

✓ 6-20-95

INTERLOCAL AGREEMENT

BETWEEN THE INCORPORATED LOCAL GOVERNMENTS OF
THE CITY OF GREAT FALLS, MONTANA
AND
CASCADE COUNTY, MONTANA
IN RE CASCADE COUNTY PROVISION OF
BULK WATER SERVICES TO COUNTY RESIDENTS

(6th rev., 06-20-95)

WHEREAS, the Montana Interlocal Cooperation Act, codified at Mont. Code Ann. § 7-11-101, et seq. (1993), permits local government units to make the most efficient use of their powers by enabling them to cooperate with other local government units on the 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, the Montana Interlocal Cooperation Act provides that public agencies may authorize and approve interlocal agreements with other public agencies to perform any administrative service, activity, or undertaking which such public agencies are otherwise authorized by law to perform; and

WHEREAS, the incorporated County of Cascade, Montana, hereinafter referred to as the "County," and the incorporated City of Great Falls, Montana, hereinafter referred to as the "City," are both "public agencies," as defined by § 7-11-103, MCA; and

WHEREAS, the § 7-13-4301, MCA, authorizes the City to establish, build, construct, reconstruct, or extend a water supply or distribution system and to operate and maintain such facilities for public use;

WHEREAS, §§ 7-7-4404 and 7-7-4402(3)(a), MCA, authorize the City to construct, acquire, improve, operate, and maintain a water system together with all parts thereof and appurtenances thereto, upon funding derived from the issuance of municipal revenue bonds; and whereas §§ 7-7-4404 and 7-7-4402(3)(a), MCA, further authorize the City to furnish water supply and distribution services, facilities, and commodities to public and private consumers within or without the territorial boundaries of the city and to prescribe and collect rates, fees, and charges for such services, facilities, and commodities furnished;

WHEREAS, § 7-11-104, MCA, authorizes the County to contract with the City to perform any administrative service, activity, or undertaking which the City is authorized by law to perform;

NOW, THEREFORE, pursuant to the Montana Interlocal Cooperation Act, and in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the County hereby agree as follows:

1. Purpose of Agreement.

The purpose of this agreement is to provide the County with the discretionary authority to provide reasonable and affordable bulk water supply and distribution services to county residents, based upon the standard commercial water utility rate that the City otherwise regularly charges to private and public consumers. As a means to effect this purpose, it is the intent of the City and County to enter into a contract for the sale and transfer to the County of the physical facilities and equipment that presently constitute three (3) existing City water dispensing stations.

2. Term of Agreement.

The term of this agreement is for the period from ^{July} August 1, 1995, through July 30, 2010, a period of fifteen (15) years, except as otherwise provided by the terms of the agreement.

3. Resulting Legal Entity and Joint Administration.

This agreement does not create any separate legal entity. Further, this agreement does not create any administrative position, joint board, or other administrative entity.

4. Water and Drain Service -- Financing, Rights, and Obligations.

The City shall supply bulk water and storm drain service to the three (3) existing city dispensing station sites presently located within the City of Great Falls and which are the subject of this agreement. The City shall provide such water and drain service in accordance with the policies, and at the same rates, applicable to regular commercial customers of the City utility systems. The City shall collect such charges from the County by submitting a normal monthly customer billing statement to the County for each dispensing station site's utility service.

The County shall have the right and responsibility for setting and collecting consumer water dispensing station charges applicable to dispensing station customers.

Upon termination of this agreement pursuant to Section 8(b), the City shall continue to provide to the County, at any or all of the three (3) subject water dispensing station sites, such water

and drain service as the County may require under the same terms and rates as otherwise provided under this agreement.

5. Buildings and Equipment -- Financing, Rights, and Obligations.

The County shall assume responsibility and control of the existing City buildings and equipment which presently serve as City water dispensing stations at the following three (3) locations:

- (1) 36th Avenue NE;
- (2) NW Bypass & 14th Street; and
- (3) 21st Avenue South.

The City and the County hereby acknowledge that the total depreciated cost of such Buildings and Equipment is \$42,900.00, consisting of \$36,900.00 for buildings and \$6,000.00 for equipment. Based on a stipulated interest-free fifteen (15) year amortization of the depreciated value of the above-referenced buildings and equipment, the County shall make a monthly buildings and equipment payment of \$238.00 to the City until the term of this agreement expires or the agreement otherwise terminates as provided herein, whichever occurs first.

The monthly buildings and equipment payment shall be due to the City on or before the fifteenth (15th) day of each following month. Thus, the initial monthly buildings and equipment payment shall be due to the City on or before August 15, 1995 and the last monthly payment shall be due on or before July 15, 2010, except as otherwise provided herein. The City shall submit a monthly bill to the County at least thirty (30) days prior to the due date for each monthly payment required under this section.

6. Title Status of Land, Buildings, and Equipment.

Except as provided in Sections 5 and 8 of this agreement, this agreement shall not transfer legal title to the existing buildings, equipment, or underlying land to the County. During the term of this agreement, the County shall have the exclusive right and responsibility to possess, control, and use the land underlying the above-referenced dispensing station sites, as a licensee, at no additional cost to the County.

However, during the term of this agreement, the County:

- (a) may not sublet, sell, or otherwise confer rights to use the subject dispensing site land to any third party for any purpose;

- (b) shall not use the subject land for any purpose other than the continued dispensing station service existing and authorized by this agreement; and
- (c) may not expand the dispensing station facilities at the existing sites without the express written permission of the City.

The three (3) subject parcels of land are more particularly described in Exhibit A to this agreement.

7. Maintenance and Operating Costs.

During the term of this agreement, the County shall have exclusive authority and responsibility to provide for all repair, maintenance, improvements, and other costs associated with the buildings, equipment, and operation of the subject dispensing stations. The County, at its discretion, may recover its maintenance and operating costs through consumer dispensing station rates.

However, within sixty (60) days of the effective date of this agreement, the City shall bring the three (3) subject water dispensing stations into conformance with the applicable standards of the Montana Department of Health and Environmental Sciences by installing appropriate backflow prevention devices at each of the three water dispensing stations. Further, within sixty (60) days of the effective date of this agreement, the City shall test and calibrate the water dispensing meters at the three (3) subject water dispensing stations to ensure that the amounts dispensed are accurate in accordance with a meter price to be set by the County per each thousand gallons of water dispensed.

The pumping of the drain system at the 36th Avenue NE station shall be considered a maintenance item, and thus, the responsibility of the county under this agreement.

8. Termination of Agreement and Disposition of Property.

This agreement shall not terminate, except as provided herein. The following are a number of conditions and effects that, as indicated, may or may not result in termination of this agreement:

(a) Delinquent Utility Payments.

In event that the County is delinquent in making a utility payment pursuant to Section 4 of this agreement, the County shall be subject to the normal City policies and procedures applicable to regular commercial customers of City

utility systems in the case of delinquent utility payments. However, such a delinquency shall not constitute grounds for termination of this agreement.

(b) Termination Upon Normal Expiration of Term.

Except as otherwise provided herein, this agreement shall terminate according to its terms upon the expiration of the term set forth in Section 2 of this agreement and upon complete satisfaction of the payment schedule set forth in Section 5 of this agreement.

Upon termination of this agreement by normal expiration of its term and upon complete satisfaction of the payment schedule set forth in Section 5 of this agreement, the City shall immediately convey title to the subject buildings and equipment to the County by quitclaim deed or bill of sale, as appropriate.

Further, upon termination of this agreement by normal expiration of its term and upon complete satisfaction of the payment schedule set forth in Section 5 of this agreement, the City, at the option and upon the written request of the County, shall issue a written license authorizing the County to continue its use and possession of the land underlying the three (3) sites of the subject water dispensing stations, at no cost and upon the same terms as set forth in this agreement, for a period of fifteen (15) years from the effective date of termination of this agreement. However, if at any time during such license period the County ceases using any of the subject sites as a water dispensing facility, then the City may terminate the license for the land underlying such site upon sixty (60) days written notice to the County.

(c) Termination By Default/Acceleration.

If the County fails to make any buildings and equipment payment, as required by Section 5 of this agreement, then the entire outstanding balance for buildings and equipment, as defined by Section 5 of this agreement, shall become immediately due and payable if the County then fails to cure such default by making the delinquent monthly payment to the City within five (5) days of receipt of written notice of the delinquency from the City. Upon such acceleration, this agreement shall immediately terminate, but the accelerated County debt shall remain due and payable to the City.

However, if the City fails to provide written notice of acceleration upon a delinquent monthly payment, then the City may not terminate this agreement and accelerate the entire outstanding balance for buildings and equipment, as defined by Section 5. In the event of non-acceleration, the delinquent monthly payment shall remain due and owing to the City,

subject to City enforcement via any available legal recourse, but shall not constitute grounds for termination of this agreement.

(d) Unilateral Termination.

The County may unilaterally terminate this agreement for any reason by providing written notice of termination to the City. Upon such notice, this agreement shall terminate on the date one-hundred and twenty (120) days from the date of City receipt of the notice of County termination.

(e) Effect of Unilateral or Default/Acceleration Termination.

Upon termination of this agreement due to County default/acceleration, as defined by Section 8(c), or unilateral termination, as defined by Section 8(d) the following provisions shall apply:

- (1) except as otherwise provided, all rights granted to the County under this agreement, including the right to possess and control the subject dispensing site buildings, equipment, and land, shall immediately terminate and the full right, title, and interest thereto shall revert to the City;
- (2) the final monthly payment that shall become due under the schedule set forth in Section 5 of this agreement shall be the payment for the month in which the effective termination date falls;
- (3) the County shall not be obligated to make any further payments under Section 5 of this agreement, except for any outstanding payments which otherwise became due on or before the effect date of termination; and
- (4) The County shall return the subject dispensing station buildings and equipment to the City in a fully operable and reasonably maintained condition, normal wear and tear excepted; and
- (5) The right to operate and manage the subject water dispensing stations shall revert to the City, in accordance with applicable state law and city ordinance and policies.

Except where inconsistent with the terms of this agreement, the City and the County retain the right to otherwise enforce the terms of this agreement through any remedy available at law or equity.

9. Closing and Re-Opening of City Water Stations.

The County, at its discretion, may close or re-open any or all of the three (3) subject water dispensing stations as it may deem necessary or appropriate to the exercise of the authority granted to it under this agreement.

10. Independent County Water Dispensing Facilities.

At its discretion, the County may independently establish and operate, at other sites within the County, water dispensing stations for the purpose of providing similar water dispensing station services to county residents. Accordingly, the County may also independently acquire, hold, and dispose of any additional land, buildings, or equipment for the purpose of operating or providing water dispensing station services to county residents at other sites with the County.

In such event, the City shall provide the County with necessary access to City water and drain systems, at County expense and in accordance with normal City development policy, under the same terms and rates as otherwise provided in this agreement. However, unless otherwise mutually agreed, the City shall not be required to provide City water or drain service outside the "Great Falls Water Service Area," as defined by City ordinance and policy.

Notwithstanding the termination of this agreement pursuant to Section 8(b) or Section 8(d) of this agreement, the rights granted to the County under this section shall not terminate until the thirty (30) year anniversary date of the effective date of this agreement.

11. Third Party Contracts With the City.

During the period beginning on the effective date of this agreement and expiring on the thirty (30) year anniversary date thereof, the City shall not provide water or drain service, at any rate lower than that provided to the County under the terms of this agreement, to any third party or entity engaged in the for-profit sale, distribution, or dispensing of bulk water to county or city residents. This restriction shall be effective notwithstanding the termination of this agreement pursuant to Section 8(b) or Section 8(d) of this agreement. The provision of water or drain service by the City to a third party or entity in contravention of this section, shall constitute a breach of this agreement.

As applicable, and in addition to any other remedy available at law or equity, upon the City's failure to satisfactorily remedy a breach of this section within thirty (30) days of receipt of written County notice to do so, the County may terminate this agreement by providing written notice of termination to the City.

Upon such notice, this agreement shall terminate on the date thirty (30) days from the date of City receipt of the notice of County termination. In such case, Section 8(e) of this agreement shall apply and the County termination shall have the same effect under Section 8(e) as if the County had terminated this agreement pursuant to Section 8(d).

12. Amendment.

This interlocal agreement may not be amended except by a written agreement between the City and the County, in conformance with the requirements of the Montana Interlocal Cooperation Act, codified at Title 7, Chapter 11, Part 1, MCA.

13. Attorney Fees and Costs.

In any judicial or administrative action to enforce or interpret the terms of this interlocal agreement, the prevailing party shall be entitled to recover from the other party its costs of suit and a reasonable attorney fee, as authorized by law.

14. Severability.

If any term of this agreement should hereafter be declared or become void or unenforceable by decision or operation of law, all other terms of this agreement shall continue to be effective unless the void or unenforceable term(s) materially affect(s) the central purpose and effect of this agreement.

15. Notice.

All notices contemplated by this agreement shall be effective only if issued in writing and delivered via certified or registered mail.

16. Time of the Essence.

Time is of the essence in all actions and conditions contemplated by this agreement.

17. Merger.

This interlocal agreement constitutes the entire agreement of the City and the County with respect to the matters addressed herein and supersedes any and all previous agreements or representations whether verbal or written, if any, between the parties.

18. Prerequisite City Commission Action.

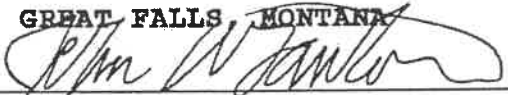
Pursuant to §§ 7-8-4201, 7-3-4368, and 7-3-4303, MCA, this interlocal agreement shall not be effective unless prior to execution by the appropriate City official(s), the City Commission of the City of Great Falls has passed a resolution approving this agreement by a 2/3 vote.

19. Assent.

This agreement shall be effective on the date of execution of the last authorized representative of the City and the County. Pursuant to § 7-11-104, MCA, the City and the County hereby authorize, approve, and execute the terms of this interlocal agreement.

DATED this 20th day of June, 1995.

CITY OF GREAT FALLS, MONTANA

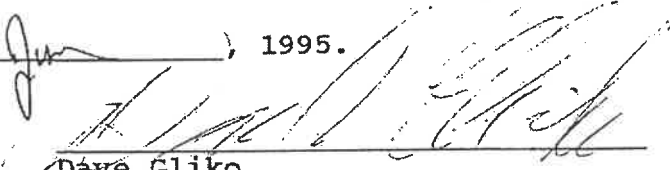

John Lawton, City Manager

ATTESTED this 20th day of June, 1995.

(Official Seal)


City Clerk

APPROVED as to form, this 20th day of June, 1995.


Dave Gliko,
City Attorney, City of Great Falls

DATED this 17th day of July, 1995.

BOARD OF COUNTY COMMISSIONERS,
CASCADE COUNTY

Jack T. Whitaker
Jack T. Whitaker, Chairman

Roy M. Aafedt, Commissioner

Peggy S. Beltrone
Peggy S. Beltrone, Commissioner

ATTESTED this 18th day of July, 1995.

(Official Seal) Rita Hudak
Rita Hudak
Cascade County Clerk & Recorder

APPROVED as to form, this 18th day of
July, 1995.

Brant S. Light
Cascade County Attorney

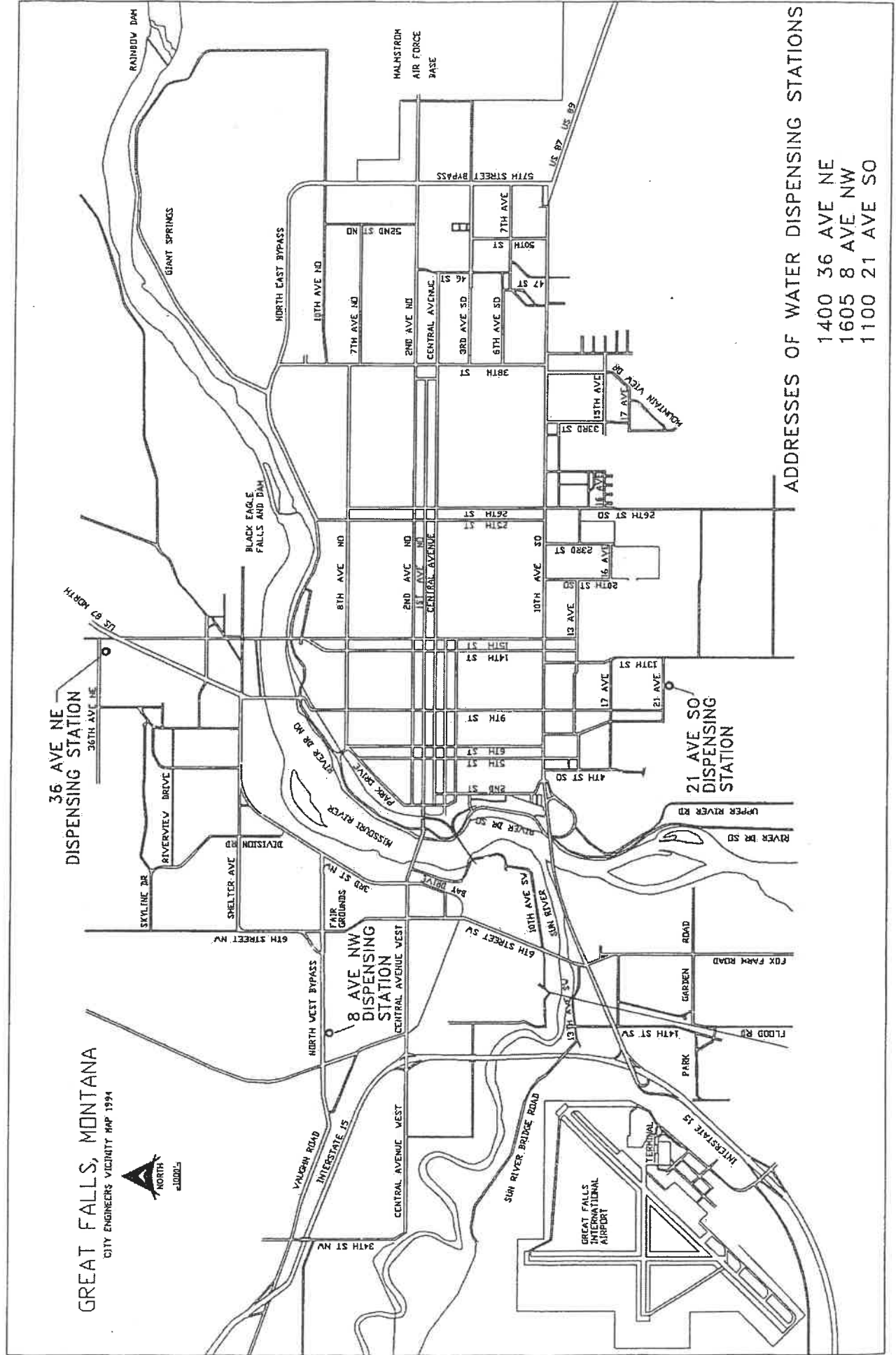
By Dirk M. Sandefur
Dirk M. Sandefur
Deputy County Attorney

LEGAL DESCRIPTIONS FOR LAND
UNDERLYING SUBJECT DISPENSING STATION SITES

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GREAT FALLS, MONTANA

CITY ENGINEERS VICINITY MAP 1994



ADDRESSES OF WATER DISPENSING STATIONS

- 1400 36 AVE NE
- 1605 8 AVE NW
- 1100 21 AVE SO

ROW LINE

EDGE OF PAVEMENT

Q 36 AVE NE

EDGE OF PAVEMENT

ROW LINE

220' ± TO BOOTLEGGER TRAIL



0 10 20 30

1400 36 AVE NE

8" WATER MAIN

16" WATER MAIN

20" WATER MAIN

DISPENSING STATION

STORM DRAIN

HYDRANT

FENCE

ELEVATED TANK

2058' TO
CL OF 9 ST NE

150'

75.00

10'

10'

1605 8 AVE NW

BLOOMINGDALE PARK

