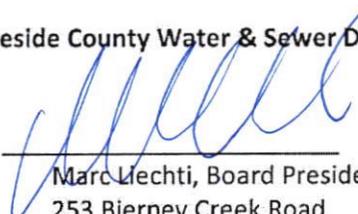
Signatures:

**Flathead County Board of Commissioners**

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

Date: 3/19/24

**Lakeside County Water & Sewer District**

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

Date: 3-19-2024



## Flathead County

### DNRC APRA Third-Party Subrecipient Memorandum

#### Memorandum of Agreement Between Pass-Through Subrecipient and Third-Party Subrecipient

This Agreement is entered into by Flathead County, the pass-through subrecipient, and Lakeside County Water and Sewer District, the third-party subrecipient, (collectively, "Subrecipients"). Flathead County is the recipient of ARPA funding through State and Local Fiscal Recovery Fund (SLFRF) and the water and sewer infrastructure grant under HB 632 for the Lakeside County Water and Sewer District Septage Receiving and Treatment Facility. This Agreement between Flathead County and the Lakeside County Water and Sewer District will enable them to enhance cooperation implementing the ARPA award where Flathead County has determined that collaborating with Lakeside County Water and Sewer District can provide operational efficiencies for county-wide septage treatment.

#### Section 1: Purpose

- 1.1 Flathead County is required to enter into a contract with the Lakeside County Water and Sewer District specifying the terms and conditions of the subaward to the third-party subrecipient. The purpose of this Agreement is to establish procurement, reporting, audit, and other requirements to grant funds to the third-party subrecipient for the Septage Receiving and Treatment Facility. Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (2021) ("ARPA") establishes the Coronavirus State Fiscal Recovery Fund and the State and Local Fiscal Recovery Fund (SLFRF). SLFRF funds may be used to make necessary investments in water and sewer infrastructure. Flathead County is the subrecipient of funding under HB 632, 67th Leg., (Mont. 2021), which appropriated ARPA funds.

#### Section 2: Pass-Through Subrecipient Role

- 2.1 Flathead County is administering SLFRF funds awarded by the Legislature to ensure that the funds are used according to the intent of the Legislature and according to the federal ARPA directives. Flathead County constitutes a "pass-through" entity as defined under 2 CFR § 2000. Any awards granted by Flathead County constitute a subaward of SLFRF funds. Flathead County shall comply with all federal ARPA SLFRF requirements pursuant to 2 CFR § 200 and all state and local laws, statutes, rules, and ordinances. The pass-through subrecipient recognizes that being a pass-through entity does not exempt it from these requirements.
- 2.2 Any agreement between a pass-through subrecipient and a third-party subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget.
- 2.3 Financial Agreement
  - \$188,000 will be subject to the requirements with respect to a reimbursable grant agreement.

**Section 3: Third-Party Subrecipient Role**

3.1 A third-party subrecipient receiving a transfer of SLFRF funds from a pass-through subrecipient will be considered to be a subrecipient and must comply with all subrecipient requirements.

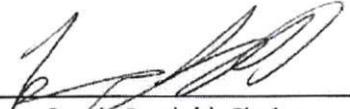
**3.2 Unless otherwise stated in this subsection, the third-party subrecipient is subject to all terms and conditions of grant agreement number AMC-23-0057.**

3.2.1 Third-party subrecipient is subject to Section 7 in Flathead County to the extent that it will provide the required information and reports to the pass-through subrecipient sufficient for the pass-through subrecipient to satisfy the Section 7 obligations to DNRC.

3.3 The subrecipient and third party subrecipient is responsible for all terms and conditions in CFDA 21.027 and is required to follow all state and annual audit requirements.

Signatures:

**Flathead County Board of Commissioners**

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

Date: 3/19/24

**Lakeside County Water & Sewer District**

By:   
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Date: 3-19-24