

July 16, 2020

**Proposal to the Billings City Council regarding the extension of Lockwood Water and Sewer District's sewer boundary to include the Lockwood Targeted Economic Development District study area.**

The Wastewater Service Agreement between Lockwood Water and Sewer District (LWSD) and the City of Billings has been a solid, trusted contract fostering a mutually beneficial partnership since 2008. This agreement, in paragraph 2, anticipates and allows for expansion of the service area with the written consent of the City of Billings.

“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 consent to do so and that the CITY has sole discretion to withhold such consent.”

The City of Billings Public Works Department's Rules and Regulations Governing Water and Wastewater Service addresses waiver by the Mayor and City Council of the annexation requirement for receiving wastewater service as provided in the City Code section 26-207.

“Unless this section is waived by the Mayor and City Council as provided by City Code section 26-207, all properties to be included within the wastewater service area shall be annexed or an attempt at annexation shall be made first and before any wastewater service area enlargement applications may be considered.”

City Code section 26-207 allows that “by a simple majority vote of those members present and voting, the mayor and city council may waive the requirements of section 26-203 and 26-204 (which includes the annexation requirement) if in their discretion there exists unique or exceptional factual circumstances that convince them that such requirements within these two (2) sections are unnecessary or impractical.”

Unique or exceptional factual circumstances rendering the annexation requirement unnecessary or impractical in this case exist, including:

- An existing agreement is in place - The Wastewater Service Agreement between LWSD and the City of Billings is an existing contract adopted under a waiver of the terms of Chapter 26 of the City's Code of Ordinances. This contract contemplated and allowed for the expansion of LWSD's sewer service area with the consent of the City.
- Need for City/LWSD/Landowner support – The model we have adopted for the development of the Lockwood TEDD Industrial area is a partnership between many entities –including area property owners, Yellowstone County, the community of Lockwood, Lockwood Water and Sewer District (LWSD), Lockwood Fire District, and the City of Billings. Property owners have expressed unanimous opposition to the annexation requirement. LWSD requires a majority vote of area property owners to expand their sewer boundary, if allowed by the City of Billings. It is highly unlikely that a majority could be mustered if annexation or waivers of the right to protest annexation are required. The Lockwood TEDD area would develop without municipal sewer service, but not as robustly or as safely as would be possible with that service.

- Provision of fire service – the prospect of Waivers of the Right to Protest Annexation in the TEDD area raised the concern of how fire service would be provided to the area in the interim. Lockwood Fire District indicated that they would have no incentive to continue to include this area in their district if waivers were required by the City, giving the City the right to annex once the TIF district expired. If the TEDD area were removed from the fire district, it would mean significantly higher insurance rates for the businesses in the area and may adversely affect the recruitment of businesses.
- Timeline – the designation of this area as a Targeted Economic Development District (TEDD) allows for Tax Increment Financing (TIF). However, TIF regulations would preclude the annexation of any part of this area until after the sunset of the TIF provision. This could be as late as 2056.
- Checkerboard Annexation – The existing businesses in this area have developed their locations to operate without the need for municipal services, including wastewater. Even decades from now, these properties may not have the need to hook into the sewer system. Other parcels may remain undeveloped or develop without the need for municipal sewer. These businesses and landowners would not have signed waivers, thus leaving a “checkerboard” of parcels available for annexation by the City.
- Important concessions for the City - LWSD is offering important consideration to the City and has a history of positive partnership with the City under the existing agreement.

Therefore, the following solution is proposed:

The City of Billings will agree to the extension of Lockwood Water and Sewer District’s sewer boundary to include the TEDD Study area under the terms of the existing Wastewater Service Agreement without requiring Waivers of the Right to Protest Annexation from property owners when they connect to the expanded sewer system. This proposal is subject to the following considerations:

1. Wastewater from the expanded area would be subject to a surcharge of 18%.
2. This agreement does not include the provision of water for the Lockwood TEDD. If, in the future, Lockwood Water and Sewer District (LWSD) needs additional water, they will be prohibited from obtaining that water from the Heights Water District. This agreement does not prohibit LWSD from seeking additional water rights to meet the needs of the area. Any future provision of water from the City to the Lockwood TEDD would be subject to the terms and conditions, including annexation or waiver of the right to protest annexation, as prescribed by the City of Billings (per Public Works Department Rules and Regulations, Chapter 28-4, and Billings Code of Ordinances, Chapter 26).

Furthermore, the City of Billings and Yellowstone County, consistent with Planned Neighborhood Development outlined in Project Re:Code, will develop an MOU or similar agreement to expressly outline a cooperative approach to development, subdivisions, land use, zoning, regulation, and annexation issues along the City-County boundary including, but not limited to:

- The Inner Belt Loop
- Airport Corridor/Highway 3
- City Lakes area/West Billings

- MetraPark – EBURD
- Zoo Drive area/I-90 Interchange
- Billings Bypass Corridor
- East Billings Heights

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