

LICENSE FOR OPERATION OF THREE BULK WATER DISPENSING STATIONS AND ASSOCIATED FACILITIES

This License is issued on the 5th day of October 2010 by the CITY of Great Falls ("CITY") to Cascade County ("COUNTY").

- 1) **Purpose.** The CITY grants COUNTY the right to occupy CITY-owned real property for the purpose of operating, and maintaining Bulk Water Dispensing Stations and related equipment, provided such use is in conformance with federal, state and local regulations. This License applies to each of three existing dispensing stations located at the following addresses:

- (a) 1400 36th Avenue NE, adjacent to the Skyline Elevated Tank
- (b) 1605 8th Avenue NW, located in Bloomingdale Park, and
- (c) 1100 21st Avenue South.

The COUNTY shall not use the subject property for any purpose other than the continued operation of water dispensing stations, nor shall the COUNTY expand the subject dispensing station facilities without the express written permission of the CITY, such permission not to be unreasonably withheld.

- 2) **Period.** The period of this License is fifteen (15) years. This License shall automatically renew at the end of the period for one (1) subsequent fifteen (15) year period, unless the COUNTY, not less than one-hundred twenty (120) days prior to the end of the period, provides notice to the CITY that it wishes to terminate the License. The renewal period shall be on the same terms and conditions as the first period.

- 3) **Operation of sites.**

- (a) The COUNTY, at its discretion, may close or re-open any or all of the subject sites as it may deem necessary or appropriate. During such time that a site is closed, the COUNTY shall continue to maintain the property as required in Article 9. Should the COUNTY choose to temporarily cease operation of one or all of the sites, it shall notify the CITY of its intention.
- (b) The CITY may commence termination of this Lease upon failure of the COUNTY to notify CITY of a temporary closure of any or all of the sites under the terms of Article 16 (b). However, the CITY shall cease the termination process if, within 30 days of receiving the notice required under Article 16 (b), the COUNTY notifies the CITY of the temporary nature of the closure as required in this article.

- 4) **Title Status of Land, Buildings, and Equipment.** This License shall not transfer legal title to the underlying land to the COUNTY. During the term of this License the COUNTY shall have the exclusive right and responsibility to occupy, control, and use the land underlying the subject sites at no additional cost to the COUNTY. During the term of this License the COUNTY:

- (a) May, subject to prior approval by the City, contract, sublet, sell, or otherwise confer rights to use the subject dispensing site land to any third party, provided the rights being conferred are limited to the rights allowed by this License;

- (b) Shall not use the subject land for any purpose other than the continued dispensing stations service absent approval by the City; and
- (c) May not expand the dispensing station facilities at the existing sites without the express written permission of the CITY.

5) **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 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 within 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 License. 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.

6) **Construction.** If the COUNTY chooses to modify any of the following:

- The building, or;
- Any piping or devices inside the building such that any increased potential for contamination of the CITY's water supply would be caused (i.e. any piping that is not supplied water by the backflow preventer, or the backflow preventer itself), or;
- Any equipment, structure or facility outside the building, except: Items attached to the building that do not protrude more than two (2) feet, or; the piping that delivers water from the building to the customer, or; the building's roof.

the COUNTY shall:

- (a) Provide detailed construction plans prior to commencing any modification. The COUNTY shall not proceed with construction until the CITY has approved these plans, such approval not to be unreasonably withheld. Construction shall be in accordance with the approved plans unless a variance is requested by the COUNTY and approved by the CITY.
- (b) Install all modifications in a workmanlike manner. Installations shall be in conformance with all applicable laws, shall not interfere with the current operation of the CITY's property, and shall cause no damage to other CITY-owned property. Prior to installation of any equipment, the COUNTY shall provide details of the equipment installation to the CITY and the CITY shall have the right to refuse to allow any installation which the CITY, in its sole judgement, feels may damage CITY-owned property, cause a hazard to personnel in the proper performance of their duties, or have a negative effect on the CITY's ability to utilize CITY-owned property in the manner for which it is intended.
- (c) The CITY may terminate the License under the terms of Article 16(c) if unapproved construction occurs.

- 7) **Electrical Costs.** COUNTY shall maintain separately metered electrical service to the dispensing stations including electrical service and costs for the area lighting at each site. COUNTY shall have 30 days from the date of this License to have the electrical bill for the area lighting at the 1400 36th Avenue NE site changed such that it becomes the responsibility of the COUNTY.
- 8) **CITY Maintenance.** The CITY will notify County of any maintenance requirements associated with the underlying property. CITY will use its best efforts to avoid impacting operation of the dispensing stations or provide COUNTY with notice at least 48 hours in advance of any maintenance that may affect or impact COUNTY's operation.
- 9) **COUNTY Maintenance and Operating Costs.** During the term of this License, the COUNTY shall have exclusive authority and responsibility to provide for all repair, maintenance, improvements and other costs associated with the subject property including, but not limited to:
 - (a) Buildings, equipment and signage.
 - (b) Water Service line, beginning at the water main, in accordance with Title 13, Chapter 6 of the Official Code of the City of Great Falls (OCCGF).
 - (c) Storm Drainage:
 - (i) For 1605 8th Avenue NW and 1100 21st Avenue South: From the inlet to its connection with the CITY's main line.
 - (ii) For 1400 36th Avenue NE: The complete storm water discharge system including the drainfield.
 - (d) All asphalt areas from the edge of the roadway.
 - (e) For 1100 21st Avenue South: The landscaped area described in Attachment 1.

The COUNTY, at its discretion, may recover its maintenance and operating costs through consumer dispensing station rates.

- 10) **Vandalism.** COUNTY understands that the CITY will not be responsible for the security of the site or protection of COUNTY's equipment from vandalism. Should vandalism occur, COUNTY will make the required repairs to restore its installation aesthetically so as not to maintain a nuisance.
- 11) **Compensation/Rent.** There will be no rental or lease charge to the COUNTY by the CITY for occupancy of the three dispensing station sites in conformance with this License. However, the CITY may recover just compensation for services provided to the COUNTY.
- 12) **Rates.** The CITY shall supply bulk water and storm drain service to the three dispensing station sites. 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. There shall be no additional charges to the COUNTY or to the customers of the subject sites for provision of these services.

In the event that the COUNTY is delinquent in making a utility payment, the COUNTY shall be subject to the normal CITY policies and procedures applicable to regular commercial customers of CITY utility systems. Such delinquency shall not constitute grounds for termination of this License.

While this License is in effect, the CITY shall not provide water or drain service at any rate lower than that provided to the COUNTY to any third party or entity engaged in the for-profit sale, distribution, or dispensing of bulk water to COUNTY or CITY residents.

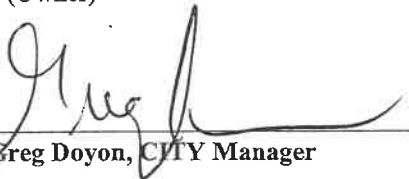
- 13) **Backflow Preventer.** A Reduced Pressure Principal Backflow Preventer shall be maintained in operation at all times in each of the water dispensing stations. The COUNTY must have the Backflow Preventer tested annually by a Certified Backflow Prevention tester who is certified by the American Backflow Prevention Association. The COUNTY shall provide the CITY with documentation of annual performance testing including the Name, Certification Number and certification's Expiration Date of the person that performed the testing as well as a statement verifying that the Backflow Preventer passed the test.
- 14) **Assignment.** This License may not be sold, assigned or transferred by COUNTY to any other party without written approval of CITY.
- 15) **Notice.**
 - (a) Written correspondence to the CITY shall be addressed to Mike Jacobson, WTP Supervisor, CITY of Great Falls, P.O. Box 5021, Great Falls, 59403.
 - (b) COUNTY shall supply a contact name and address to which all correspondence will be mailed.
- 16) **Termination.**
 - (a) By COUNTY's Choice: COUNTY may terminate this License or choose not to renew the License as described in Article 2 for any or all of the sites by notice to the CITY without further liability. Upon such notice, this License shall terminate on the date one-hundred and twenty (120) days from the date of CITY receipt of the notice of COUNTY termination. Upon termination, the CITY shall retain all payments made by COUNTY. COUNTY reserves the right to move any and all buildings and equipment to another location upon termination of the License.
 - (b) By non-use: Except as allowed in Article 3, if at any time the COUNTY ceases using any of the subject sites as a water dispensing facility, the CITY may terminate this License as it applies to the unused site upon sixty (60) days written notice to the COUNTY.
 - (c) By Default: If the COUNTY fails to abide by the terms of this License, the CITY may terminate this License for any or all of the subject property after providing notice to the COUNTY and allowing the COUNTY opportunity to provide remedy as described in Article 20.

- 17) **Status of Property upon Termination.** Upon termination for any reason:
- (a) COUNTY may remove all equipment owned by COUNTY from the property within 30 days.
 - (b) COUNTY-owned Improvements that may benefit the CITY may be left in place and would become property of the CITY upon approval by the CITY.
 - (c) County-owned improvements that do not benefit the City must be removed from the property within 90 days.
 - (d) For those sites where the County chooses to leave County-owned improvements in place and the City chooses to maintain the use of said improvements, the County will be compensated for the County-owned improvements which remain at the site(s) in an amount to be negotiated between the CITY and COUNTY governing bodies. In the event of a dispute over valuation, CITY and COUNTY will engage an independent appraiser to fairly value the equipment, buildings or other County-owned property left in place.
- 18) **Insurance.** COUNTY shall maintain throughout the life of this License commercial general liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate. COUNTY will also maintain auto liability coverage. COUNTY's insurance coverage shall name the CITY as additional insured and shall contain a provision that no cancellation thereof shall be effective by the insurers without 45 days prior written notice to the CITY and COUNTY.
- 19) **Indemnification.** Each party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other party, or its employees, contractors or agents.
- 20) **Default.** In the event there is a breach by COUNTY with respect to any of the provisions of this License or its obligations under it, CITY shall give COUNTY written notice of such breach. After receipt of such written notice, COUNTY shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided COUNTY shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and COUNTY commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. CITY may not maintain any action or effect any remedies for default against COUNTY unless and until COUNTY has failed to cure the breach within the time periods provided in this Paragraph.
- 21) **Miscellaneous**
- (a) The terms of this License apply to and bind the heirs, successors, executors, and assigns of the parties to this License.

- (b) The terms of this License supersede all prior written and verbal agreements, representations, promises, or understandings between parties.
- (c) Any modification to this License shall be by Amendment only, executed by both parties.
- (d) If any term of the License should hereafter be declared or become void or unenforceable by decision or operation of law, all other terms of this License shall continue to be effective unless the void or unenforceable term(s) materially affect(s) the central purpose and effect of this License.
- (e) Except where inconsistent with the terms of this License, the CITY and the COUNTY retain the right to otherwise enforce the terms of this License through any remedy available at law or equity.

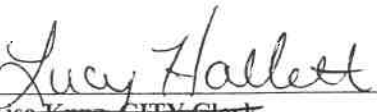
CITY OF GREAT FALLS

(Owner)

By 
Greg Doyon, CITY Manager

Date: 10-12-2010

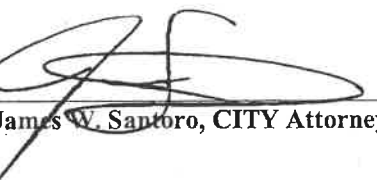
ATTEST

By 
~~Lisa Kunz, CITY Clerk~~
Lucy Hallett, Acting City Clerk

10-5-10
Date approved by the Great Falls
CITY Commission

(Seal of the CITY of Great Falls)

APPROVED FOR LEGAL CONTENT:

By 
James W. Santoro, CITY Attorney

Attachment 1
Landscape Maintenance Area, 1100 21st Avenue South.

