

Wastewater Service Agreement

THIS AGREEMENT made and entered into this 24th day of March, 2008, by and between the City of Billings, Montana, a municipal corporation, hereinafter referred to as "CITY," and the Lockwood Area/Yellowstone County Water and Sewer District, a county water and sewer district organized and existing under the laws of the State of Montana, hereinafter referred to as "DISTRICT";

WITNESSETH

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, the DISTRICT is authorized under state law to construct, purchase, lease, acquire, operate and maintain a wastewater system to benefit the inhabitants of the DISTRICT; and

WHEREAS, the DISTRICT has determined that it would be cost effective at this time for the DISTRICT to transport its wastewater to the municipal wastewater system and to contract with the CITY for the treatment and disposal of said wastewater; and

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the DISTRICT'S wastewater in a manner that meets all the effluent limitations set forth in the CITY'S current Montana Pollutant Discharge Elimination System Permit, MT-0022586.

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the parties hereto, it is hereby agreed as follows, inclusive of the referenced Exhibits and Attachments:

1. **Contractual Relationship:** Approval of this wastewater service agreement (Agreement), including payment by the DISTRICT of system development fees, does not create in behalf of the DISTRICT and/or the DISTRICT'S users any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and the DISTRICT and/or the DISTRICT'S wastewater users created hereby. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual

customer (DISTRICT), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either party.

2. **Service Area:** This Agreement obligates the CITY to accept for treatment domestic wastes that are contributed from the DISTRICT'S users whose properties are situated entirely within the boundaries of the DISTRICT at the time of its creation under County Resolution #96-83, dated August 22, 1996, and as more specifically described and shown on Exhibit "A" and Exhibit "B," respectively, subject to the flow and loading limitations in Section 4 herein. Said area will hereinafter be 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 consent to do so and that CITY has sole discretion to withhold such consent. Failure to obtain such consent shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

3. **Point of Connection:** The DISTRICT'S force main shall connect to the municipal wastewater system at or near the site of the municipal wastewater treatment plant, with the exact location subject to the written approval of the Public Works Director (Director). A professional engineer licensed to practice in the State of Montana shall design the method of connection. The Director and the Montana Department of Environmental Quality (DEQ) shall approve in writing the detailed plans and specifications for the connection prior to its construction. The DISTRICT shall bear all costs associated with construction, operation, maintenance and replacement of the DISTRICT'S force main and appurtenances, including the connection of its force main with the municipal wastewater system.

4. **Reserve Capacity:** Exhibit "C" is a January 22, 1998 Memo from Bill Enright, Morrison-Maierle, Inc., to Al Towleron, Public Utilities Department. Therein the District's engineering consultant estimates the per capita contributions for various wastewater constituents. Exhibit "D" is an excerpt from the Lockwood Water and Sewer District Facility Plan Report, which was subsequently supplied to Alan Towleron, Public Works Department, by Carl Anderson of Morrison-Maierle, the DISTRICT'S engineering consultant. Therein, the projected population for Lockwood is 9,119 for the year 2020, which the DISTRICT represents is the estimated ultimate build out of properties within the Service Area. Applying the per capita contributions to the projected build out population shows that for the Year 2020, the DISTRICT'S average daily wastewater flow will be 0.91 million gallons per day (mgd), its maximum daily flow of wastewater will be 2.74 mgd, utilizing a 3.0 peaking factor, the average Biochemical Oxygen Demand (BOD) Loading will be 1,915 pounds per day and its average Total Suspended Solids (TSS) Loading will be 2,006 pounds per day. Because conditions of development within the Service Area may change resulting in wastewater flows and loadings ultimately

exceeding those estimated above, 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 flows and loadings identified above, subject to negotiations up to 100%. The rates and billing methodologies developed for these flows and loadings, as outlined in Sections 19 and 20 shall be complied with by the DISTRICT. Approximately six (6) months prior to the time that flows or loadings are expected to equal the above-mentioned 80% value, 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 there are flows or loads exceeding the limits specified in this section that have not been previously negotiated, 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.

Each time this Agreement is renegotiated, the DISTRICT may, at its sole discretion, decrease the amount of the reserve capacity set forth herein. Any increase in the reserve capacity at that time, however, shall be subject to the approval and acceptance of the CITY. Said renegotiated adjustments in the reserve capacity shall be taken into account the first time the CITY adjusts the rates that it charges the DISTRICT for treatment of the DISTRICT'S wastewater following such renegotiations. In any event, the CITY reserves the right to require the DISTRICT to contribute up-front for the construction cost of any additional reserve capacity that may be renegotiated.

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

The DISTRICT may not at any time exceed the reserve capacity the CITY has set aside for the DISTRICT. In the event that the DISTRICT should exceed such reserve capacity, The DISTRICT shall accept no new customers or service line connections into its system and will immediately commence design and construction of pretreatment and/or I/I storage facilities to reduce flows and loads received by the CITY below the reserve capacity. Such facilities shall be completed within two years of notification by the CITY and if not completed, this contract will be terminated and service will be disconnected within an additional two years. Failure to comply with these provisions will subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

5. Compliance with Regulations: The DISTRICT hereby agrees to accept and abide by the following regulations governing wastewater service:

A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;

B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and

C. Any special conditions set forth in this Agreement.

If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification and fixed sum payment provisions set forth in Sections 28 and 30 shall apply.

6. Flow Measurement: The DISTRICT, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director. The DISTRICT shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, as a minimum, accurately and continuously indicate and record at the municipal wastewater treatment plant the rate of flow and volume of all wastewater passing through the DISTRICT'S force main and into the municipal wastewater system.

All such flow measuring facilities shall be calibrated at least annually under the direct supervision of a professional engineer who is licensed to practice in the State of Montana. Said professional engineer shall be mutually acceptable to both the DISTRICT and CITY. The professional engineer shall certify in writing to the CITY and DISTRICT within thirty (30) days of performing the calibration that the flow measuring facilities, including the wastewater meter, have been properly calibrated according to the manufacturer's recommendations and are operating within approved accuracy limits. All costs associated with the annual calibration of the flow measuring facilities, including the wastewater meter, shall be borne by the DISTRICT. Reasonable, estimated flow adjustments shall be made for any incorrect meter readings. The DISTRICT agrees to verify the calibration of the flow measuring facilities, at its sole expense and at the request of the CITY, in the event flow information deviates from normal indicating a problem with the facilities.

Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

7. Testing and Sampling: The DISTRICT, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director. As a minimum, the DISTRICT shall install sampling and testing facilities at or near the point of connection of the DISTRICT'S force main with the municipal wastewater system and

prior to the mixing of the CITY'S and DISTRICT'S wastewater. Such facilities shall be designed by a professional engineer, licensed to practice in the State of Montana. The facilities shall be located above ground and shall be designed to meet appropriate safety regulations and to satisfactorily operate under all weather conditions. The DISTRICT and the CITY shall have equal access at all times to said facilities.

The Director shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on the DISTRICT'S influent wastewater. Said parameters are subject to change from time to time at the Director's sole discretion. Such changes do not require renegotiations of this Agreement. (See Attachment I)

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants*. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

8. Test Noncompliance: Test results on samples of the DISTRICT'S wastewater that are in noncompliance with specified limits shall automatically trigger repeat sampling and testing by the CTL. If the follow-up test results remain out of compliance, the DISTRICT shall forthwith begin an in-depth investigation to determine the cause of noncompliance. Upon making such determination, the DISTRICT shall take immediate steps to correct the problem and regain full compliance. The DISTRICT shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations. In addition, the DISTRICT shall be subject to the fixed sum payment provisions of Section 28 herein.

9. Sewer Use Regulations: The DISTRICT shall adopt sewer use regulations to regulate the use of its wastewater system. Said regulations shall be subject to the Director's written approval prior to their adoption by the DISTRICT. The sewer use regulations shall, as a minimum, be equivalent to the CITY'S adopted sewer use regulations and the model sewer use ordinance set forth in WPCF Manual of Practice No. 3, *Regulation of Sewer Use*, 1975. The DISTRICT shall aggressively enforce such regulations at all times, especially as it relates to prohibited pollutants and/or any limited

pollutants allowed to enter the DISTRICT'S wastewater system. The DISTRICT agrees to adopt and enforce any sewer use regulations of the CITY as they may change from time to time.

The sewer use regulations shall also specifically prohibit the discharging of septage into the DISTRICT'S wastewater system. The DISTRICT shall assure, both through regulation and practice, that the discharging of any nondomestic and/or nonmetered wastes into the DISTRICT'S wastewater system from vehicular washing facilities, recreational vehicle (RV) dumps, and floor drains located in facilities utilized to maintain, repair or house vehicles and other motorized equipment shall conform with all policies, practices, administrative orders, rules and regulations, resolutions and ordinances of the CITY. The DISTRICT shall also prohibit in its sewer use regulations the discharge of any unpolluted waters into its wastewater system, such as storm water, groundwater, roof runoff, subsurface drainage, cooling water or industrial process waters.

Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

10. Construction Standards: The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

The DISTRICT shall maintain adequate records (such as inspection reports, test results, as-built drawings, permits, etc.) to document that its facilities have been properly inspected, tested and constructed during installation.

Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

11. Operation and Maintenance: Failure by DISTRICT to properly operate and maintain its wastewater system can substantially influence the volume, rate of flow, and characteristics of the wastewater discharged by DISTRICT into the municipal wastewater system. Accordingly, the DISTRICT shall at all times operate and maintain its wastewater system in a manner that is consistent with good utility practice, as set forth in *Water Environment Federation Manual of Practice 7, Wastewater Collection systems Management*, latest edition. The DISTRICT shall maintain adequate records to document its compliance with this section.

To ensure access to the DISTRICT'S wastewater system for operation and maintenance purposes, the DISTRICT'S sanitary sewer lines shall be located in street right-of-way and easement locations shall be kept to a minimum. In any event, all such easements shall guarantee DISTRICT unrestricted access to its sanitary sewers for such purposes at all times and under any weather conditions.

Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

12. Conservation: The DISTRICT shall actively encourage its users to conserve water and to utilize flow reduction measures, such as reduced-flow shower heads, toilets, and faucets. The DISTRICT shall maintain an ongoing educational program for this purpose. Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

13. Pretreatment Program: The DISTRICT shall not permit any person to discharge industrial wastes into the DISTRICT'S wastewater system without first adopting a Pretreatment Program, which shall be subject to the prior written approval of the Director and the EPA Regional Pretreatment Coordinator. The Director's approval shall be withheld until such time as the DISTRICT legally adopts enforceable pretreatment standards and requirements equal to or exceeding that adopted and enforced by the CITY and those set forth in 40 CFR Part 403. For further information and details regarding this issue as well as information regarding significant industrial users, see BMCC 26.611. Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

14. Odor and Corrosion Control: The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction. Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

15. Enlargements and Modifications: The DISTRICT shall obtain the Director's written approval prior to enlarging or modifying any of its wastewater facilities which would change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in this Agreement. Failure to comply with these provisions shall subject the DISTRICT to the fixed sum

payment outlined in Section 28 herein.

16. Access, Records and Contact Person: The DISTRICT shall grant the Director access at all times to DISTRICT'S wastewater system facilities for the purpose of inspecting, sampling, and studying the DISTRICT'S wastewater and permission to contact any individual users. Also, the DISTRICT shall, on request, provide the Director with copies of any flow, sampling and testing records that the Director may deem appropriate for said purposes or for the purpose of checking DISTRICT'S compliance with sewer use, industrial waste and/or pretreatment regulations. Prior to beginning the discharge of wastes into the municipal wastewater system, the DISTRICT shall also advise the Director in writing of the name, telephone number and mailing address of its official representative, who shall be authorized to make decisions on the DISTRICT'S behalf regarding the terms of this Agreement and to receive any notices, service bills, correspondence, etc. required herein. Failure to comply with these provisions shall subject the DISTRICT to the fixed sum payment outlined in Section 28 herein.

17. Notification: The DISTRICT shall immediately notify the Director and the CITY'S wastewater treatment plant in the event of any accident, negligence, or other occurrence that occasions discharge to the municipal wastewater system of any waters or wastes not covered by this Agreement as well as any accidental slug discharges of authorized pollutants. In addition, the DISTRICT agrees to file with the Director, within five (5) working days of such discharge, a written report explaining why said discharge occurred. The report shall also identify in detail the DISTRICT'S plan of action to prevent reoccurrence of such type discharge. The DISTRICT shall be responsible for all damages, costs, and fines of the CITY due to unauthorized or negligent discharges. In addition, the DISTRICT shall be subject to the fixed sum payment provisions of Section 28 herein for failure to comply with these provisions.

18. Degree of Treatment: It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in Section 22 herein.

19. Billing: The DISTRICT shall pay to the CITY a monthly charge for the treatment and disposal of the DISTRICT'S wastewater. Monthly payments shall begin at the time the DISTRICT commences discharge of wastewater into the municipal wastewater system. 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 a late-payment interest charge. The late-payment interest charge shall be the amount stated in the CITY'S adopted schedule of Rates and Charges.

If agreed by the DISTRICT and CITY, system development fees may be included in this monthly billing process and, if so, will be subject to all provisions contained herein. In addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of the DISTRICT'S wastewater. The surcharge shall not apply to system development fees and franchise fees. All revenue generated from this Agreement as a result of the monthly franchise fee and surcharge shall be transferred to the city's general fund.

In addition to the remedies outlined in this section, the DISTRICT shall be subject to the fixed sum payment provisions in Section 28 herein.

20. Future Wastewater Rate Making Methodology: It is the intent of the parties hereto that during the life of this Agreement, the DISTRICT shall pay reasonable and just rates for treatment of its wastewater and that the CITY, in turn, shall receive a reasonable and just compensation for the treatment of the DISTRICT'S wastewater. Accordingly, the wastewater rate charged to the DISTRICT in the future for treatment of its wastewater shall be based upon cost-of-service principles as set forth in 40 Code of Federal Regulations (CFR) Part 35, *Guidelines for User Charges*. When calculating the cost-of-service rate to be charged the DISTRICT for treatment of its wastewater, the CITY'S rate expert shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the rate expert shall, among other things, take into consideration the following when calculating the cost-of -service rate to be charged the DISTRICT:

A. The amount and level of service that the CITY is providing the DISTRICT as well as any contributions the DISTRICT has made for the construction of the CITY'S wastewater treatment facilities.

B. The amount of contributions made by inside-city customers towards facilities utilized to serve the DISTRICT.

C. The amount of reserve capacity that the CITY has set aside for the DISTRICT in the municipal wastewater system.

D. The costs of any construction improvement required for increases in reserve capacity requested by the DISTRICT.

E. The cost of performing the rate study, unless arrangements are made between the CITY and DISTRICT for payment otherwise.

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on

investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

The DISTRICT shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 19, above.

In the event the strength of the pollutants (BOD, TSS, etc.) contained in the DISTRICT'S wastewater are determined to exceed those normally present in domestic wastes, the CITY will charge the DISTRICT, in addition to other rates set forth herein, an extra-strength surcharge as identified in the adopted schedule of Rates and Charges.

The rates the CITY charges the DISTRICT for the treatment of any special wastes and/or permitted industrial wastes shall be determined on a case-by-case basis. Determination of such rates requires separate study and negotiation. (See BMCC 26-106 for additional information regarding special agreements and payments for unusual wastewater treatment.) Any and all costs associated with and incurred by the CITY arising from such special study and negotiation shall be paid by the DISTRICT. In the event the DISTRICT declines to pay for such study and negotiation, the special waste and/or permitted industrial wastes shall not be accepted by the DISTRICT into the wastewater system. Failure by the DISTRICT to comply with these provisions will be subject to the fixed sum payment provisions in Section 28 herein. In any event, such rates shall be charged to the DISTRICT in addition to any other rates set forth herein. Nothing in this section shall relieve the DISTRICT from their obligation to adopt and administer a pretreatment program as specified in Section 13.

The CITY reserves the right to periodically adjust the rates set forth herein in conformance with the provisions of Sections 20 and 22.

21. System Development Fees: In addition to the wastewater rates the DISTRICT shall pay to the CITY wastewater system development fees with the amount of the fee to be determined by the CITY'S rate expert. The rate expert shall determine the methodology to be used to calculate the fees that is most fitting for this Agreement; however, lacking such a determination by the rate expert, the methodology used shall be one most advantageous to the CITY as determined by the CITY.

The fees shall be assessed on a per-connection basis and shall be due at the time of connection to the DISTRICT'S sewer system; however, the rate expert may recommend an alternate assessment method if deemed appropriate to this Agreement, provided, however, that any alternate method must be approved by the CITY. The DISTRICT shall maintain sufficient records to document connections to their system and information necessary to determine the system development fees to be paid by the DISTRICT. Such records shall be available to the CITY upon request. Failure to properly maintain records and pay the system development fees due will subject the DISTRICT to the fixed sum payment provisions in Section 28 herein and will be grounds for termination of this Agreement. Details of the procedure for payment of the fees to the CITY by the DISTRICT as well as the record keeping by the DISTRICT to document the fees to be paid shall be cooperatively determined by the DISTRICT and CITY.

22. Wastewater Rate Study: With respect to any wastewater rate study that would affect the wastewater rate charged to the DISTRICT, the CITY shall give the DISTRICT advance notice of its intent to have a rate expert undertake such a study. The rate expert's draft report(s), work papers and any underlying data used to generate such report(s) shall be available upon request to the DISTRICT. The CITY'S rate expert shall be available to meet at reasonable times with the DISTRICT and/or its rate experts during this process or the DISTRICT Manager or member of the DISTRICT'S staff, but not to include counsel. The DISTRICT agrees to provide any information relevant to determining the DISTRICT'S customer service characteristics.

Once the CITY'S rate expert has completed its written report, the CITY shall promptly provide a copy of that report to the DISTRICT.

23. Annexation of District: Should fifty-five (55) percent or more of the property within the DISTRICT'S Service Area become annexed either voluntary or by election into the corporate city limits, the DISTRICT shall take, at the CITY'S sole discretion and with the CITY'S written consent, whatever steps are legally necessary to transfer its wastewater assets and liabilities to the CITY. Failure to timely comply with this section shall subject the DISTRICT to the fixed sum payment provisions of Section 28 herein and be sufficient grounds to terminate this Agreement.

24. Term of Agreement: The first term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing. Either party may terminate this Agreement by giving the other party eight (8) years written notice. Upon expiration of the first fifteen (15) year term, this Agreement will automatically renew for four (4) additional ten (10) years terms unless terminated by either party by giving eight (8) years notice or unless the terms are modified by mutual agreement of the parties.

25. Milestones: The DISTRICT shall have two (2) years from the date this Agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements to shall commence within three (3) years from the date this Agreement is initially signed and be diligently pursued to the point of establishing wastewater discharge to the CITY. Should the DISTRICT fail to meet either of these milestones, this Agreement shall automatically terminate immediately. However, it is further agreed that if the DISTRICT fails to meet the milestone for whatever reason, termination of this Agreement is the only remedy available to the CITY and the DISTRICT shall not be subject to any fixed sum payment nor will there be any claim asserted by the CITY upon the performance bond/financial assurance as provided in Section 29 because the DISTRICT failed to meet the milestone.

26. Non-Binding Mediation: As a prerequisite to commencing litigation on any unresolved dispute arising from this Agreement, the parties agree that all unresolved claims, demands, disputes, controversies and differences that may arise between the parties concerning the content of this Agreement shall first be submitted to non-binding mediation. The parties shall confer and agree upon selection of a mediator for such purposes; however, if they cannot agree, each party shall select a mediator and both mediators shall then agree upon and select a third mediator before whom all disputes shall be presented. Thereafter, either party may pursue litigation and shall have a right to file an action if mediation does not result in a final agreement and release between the parties which resolves all disputes pending at that time. Jurisdiction of all litigation shall be in Montana State District Court and venue shall be in Yellowstone County, Montana. Each party shall bear its own internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

In lieu of the above paragraph, the parties may agree and stipulate to binding arbitration in lieu of mediation. The arbitrator shall be selected, the arbitration conducted and the arbitration ruling shall be pursuant to the Montana Arbitrators' Association. Binding arbitration shall preclude litigation in District Court by either party on any issue decided by the arbitrator. Each party shall bear their own attorney fees and related costs and expenses if binding arbitration is selected as the dispute resolution method.

27. Definitions: Terms/phrases used herein this Agreement (such as but not limited to Biochemical Oxygen Demand (BOD), customer, domestic wastes, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, municipal wastewater utility, pollutant, pretreatment, public works department, public works director, rules and regulations, septage, service agreement, Total Suspended Solids (TSS), infiltration/inflow

(I/I), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

28. Fixed Sum Payment for All Non-Regulatory Breaches of Agreement:

The DISTRICT also agrees to pay the CITY a fixed sum payment in the amount of \$3,000.00 per day for each day that the DISTRICT is in noncompliance with any non-regulatory/non-statutory breach of this Agreement such as but not limited to exceeding the Reserve Capacity and discharge limits under Section 4 of this Agreement.

29. Performance or Financial Guarantee Bond: The DISTRICT shall provide an annually renewable Performance or Financial Guarantee bond in the name of the CITY in the amount of \$1,000,000.00 (One Million) 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 bond will be for a one year term to protect the CITY in the event of default by the principal (the DISTRICT) in the performance of the terms of this Agreement. The bond may be extended for additional one year terms at the option of the Surety however a new bond shall be provided each year to the CITY, no continuation certificates will be acceptable. Neither non-renewal by the surety nor failure or inability of the principal to file a replacement bond shall constitute a loss by the obligee (CITY) recoverable under the bond. However, non-renewal of the Bond and inability to provide and continuously maintain a replacement bond by the DISTRICT, or the CITY'S decision to reject an unsuitable alternative financial assurance offered by the DISTRICT, shall be a breach of this Agreement subject to alternative action by the CITY such as but not limited to termination under Section 31 and/or the non-regulatory/non-statutory penalty provision of Section 28 as well as all other applicable provisions within this Agreement.

The bond shall be in a form acceptable to the CITY except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety bond Branch, U.S. Department of the Treasury. Any bond signed by an agent must be accompanied by a certified copy of the agent's authority to act.

If the surety on any bond furnished by the DISTRICT is declared bankrupt or becomes insolvent or its right to do business in Montana is terminated or it ceases to meet the requirements in the section above, the DISTRICT shall notify the CITY and shall, within twenty (20) days after the event giving rise to such notification, provide another bond which shall comply with the requirements herein.

Any bond required shall be obtained from surety or insurance companies that are duly licensed or authorized in Montana, with minimum "A.M. Best Rating" of B+, VI, as will protect the CITY for the amount so required.

In lieu of the performance or financial guarantee bond referenced herein, the CITY may, in its sole discretion, accept other, alternative financial assurances or pledged and encumbered DISTRICT reserves in the amount of \$1,000,000 (One Million) dollars for the faithful performance of this Agreement.

Indemnification and Insurance: The DISTRICT agrees to indemnify, hold harmless, and defend the CITY from and against all liabilities, claims, penalties, daily or one-time fines assessed by any regulatory agency, forfeitures, suits, preliminary or permanent injunctions, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which the CITY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage is caused by; (1) the DISTRICT'S breach of this Agreement; or (2) any negligent or willful act or omission of DISTRICT or its employees, contractors or agents in the performance of services.

In addition, the DISTRICT shall indemnify, defend and hold the City harmless if the DISTRICT is in noncompliance with any federal, state, or local law, order or regulation including but not limited to discharges of wastewater that causes the CITY to incur a fine or penalty, causes the CITY to do or refrain from doing any act as ordered by any federal, state or local regulatory agency or causes the City to discharge in violation of MPDES permit or pretreatment violations.

The CITY agrees to indemnify, hold harmless, and defend the DISTRICT from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the DISTRICT may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of this Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

The DISTRICT shall provide the CITY with proof of the DISTRICT'S liability insurance for personal injury and property damage in the amount of \$750,000 per claim and \$1,500,000 per occurrence, endorsing the City as primary, non-contributory insured. Such insurance shall be reviewed by and subject to approval by the CITY as a prerequisite to commencing the mutual performance of this Agreement by the parties.

31. Remedies Upon Default and Termination: Notwithstanding the notice provision in Sections 4 and 17, should the DISTRICT violate any term of this Agreement the CITY shall provide written notice of such within fourteen (14) calendar days of discovering the violation or being advised in writing by the DISTRICT of such violation. The DISTRICT shall have an additional fourteen (14) calendar days to remedy any violation after receiving written notice from the CITY.

Thereafter, should the DISTRICT fail to remedy any violation, it shall be deemed in breach of and in default under this agreement. The CITY shall be entitled to exercise any or all remedies specifically provided in this agreement as well as all other legal remedies available to it provided by law such as but not limited to submitting a claim upon the DISTRICT'S Financial Guarantee Bond, initiating litigation to compel specific performance, submitting a request to the DISTRICT for indemnification or to recover penalties under Section 28 of this Agreement or any other incurred damages from the DISTRICT.

32. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Montana, without reference to or application of choice of law rules or principles.

33. Attorney's Fees and Litigation Venue:

In the event litigation is commenced by either party to enforce any rights or obligations under this agreement, the prevailing party, if any, shall not be entitled to any litigation costs or expenses; rather, each party shall bear all of their respective litigation costs including, but not limited to, attorneys fees and expert witness fees.

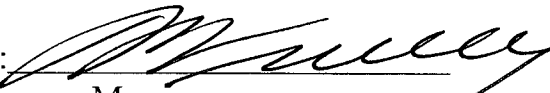
Venue for such litigation shall be in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, Montana.

34. Severability and Waiver: In the event any provision of this Agreement is declared void, invalid or contrary to law, the parties hereto agree that the remaining provisions shall continue and remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

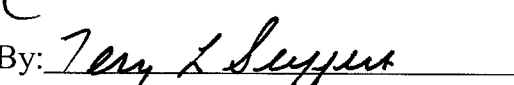
City of Billings, Montana

Lockwood Area/Yellowstone
County Water & Sewer District

By: 
Mayor

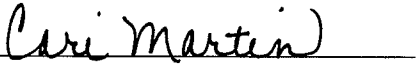
By: 
Chairman


By: 
City Attorney

By: 
District Attorney

Attest:

Attest:


Cari Martin
City Clerk


Brenda K Robison
Secretary

ATTACHMENT I

Pursuant to the Agreement between the City of Billings (City) and the Lockwood Area/Yellowstone County Water and Sewer District (District), this Attachment sets forth the tests to be performed by District on the wastewater it discharges into the municipal wastewater system. This Attachment also sets forth the frequency of sampling, the limits for test compliance and the methods of sampling. The following parameters and other criteria are subject to periodic change by the Director, at his sole discretion:

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
BOD ₅	300 mg/l	Weekly ¹	Composite
TSS	300 mg/l	Weekly ¹	Composite
pH	5.5 - 9.0	Daily	Grab
Total Oil & Grease ^{2,5}	100 mg/l	2x/week	Grab
TPH (Total Petroleum Hydrocarbons)	100 mg/l	Bi-monthly	Grab
Total Phosphorus (as P)		1x/Quarter	Composite
Total Ammonia (as N)		1x/Quarter	Composite
Nitrate & Nitrite (as N)		1x/Quarter	Composite
TKN (Total Kjeldahl Nitrogen)		Quarterly	Composite
Temperature		Weekly	Instantaneous
Volatile Organics ^{3,4}		Annually	Grab
Organic Acids ^{3,4}		Annually	Composite
Base/Neutral Organics ^{3,4}		Annually	Composite
Pesticides ^{3,4}		Annually	Composite
Antimony (Total)		Quarterly	Composite
Arsenic (Total)	2.5 mg/l	Quarterly	Composite
Beryllium (Total)		Quarterly	Composite
Cadmium (Total)	13.9 mg/l	Quarterly	Composite
Chromium (III)		Quarterly	Composite
Chromium (VI)		Quarterly	Grab
Chromium (Total)	35.3 mg/l	Quarterly	Composite

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
Lead (Total)	2.2 mg/l	Quarterly	Composite
Mercury (Total)	0.15 mg/l	Quarterly	Composite
Nickel (Total)	26.8 mg/l	Quarterly	Composite
Selenium (Total)	< Detection Limit	Quarterly	Composite
Silver (Total)	1.1 mg/l	Quarterly	Composite
Thallium (Total)		Quarterly	Composite
Zinc (Total)	1.1 mg/l	Quarterly	Composite
Cyanide (Total)	2.6 mg/l	Quarterly	Grab
BTEX (Benzene, Toulene, Ethelbenzene, Xylene)		Monthly	Grab
Tetrachloroethylene		Quarterly	Grab

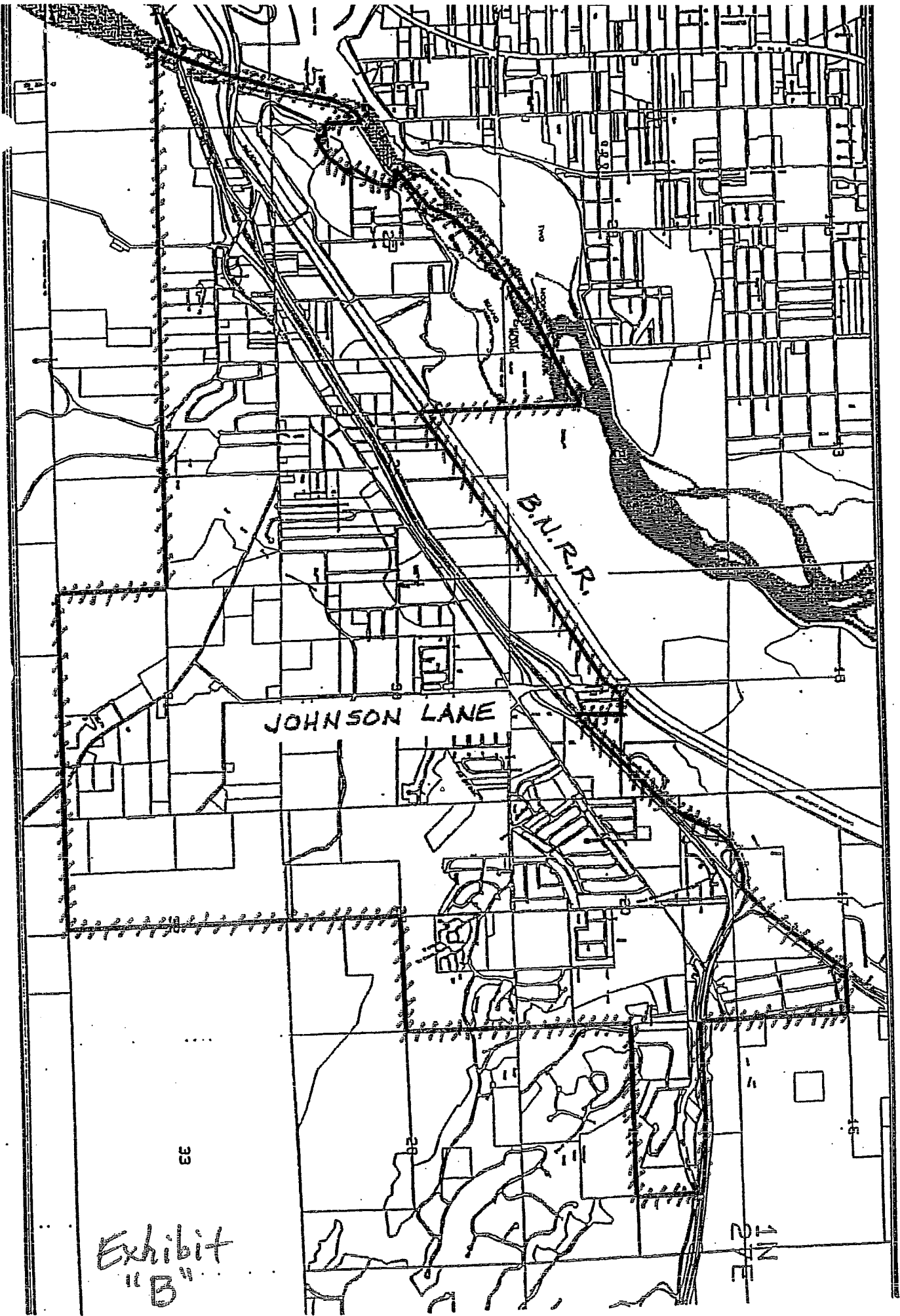
Footnotes:

- 1 A 24-hour, composite sample to be taken on progressive days each sampling event.
- 2 A visual sheen shall be considered a violation.
- 3 Minimum parameters to be tested for as determined by the Director.
- 4 A minimum of every 5 years, or sooner if determined necessary by the Director; monthly analysis for parameters designated by Director shall be done in support of local limits re-evaluation.
- 5 In addition to the visual sheen criteria set forth in Footnote 2, above, oil and grease shall not cause any interference or obstruction in the municipal wastewater system.

**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.

EXHIBIT "A"



JOHNSON LANE

B.N.R.R.

33

Exhibit
"B"

LINE

33

FAX TRANSMISSION

Engineers
Scientists
Planners
Surveyors

MORRISON-MAIERLE, INC.
Since 1945

2020 Grand Avenue
Billings, Montana 59102
Phone: (406) 656-6000
e-mail: bille@mmiblg.com

DATE: January 22, 1998

PROJECT NO.: 3046.001/010/0211

SEND TO: AL Towler - PUD

FAX NO.:

FROM: Bill Enright

SUBJECT: Revision to Lockwood Projected Loadings

THIS IS PAGE 1 OF 2 PAGES

MESSAGE:

Al: The loading data I presented for Lockwood was in error for the projected BOD and TSS loadings. The values were incorrectly calculated using the estimated gallons per day * 0.21 lb/capita/day instead of the projected population * 0.21 lb/capita per day. The same error occurred on the TSS loading projection. The following table presents the corrected estimates. This resulted in a 100x inflation of the estimate. I apologize for my error.

Exhibit "c"

OUR FAX NUMBER IS (406) 656-3432

■ AIRPORTS ■ HIGHWAYS ■ CONSTRUCTION ENGINEERING ■ PHOTOGRAMMETRY
■ STRUCTURES ■ SURVEYING ■ WATER ■ WASTEWATER ■ WATER RESOURCES

Estimated Yearly Growth
 Estimated Beginning Population
 Estimated Per Capita Wastewater Contribution
 Peaking Factor (Figure 1 - WQB-2)
 Estimated BOD/Capita/Day (lbs)
 Estimated SS Per /Capita/day (lbs)
 Estimated Phosphorous Influent Load (mg/l)- Avg

2.40%
 6000
 100
 Varies
 0.21
 0.22
 10

Year	Population	Est GPD	Peaking Factor	Estimated Peak GPD	Pounds Per Day (Avg)		
					Estimated Est BOD	Estimated Est SS	P
1997	6,000	600,000	3.3	1,980,000	1,260	1,320	50.0
1998	6,144	614,400		2,027,520	1,290	1,352	51.2
1999	6,291	629,146		2,076,180	1,321	1,384	52.5
2000	6,442	644,245		2,126,009	1,353	1,417	53.7
2001	6,597	659,707		2,177,033	1,385	1,451	55.0
2002	6,755	675,540		2,229,282	1,419	1,486	56.3
2003	6,918	691,753		2,282,785	1,453	1,522	57.7
2004	7,084	708,355	3.2	2,266,736	1,488	1,558	59.1
2005	7,254	725,355		2,321,138	1,523	1,596	60.5
2006	7,428	742,764		2,376,845	1,560	1,634	61.9
2007	7,606	760,590		2,433,889	1,597	1,673	63.4
2008	7,788	778,845		2,492,302	1,636	1,713	65.0
2009	7,975	797,537		2,552,118	1,675	1,755	66.5
2010	8,167	816,678	3.1	2,531,701	1,715	1,797	68.1
2011	8,363	836,278		2,592,462	1,756	1,840	69.7
2012	8,563	856,349		2,654,681	1,798	1,884	71.4
2013	8,769	876,901		2,718,393	1,841	1,929	73.1
2014	8,979	897,947		2,783,634	1,886	1,975	74.9
2015	9,195	919,497		2,850,442	1,931	2,023	76.7
2016	9,416	941,565		2,918,852	1,977	2,071	78.5
2017	9,642	964,163	3.0	2,892,488	2,025	2,121	80.4

OUR FAX NUMBER IS (406) 656-3432

■ AIRPORTS ■ HIGHWAYS ■ CONSTRUCTION ENGINEERING ■ PHOTOGRAMMETRY
 ■ STRUCTURES ■ SURVEYING ■ WATER ■ WASTEWATER ■ WATER RESOURCES

**Exhibit "D" - Excerpt from Lockwood Water & Sewer District Facility Plan Report
as supplied to Alan Towleron by Carl Anderson of Morrison-Maierle, District
consultant**

Population Center and Data	1990	1995	2000	2005	2010	2015	2020
Yellowstone County Projected Population ^a	113,419	119,374	125,329	131,284	137,239	143,194	149,149
City of Billings Projected Population ^b	81,125	85,950	90,237	94,525	98,812	103,100	107,388
Billings Percent of County	72	72	72	72	72	72	72
Lockwood Projected Population ^c	3,967	4,178	4,386	4,595	4,805	5,012	5,220
Lockwood Percent of County	3.5	3.5	3.5	3.5	3.5	3.5	3.5

a Provided by Yellowstone County Planning Department
 b Assumes Billings comprises 70 to 72 percent of the population of Yellowstone County based on historical data.
 c Assumes Lockwood comprises 3.5 percent of the population of Yellowstone County.

Year	Plan Percent Change Per Year	Projected Population	Year	Plan Percent Change Per Year	Projected Population
1996		5,161	2009	2.40%	7,025
1997	2.40%	5,285	2010	2.40%	7,193
1998	2.40%	5,412	2011	2.40%	7,366
1999	2.40%	5,542	2012	2.40%	7,543
2000	2.40%	5,675	2013	2.40%	7,724
2001	2.40%	5,811	2014	2.40%	7,909
2002	2.40%	5,950	2015	2.40%	8,099
2003	2.40%	6,093	2016	2.40%	8,293
2004	2.40%	6,239	2017	2.40%	8,492
2005	2.40%	6,389	2018	2.40%	8,696
2006	2.40%	6,542	2019	2.40%	8,905
2007	2.40%	6,699	2020	2.40%	9,119
2008	2.40%	6,860			

It must be noted, that not all properties within the Lockwood Water and Sewer District boundaries are served by the Lockwood Water Users Association, and a population projection based solely on water usage may be understated.

The Lockwood community is an unincorporated community, and has no central form of government except the Yellowstone County Commission. Numerous boards exist in Lockwood. In addition to the Lockwood Water and Sewer District, these boards include: