

RESOLUTION NO. 4245

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MILES CITY AND THE CUSTER COUNTY WATER AND SEWER DISTRICT NO. 2.

WHEREAS, the City of Miles City and the Custer County Water and Sewer District No. 2 have previously entered into interlocal agreements for the mutual development and operation of water and sewer facilities;

AND WHEREAS, said previous agreement has expired, and the parties desire to enter into a new agreement relating to the same;

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

1. The "Interlocal Agreement" between the City of Miles City and the Custer County Water and Sewer District No. 2, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.

2. The Mayor is hereby empowered and authorized to execute said 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, AT A REGULAR MEETING THIS 14TH DAY OF MAY, 2019.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

INTERLOCAL AGREEMENT
City of Miles City
And
Custer County Water and Sewer District

THIS AGREEMENT made this 14th day of May, 2019, 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 this Interlocal Agreement ("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 up to the **CITY** sewer line for purposes 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 **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 percent (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 and reading
- (2) Processing of bills
- (3) Office supplies, postage and telephone
- (4) Maintenance of equipment, buildings and plant works
- (5) Treatment plant operations
- (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 twenty percent (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 twenty percent (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 and no/100 Dollars (\$240.00) or the then current rate charged to **CITY** users, whichever is greater. It

is noted that the purpose of this hook-up 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** for 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.

6. **Term.** The term of this agreement will commence on the 1st day of July, 2019, and shall continue in effect through June 30th, 2024, unless sooner terminated by mutual agreement of the parties. On or before January 1, 2024, 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, 2025.

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 non-payment 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 date of giving such written notice to remedy the problem. If the **DISTRICT** has not remedied the problem within such sixty (60) day period, then the **CITY** may proceed to terminate or interrupt service to each user or users where the problem exists.

The **CITY** may not terminate services 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 the **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 date of giving of such written notice of default in which to cure the default. If the **DISTRICT** has not remedied the default within such sixty (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. Boxes 967
Miles City, Montana 59301**

Notice shall be deemed to have been given upon the 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** 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 as set forth in 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 contribution 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** 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 or annexation agreements, which were obtained by the **CITY**.

As a material part of this Agreement, 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. The 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 it will not oppose any attempt 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 its 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** and **DISTRICT** maintain their positions as separate governmental entities.

Each entity is responsible for establishing and maintaining its 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 purchased the property, unless otherwise agreed to in writing.


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.

ATTEST:


Secretary

CUSTER COUNTY WATER AND SEWER DISTRICT NO. 2

By: 
Donald Bundy, President

ATTEST:


Clerk

CITY OF MILES CITY

By: 
John Howowell, Mayor