

RESOLUTION NO. 3098

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH CUSTER COUNTY WATER AND SEWER DISTRICT NO. 2 FOR SEWER AND WATER SERVICES.

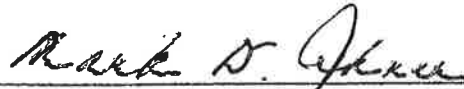
WHEREAS, §7-11-104 MCA grants the City Council power to enter into interlocal agreements for the provision of services;

AND WHEREAS the City Council finds that it is the best interest of the City of Miles City to enter into such an interlocal agreement with the Custer County Water and Sewer District No. 2, of Miles City, Montana, for the provision of water and sewer services by the City to such District.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA:

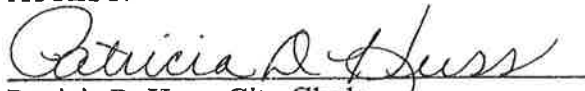
It does hereby authorize, adopt and ratify the Interlocal Agreement, attached hereto as Exhibit "A" and made a part hereof, between the City of Miles City, and Custer County Water and Sewer District No. 2, of Miles City, Montana, and the Council President of the City of Miles City, presiding in the absence of the Mayor, and is hereby empowered and authorized to execute said interlocal agreement on behalf of the City of Miles City and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 18TH DAY OF APRIL, 2006.



Mark D. Ahner, Council President
In the absence of the Mayor

ATTEST:


Patricia D. Huss, City Clerk

City of Miles City - Custer County Water and Sewer District - Interlocal Agreement

THIS AGREEMENT, made this 18th day of April, 2006, between the CITY OF MILES CITY, a body politic, of Miles City, Montana, hereinafter referred to as CITY; and the CUSTER COUNTY WATER AND SEWER DISTRICT NO. 2, of Miles City, Montana, hereinafter referred to as DISTRICT;

WHEREAS, it is the parties intent to enter into an Agreement for the mutual development and operation of water and sewer facilities, and;

WHEREAS, it is to the mutual advantage of the parties to provide for water and sewer facilities in the City of Miles City and in the boundaries of the Custer County Water and Sewer District No. 2, and;

WITNESSETH:

1. Funding, Design, and Installation of Water and Sewer Lines. The DISTRICT has installed a main water line on Haynes Avenue and the CITY has installed the "Haynes" Avenue sewer line. The CITY and DISTRICT agree that, subject to regulations on designs for tapping into main lines, the CITY shall have the right to hook to the DISTRICT water line and the DISTRICT shall have the right to hook to the CITY sewer line for purpose of serving DISTRICT and CITY sewer line for purpose of serving DISTRICT and CITY users.

This Agreement for the utilization of each party's lines shall extend to all appropriate lines, not just the Haynes Avenue lines. Each party shall notify the other of connections. All taps to water mains shall be performed by the city crew, while all connections to sewer mains shall be by a licensed and bonded plumber.

The DISTRICT in its design for water or sewer shall cooperate with the CITY with respect to design specifications and shall use the same or compatible design components as on CITY water and sewer facilities; however, final authority for system design in the DISTRICT shall be with the DISTRICT.

2. Water and Sewer supplied by CITY - Costs. The CITY agrees to provide water and the use of its water and sewer facilities to the residents and to the DISTRICT upon the same terms and at rates no greater than the CITY charges now and in the future for CITY water and sewer facilities users. The parties agree that the rates the City charges the DISTRICT should actually be lower than the CITY user rates because the CITY does not have a responsibility for the operation and maintenance of lines owned by the DISTRICT, in addition to the DISTRICT

having separate responsibilities for administrative costs. The parties agree to continue the past practice to apply a twenty per cent (20%) credit to the base rate charge on the billing to the **DISTRICT** customers, to help defray the **DISTRICT**'s administrative and maintenance costs.

The **CITY** shall provide and be paid for the following:

(a) **Costs for Water.** It is understood and agreed that the **CITY** shall provide and shall be entitled to charge according to its actual cost consisting of:

- (1) Meter installation & reading
- (2) Processing of bills
- (3) Office supplies, postage, and telephone
- (4) Maintenance of equipment, buildings, and plant works
- (5) Treatment plant operators
- (6) Electrical power
- (7) Chemicals
- (8) Natural gas
- (9) Bond payments and required reserve relating to the treatment plant

It is agreed that the charge to the **DISTRICT** for the above cost shall include the above items, and shall be the same as charged to **CITY** water users, except for the 20% base rate credit as referenced above. The **CITY** shall bill and collect the accounts from **DISTRICT** users for sewer and water service performed by the **CITY** and other billings as requested by the **DISTRICT**, and the **CITY** will pursue the collection of delinquent, final, and inactive accounts of **DISTRICT** users.

In the event the **CITY** has pursued their normal collection practices for payment of accounts, and the accounts of the **DISTRICT** customers remain unpaid, the **CITY** shall, on an annual basis, on or before May 1st of each year, submit a statement of unpaid accounts by claim to the **DISTRICT**. The **DISTRICT** agrees to pay any legitimate unpaid accounts, to the **CITY** by not later than June 30th of that respective year.

The parties agree that the **DISTRICT** water users' cost will be in accordance with the **CITY** water rate schedule based upon meter size, less the 20% base rate credit.

(b) **Sewer Hookup.** The parties agree that users in the **DISTRICT** shall be entitled to hook to the **CITY** main line on Haynes Avenue or other locations in the **DISTRICT** as are necessary for sewage service to the **CITY** system upon paying a one-time charge of Two

Hundred Forty Dollars (\$240.00) or the then current rate charged to CITY users, whichever is greater. It is noted that the purpose of this hookup fee is to cover the usage of excess capacity at the sewage plant, and the fee does not cover the costs of any sewer lines.

(c) Sewer Charges. It is agreed that the CITY shall receive the one-time hookup charge discussed in 2(b) above. Gallonage for the monthly bills is to be determined by the average metered winter water usage, or if the user does not have city water, the gallonage is determined by the average metered winter water CITY residential usage. The cost per gallon must be reviewed every year and is subject to adjustment to meet current CITY costs for sewer. Sewer charges are to be similar to water charges covered in 2(a) above in that they are to include costs for the items listed.

It is agreed that both parties are subject to any applicable Environmental Protection Agency regulations or requirements and this agreement shall be modified if necessary to conform to any applicable Environmental Protection Agency regulations.

(d) Rates and Charges of the DISTRICT. The DISTRICT reserves the right to add additional charges to the rates to its users for administration and overhead, operating and maintenance, bond principal and interest payments, and other charges or costs which the DISTRICT may charge under State law.

3. Inspection of Records. The parties agree to allow reasonable inspection and copying of records for auditing and calculating rates and other reasonable and necessary purposes of the parties.

4. New Hook-ups. If water and sewer hook-ups are desired by the DISTRICT customers and there is sufficient capacity in the water or sewer systems, the CITY agrees to provide hook-ups to the DISTRICT at the cost assessed to CITY customers. The DISTRICT also agrees to allow extensions off its lines for CITY purposes, if the DISTRICT believes there is sufficient capacity in its lines.

5. Maintenance. The CITY agrees to provide maintenance for the DISTRICT water and sewer lines and shall be paid by the DISTRICT the actual costs of maintenance of water and sewer; however, the DISTRICT may undertake its own operation and maintenance of water and sewer. The parties further agree that in the event the DISTRICT needs maintenance on their lines, that the DISTRICT will make reasonable efforts to give the CITY the first opportunity to perform such maintenance at a rate to be agreed upon in advance. per City current

RENTAL RATES.

Lift Stations:

6. **Term.** The term of this Agreement will commence upon its approval by the governing bodies of each party, and shall continue in effect through June 30th, 2011, unless sooner terminated by mutual agreement of the parties. On or before January 1st, 2011, the parties shall commence negotiations, in good faith, to either renew this Agreement for a mutually agreed period of time or to arrive at the terms and conditions of a new agreement. The terms and conditions of this Agreement shall remain in full force and effect during such period of good faith negotiations, but not beyond June 30th, 2012.

The parties, by mutual agreement, may enter into a written extension for this agreement under these same terms and conditions for an additional five (5) year period.

7. **Termination of Service.** The CITY may terminate service to any user of the DISTRICT for failure to timely pay their billing for services. The CITY will utilize the same procedure for termination of service due to nonpayment as is utilized for users of the CITY system. The CITY will provide a courtesy notice to the DISTRICT for termination of service to a user delinquent in payment. In all other cases, except for emergency repair and maintenance, the CITY shall not terminate services or shut off any lines in the DISTRICT boundaries or affecting the DISTRICT use or any DISTRICT user without prior written notice to the DISTRICT of such proposed action. The written notice shall specify in detail the reasons for closing or terminating the service, and how the problem may be remedied by the DISTRICT. The DISTRICT shall have sixty (60) days from the giving of such written notice to remedy the problem. If the DISTRICT has not remedied the problem within such 60-day period, then the CITY may proceed to terminate or interrupt service to such user or users where the problem exists.

The CITY may not terminate service to the DISTRICT as an entity for any alleged default against the CITY without a judicial determination.

If the CITY alleges that the DISTRICT is in default of any of the material terms and conditions of this Agreement, then the CITY shall give DISTRICT written notice of the alleged default and the action required of the DISTRICT to remedy the default. The DISTRICT shall have sixty (60) days from the giving of such written notice of default in which to cure the default. If the DISTRICT has not remedied the default within such 60-day period, then the CITY may institute legal proceedings to terminate its obligations to provide service to the DISTRICT under this Agreement.

All notices called for hereunder shall be given to the **DISTRICT** by certified mail, return receipt requested, addressed to the **DISTRICT** at P.O. Box 967, Miles City, Montana 59301. Notice shall be deemed to have been given upon its deposit into the United States Mail, addressed as provided above, with adequate prepaid postage attached.

8. DISTRICT contributions - extension of new services. The parties recognize that the **DISTRICT** will benefit from certain system-wide improvements made to the **CITY** of Miles City water and wastewater system. The parties further recognize that under previous contracts, and this agreement, funds for maintenance of equipment, building and plant works have been included in the monthly water charges. (See paragraph 2 (a)).

It is agreed that on a case-by-case basis for additional system-wide improvements, which will benefit the **DISTRICT** that after a full presentation by the **CITY** of that project to the **DISTRICT**, that the **DISTRICT** will make a good-faith effort to make a pro-rated capital contribution. The amount of such contributions will be subject to the final determination by the **DISTRICT's** board. The parties will agree to the ownership of any project referenced above, prior to the commencement of such project.

It is further agreed that whenever there are proposed new water and sewer services within the jurisdiction of the **DISTRICT**, that the **DISTRICT** and the **CITY** will consult, through the engineering representative of each entity to determine whether it is in the public's best interest to have that service with the **DISTRICT** or with the **CITY**. The **DISTRICT** board will make the final decision, as to whether the service will be to the **DISTRICT** or to the **CITY**.

9. DISTRICT and CITY jurisdiction. The **CITY** and **DISTRICT** agree that the **CITY** shall have jurisdiction and control and shall provide any necessary water and sewer or other services inside the boundaries of the **CITY** of Miles City as established effective July 1, 1990. The **DISTRICT** will provide water and sewer service within its boundary, but it may allow the **CITY** to provide service to a new area rather than the **DISTRICT**, if a written agreement on providing this service is reached with the **CITY**. It is specifically agreed that **DISTRICT** users shall be under the exclusive control, jurisdiction, and subject to the **DISTRICT's** charges and assessments under State law, until the **DISTRICT's** debt obligation has been satisfied even though in the future, the **CITY** should annex all or part of the **DISTRICT** area.

10. No protest of annexation agreements. The parties acknowledge that there have been past disputes, as to whether or not the **DISTRICT** customers should consent to annexation as a

requirement to receive water and sewer services from the **DISTRICT**. The parties further agree that there are disputed issues as to the validity of previous no protest of annexation agreement, which were obtained by the **CITY**.

As a material part of this Agreement, that the **CITY** will not require the **DISTRICT** to enforce the previous no protest of annexation agreement.

The **DISTRICT** does agree that from the date of the execution of this agreement, that if requested by the **CITY** and obtained by **CITY** efforts, the **DISTRICT** will require a no-protest of annexation agreement, prepared in form and substance as approved by the **CITY**, as a condition for any new customers, who wish to obtain commercial water and sewer services in areas, which are zoned commercially. This requirement does not apply to home-based businesses in non-commercial areas, that may be operating under a zoning variance or conditional use permit. The **DISTRICT** further agrees that as an entity they will not oppose any attempts from the **CITY** to obtain no-protest agreements for annexations required by the **CITY** for other purposes, however it is understood that the **DISTRICT** has no legal requirement to obtain a no protest of annexation agreement from the **DISTRICT** customers, except as provided for above.

It is further understood that the City, at their option, may waive the requirement of obtaining the no protest agreement from any potential **DISTRICT** customer.

11. Interlocal requirements. This agreement is entered into under MCA §7-11-105. No separate entity is created as a result of this agreement, and the **CITY** of Miles City and Custer County Water and Sewer **DISTRICT** No. 2 maintain their positions as separate governmental entities.

Each entity is responsible for establishing and maintaining their own budgets for this undertaking, subject to the provisions of this agreement.

There is no separate board or administrator responsible for administering the terms of this agreement. The respective entities will directly deal with any issues or disagreements over the terms of this agreement. Each party is responsible for the hiring, management, and payment of their own employees and/or contractors used for the implementation of this agreement. Any property purchased under this agreement will remain the separate and distinct property of the entity that purchases the property, unless otherwise agreed.

This agreement will be filed with the Custer County Clerk and Recorder, in addition to the Montana Secretary of State.

DATED the year and date first above written.

**CUSTER COUNTY WATER AND SEWER
DISTRICT NO. 2**

By: Donald Bursley
President

ATTEST:
Deeki Hamilton
Secretary

CITY OF MILES City
By: Mark D. Ahner
Mark D. Ahner, Council President acting
in absence of the Mayor.

ATTEST:
Christina A. Huss
Clerk