

AGENDA REPORT

DATE July 20, 2004

ITEM Approve Water and Sewer Service Agreements with International Malting Company (IMC)

INITIATED BY Fiscal Services

ACTION REQUESTED Approve Agreements

PREPARED BY Martha Cappis, Operations Supervisor

APPROVED & PRESENTED BY Coleen Balzarini, City Controller

RECOMMENDATION: Staff recommends approval of the Water and Sewer Service Agreements with International Malting Company.

MOTION: "I move the Commission approve the Water and Sewer Service Agreements with International Malting Company and authorize the City Manager to execute the agreements."

SYNOPSIS: The agreements outline the rates charged for water and sewer service through June 30, 2010 for potable and raw water, sanitary and industrial wastewater, and applicable fees. The agreements also outline the responsibilities of the parties in regards to the reporting of data, the ownership of the meters and system, and the payment requirements, along with addressing the water rights issue for raw water.

BACKGROUND: The City of Great Falls and IMC have been negotiating the charges for water and sewer service to the plant being built north of Great Falls. The wastewater rates are based on a minimum usage of 1,000,000 gallons per day of industrial process wastewater. These rates were established after analyses and/or consultation with Black & Veatch Engineering Consultants and Water Right Solutions, Inc. Consulting. This quantity will utilize existing capacity at our treatment plant. The raw water rate is based on untreated water coming directly from the Missouri River. Costs related to drawing and delivering the water to IMC's facility are IMC's responsibility. Both the sanitary sewer and potable water rates are equivalent to the current commercial rates for service.

**International Malting Company & the City of Great Falls
Water Service Agreement
PHASE ONE**

This Water Service Agreement (the "Agreement") is made and entered into this _____, day of _____, 2004, by and between the City of Great Falls Montana, a municipal corporation of the State of Montana, (hereinafter referred to as the "City"); and International Malting Company, LLC, a Delaware limited liability company (hereinafter referred to as "IMC");

WHEREAS, upon the performance of all conditions of that certain Interlocal Agreement authorizing the City to enforce building code enforcement programs pending annexation, dated September 16, 2003, (the "Interlocal Agreement"), IMC desires to make connection to the City's water system to serve the Malt Barley Processing Facility (the "Facility") which will be constructed and operated by IMC at the location described in the said Interlocal Agreement;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

A. System Requirements and Guarantees

- I. The City shall make available to IMC the domestic water necessary or desirable to operate the Facility. The City will dedicate 1,500 gallons per minute of the City's total water right from Giant Springs to provide raw water to IMC.
- II. All water shall be metered through an appropriately sized water meter selected by the City. IMC shall provide appropriate pipes and fittings for the installation of the separate metering for domestic water and Industrial Process Water. The City shall provide an appropriately sized domestic water meter with register display that indicates total flow volume. The domestic meter shall be capable of field testing and repair made possible by an appropriately sized lockable by-pass installed as part of the domestic meter setting. The Industrial Process Water meter shall be an appropriately sized propeller meter with digital register display, showing rate of flow and total flow in gallons, provided by the City. The propeller meter will not be capable of field testing and repair. IMC shall keep daily records of Industrial Process Water passing through this meter. Both meters shall be installed by IMC in accordance with manufacturer's requirements. The meters shall be in an appropriate, accessible location that is agreeable to the City.
- III. IMC must apply and conform to all applicable requirements of the Water Service Line Permit. IMC must comply with all applicable requirements in accordance with the ordinances and resolutions described in Title 13, Official Code of the City of Great Falls ("OCCGF").

B. System Ownership

- I. The City will maintain ownership of the potable water mains that provide water to the Facility. IMC shall own the water service line from the point

at which it is attached to the City's water main. The City is responsible for the ownership, maintenance and upkeep of all water meters.

C. Fees and Rates

- I. In consideration of receiving water provided by the City, IMC shall:
 - (a) pay to the City all connection charges, service fees and other charges as apply under the attached hereto as Exhibit A, in accordance with the ordinances and resolutions described in Title 13, OCCGF, as the same may be amended from time to time; and
 - (b) comply with all applicable terms and conditions of Title 13, OCCGF; and by this reference such terms and conditions and related definitions and provisions are hereby incorporated herein as if set forth herein.
- II. IMC agrees to the rates and requirements for the use of the City's water at the rates described hereto in the attached Exhibit A.
- III. Charges for potable water shall be based on the total volume of water passing through the domestic water meter. Meter readings shall be taken by City personnel approximately once per month. Charges will be based on the City's Commercial Water rate as described in the attached Exhibit A.
- IV. Except as described below, charges for industrial water volume shall be based on the consumptive use of water by calculating the difference in the volume of industrial wastewater discharged to the City's sewer system subtracted from the volume of water passing through the industrial water meter. To ensure the integrity of the City's water right, on the 15th day of each month, the volume will be determined by the total gallons of water used. IMC shall keep daily detail of the amount of water passing through the industrial water meter, and report that information in a fashion that is acceptable by the City. The volume of industrial process water will be billed under the Raw Water rate as described in the attached Exhibit A.

D. Billing

- I. Each month the City will invoice IMC for services provided in the prior month. Payment shall be due and payable fifteen (15) days from each invoice date. Late payment penalties are charged at 1.5% of the balance over 60 days past due.
- II. Pursuant to the OCCGF, water service may be discontinued by the City upon continued non-payment of service fees for a period of sixty (60) days or for such other period as may hereafter be established pursuant to any section of or amendment to the OCCGF (after written notice and an opportunity to cure has been provided by the City).

E. Term of Agreement

- I. The initial term of this Agreement shall extend for a period ending June 30, 2010. At that time, renewal terms will be negotiated to the satisfaction of both parties.
- II. If either party defaults in its material obligations under this Agreement and such default remains unremedied for a period of sixty (60) days after written notice from the non-defaulting party, then the non-defaulting party (or for such other time as mutually agreed by the parties), may terminate this Agreement.

F. Provisions

- I. Failure in the water system shall create no liability against the City unless such failure shall have been caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors. IMC shall hold the City harmless and indemnify the City for any and all claims and actions for property damage or personal injury arising from any acts or omissions of IMC and with respect to IMC's construction and use of pipelines and buildings located upon realty or rights-of-way of the City unless such damage or injury shall arise from the gross negligence or willful misconduct of the City, its employees, agents or contractors.
- II. No delay by the City or IMC in exercising any right or power or in enforcing any of its remedies hereunder shall be deemed a waiver of such default of the rights, power and remedies herein provided.
- III. The provisions of this Agreement will be binding upon and inure to the benefit of the successors and assignees of each of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the consent of the other party. Any consent required by this Section shall not be unreasonably withheld.
- IV. The Agreement shall be interpreted according to the laws of the State of Montana.
- V. Any notice, demand, request, statement or correspondence provided for in this Agreement, or any notice which a party may desire to give to the other, shall be in writing (unless otherwise provided) and shall be considered duly delivered when received by mail, facsimile or overnight courier, at the address below unless otherwise required or directed in this agreement:
 - a. To City:
City of Great Falls
Fiscal Services Director
P.O. Box 5021
Great Falls, MT 59403
Fax Number (406)452-8048

- b. To IMC:

International Malting Company, LLC
433 East Michigan Avenue
Milwaukee, WI 53151
Fax Number (414)615-4012

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED this Agreement to be executed by persons duly authorized on this _____ day of _____, 2004.

John Lawton, City Manager
City of Great Falls

International Malting Company, LLC

David Gliko
City Attorney

**CITY OF GREAT FALLS, MONTANA
INTERNATIONAL MALTING COMPANY, LLC
WATER RATES**

*Valid thru June 30, 2010
All Rates Subject to Yearly Rate Review
As of June 1, 2004*

MINIMUM SERVICE CHARGE - SERVICE LINE SIZE

0.75"	1"	1.25"	1.5"	2"	3"	4"	6"	8"	10"	12"
3.88	4.13	7.50	7.50	9.49	25.30	36.62	73.80	111.08	157.08	231.80

MONTHLY SERVICE CHARGE

COMMERCIAL WATER

	(per 100 ccf)
1st 300 CCF/Month	0.94
Over 300 CCF/Month	0.94

RAW WATER

	(per 100 ccf)
1st 300 CCF/Month	0.16
Over 300 CCF/Month	0.16

CONNECTION FEES

Fee shall be ADDED TO: General Plumbing Permit for extension to new buildings; or, Inspection Permits for larger diameter pipe.

SERVICE LINE SIZE

0.75"	1"	1.25"	1.5"	2"	3"	4"	6"	8"	10"	12"
270.00	300.00	NA	365.00	395.00	595.00	765.00	1,185.00	1,980.00	NA	3,970.00

Fee shall be ADDED TO: General Plumbing Permit for extension to new buildings; or, Inspection Permits for larger diameter pipe.

There is no fee for STORM SEWER connection.

Where one meter serves one multi-purpose development, either mobile home, multiple family housing units, local business, commercial, industrial, residential use zones or variance, the connection charge will be based upon the size of the water tap. If there is no water tap, the charge will be based upon the the sewage being discharged on the same ratio as for other sewer connections.

TAPPING FEES

Fees for any new or replacement tap being made on a water main.

1 to 5 taps

6 or more taps

0.75"	1"	1.25"	1.5"	2"	3"	4"	6"	8"	10"	12"
290.00	305.00	NA	460.00	580.00	NA	NA	NA	NA	NA	NA
260.00	285.00	NA	460.00	580.00	NA	NA	NA	NA	NA	NA

INCLUDED in this fee is installation of a corporation stop on the main, and furnishing of corporation stop, curb stop and box. NOT INCLUDED, and to be BILLED EXTRA, is the cost of saddles, clamps and other extraneous fitting required for the tap

INSPECTION FEES

Fees for inspection and approval of all water service work and all sewer connections under Title 13 OCCGF.

WATER	Flat fee of : \$	100
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RIGHT OF WAY PERMIT (Water & Sewer)

Fee for the Permit to be issued for any excavation in a dedicated right-of-way. (Formerly the Street Opening Permit.)

Flat fee of : \$	35
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FIRE LINES

NEW	Flat fee of : \$	100
REPAIR	Flat fee of : \$	100

**International Malting Company & the City of Great Falls
Sewer Service Agreement
PHASE ONE**

This Sewer Service Agreement (the "Agreement") is made and entered into this _____, day of _____, 2004, by and between the City of Great Falls Montana, a municipal corporation of the State of Montana, (hereinafter referred to as the "City"); and International Malting Company, LLC, a Delaware limited liability company (hereinafter referred to as "IMC");

WHEREAS, upon the performance of all conditions of that certain Interlocal agreement authorizing the City to enforce building code enforcement programs pending annexation, dated September 16, 2003, (the "Interlocal Agreement"), IMC desires to make connection to the City's sanitary sewer system and sewer service provided by the City to serve the Malt Barley Processing Facility (the "Facility") which will be constructed and operated by IMC at the location described in the said Interlocal Agreement;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

A. System Requirements and Guarantees

- I. The City shall make available to IMC at all times the wastewater processing capacity necessary or desirable to operate the Facility. All discharged wastewater must be in compliance with applicable local, state and federal laws.
- II. Wastewater from sanitary facilities shall be discharged separately from Industrial Process Wastewater. Industrial Process Wastewater shall be metered through an appropriately sized magnetic flow meter or a similar meter acceptable to the City. The meter shall have a digital display that indicates current flow rate and total flow volume. The meter will be owned by IMC and shall be installed in accordance with the manufacturer's requirements and be factory calibrated. The meter shall not be capable of field calibration. IMC shall record daily flow volumes and report them to the City in a fashion that is mutually acceptable. Sanitary wastewater shall be discharged without passing through a meter and shall be billed based on potable water usage.
- III. IMC must apply and conform to all applicable requirements of the Permit to Discharge Industrial Wastewater as issued by the City. IMC must comply with all applicable requirements regarding discharging wastewater in accordance with the ordinances and resolutions described in Title 13, Official Code of the City of Great Falls ("OCCGF"). Violation of the material terms of the permit will be considered a breach of terms of this agreement in addition to any enforcement actions resulting from the violation.

- IV. IMC must annually determine the accuracy of the meter. This information and findings shall be forwarded to the City's Public Works Director within 30 days of this determination.

B. System Ownership

- I. The City will maintain ownership of a lift station located near the Facility. The City shall own and maintain this lift station, the force main from this lift station and any gravity sewer necessary to convey IMC's sanitary and Industrial Process Wastewater to the City's Wastewater Treatment Plant. IMC shall provide a meter for measuring Industrial Process Wastewater discharged as described above. The meter shall be properly maintained by IMC in accordance with manufacturer's recommendations and shall be accessible to the City during normal working hours.

C. Fees and Rates

- I. In consideration of receiving wastewater processing provided by the City, IMC shall:
 - (a) pay to the City all sewer connection charges, service fees and other charges as applicable under the attached as Exhibit A, in accordance with the applicable ordinances and resolutions described in Title 13, OCCGF, as the same may be amended from time to time;
 - (b) comply with all terms and conditions of Title 13, OCCGF; and by this reference such terms and conditions and related definitions and provisions are hereby incorporated herein as if set forth herein.
- II. Charges for service shall be based on total monthly discharge of Industrial Process Wastewater and discharge from sanitary facilities. Industrial Process Wastewater shall be measured through the meter described in Section A. I of this Agreement. Discharge from sanitary facilities shall be assumed to be equal to the consumption of potable water measured by the City's water meter. Meter readings shall be taken by City personnel approximately once per month.
- III. IMC agrees to the rates and requirements for the use of the City's sewer service processing at the rates described in the attached Exhibit A.
- IV. For the Industrial Process Wastewater, the City will charge IMC for a minimum usage of one million gallons per day of each billing cycle, plus any usage above minimum. Notwithstanding the foregoing, IMC may, from time to time, make modifications to its malting process/the Facility which may result in a decreased need for such minimum usage of Industrial Process Wastewater, in which case, IMC may reduce such minimum usage to eight hundred thousand gallons per day of each billing cycle; in which case the parties shall renegotiate, in good faith and upon mutually acceptable terms, a revised "Guaranteed Sewer" rate. Subject to

the preceding sentence, the City will bill IMC under the “Guaranteed Sewer” rate as stated on the attached Sanitary Sewer Rate schedule for the term of this agreement. The “Extra Strength Charges” shall also apply according to the attached schedule. If the level of Total Suspended Solids (TSS) falls below the applicable level as stated on Exhibit A, a credit will be given to IMC at the rate shown

D. Billing

- I. Each month the City will invoice IMC for services provided in the prior month. Payment shall be due and payable fifteen (15) days from each invoice date. Late payment penalties are charged monthly at 1.5% of the balance over 60 days past due.
- II. Pursuant to the OCCGF, sewer service may be discontinued by the City upon continued non-payment of service fees for a period of sixty (60) days or for such other period as may hereafter be established pursuant to any section of or amendment to the OCCGF (after written notice and an opportunity to cure has been provided by the City).

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- II. If either party defaults in its material obligations under this Agreement and such default remains unremedied for a period of sixty (60) days after written notice from the non-defaulting party (or for such other times as mutually agreed by the parties), then the non-defaulting party may terminate this Agreement.

F. Provisions

- I. Failure in the sewer system shall create no liability against the City unless such failure shall have been caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors. IMC shall hold the City harmless and indemnify the City for any and all claims and actions for property damage or personal injury arising from any acts or omissions of IMC and with respect to IMC’s construction and use of pipelines and buildings located upon realty or rights-of-way of the City unless such damage or injury shall arise from the gross negligence or willful misconduct of the City, its employees, agents or contractors.
- II. No delay by the City or IMC in exercising any right or power or in enforcing any of its remedies hereunder shall be deemed a waiver of such default of the rights, power and remedies herein provided.

- III. The provisions of this Agreement will be binding upon and inure to the benefit of the successors and assignees of each of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the consent of the other party. Any consent required by this Section shall not be unreasonably withheld.
- IV. The Agreement shall be interpreted according to the laws of the State of Montana.
- V. Any notice, demand, request, statement or correspondence provided for in this Agreement, or any notice which a party may desire to give to the other, shall be in writing (unless otherwise provided elsewhere in this agreement) and shall be considered duly delivered when received by mail, facsimile or overnight courier, at the address below unless otherwise required or directed in this agreement:
- a. To City:
City of Great Falls
Fiscal Services Director
P.O. Box 5021
Great Falls, MT 59403
Fax Number (406)452-8048
- b. To IMC:
International Malting Company, LLC
433 East Michigan Avenue
Milwaukee, WI 53151
Fax Number (414)615-4012

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED this Agreement to be executed by persons duly authorized on this _____ day of _____, 2004.

John Lawton, City Manager
City of Great Falls

International Malting Company, LLC

David Gliko
City Attorney

**CITY OF GREAT FALLS, MONTANA
INTERNATIONAL MALTING COMPANY, LLC**

**SEWER RATES
Valid thru June 30, 2010**

As of June 1, 2004

MONTHLY SERVICE CHARGE

\$4.75

GUARANTEED SEWER

Based on 1,000,000 gallons per day
(per 100 ccf)

1st 300 CCF/Month \$1.11
Over 300 CCF/Month \$1.11

SEWER EXTRA STRENGTH CHARGES

BOD > 200 mg/L \$0.299 per pound
TSS > 250 mg/L \$0.204 per pound
TSS < 100 mg/L (\$0.204) per pound

CONNECTION FEES (subject to yearly rate review)

Fee shall be ADDED TO: General Plumbing Permit for extension to new buildings; or, Inspection Permits for larger diameter pipe.

Water/Sewer Service Line Size (inches)											
(3/4")	0.75	1.00	1.25	1.50	2.00	3.00	4.00	6.00	8.00	10.00	12.00
\$	150	\$ 280	NA	\$ 550	\$ 1,155	\$ 2,200	\$ 3,965	\$ 5,730	\$ 8,790	\$ 12,155	\$ 16,910

SEWER (Added Fees) (subject to yearly rate review)

Fee is IN ADDITION TO the Inspection Fee, and is for connection of service line to sewer line, which does not include installation.

There is no fee for STORM SEWER connection.

Where one meter serves one multi-purpose development, either mobile home, multiple family housing units, local business, commercial, industrial, residential use zones or variance, the connection charge will be based upon the size of the water tap. If there is no water tap, the charge will be based upon the the sewage being discharged on the same ratio as for other sewer connections.

INSPECTION FEES (subject to yearly rate review)

Fees for inspection and approval of all water service work and all sewer connections under Title 13 OCCGF.

SEWER Flat fee of : \$ 100

RIGHT OF WAY PERMIT (Water & Sewer) (subject to yearly rate review)

Flat fee of : \$ 35

Fee for the Permit to be issued for any excavation in a dedicated right-of-way. (Formerly the Street Opening Permit.)

INDUSTRIAL DISCHARGE PERMIT APPLICATION FEE (subject to yearly rate review)

(Based upon Wastewater Discharge Quantity)

Gallons per Day (GPD)

0 to 10,000 \$ 83
10,001 to 25,000 \$ 133
25,001 to 100,000 \$ 171
Over 100,000 \$ 171
+PLUS \$ 51 per 100,000 GPD, or portion thereof