

First Amendment to Wastewater Service Agreement

This First Amendment to Wastewater Service Agreement is entered into this ____ day of October, 2020, by and between the **CITY OF BILLINGS, MONTANA** (City), a Montana Municipal Corporation whose principal business address is 210 North 27th Street, P.O. Box 1178, Billings, Montana 59103, and the **LOCKWOOD AREA /YELLOWSTONE COUNTY WATER AND SEWER DISTRICT** (District), whose principal business address is 1644 Old Hardin Road, Lockwood, Montana 59101.

RECITALS

1. The City and District entered into a **Wastewater Service Agreement** on March 24, 2008, hereinafter the “**Agreement**”. The **Agreement** sets forth terms of the disposal of the District’s wastewater to the City for treatment by the City.
2. Pursuant to the **Agreement**, the District requested to expand its service area to include the Lockwood Targeted Economic Development District (TEDD) study area. In exchange for allowing this expansion of service, the City requires additional amendments to the **Agreement**. The District’s service area is described on Exhibit “A” and on Exhibit “B”. The proposed expansion area (the TEDD tract) is described on Exhibit “C” and Exhibit “D”.
3. The TEDD (Targeted Economic Development District) is a statutorily authorized tax increment finance district created to help fund a “turn-key” facility for industry to locate and expand in Yellowstone County. The TEDD is located outside of the City limits and appurtenant to the District’s service area.
4. The TEDD is expected to develop over a number of years. Accordingly, at this time neither the City nor the District can predict the volume or types of wastewater that will be generated from the TEDD. The District recognizes that this unknown factor creates additional ongoing risk for the City, particularly since the District is a non-owner customer of the City. The District agrees to pay the City an 18% surcharge on all wastewater services provided to the TEDD through the District because of this additional risk and because of the significant benefit to Lockwood and the TEDD.
5. The District acknowledges and agrees that the cost of wastewater service from the City has been freely negotiated between the Parties. The City has no obligation to provide wastewater services to the TEDD. The District is a non-owner customer. The District agrees that the terms of this Agreement are fair and equitable and that the contract rate for the cost of service, including the surcharges, is reasonable and just. The District acknowledges that the City is agreeing to provide wastewater services to the District and to the TEDD at a cost that is significantly less than any other option available to the District and the TEDD. The District agrees that City wastewater service is the best, most feasible, and least expensive option available to provide wastewater service to the TEDD.

6. The District and City acknowledge that this amendment in no way obligates the City to provide access to its municipal water services. If in the future, the District and City work together to provide municipal water services to the TEDD tract or any other tracts served by the District, it is the City's intent that all municipal water extension ordinances and rules in place at the time of the extension will be adhered to, including all rules pertaining to annexation.

NOW THEREFORE, the City and the District agree to amend the **Agreement** as provide herein.

AGREEMENT:

1. The City and the District agree that the Recitals stated above are true and accurate and are incorporated into this Agreement.
2. The City and the District agree that the **Agreement** shall be amended as follows:
 - A. **Section 2 Service Area** on page two of the **Agreement** shall be deleted and replaced with the following paragraph:

Service Area: The City shall accept for treatment wastes that are contributed from the District's users whose properties are situated entirely within the boundaries of the original District delineated on attached Exhibits A and B and within the boundaries of the TEDD study area delineated on attached Exhibits C and D, subject to the flow and loading limitations in Section 4 herein. Said areas will be hereinafter referred to as "Service Area." It is further understood between the parties hereto that the District shall not expand its Service Area to include any additional properties without first obtaining the City's written approval and that the City may withhold its consent, with or without cause, in the City's sole and exclusive discretion. The District's failure to obtain the City's prior written consent shall subject the District to the fixed sum payment outlined in Section 28 herein.

- B. The first paragraph of **Section 4 Reserve Capacity** on pages two and three of the **Agreement** shall be deleted and replaced with the following paragraphs:

The amount of capacity that the City will reserve in the municipal wastewater system for the sole benefit and use of the District shall be 80% of the following flows and loadings:

- Average daily wastewater flow of 0.91 Million Gallons per Day (MGD); and
- Maximum daily wastewater flow of 2.74 MGD, utilizing a 3.0 peaking factor; and
- Average Biochemical Oxygen Demand (BOD) loading of 1,915 pounds per day; and

- Average Total Suspended Solids (TSS) loading will be 2,006 pounds per day.

The reserve capacity is subject to negotiations up to 100% of the flows and loadings identified above. Approximately six (6) months prior to the time that flows or loadings are expected to equal 80% of the flows and/or loadings identified above, the amount of reserve capacity, not to exceed 100% of the values identified above, shall be renegotiated and rates shall be recalculated in accordance with the applicable provisions of the Agreement. If flows or loads exceed the limits specified in this section, the City shall notify the District of such noncompliance. If the District does not restrict the flows or loads exceeding the limits within five (5) days of such notification, the fixed sum payment outlined in Section 28 herein shall apply.

- C. **Section 19 Billing** on pages eight and nine of the **Agreement** shall be deleted and replaced with the following paragraphs:

The District agrees to pay monthly all wholesale user established rates, charges, and fees of the City for the treatment and disposal of the District's wastewater. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to the late-payment interest charge stated in the City's adopted schedule of wastewater rates and fees.

In addition, a uniform wholesale user surcharge of six (6) percent will be assessed on the equitable bases of prevention of water supply pollution and the City's assumption of the inherent financial risk and liability of providing these services to the District. The six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of the District's wastewater from the properties that are situated entirely within the boundaries of the original District delineated on Exhibits A and B. The properties that are situated within the boundaries of the TEDD are shown in Exhibits C and D. A uniform wholesale user surcharge of eighteen (18%) percent will be assessed on the equitable bases of prevention of water supply pollution and the City's assumption of the inherent additional financial risk and liability of providing these services to the TEDD. The eighteen (18%) percent surcharge will be applied to all monthly charges for the treatment and disposal of wastewater from the properties that are situated entirely within the boundaries of the TEDD, delineated on Exhibits C and D. The uniform user surcharge on monthly charges for the TEDD shall begin upon the first connection in the TEDD area to the District's wastewater system and will apply to both the volumetric rate based on wastewater flows and the TEDD area's proportionate share of the fixed monthly fee based on the TEDD area's flows and loadings.

The surcharge shall not apply to system development fees. In addition to the remedies outlined in this section, the District shall be subject to the fixed sum payment provisions in Section 28 herein.

D. **Section 29 Performance or Financial Guarantee Bond.** The first sentence shall be deleted and replaced with the following:

The DISTRICT shall provide an annually renewable Performance or Financial Guarantee Bond in the name of the CITY in the amount of \$500,00.00 (Five Hundred Thousand Dollars) for the faithful performance of all obligations under this Agreement and shall remain in force at all times throughout the term of this Agreement.

The current, original **Agreement** remains in full force and effect, except as expressly amended hereby. In the event of any conflict between the **Agreement** and the terms of the **First Amendment to the Wastewater Service Agreement**, then the terms of the **First Amendment to the Wastewater Service Agreement** shall govern.

IN WITNESS WHEREOF, on this ____ day of October, 2020, each of the parties has executed this **First Amendment to the Wastewater Service Agreement** to be incorporated as part of the **Agreement** dated March 24, 2008

DISTRICT:

LOCKWOOD WATER AND SEWER
DISTRICT

By: _____
President

Attest:

Secretary

CITY:

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
WILLIAM A. COLE, MAYOR

Attest:

Denise R. Bohlman, City Clerk

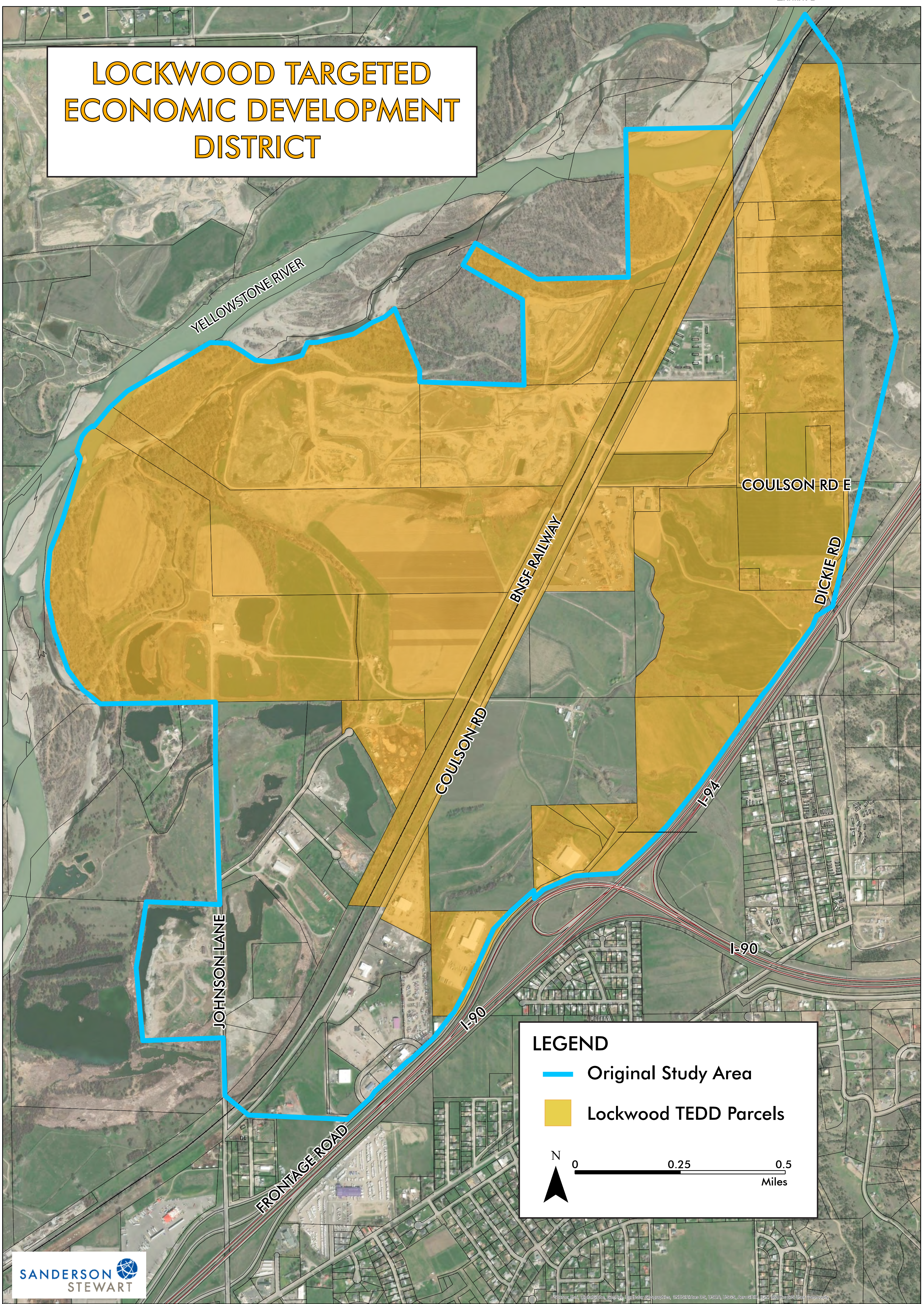
**BOUNDARY OF THE PROPOSED LOCKWOOD/YELLOWSTONE COUNTY
WATER AND SEWER DISTRICT**

Beginning at the point of intersection of the east and west centerline of Section 34, T1N, R26E, with the mid-channel of the Yellowstone River and running thence northeasterly along the mid-channel of said river to its intersection with the north and south centerline of the southwest quarter of Section 24, T1N, R26E, thence south along said line about 0.7 miles to its intersection with the south boundary of the Burlington Northern Railroad right-of-way, thence northeasterly along said boundary line to its intersection with the east and west centerline of Section 19, T1N, R27E, thence east along the north boundary of the Borgan Subdivision and then south along the east boundary of the same said subdivision to its intersection with the north boundary of the Interstate 90 Highway right-of-way. This boundary line, coincidental with the north edge of Interstate 90, becomes the north boundary of the Interstate 94 right-of-way and continues as such to the intersection of said line with the west and east centerline of Section 21, T1N, R27E, thence east to the east boundary of said section, thence south along said boundary to its intersection with the north boundary of the Interstate 90 right-of-way, thence east along this boundary to its intersection with the north and south centerline of the northeast quarter of Section 17, T1N, R27E, thence south to the intersection of said line with the east and west centerline of Section 21, T1N, R27E, thence west along said line to its intersection with the west boundary of Section 21, T1N, R27E, thence south along this line to its intersection with the east and west centerline of Section 29, T1N, R27E, thence west along this line to its intersection with the north and south centerline of this same section, thence south along said north and south centerline to its intersection with the southern boundary of Section 32, T1N, R27E. From this point the boundary line extends west along the southern boundary of Section 32 and adjacent Section 31 to the east boundary of Section 36, T1N, R26E, thence north to the east and west centerline of said Section 36, thence west along said centerline to the point of origin, EXCEPTING THEREFROM all of Certificate of Survey No. 830; all of Certificate of Survey No. 111; Tract 1 of Certificate of Survey No. 218; and, Tract 1 of Certificate of Survey No. 2777; and, Tract 1, Certificate of Survey #2623; and, Tracts 62 and 65, Certificate of Survey #1414; and, Tract 1F, Certificate of Survey #704.



BOUNDARY OF THE TEDD STUDY AREA TRACT

PENDING

LOCKWOOD TARGETED ECONOMIC DEVELOPMENT DISTRICT



LEGEND

-  Original Study Area
-  Lockwood TEDD Parcels

N

0 0.25 0.5 Miles