

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF MISSOULA AND THE COUNTY OF MISSOULA
RELATED TO OPEN SPACE ACQUISITION AND
USE OF OPEN SPACE BOND PROCEEDS**

This Interlocal Agreement (the "Agreement"), dated as of March 12, 2007 (the "Effective Date") is entered into by and between the City of Missoula, (the "City"), a municipal corporation and political subdivision of the State of Montana and the County of Missoula (the "County"), a political subdivision of the State of Montana.

WITNESSETH:

WHEREAS, the County is authorized pursuant to Section 76-6-109, M.C.A., to issue and sell general obligation bonds in the manner and within the limitations prescribed by applicable laws of Montana for the purpose of acquiring open space land consistent with the provisions of Title 76, Chapter 6, Part 1, M.C.A.; and

WHEREAS, Section 76-6-104, M.C.A., defines open space land as any land which is provided or preserved for: park and recreational purposes; conservation of land or other natural resources; historic or scenic purposes; or assisting in the shaping of the character, direction, and timing of community development; and

WHEREAS, the County is authorized pursuant to Section 7-7-2203, M.C.A., to issue general obligation bonds pledging the general credit of the County for the forgoing purpose upon approval of the electorate of the County, provided that such indebtedness and all other indebtedness of the County does not exceed the County's indebtedness limitation, which is currently \$77,966,281; and

WHEREAS, the Missoula County Open Lands Working Group (the "County Working Group") was created in June of 2005 to serve as a citizen advisory board to the Board of County Commissioners (the "Board") regarding the preservation of open space and related issues in the County; and

WHEREAS, the County Working Group unanimously recommended that the Board submit to the electors of the County the question of whether the County should be authorized to issue general obligation bonds (the "Open Space Bonds" or "Bonds") in an amount of up to \$20,000,000, for the purpose of preserving open space in the County; and

WHEREAS, the Missoula Open Space Working Group was created in October 2005 (the "City Working Group") to review and make recommendations to the City Council of the City of Missoula on updating the 1995 Missoula Urban Area Open Space Plan (the "Open Space Plan") in addition to the review and recommendations provided by the Citizen Open Space Advisory Committee of the City (the "Advisory Committee");

WHEREAS, the City Working Group made recommendations for updating the Open Space Plan that will serve as the guideline for continuing to create an open space system throughout the greater Missoula area; and

WHEREAS, the City Council and Board adopted and approved an updated Open Space Plan in September of 2006; and

WHEREAS, an opinion poll was conducted throughout the County, the results of which indicated widespread support for the issuance by the County of general obligation bonds for the preservation of open space and open land; and

WHEREAS, an open space task force consisting of representatives of the City and the County recommended an Open Space-Open Lands Vision Statement, which has been approved by the Board; and

WHEREAS, based on findings and recommendations of the County Working Group and after having conducted a public hearing thereon, it was the judgment of the Board to submit to the electors of the County the following question:

Shall the Board be authorized to issue and sell general obligation bonds of the County, for the purpose of preserving open space in Missoula County by: purchasing land, easements, and other interests in land from willing landowners for the following purposes: protecting the water quality of rivers, lakes and streams; protecting wildlife habitat; conserving working ranches, farms and forests; providing access along rivers, lakes and streams; managing for growth; providing open space and scenic landscapes; providing recreational and commuter trails; paying non-personnel related transaction costs associated with an approved project; paying costs of initial clean-up and weed control associated with an approved project; and paying costs associated with the sale and issuance of the bonds in the amount not to exceed Ten Million and No/100 Dollars (\$10,000,000.00), of which \$5,000,000 will be allocated to the City of Missoula and of which \$5,000,000 will be allocated to the County, which bonds shall bear interest at a rate to be determined by the Board at a competitive sale, payable semiannually during a term of not to exceed twenty (20) years and redeemable on any interest payment date after one-half of their term?

WHEREAS, on November 7, 2006 a majority of the qualified electors of the County voting on the issue, voted to authorize the issuance of the Open Space Bonds; and

WHEREAS, the City and County are authorized to enter into Interlocal Agreements pursuant to Title 7, Chapter 11, Part 1, MCA, (the "Interlocal Cooperation Act") for the purpose to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

WHEREAS, it is necessary and desirable that the City and the County enter into this Interlocal Agreement in order to set forth the limitations and procedures for the use of the proceeds of the Open Space Bonds;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

Article I. DEFINITIONS AND EXHIBITS.

Section 1.1 Definitions. In this agreement the following terms have the meaning given to them in this Section.

- (a) "Approved Open Space Project" means a Qualified Project that has been approved for funding from the Bonds in accordance with the provisions of Article V.
- (b) "Board" means the Missoula County Board of County Commissioners.
- (c) "City" means the City of Missoula, Montana.
- (d) "City Jurisdictional Area" means, for the purposes of this agreement, the Missoula Planning Region depicted on Exhibit A.
- (e) "City Open Space Advisory Committee or "City Advisory Committee" means the citizen committee appointed by the City pursuant to Ordinance Number 2958 which, among other things, will review and recommend to the Mayor and Council, Open Space Projects to be funded from the proceeds of Bonds allocated to the City.
- (f) "Council" means the City Council of the City of Missoula, Montana.
- (g) "County" means the County of Missoula, Montana.
- (h) "County Jurisdictional Area" means, for the purposes of this agreement, the area outside the Missoula Planning Region including the Frenchtown/Huson, Lolo, Nine Mile, Evaro, Swan Valley, Seeley Lake, Potomac/Greenough, and Clinton/Turah Planning Regions depicted on Exhibit A.
- (i) "Eligible Transaction Costs" means real estate commissions and fees, cost of appraisal, title research, surveys and mapping, legal fees, environmental reports, baseline studies, taxes, option fees, closing costs, other approved transaction costs, and cost of acquisition for Qualified or Approved Projects, as the case may be.
- (j) "Governing Body" means the City Council in the case of the City and the Board of County Commissioners in the case of the County.

- (k) "Joint Advisory Committee" means the combination of the City Open Space Advisory Committee and the County Open Lands Advisory Committee.
- (l) "Lead Staff" means the person designated by the Governing Body of the City and County to coordinate the respective Open Space Programs and act as the Governing Body representative with respect to the implementation of this Interlocal Agreement.
- (m) "Mayor" means the Mayor of the City.
- (n) "Missoula County Open Lands Citizen Advisory Committee" or the "County Advisory Committee" means the citizen committee appointed by the Board which, among other things, will review and recommend to the Board Open Space Projects to be funded from the proceeds of Open Space Bonds allocated to the County.
- (o) "Net Proceeds" means the principal amount of Bonds issued and accrued interest less cost of issuance and accrued interest from their dated date to the date of delivery.
- (p) "Open Space Bond Acquisition Account" means the account to be established and maintained by the County in accordance with Section 6.3.
- (q) "Open Space Bonds" or "Bonds" means the general obligation bonds authorized by the electorate of Missoula County in an amount of up to \$10,000,000, for the purpose of preserving open space in Missoula County.
- (r) "Open Space Bond Resolution" means one or more resolutions of the County adopted by the Board authorizing the issuance of a specific series of the Open Space Bonds and setting forth terms and conditions thereof.
- (s) "Open Space Project" means a project presented to the Board to determine if it meets the purposes established in Section 2.1.
- (t) "Qualified Open Space Project" means an Open Space Project determined by the Board to meet the purposes established in Section 2.1.
- (u) "Reimbursement Resolution" means the resolution adopted by the Board of County Commissioners to designate an Open Space Project as a Qualified Open Space Project as established in Section 2.1, and to provide the official declaration of intent to undertake the Qualified Open Space Project and incur expenditures prior to the date of issuance of the Bonds in accordance with United States Department of Treasury Regulations, Section 1.150-2 related to proceeds of tax-exempt bonds.
- (v) "Open Space Programs" means the programs adopted and administered by the City and the County respectively, pursuant to which they acquire and manage open space land and in particular, the Approved Open Space Projects.

- (w) "Project Related Costs" means removal of junk, trash, barbed wire, demolition of structures, abatement of safety hazards and initial weed treatment for an Approved Open Space Project.

Section 1.2 Exhibits. The following exhibits are attached hereto and incorporated by reference.

Exhibit A: Missoula County Planning Regions including the Missoula Planning Region and the regions outside the Missoula Planning Region

Exhibit B: Decision Making Structure

Exhibit C: Certificate for Reimbursement or Payment of Invoices

Exhibit D: Missoula Urban Open Space Plan 2006 Update

Article II. PURPOSE OF THE OPEN SPACE BONDS AND ALLOCATION OF PROCEEDS.

Section 2.1 General Purpose of Open Space Bonds. The purposes of the Bonds will be carried out by the City and the County by purchasing land, easements, and other interests in land from willing landowners for the following purposes:

- (a) Protecting the water quality of rivers, lakes and streams;
- (b) Protecting wildlife habitat;
- (c) Conserving working ranches, farms and forests;
- (d) Providing access along rivers and streams;
- (e) Managing for growth;
- (f) Providing open space and scenic landscapes;
- (g) Providing recreational and commuter trails and wildlife corridors; and
- (h) Paying non-personnel related transaction costs and costs of initial clean-up and weed control associated with an approved project;

Section 2.2 The proceeds of the Bonds will be allocated as follows:

- (a) Not to exceed one half of the Net Proceeds of the Bonds shall be allocated to the City for Eligible Transaction Costs for Qualified Open Space Projects and Eligible Transaction Costs, Project Related Costs and other approved costs of Approved Open Space Projects in the City Jurisdictional Area.

- (b) Not to exceed one half of the Net Proceeds of the Bonds shall be allocated to the County for Eligible Transaction Costs for Qualified Open Space Projects and Eligible Transaction Costs, Project Related Costs and other approved costs of Approved Open Space Projects in the County Jurisdictional Area.

Section 2.3 Nothing in this Article prohibits the Governing Bodies from cooperating and jointly funding an Approved Open Space Project in the Jurisdictional Area of the other.

Article III. OPEN SPACE PROGRAM ADMINISTRATION.

Section 3.1 The City and the County will each administer its respective Open Space Programs as described in this section and as shown on Exhibit B.

Section 3.2 The City and the County will be responsible for the oversight and management of Approved Open Space Projects within its Jurisdictional Area.

Section 3.3 Lead Staff shall share equally in the responsibility for joint meetings and will work cooperatively on cross-jurisdictional projects.

Section 3.4 The City Open Space Advisory Committee shall be staffed by the City and shall be responsible for, among other things, reviewing and recommending to the Mayor and Council Open Space Projects in the City Jurisdictional Area to be proposed for funding from the Open Space Bond proceeds allocated to the City.

Section 3.5 The County Open Lands Citizen Advisory Committee shall be staffed by the County's Rural Initiatives Coordinator, and shall be responsible for, among other things, reviewing and recommending to the Board Open Space Projects in the County Jurisdictional Area to be proposed for funding from the Open Space Bonds allocated to the County.

Section 3.6 Each Advisory Committee will base its recommendations on criteria approved by its respective governing body. For the City, the criteria are set forth in the Missoula Urban Area Open Space Plan 2006 Update, attached as Exhibit D.

Section 3.7 The Joint City/County Open Lands-Open Space Advisory Committee will meet annually, or as needed, to advise the City and the County on shared vision, mission, purpose and projects, and to recommend Open Space Projects of mutual interest to the respective Governing Bodies.

Section 3.8 It is understood that the City and County costs of administering their respective Open Space Programs shall not be paid or reimbursed from the proceeds of the Open Space Bonds.

Article IV. PROCEDURE TO DETERMINE IF AN OPEN SPACE PROJECT IS A QUALIFIED PROJECT.

Section 4.1 Prior to incurring expenses for which either Governing Body will seek reimbursement, the City or County Lead Staff will present to the Board a description of the proposed Open Space Project and the estimated preliminary costs of the Open Space Project for which it would seek reimbursement. The Board will determine if the proposed Open Space Project is a Qualified Open Space Project based upon the purposes established in Section 2.1. If such a determination is made, the Board will adopt a Reimbursement Resolution as required by Section 1.150-2 of the Internal Revenue Code.

Article V. PROCEDURE FOR APPROVAL OF QUALIFIED OPEN SPACE PROJECTS.

Section 5.1 Public Hearings. Upon receipt of the recommendations from their respective Advisory Committees, the Governing Bodies will conduct public hearings on each proposed Qualified Open Space Project within its Jurisdictional Area prior to approval of the project for funding from the Bonds. The City and County may elect to conduct joint public hearings on Qualified Open Space Projects that are of mutual interest. The public hearing may be adjourned from time to time.

Section 5.2 Approval of a Qualified Open Space Project by the County. Upon closing the public hearing, the Board may then, or at any subsequent public meeting, approve the Qualified Open Space Project for funding from the Bonds. A majority vote of the Board is required to approve the Qualified Open Space Project for funding.

Section 5.3 Recommended Approval of a Qualified Open Space Project by the Council. Upon closing the public hearing, the Council may then, or at any subsequent public meeting, recommend to the Board that the Qualified Open Space Project be approved for funding from the Bonds.

Section 5.4 Approval by the Board of a Qualified Open Space Project Recommended by the Council and Referred by the City. Within 30 calendar days of the receipt of the referral from the City, the Board shall approve the Qualified Open Space Project for funding from the Bonds unless a) the Qualified Open Space Project has changed in scope since the determination made by the Board in accordance with Section 4.1 hereof and the Board further determines that the change is so substantial that it no longer meets the purposes set forth in Section 2.1, or b) unless evidence presented raises questions about the lawfulness of the proposed Qualified Open Space Project, and the Board determines the Qualified Open Space Project to be unlawful.

Section 5.5 Limitation on Use of Proceeds. Bonds may only be used for Eligible Transaction Costs of Qualified Open Space Projects and for Eligible Transaction Costs, Project Related Costs and other approved costs of Approved Open Space Projects. The description of a Qualified or Approved Open Space Project shall include, in sufficient detail, all Eligible Transaction Costs and all Project Related Costs if they are to be funded from the proceeds of the Bonds.

Article VI. COVENANTS AND PROCEDURES WITH RESPECT TO EXPENDITURE OF OPEN SPACE BONDS.

Section 6.1 Issuance of Bonds. Bonds may be issued in separate series and in principal amounts as required to timely fund Eligible Transaction Costs of Qualified Projects and Eligible Transaction Costs, Project Related Costs and other approved costs of Approved Open Space Projects. Bonds will be issued in such amounts and at such times so as to ensure that the Bonds can be issued and maintain their status as tax exempt obligations.

Section 6.2 Allocation of Proceeds and Costs of Issuance. The County and City will each be responsible for its pro rata share of the costs of issuance of the Bonds based on the principal amount being issued for the entity. Those costs can be paid from cash on hand or from the proceeds of the Bonds. It shall not be necessary that each series of bonds be equally allocated between the City and the County, as long as the total amount of bonds to be issued is allocated equally.

Section 6.3 Open Space Bond Account. Upon the issuance of the Bonds and in accordance with the Bond Resolution, the Board shall create and maintain an Open Space Bond Account, and deposit into the account the proceeds of the Open Space bonds, exclusive of accrued interest. Interest earnings on the bond proceeds shall be allocated in accordance with the Bond Resolution. The Open Space Bond Account will be maintained separate and apart from other County funds and accounts and shall be subject to the County's annual financial audit.

Section 6.4 Expenditure of Open Space Bond Proceeds.

- (a) **Reimbursement of Expenditures.** The City or County may seek reimbursement from the Bonds for Eligible Transaction Costs of Qualified Open Space Projects and Eligible Transaction Costs, Project Related Costs and other approved costs of an Approved Open Space Project, as long as a Reimbursement Resolution has been adopted pursuant to Section 4.1.
- (b) **Payment of Invoices.** The Lead Staff will present to the County Chief Financial Officer, invoices for Eligible Transaction Costs of Qualified Open Space Projects or Eligible Transaction Costs, Project Related Costs and other approved costs of Approved Open Space Projects with a certification in substantially the form attached hereto as Exhibit C. The County Chief Financial Officer will pay invoices directly to the parties described.
- (c) **Transfers of Funds.** If the costs of an Approved Open Space Project, or Projects, exceed the amount of Bond Proceeds initially allocated to either the City or County, the County Chief Financial Officer may use Bond Proceeds allocated to the other entity, if that entity does not have immediate need for the funds and the total amount to be expended by the City or County does not exceed its total share of the Bonds. The amounts so used shall be restored from the next series of Bonds issued.
- (d) **Arbitrage and Compliance.** The County as issuer of the Bonds shall be responsible for compliance with the provisions of the Bond Resolution.

Article VII. AMENDMENT OF AGREEMENT.

Section 7.1 Request of Either Party. Either party may initiate a request to amend this Agreement by one Governing Body providing a written copy of the proposed amendment to the other Governing Body for review and consideration.

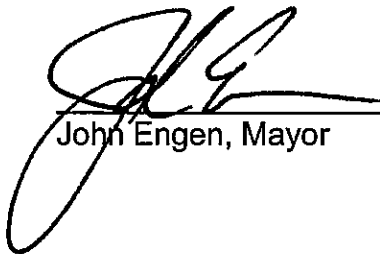
Section 7.2 Thirty Days. Action on the amendment will occur by the recipient Governing Body within 30 working days of receipt of the proposed amendment.

Section 7.3 Effective Date. An amendment will become effective on the later date by which it has been approved and adopted by a majority vote of both Governing Bodies.

IN WITNESS WHEREOF, the County of Missoula has caused this instrument to be duly executed by its proper officers on this 14th day of March, 2007.

IN WITNESS WHEREOF, the City of Missoula has caused this instrument to be duly executed by its proper officers on this 5th, day of April, 2007.

CITY OF MISSOULA:




John Engen, Mayor

COUNTY OF MISSOULA:



Barbara Evans, Chairman

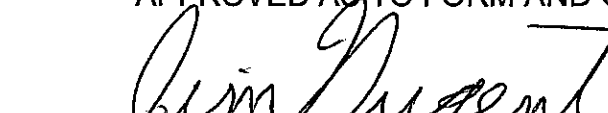


Jean Curtiss, Commissioner




Bill Carey, Commissioner

APPROVED AS TO FORM AND CONTENT:




Jim Nugent, City Attorney
City Attorney



Michael Sehested
Chief Civil Deputy County Attorney

ATTEST:



Marty Rehbein
City Clerk



ATTEST:



Vickie Zeier
Clerk and Recorder