

DATE PAID: _____

CHECK # _____

TOWN OF PHILIPSBURG
UTILITY INSPECTION APPLICATION

The undersigned (Inspector) _____, representing the Town of Philipsburg, confirms that he or she has inspected the premises described hereinafter at the request of (Applicant) _____ for the purpose of marking any known Town of Philipsburg water or sewer improvements at a proposed construction site.

The undersigned confirms that he or she has made such inspection, but this confirmation is made with the understanding that maintenance or replacement of any water service lines, sewer service lines, or other utility improvements located on these premises is the responsibility of the Applicant and not the Town of Philipsburg.

Further, this inspection is made with the understanding that the Applicant shall be fully responsible to comply with all laws, rules, and regulations pertaining to the location and construction of any improvements on the property.

Pursuant to this Utility Inspection Application, the Town of Philipsburg representative reviews water and sewer system maps and marks the approximate location of known water and sewer lines or other improvements in the area inspected. As the existence and precise location of underground utility lines cannot be confirmed without excavation, the Town makes no guarantee that the area inspected is entirely free of underground utility lines that may not be shown on those maps or are not otherwise readily apparent. Similarly, the Town makes no guarantee as to the suitability of any lines identified for any particular purpose. The approval by the undersigned is solely for the purpose of relaying the town's knowledge of any known Town of Philipsburg water and/or sewer improvements at the premises as aforesaid and is made without warranty of any kind. The Town does not hereby guarantee water pressure or capacity in the sewer main. It is the responsibility of the property owner to obtain necessary engineering or professional services to ensure adequacy of those services prior to construction. Many utility lines in town are several decades old and the town makes no representations as to the condition of utility lines.

It is the responsibility of the property owner to ensure that all construction is done on his or her own property and to confirm the location of property boundaries prior to construction of any improvements. A survey may be required if boundaries cannot be determined.

The fee for utility inspection is \$100.00. An inspection must be performed within one year prior to commencing a building project. A \$100.00 inspection fee is required for any and all re-inspections(s).

Dated this _____ day of _____ 20_____

Town of Philipsburg Representative

Applicant Signature

Phone Number: _____

Inspection Address _____

Town of Philipsburg, Montana

Water/Sewer Connection Contract

_____ (“Applicant”) seeks to connect to the Town of Philipsburg’s water and/or sewer system and has represented to the Town that the connection is for _____ (describe use, such as one single-family residence). Applicant’s property is located at physical address: _____.

Applicant acknowledges that a water and/or sewer connection requires a permit under Town Code Title 9, Chapter 2, and that these provisions require Applicant to be truthful about the scope of the use of the connection. Failing to disclose the true scope of the use of the connection is a misdemeanor under Town Code § 9-2-3.

Accordingly, Applicant agrees to be truthful about the true scope of the use of the connection. Applicant further agrees (1) that failure to do so will result in the revocation of the inspection permit, (2) require the Applicant to pay to excavate the falsely claimed connection and (3) reapply for a proper permit and reconstruct the permitted connection.

This agreement constitutes a contract between Applicant and the Town and can be enforced in court as a breach of contract and other remedies. Applicant agrees to pay the Town’s reasonable attorney’s fees and costs in any such case.

Applicant

Public Works Department
Town of Philipsburg

DATE: _____

TOWN OF PHILIPSBURG

Sewer and Water Application

\$100 FEE PAID

Applicant Information

Full Name: _____ Date: _____
Last First M.I.

Address: _____
Street Address Apartment/Unit #

City State ZIP Code

Phone: _____ Email _____

Property Owner Information (if different from applicant)

Full Name: _____ Date: _____
Last First M.I.

Address: _____
Street Address Apartment/Unit #

City State ZIP Code

Phone: _____ Email _____

Installer Information

Full Name: _____ Date: _____
Last First M.I.

Phone: _____ Email _____

Property Information

Tax ID: _____ Geocode: _____

Legal Description: _____

Type/complete
description of project
(residential
(single/multiple)/
commercial
(single/multiple)/
condominium/
apartment)/subdivision:

New Construction or remodel or addition: _____

Size and Number of lots: _____ # of bedrooms: _____

Engineer Information

Full Name: _____ Phone: _____

Company: _____ Email: _____

Address: _____

TOWN USE ONLY

Approximate distance from water main to service location: _____

Water main details (size, material, condition, load): _____

Approximate distance from sewer main to service location: _____

Sewer main details (size, material, condition, load): _____

Water main extension required? _____

Sewer main extension required? _____

Service line minimum/maximum size and specs? _____

NOTICES

If a main extension is required, all DEQ requirements must be followed and engineering must be completed by a licensed engineer.
The determination that a main extension is or is not required is made by the town based on the information provided by the applicant and is subject to change if the project details change. The determination is generally valid for the project specified for one year from the date of application but is subject to change if the situation changes materially.
Materials used for all main extensions and service connections must be approved by the town prior to installation. If necessary, the installation of any water pressure reducing valve or sewer backflow preventer is the responsibility of the installer.
All main extensions and service connections must be inspected and approved by the town public works department prior to backfill.
The installer must be licensed and insured and is responsible for any damages or disturbance of the public right of way. Restoration of the public right of way to its prior condition will be the responsibility of the installer.
The installer shall comply with all applicable laws and regulations including but not limited to Town of Philipsburg Ordinance titles 7, 9, and 10, including the bonding requirement in ordinance 7-6-1 and the requirement that a master plumber install the water meter pursuant to Ordinance 10-1-4(H).

PLUMBER INFORMATION

PLUMBER'S NAME: _____

COMPANY NAME: _____

COMPANY ADDRESS: _____

PHONE: _____ EMAIL: _____

LICENSE NUMBER: _____

DATE AND CURRENT STATUS OF LICENSE: _____

PHYSICAL ADDRESS WHERE WORK IS TO BE DONE:

PLUMBER'S SIGNATURE: _____ DATE: _____

TOWN OF PHILIPSBURG WATER AND SEWER REGULATIONS

The construction season for Town for hooking up to new service lines for both sewer and water to Town mainlines will run from May 1st to October 15th of each year. All requests for these services must be completed between these dates stated above.

I. WATER AND SEWER CONNECTION APPLICATION AND FEES

All requests for water and sewer hookups, including hook-ups, extensions, modifications, and re-hookups, must be submitted via application with Town Hall. Upon receipt of the application the Public Works Department will inspect and inform the property owner of findings. The application fee is one hundred dollars (\$100.00). The Public Works Department reserves the right to reject or conditionally accept any application for service to any property if, in the opinion of the Director of Public Works, such a connection might jeopardize the existing water system by causing excessive demand upon the Town's water supply, by impairing the Town's ability to deliver water for domestic use or fire protection, or by overloading sewer capacity. Any person aggrieved by the Public Works Department's action on an application may appeal that action to the Town Council by writing a letter requesting to have the issue reviewed at a regularly scheduled Town Council meeting.

No work may be commenced prior to the processing of the payment of all fees associated with the physical connection of water or sewer services by the Town water or sewer user. Said fees are listed below. The system development fees (includes costs for physical connection to the Town's water main or sewer main) are set at Three Thousand Dollars (\$3,000.00) per unit. A Three Thousand Dollar (\$3000.00) fee is required for hookup to the Town's water system and separate Three Thousand Dollar (\$3000.00) fee is required for hookup to the Town's sewer system. Fees for a water and/or sewer user to be physically disconnected from the water or sewer supply, as requested by the Town water or sewer user, are set at Three Thousand Dollars (\$3,000.00) per unit. A Three Thousand Dollar (\$3000.00) fee is required to disconnect from the Town's water system and separate Three Thousand Dollar (\$3000.00) fee is required to disconnect the Town's sewer system. All fees set herein are in addition to the utility inspection fee of One Hundred Dollars (\$100.00). The fees set forth herein are equitable in proportion to the services and benefits rendered and may be changed from time to time without notice by the Town Council.

At the time of payment for hookups the customer will also be required to set up an account for payment of services with the Town Clerk. The account will remain inactive until such time that Public Works informs the Clerk that the water service has been physically turned on at which time the account will be activated and the billing for the services will commence.

II. TOWN OF PHILIPSBURG WATER REGULATIONS

1. Main Connections. Upon approval by the Town Council and payment of all fees pursuant to section I, above, the Public Works Department shall expose and tap the main, install a service saddle, corporation valve, and curb stop. The customer's Three Thousand Dollar (\$3,000.00) hook-up fee will cover the expense for labor, equipment, and materials for such installations. The customer will contact the Public Works Department for notification and scheduling of proposed hook-up.

2. Service Lines. The customer, at the customer's expense, shall be responsible to install all piping and appurtenances from the curb stop to the point of usage for the building or home. The connection to the curb stop must be made by a Montana-licensed master plumber. The surface condition will be restored to that

which existed before the installation. The customer shall cause an appropriate service line to be installed between the corporation valve and the curb stop in a manner approved by the Town Public Works Department. The curb stop and curb box shall be installed by the customer as specified and approved by the Town Public Works Department in the public right of way or an easement in a location that is readily accessible to the Town Public Works Department.

3. Water meters. Water meters are required. All new hookups to the town's water system, and all new Town water users shall purchase their own water meter and water meter pit from the Town and have such installed by a Montana-licensed master plumber to install the water meter as directed by the Town. Water meter pits are required for all new hookups.

The name of the Licensed Plumber who is to install the required meter and all pertinent contact information, including a copy of the License, shall be provided to the Town Public Works Department before the release of any meter from the Town Public Works to the applicant. The information and copy of License will be kept on file with the Town. If this process is not followed the Town reserves the right to enforce a monetary penalty of \$250.00 as well as costs incurred by personnel to correct the situation. A copy of the application is provided in this packet.

4. Maintenance and Responsibilities.

- a. The customer shall maintain, at the customer's expense, all service piping and appurtenances in a good condition, free from leaks. Failure to do so shall be cause for discontinuance of service. If curb boxes are not maintained to a condition that the service can be shut off or turned on freely, the Public Works Department reserves the right to make whatever repairs are necessary to return the shut-off to full function and charge the customer for labor, equipment, and materials necessary to make the repair.
- b. It is the customer's responsibility to repair any leaks in the service line immediately upon discovery. The Public Works Director and all Town personnel may not recommend any specific private contractor or company to assist the customer in the repair and maintenance of any private service lines. It is the sole responsibility of the customer to make contact and employ a qualified professional for services needed.
- c. Any digging in a street, alley, or other Town right-of way must be performed by a licensed and insured contractor, or, only upon approval by the Director of Public Works, upon the posting of a suitable bond.
- d. All new water main service connection materials, construction, and inspection required hereunder shall be at the sole cost and expense of the customer.
- e. For a water main extension, the customer must submit a blueprint produced by a state certified engineer of the customer's choice. All charges for engineering services shall be at the sole cost and expense of the customer.
- f. Upon the completion of the water main extension the customer must provide the Public Works Director with reproducible Mylar drawings that accurately indicate the water main extension as actually installed, in plan and profile. No water main extension shall be accepted until "as-built" drawings are provided.
- g. Non-emergency (as determined by the Director of Public Works) main connections will not be made outside of the May 1 to September 30 timeframe or as weather and work scheduling permits.
- h. For all new construction, the Town recommends that the customer install all new service lines. Any connection to pre-existing service lines is at the customer's risk.

III. TOWN OF PHILIPSBURG SEWER REGULATIONS

1. Main Connections. Upon approval by the Town Council and payment of all fees pursuant to section I, above, and after the customer has exposed the sewer main, the Public Works Department shall install a service saddle on the sewer main to facilitate connection of the sewer service line. The customer's Three Thousand Dollar (\$3,000) hook-up fee will cover the expense for labor, equipment, and materials for such installation. The customer shall fill in the excavation and restore the surface to that which existed before the installation. The customer will contact the Public Works Department for notification and scheduling of the proposed hook-up.

2. Service Lines. The customer, at the customer's expense, shall be responsible to install all piping and appurtenances from the main connection to the point of usage for the building or home. The surface condition shall be restored to that which existed before the installation. All material, pipe, appurtenances, valves, and auxiliary piping shall be designed and installed in a manner and with materials approved by the town public works department.

"Additional Dwelling Units" will be defined as any structure that includes a full functioning kitchen and at least one full functioning bathroom that contains a toilet, bath and/or shower and sink.

Any new "Additional Dwelling Units" that are built on the property with already existing service lines for both sewer and water connected to the existing building or house, must be connected to the mains with separate and new service lines. Full hook-up fees, including application costs, meter cost, and installation will be charged as stated above.

Properties with additional dwelling units that are currently sharing service lines with the original house or building will remain as such, and not be made to install new service lines to the specific existing additional dwelling unit. They will, however, be charged a separate additional base rate for both sewer and water services.

Public Works Department reserves the right to adjust this policy when a determination must be made related to inherited sewer and water mains running through private property, wherein the subject of ownership may come into play.

3. Sewer Backflow Preventers. Sewer backflow preventers add a layer of protection against sewage backing up into buildings in the event that a sewer line becomes clogged. Sewer backflow preventers are required to be installed by the customer at the customer's expense on all new sewer service lines. Sewer backflow preventers are recommended to be installed on all existing sewer service lines. The Town is not responsible for damage caused by sewer backups.

4. Maintenance and Responsibilities.

a. The customer shall maintain, at the customer's expense, all service piping and appurtenances in a good condition, free from leaks. If a leak of waste water is detected and not immediately attended to by property owner, the Public Works Department reserves the right to make necessary repairs so that the line may be returned to full function and charge the customer for labor, equipment, and materials necessary to make the repair in consideration of public health and safety.

b. Town personnel may not recommend any specific private contractor or company to assist the customer in the repair and maintenance of any private service lines. It is the sole responsibility of the customer to make contact and employ a qualified professional for services needed.

- c. All new sewer main service connection materials, construction, and inspection required hereunder shall be at the sole cost and expense of the customer.
- d. For a sewer main extension, the customer must submit a blueprint produced by a state certified engineer of the customer's choice. All charges for engineering services shall be at the sole cost and expense of the customer.
- e. Upon the completion of the sewer main extension the customer must provide the Public Works Director with reproducible Mylar drawings that accurately indicate the sewer main extension as actually installed, in plan and profile. No sewer main extension shall be accepted until "as-built" drawings are provided.
- f. *Things that should never be flushed or drained include but are not limited to:*
Sanitary wipes, Paints, solvents, gasoline, combustible fuels, toxic chemicals, antifreeze, medicines, pharmaceuticals, paper towels, cloth, disposable diapers, baby wipes, feminine products, needles, razor blade, large amounts of food waste through the disposal, fats, oils, and grease.
The Town reserves the right to charge for remediation necessitated by foreign material in the sewer system.
- g. If you are experiencing a sewer or water service problem Monday thru Friday 8am-5pm please call Town Hall at 406-859-3821 or the Town Shop at 406-859-3455. For emergencies outside of those hours, please call the Sheriff's Department dispatch at 406-859-3251 and state that you are reporting a sewer emergency or a water line leak. Backed up sewer lines, waterline breaks, sewer odors and overflowing manholes are considered an emergency.
- h. Non-emergency main connections (as determined by the Director of Public Works) will not be made outside of the May 1 to September 30 timeframe or as weather and work scheduling permits.
- i. For all new construction, the Town recommends that the customer install all new service lines. Any connection to pre-existing service lines is at the customer's risk.

IV. WATER AND SEWER RATES AND BILLING

1. The base rate for water service for all accounts is \$52.00 per month, which will include 5,000 gallons of water.
2. The water usage rate is \$5.00 per 1,000 gallons metered after the first 5,000 gallons used, up to 15,000 gallons.
3. The water usage rate is \$10.00 per 1,000 gallons metered after the first 15,000 gallons used, up to 45,000 gallons.
4. The water usage rate is \$20.00 per 1,000 gallons metered after the first 45,000 gallons used.
5. The base rate for sewer service is \$55 per month. (Resolution 2015-3)
6. The sewer usage rate is \$1.50 per 1000 gallons and shall be billed based on the average water usage metered for the preceding November, December, January, and February.

7. Charges for water or sewer shall be charged against the landowner of the premises and shall constitute a lien against the premises for which said services were supplied. The landowner is ultimately responsible for all water and sewer charges, even if the property is vacant or is occupied by a tenant.

8. Water/sewer charges shall be billed monthly for the previous month's usage.

9. Delinquent water bills shall accrue interest at the rate of 5/6 of 1% per month from and after the delinquency until paid.

10. The town may exercise any legal remedy available to it to collect unpaid water/sewer bills, including but not limited to adding delinquent bills to the property tax assessments (MCA 7-13-4309), placing a lien on the property (Philipsburg Ordinance 10-1-1), shutting off water service, legal action, or other legal remedy. All costs incurred by the Town in pursuing collection of delinquent accounts, in addition to a reasonable collection fee, shall be the responsibility of the landowner of the premises. A \$75 fee is hereby authorized to be added to the water/sewer bill each time a notice is placed on the premises of a delinquent account.

11. Regarding new construction, the Town cannot guarantee water pressure or capacity in any given water main, or functionality of any given sewer main. It is the responsibility of the property owner to obtain necessary engineering or professional services to ensure adequacy of those services prior to construction.

12. Dwellings that are hooked up to water and sewer services and remain vacant for extended periods of time to include part time seasonal habitation will continue to be charged a monthly flat rate bill. An exception will be made to this policy for owners who remove all fixtures, i.e., toilets, kitchen and bathroom sinks from the premises and can demonstrate to Public Works that this requirement has been met through visual inspection.

As the existence and precise location of underground utility lines cannot be confirmed without excavation, the Town makes no guarantee that the area inspected pursuant to a Utility Inspection is entirely free of underground utility lines that may not be shown on those maps or are not otherwise readily apparent. Similarly, the Town makes no guarantee as to the suitability of any lines identified for any particular purpose.

V. COMMERCIAL, INDUSTRIAL OR OVERSIZED SERVICE LINE HOOK UPS TO TOWN SEWER AND WATER MAINS

If a customer decides to tap into Town's existing sewer and/or water mains with taps, valves, fittings, pipes and other appliances, including meters that have a larger diameter than the conventional residential diameter for water, that being ¾" (3 quarters of an inch), the applicant is responsible for the following:

a. The applicant must, at their expense, secure an engineer to draw up designs for the project so that it has an engineer's stamp meeting all the requirements related to DEQ and other State Agency regulations. These plans must be submitted both on paper and digitally to the Town's Public Works Department for review and approval prior to construction.

b. The cost of all materials related to the project will be paid for by the applicant. This is to include payment to the Town for the cost of the physical connection to the Town main undertaken and overseen by the Public Works Department of the Town. These estimated costs and values will be imparted to the applicant's engineer who will in turn relay the information concerning these costs to the applicant. These costs can include, but are not limited to, full main extensions, as well as any upgrades or maintenance to existing mains that are needed to accommodate the connection of the new service line being requested.

c. These fees must be paid in full before the Town connects the requested service line or lines to the Town main lines. The applicant must contact the Town Clerk and set up an account for billing purposes before the services are turned on.

VI. ACCESS FOR EASEMENT FOR INSTALLATION AND MAINTENANCE OF UTILITIES RUNNING THROUGH PRIVATE PROPERTY

1. Secondary Easements. For any easement, the law implies a "secondary easement" that allows the easement holder to make repairs to whatever is involved with the rights conveyed in the easement. That is, the easement need not state that the easement holder has the right to make repairs; the law automatically allows this. As the Montana Supreme Court held in 1941:

The right to enter upon the [easement grantor's property] for the purpose of repairing or renewing an artificial structure, constituting an easement, is called a 'secondary easement,' a mere incident of the easement that passes by express or implied grant, or is acquired by prescription.

Laden v. Atkeson, 112 Mont. 302, 116 P.2d 881, 883 (1941).

But there are limits on a secondary easement. They "can be exercised only when necessary and in such a reasonable manner as not to needlessly increase the burden upon the servient tenement." *Id.*

In sum, the holder of the easement, "has the right to enter upon the [easement grantor's property] and make repairs necessary for the reasonable and convenient use of the easement, doing no unnecessary injury to the [easement grantor's property]." *Id.*

The Supreme Court provided an example:

A person having an easement in a ditch running through the land of another may go upon the [other's] land and use so much thereof on either side of the ditch as may be required to make all necessary repairs and to clean out the ditch at all reasonable times.

Id.

The Town has a secondary easement to service utility pipes. However, the repairs must be necessary, the Town must give reasonable notice to the property owner, and the Town cannot cause unnecessary damage to the property. The Town could pass an ordinance to codify its secondary easement rights.

2. Prescriptive Easements. As previously stated, a secondary easement attaches to every easement. Easements to the Town for utility pipes are created in one of three ways: (1) the plat of a subdivision, (2) a separate written easement, or (3) prescriptive easement.

Several of the Town's utility easements are included in plats and a few are from separate written easements.

Even if there is no plat or separate written easement, the Town has utility easements via prescriptive easements. These are easements that are implied by the law because of long use instead of a written easement. To obtain a prescriptive easement, "[T]he party claiming an easement must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full five-year statutory period." *Cremer Rodeo Land & Livestock Co. v. McMullen*, 2023 MT 117, ¶ 17, 412 Mont. 471, 531 P.3d 566. See also MCA 70-19-405 (allowing prescriptive easements) & MCA 70-19-401 (five-year period of use). Many

of these words are overblown nineteenth century common law terms. Each of these words are explained in modern language immediately below.

"Open" means the Town is not hiding that it has pipes under the property; it does not require that the pipes are visible. "Notorious" means much the same as "open." "Exclusive" means the property owner does not share the easement right with anyone. This would be true of a utility easement because the property owner would not be sharing the pipes with the Town. "Adverse" means that the Town's easement is inconsistent with the property owner's use of the easement. "Continuous" and "uninterrupted" need no explanation.

Entities running pipes are routinely held to have a prescriptive easement to do so. See, e.g., *O'Connor v. Brodie*, 153 Mont. 129, 454 P.2d 920 (1969) (owner of water line held to have prescriptive easement).

For these reasons, it is concluded that the Town has a prescriptive easement to any utility lines in the ground for five years or more, whether or not a plat or written easement grants an easement.