



Item: MOU between the City and the Upper/Lower River Road Water and Sewer District (ULRRWSD) for Service District #5

From: Tom Micuda, Deputy Director

Initiated By: ULRRWSD

Presented By: Craig Raymond, CBO, Director, Planning and Community Development

Action Requested: City Commission approve the Memorandum of Understanding

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/deny) the Memorandum of Understanding between the City and the Upper/Lower River Road Water and Sewer District for Service District #5 and authorize the City Manager to execute the agreement.”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.

Staff Recommendation: It is recommended that the City Commission approve the Memorandum of Understanding (MOU) with the Upper/Lower River Road Water and Sewer District for Service District #5.

History: The City has been involved in discussions with the City County Health Department and residents of the Upper/Lower River Road area since 1996 concerning the significant groundwater and drinking water quality problems experienced by area residents. A water and sewer district was formed by the residents to determine the most cost effective method of correcting the situation and providing utility service.

Over the last 20 years, the District’s Board has investigated several ways to provide acceptable water and sewer service to the area. The most affordable alternative is for the property owners to annex into the City of Great Falls and receive municipal water and sewer service.

Annexation of Service District #1 of the ULRRWSD was approved by the City Commission on March 6, 2007. Annexation of Service District #2 was approved on March 10, 2009. Annexation of Service District #3 was approved on November 16, 2010. Finally, annexation of Service District #4 was approved on October 18, 2011. A map showing these previous service

districts, the current proposed District #5, as well as future districts has been provided by ULRRWSD.

District 5 Boundaries: The MOU between the City and ULRRWSD for District #5 covers 18 dwellings located in two separate areas. The first area is a tier of lots along the north and east sides of Upper River Road. The second area encompasses lots on the north side of 21st Avenue South and lots on both sides of 4th Street South. The geographic boundaries of District #5 were determined by the following factors:

1. Availability of grant funding and the projected cost per user;
2. Topography related to the gravity flow of sewer systems;
3. Presence of a 12 inch sewer main on Upper River Road; and
4. Presence of septic issues on 21st Avenue South;

Topographic challenges and high projected costs per user concerns caused areas shown as future Districts #6 and #7 to be deferred until later phases.

Terms of the MOU: The proposed agreement sets forth general conditions for water and sewer connections to these 18 existing dwellings and subsequent annexation into the City. The ULRRWSD and the property owners in Service District #5 will be responsible for paying the costs of the water and sewer infrastructure to serve District #5. The ULRRWSD will move to receive bids and construct improvements in 2016. This will be followed by an annexation request to the City.

Justification for the Request: As noted earlier in this report, there are public health issues associated with these areas continuing to use drain fields and wells for sewer and water service. One of the drain fields in District #5 is reportedly in failure already. There is another that requires continual maintenance to keep it functional. However, the greatest concern from a public health perspective is that there are likely additional drain fields that are functional but still associated with seepage of sewage into groundwater.

In addition to the public health issue, the provision of sewer and water is not being provided at the City's expense. The District has been successful in receiving grant funding from the following sources: 1) Montana Department of Commerce, Treasure State Endowment Program (TSEP), 2) Montana Department of Natural Resources, Renewable Grant and Loan Program (RRGL), 3) Montana Department of Natural Resources, State Revolving Fund Loan Forgiveness (SRF-A).

The City is willing to assist the District in providing an affordable method for landowners to proceed with the project. The project involves the District incurring debt to finance the required utilities using the funding sources noted in this report, with the understanding that the landowners in Service District #5 agree to annex into the City of Great Falls upon completion of construction of both water and sewer lines. Therefore, the City is proposing:

1. To allow annexation of Service District #5 upon receiving the necessary petitions immediately following construction.
2. That no service line will be connected until a service agreement and annexation petition are received from the property owner.

3. To delay other normal city annexation requirements until debt service for water and sewer have been met. District residents understand that while the City will maintain roads within newly annexed territory, capital improvements will be delayed until such time as the property owners are willing to bear the expense of bringing the roadways up to acceptable city standards.

The public health and safety issues of the area support the City deviating from its established annexation policies. Annexation will occur by phase when utility lines have been extended by the District. The City of Great Falls will receive additional tax base, increased water and sewer utility revenues, increased population by some estimated 400 households when the whole district is annexed, and increased development potential.

Concurrences: Public Works, Legal, and P&CD staffs have been involved in the review of the attached MOU, which is very similar to the MOUs previously approved for Service Districts #1 - 4.

Fiscal Impact: The MOU will eventually lead to the annexation of Service District #5 which will result in expanded service responsibilities for the City. To that end, staff notes that the western area of District 5 contains lots accessed from Upper River Road. This road is a two-lane, paved County road in reasonably good condition. There are no sidewalks or curbing on this section of Upper River Road, but that same condition also exists along Upper River within City limits. The eastern area of District #5 is not in the same condition. Neither 21st Avenue South nor 4th Street South is paved. Both roads are also substandard in terms of street width, curb and gutters, and sidewalk.

Alternatives: The City Commission could disapprove the MOU, but that would reflect a significant change in direction as previously exhibited through support of MOUs for Service Districts #1-4 and create a serious dilemma for the ULRRWSD.

Attachments/Exhibits:

1. Memorandum of Understanding
2. District Map

cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
John Stephenson-Love, 300 Central Ave, 7th Floor

MEMORANDUM OF UNDERSTANDING

UTILITY CONNECTION CONDITIONS

Between

**UPPER/LOWER RIVER ROAD WATER AND SEWER DISTRICT
Service District No. 5**

And

CITY OF GREAT FALLS, MONTANA

This agreement is made and entered into this ____ day of _____, 2016, by and among the City of Great Falls, Montana, a municipal corporation organized under the laws of the State, hereinafter referred to as the “City”, and the Upper/Lower River Road Water and Sewer District, Montana, a duly organized and incorporated county water and sewer district, hereinafter referred to as the “District” (collectively, the “Parties”).

WHEREAS, the City currently owns and operates a municipal water system and a municipal sewer system (“City Utilities”); and

WHEREAS, the District and City have a mutual interest in improving water quality, resolving public health issues, removing sources of groundwater contamination, and improving the tax base of the community; and

WHEREAS, the District has determined that the most feasible way to provide water and sewer service is to divide the District into Service Districts, and pursuant thereto, the District has provided water and sewer service to Service District No. 1 and to Service District No. 2 and to Service District 3, and to Service District No. 4 which have all been annexed into the City of Great Falls, and is now preparing to provide water and sewer service to the residents of Service District No. 5; and

WHEREAS, neither public water nor sewer service is available to the residents of Service District No. 5; and

WHEREAS, the District and City have worked together in an attempt to provide affordable water and sewer service to District residents; and

WHEREAS, the District and the City have determined that the most cost effective manner of providing water and sewer to Service District No. 5, is for the District to finance and install water and sewer lines and related necessary improvements to connect to the City’s water and sewer systems (the Water Improvements and the Sewer Improvements, collectively, the “Project”); and

WHEREAS, the City's stated policy is to require annexation as a condition precedent to the provision of City Utilities; and

WHEREAS, the Parties have developed a preliminary plan to assist in financing water and sewer improvements with Grants and Low Interest Loan funds; and

WHEREAS, in an effort to encourage the construction of the Project and make it more affordable, the City is willing to modify its annexation requirements and make its City Utilities available to the residents of Service District No. 5 on terms the District deems favorable and as set forth in this agreement; and

WHEREAS, the District Board has held public meetings and accepted input from District residents, and has taken this input into consideration.

WITNESSETH:

IN CONSIDERATION OF THE PERFORMANCE OF THE TERMS AND CONDITIONS, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

Section 1. Purpose. The purpose of this agreement is to set forth general conditions for water and sewer connections to Service District No. 5 of the Upper and Lower River Road Water and Sewer District to City Utilities and the subsequent annexation of properties in the Service District to the City. If necessary, the parties agree to enter into an Interlocal Agreement to cover more specific and detailed conditions not known or contemplated at the present time.

Section 2. The Improvements. The District has determined that the most affordable and feasible method for bringing water and sewer service to the District is to create a number of "Service Districts" within the District and to bring water and sewer service to the Service Districts in phases. The Board has determined that portions of the District shown on Exhibit A shall be Water and Sewer Service District No. 5 (herein Service District No. 5). The District has been awarded grants for sewer and water improvements, which can be used for Service District No. 5, and has received approval from voters in Service District No. 5 for bond issuance. Construction is expected to be completed in 2016, and shall be completed in accordance with applicable local, state and federal laws, ordinances, and/or regulations. This Memorandum of Understanding shall apply to Service District No. 5 but the Board intends to create additional water and sewer Service Districts and obtain funding for water and sewer construction in such Districts. Thus, it is contemplated that future Memoranda of Understanding shall apply to water and sewer projects for additional Service Districts, with such changes as are necessary to fit each particular Service District.

Section 3. Petition for annexation. The owner of each parcel of land in Service District No. 5 which is to receive a water or sewer connection shall sign, as a condition to receiving City water or sewer service, a petition requesting annexation and waive the right of protest and appeal of annexation. Such agreements shall be recorded and shall bind all heirs, successors, and assigns thereof. The District will provide the City with a legal description and exhibit of the Service

District No. 5 for annexation purposes prior to awarding the contract for construction of improvements for District No. 5.

Section 4. City Water and Sewer Contracts. Once water or sewer service is available in Service District No. 5, neither replacement drain fields nor other drinking water systems which are not operated by the City will be allowed within Service District No. 5. Individual irrigation wells are allowable, if no cross connection occurs between irrigation and public water mains. No service lines will be connected to the City's sewer or water system until the City has received executed water and sewer service agreements from the owners of the properties to be served and all applicable utility service line tapping, connection, and inspection fees have been paid. Property owners in Service District No. 5 not signing an appropriate water or sewer service agreement will still be assessed or charged for the Service District No. 5 Improvements.

Section 5. Zoning; Legal Non-Conforming Uses. Once the property in Service District No. 5 is annexed into the City, the City will zone the property consistent with surrounding residential zoning districts currently within City limits. All existing commercial, multifamily, and light industrial uses, which were legally established under zoning in effect at the time of annexation, will be allowed to continue as legal nonconforming uses and will be subject to the City Code requirements of Title 17, Chapter 64.

Section 6. Ownership, Operation and Maintenance. The City will assume ownership of the Improvements in Service District No. 5 upon substantial completion of the Improvements and acceptance by the City. The District shall require that the Improvements be subject to a two-year warranty from the contractor. The City will be responsible for the operation and maintenance of the Improvements, at city-wide standard rates per user. The City will bill each user directly for the costs of operations and maintenance. The City will give legal notice of any proposed rate increase. The capital costs of the Project will be payable separately by the users or property owners in Service District No. 5 in accordance with the method of financing used to construct the Improvements. The City will provide administrative services to Service District No. 5 at no additional cost for accounts management, billing, and debt service collection as appropriate.

Section 7. Reimbursements. The District agrees to reimburse the City for Harold Mora for \$36,522 and for Roy Volk for \$92,320, per their annexation agreements, and to the City for the cost of an eight (8) inch equivalent water main (\$170,456) not to exceed \$299,298 total. The District has to date reimbursed the City as noted below:

1. \$132,000, due to Mora, Volk and the City of the total amount as part of the construction costs of the water and sewer improvements constructed in Service District No. 1;
2. \$82,300 as part of the costs of the water and sewer improvements constructed in Service District No. 2;
3. \$25,286.42 as part of the costs of the water and sewer improvements constructed in Service District No. 3; and
4. \$23,800 as part of the costs of the water and sewer improvements constructed in Service District No. 4.

The remaining reimbursement, equaling \$35,911.58, shall be prorated among the future Service Districts within the District, based on Equivalent Dwelling Units (EDU's). The pro rata share for Service District No. 5 is determined to be \$13,002.47. Subsequently created Service Districts shall bear their respective pro rata shares until the City is reimbursed the total sum of \$299,298 for all phases. Reimbursement for each phase will be determined by the percentage of EDU's in that phase in comparison to the total number of EDU's remaining in all future Service Districts. Reimbursement to the City for previous construction of the South Interceptor sewer main, (City O.F.856, completion date August 24, 1987) Schedule IV, Section One (1) through the District will not be required.

Section 8. Storm Drain Fee. Upon annexation of Service Districts into the City, the District will pay the standard storm drain fee (\$250 per acre). The storm drain fee for Service District No. 5 is determined to be \$5,280 based on 21.12 acres. The City agrees to the extent possible to use such storm sewer fees to construct and install storm drainage facilities in the Service Districts.

Section 9. No Waiver of Right to Protest Other Special Improvement Districts.

The City will not require residents of Service District No. 5 to waive their right of protest for future special improvement districts for roadway, street lighting, and storm drain improvements. It is mutually agreed and understood that the District will not be involved in formation of roadway, storm drain, lighting, or other Special Improvement Districts. Nothing herein obligates the City to upgrade or improve roadways within the District.

Section 10. City Contributions.

10.1 The City will bear the cost of over-sizing of all water and sewer pipelines in the District that are required for future growth to the south, east and west of the District as determined by the City.

10.2 All previously committed Community Development Block Grant funds have been spent in other Service Districts.—There will be no additional City CDBG contribution for Service District No. 5.

10.3 The City will endorse and support all District efforts for funding of the Project.

Section 11. Permits and Connections.

11.1 The District will obtain a water service permit and a sewer service permit from the City as specified by current City ordinance for each property to be served. The water service permit may not include the cost of the corporation, curb stop and curb box, as those materials may be included as part of the project.

11.2 The District will include provisions in the contract for construction of the improvements, requiring the selected contractor to pay for water main tapping fees as required by the City.

11.3 A licensed plumbing contractor will be required for all water service line installations. Each individual property owner will employ a licensed plumbing contractor to

obtain necessary permits from the City to extend the service from the curb box or meter box to the house. The City retains the right of inspection and approval of water service lines.

11.4 Each individual sewer connector to the District's sewer main, while it is under the jurisdiction of the District, will obtain a City sewer permit for extension of the service line from the property line to the building. The City will then inspect the sewer service line from the property line to the house connection.

11.5 The District will inspect main line and service piping within the public easements and rights of way consistent with City inspection policy.

Section 12. City Water and Sewer Ordinances Applicable. The District will enact an ordinance, or ordinance as may be required, specifying that users of water and sewer service within the District shall be subject to applicable city water and sewer ordinances.

Section 13. Debt for District Improvements.

13.1. The District shall be responsible for paying the costs of the Improvements, except as provided herein.

13.2. The District Board has determined that bonded indebtedness shall be repaid from special assessments based on an equal method of assessment (the equivalent dwelling unit method). The District will enact ordinances or resolutions as may be required for the repayment of District debt, including ordinances, or resolutions as may be required, requiring that new subdivisions, or users who obtain new or additional water and/or sewer service after original construction and who have not contributed to the capital costs of the Improvements, to pay a pro-rata share of the costs of the Improvements.

Section 14. Individual Annexation. The annexation conditions and concessions of this Memorandum will not apply to individual properties within the District wishing to annex prior to or separate from overall District annexation. The City will administer such annexations in accordance with standard City policies and procedures.

Section 15. Reimbursements to District residents. Future users who connect to District financed water and sewer main extensions, will pay a connection fee equal to the pro-rated cost of the project improvements, even after annexation. Connection fee revenues shall be utilized in the best interest of overall water and sewer district residents, as determined by the District Board.

Section 16. Monthly Storm Drain Fees. All lots in all Service Districts will be assessed monthly storm drain fees per "Land Use Classification Group E", regardless of land use or number of dwelling units on the parcel, under the City Storm Drain Ordinance for developed property that does not discharge to an underground storm drainage system. Changes can be made to the Land Use Classifications for a property or group of properties, if underground storm drainage improvements are made, or if the land use code for a property changes. It is mutually understood, that if or when formal storm drain capital improvements are installed by the City, the user classifications may change.

By the City of Great Falls:

By the District:

Gregory T. Doyon, City Manager

Rolland E. Leitheiser, President

Attest: _____
Lisa Kunz, City Clerk

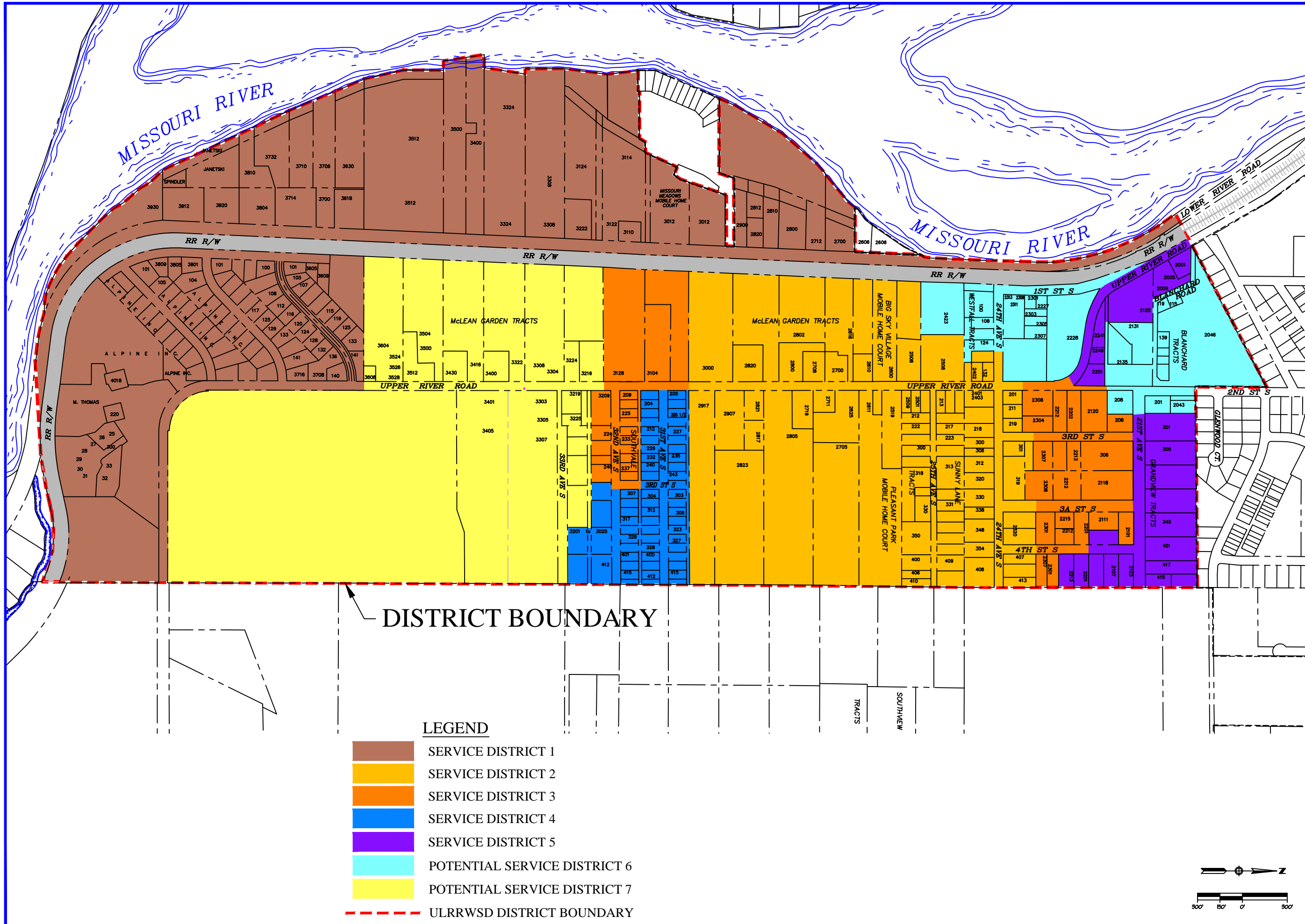
Attest: _____

(Seal of the City)

Approved for Legal Content*

Sara R. Sexe, City Attorney

*By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.



| Revisions | By | Date |
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| File No. | Job No. |
| 8/5/16 | 1402 PH5 DISTRICT MAP |
| Date | Scale |
| | AS SHOWN |

Professional Seal

Engineers
Environmental Specialists
Planners
Designers
Surveyors

4509 North Star Boulevard
P.O. Box 6350
Great Falls, MT 59406
Phone 406-453-5478
Fax 406-453-2009

Owner

UPPER/LOWER RIVER ROAD WATER AND SEWER DISTRICT

Project Title

WATER AND SEWER IMPROVEMENTS

Sheet Title

ULRRWS DISTRICT MAP

Sheet _____ Of _____

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LEGEND

- SERVICE DISTRICT 1
- SERVICE DISTRICT 2
- SERVICE DISTRICT 3
- SERVICE DISTRICT 4
- SERVICE DISTRICT 5
- POTENTIAL SERVICE DISTRICT 6
- POTENTIAL SERVICE DISTRICT 7
- ULRRWS DISTRICT BOUNDARY

