

RESOLUTION NO. 4194

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A DATA EXCHANGE LICENSE AGREEMENT WITH MONTANA-DAKOTA UTILITIES CO. TO ALLOW FOR SHARING OF CERTAIN GEOGRAPHIC INFORMATION SYSTEM MAPPING INFORMATION.


WHEREAS, Montana-Dakota Utilities Co. (MDU) has certain Geographic Information System Mapping (GIS) infrastructure located on light poles owned by MDU and located in the City;

AND WHEREAS, the City desires to have access to such GIS information from MDU;

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

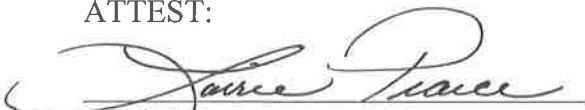
1. The "Data Exchange License Agreement" attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement 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 DULY CALLED MEETING THIS 28TH DAY OF AUGUST, 2018.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Data Exchange License Agreement

THIS LICENSE AGREEMENT (hereinafter referred to as the "AGREEMENT") made and dated this 28th day of August 2018, by and between MONTANA-DAKOTA UTILITIES CO., a Division of MDU Resources Group, Inc., (hereinafter referred to as "MONTANA-DAKOTA"), a Delaware corporation, with offices at 400 N. Fourth St., Bismarck, ND 58501 and City of Miles City
Miles City, MT a Government Entity with offices at 175 8th ST (hereinafter referred to as "Recipient"). Each or both may also hereinafter be referred to as the "Party" or "Parties" respectively.

WHEREAS, MONTANA-DAKOTA possesses certain technical, digital, documentary, land base, facility, photographic, or other information or data which MONTANA-DAKOTA considers proprietary to it and relates to its Geographic Information System (GIS) data base (hereinafter referred to as "PROPRIETARY INFORMATION"), and

WHEREAS, Recipient desires to use portions of MONTANA-DAKOTA's PROPRIETARY INFORMATION for the purposes of developing maps and mapping applications, and Recipient desires to obtain the right to use MONTANA-DAKOTA's PROPRIETARY INFORMATION and updates thereto in exchange for providing MONTANA-DAKOTA upon request with;

- A. Access to Recipient's corresponding GIS database, as updated. The access shall consist of supplying requested land base data, aerial photos, and/or facility data.
- B. Authorization to use Recipient's GIS information to update and augment MONTANA-DAKOTA's PROPRIETARY INFORMATION.
- C. Maps and other types of data developed with the aid of MONTANA-DAKOTA's PROPRIETARY INFORMATION.

WHEREAS, it is recognized that in anticipation of any current or future need to share information or coordinate projects between the Parties, it may be both necessary and desirable that MONTANA-DAKOTA provide to Recipient the above-described PROPRIETARY INFORMATION.

NOW, THEREFORE, in consideration of these promises, and of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. MONTANA-DAKOTA shall provide to Recipient certain PROPRIETARY INFORMATION designated in Exhibit A attached hereto for the LIMITED USE ONLY as set forth in Section 3 of this Agreement, including requested land base, aerial photos, and/or facility data. The PROPRIETARY INFORMATION to be disclosed by MONTANA-DAKOTA may be contained in documents, electronic media (ArcGIS Geodatabase, ArcGIS Shapefile, DXF, DWG, JPEG, PDF and/or .TIF format only), and other materials.

2. The Parties hereto agree that MONTANA-DAKOTA retains all right, title, and interest in and to the disclosed PROPRIETARY INFORMATION and that Recipient is not hereby granted any right, license or interest in the PROPRIETARY INFORMATION, except as specifically provided in this Agreement. Recipient shall not distribute, sell, license, or reproduce the PROPRIETARY INFORMATION, except as specifically set forth herein. MONTANA-DAKOTA shall be under no obligation as a result of this Agreement to disclose any PROPRIETARY INFORMATION other than the PROPRIETARY INFORMATION listed in Exhibit A, attached hereto.
3. MONTANA-DAKOTA may grant Recipient the right to make limited public disclosure of the PROPRIETARY INFORMATION obtained from MONTANA-DAKOTA upon receipt of advance written authorization from MONTANA-DAKOTA and in accordance with this section. This disclosure may include producing and distributing paper or Mylar documents using the data (e.g. construction drawings, plan sets, maps), publishing articles relying on or citing the data, or such other types of disclosure as MONTANA-DAKOTA may authorize in advance in writing. Any disclosure or release of data obtained from MONTANA-DAKOTA shall attribute the data to MONTANA-DAKOTA; such attribution shall take the form of text incorporated into example maps and drawings and summary data tables as well as all project reports, papers, and articles presented or published for public disclosure. Such authorized disclosure of information shall in no way operate to modify Recipient's obligation to protect the propriety nature of other PROPRIETARY INFORMATION in accordance with the terms of this AGREEMENT. Limited disclosure of PROPRIETARY INFORMATION as permitted pursuant to this AGREEMENT shall not change the proprietary character of the PROPRIETARY INFORMATION, but MONTANA-DAKOTA shall have no proprietary interest in the example maps, drawings, summary data tables, or other forms in which the PROPRIETARY INFORMATION is disclosed and the information as contained in example maps, drawings, summary data tables, and other authorized forms shall not be deemed Proprietary Information.
4. MONTANA-DAKOTA is not providing, nor is Recipient obtaining, the right to make copies of the PROPRIETARY INFORMATION furnished pursuant to this AGREEMENT, except that Recipient may make backup copies for its own use. Recipient shall also not obtain as a result of this Agreement the right to make MONTANA-DAKOTA's PROPRIETARY INFORMATION available to or distribute to third parties in either computer or non-computer readable form, except as set forth in Paragraph 3, or the right to use MONTANA-DAKOTA's PROPRIETARY INFORMATION for purposes of design, analysis, or any information gathering for third parties. MONTANA-DAKOTA reserves the exclusive right to reproduce and make available to others, on such terms and conditions as MONTANA-DAKOTA may determine, MONTANA-DAKOTA's PROPRIETARY INFORMATION in either computer or non-computer readable form.

5. The points of contact for the parties with respect to the provision of PROPRIETARY INFORMATION are as follows:

MONTANA-DAKOTA UTILITIES CO.
Dennis W. Hammer
Manager, Enterprise GIS System
555 S Cole Rd
P.O. Box 7608
Boise, ID 83707
208-377-6180

FOR: City of Miles City
Name: Dawn Colton
Title: Planner II
Address: P.O. Box 910 17 S 8th
City: Miles City, MT 59301
Phone: 406-874-8613

6. Recipient shall restrict disclosure of MONTANA-DAKOTA's PROPRIETARY INFORMATION to only those employees who have a job-related need for the PROPRIETARY INFORMATION and who have been advised of and agreed to the restrictions on disclosure and use contained in this Agreement. Upon discovery by Recipient of any unauthorized use or disclosure, Recipient shall immediately notify MONTANA-DAKOTA and shall endeavor to prevent further unauthorized use or disclosure.
7. In the event of any breach of this AGREEMENT by Recipient, Recipient agrees that injunctive relief will be essential for MONTANA-DAKOTA's protection. Accordingly, MONTANA-DAKOTA and Recipient agree and consent that in the event of any breach or threatened breach of this AGREEMENT, MONTANA-DAKOTA may obtain such injunctive relief, in addition to any other legal remedy and/or damages, as it believes necessary in order to prevent any threatened or continued violation of the terms of this AGREEMENT. Recipient further acknowledges that any disclosure of PROPRIETARY INFORMATION in breach of this AGREEMENT may result in substantial damages to MONTANA-DAKOTA, and that MONTANA-DAKOTA has the right to initiate legal action to recover its damages in the event of such a breach. In the event that MONTANA-DAKOTA, based on this AGREEMENT, seeks injunctive relief, Recipient agrees to waive any requirement that MONTANA-DAKOTA post a bond or other security for the requested injunctive relief.

8. Any PROPRIETARY INFORMATION delivered by MONTANA-DAKOTA to Recipient pursuant to this AGREEMENT shall be for use solely as specified in this Agreement. No other use of PROPRIETARY INFORMATION may be made without the prior written consent of MONTANA-DAKOTA.
9. Recipient's obligations with respect to disclosing and using PROPRIETARY INFORMATION, as set forth in this AGREEMENT, are not applicable to any such information or data if same is:
 - a. In the public domain at the time of receipt or comes into the public domain thereafter through no act of Recipient in breach of the AGREEMENT, or
 - b. Is in Recipient's possession prior to disclosure by MONTANA-DAKOTA, or
 - c. Disclosed with the prior written approval of MONTANA-DAKOTA, or
 - d. Independently developed, without aid from MONTANA-DAKOTA's PROPRIETARY INFORMATION, by Recipient, or
 - e. Lawfully disclosed to Recipient by a third party under conditions permitting such disclosure.
 - f. MONTANA-DAKOTA's PROPRIETARY INFORMATION is not intended to be used for "line location" activities by Recipient in lieu of contacting an authorized "One-Call" Center.
10. The term of this AGREEMENT shall be for as long as the information is in possession of Recipient, or until terminated by either Party. Either Party shall have the right to terminate the AGREEMENT upon 30 days written notice to the other.
11. Upon expiration or termination of this AGREEMENT, in accordance with its terms, Recipient will, within a reasonable period of time thereafter, return all PROPRIETARY INFORMATION received from MONTANA-DAKOTA under this AGREEMENT along with all copies thereof, or certify in writing that all such PROPRIETARY INFORMATION has been destroyed. Upon receipt of replacement or updated PROPRIETARY INFORMATION from MONTANA-DAKOTA, Recipient will, within a reasonable period of time thereafter, return the prior versions of such PROPRIETARY INFORMATION received from MONTANA-DAKOTA under this agreement along with copies thereof, or certify in writing that all such PROPRIETARY INFORMATION has been destroyed.
12. PROPRIETARY INFORMATION transmitted to Recipient pursuant to this AGREEMENT shall not constitute any representation, warranty, assurance, guarantee or inducement by MONTANA-DAKOTA to Recipient that any patent or other proprietary intellectual property rights owned or controlled by any third party have not been infringed, and nothing in this AGREEMENT shall be construed as a warranty or representation of any kind with respect to the content or accuracy of data, documents and information transmitted by MONTANA-DAKOTA under this AGREEMENT.

13. Recipient agrees to indemnify and hold harmless MONTANA-DAKOTA against any and all claims, causes of action or damages, liabilities, including attorneys' fees and expenses, brought as a result of or arising from Recipient's use of the PROPRIETARY INFORMATION.
14. The Parties hereto agree that any suits or claims arising from this AGREEMENT shall be brought in the County of Burleigh, State of North Dakota.
15. This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of North Dakota.
16. This AGREEMENT contains the entire understanding between the Parties relative to the protection of the PROPRIETARY INFORMATION and supersedes all prior and collateral communications, reports, and understandings between the Parties with respect thereto. No change to, modification of, alteration of, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both Parties.
17. This AGREEMENT shall apply in lieu of and notwithstanding any specific legend or statement associated with the PROPRIETARY INFORMATION, and the duties of the Parties shall be determined exclusively by the aforementioned terms and conditions.
18. If Recipient is a public entity subject to the disclosure requirements of the North Dakota open records law, the federal Freedom of Information Act, or any other state or federal legislation which would require public disclosure of the PROPRIETARY INFORMATION upon request, Recipient shall notify MONTANA-DAKOTA immediately of any and all public records requests regarding the PROPRIETARY INFORMATION. MONTANA-DAKOTA will respond within five (5) business days and inform Recipient of MONTANA-DAKOTA's approval or disapproval of disclosure. In the event that MONTANA-DAKOTA disapproves of disclosure, MONTANA-DAKOTA will hold Recipient harmless against any legal challenges to nondisclosure of the PROPRIETARY INFORMATION. Voluntary disclosure of PROPRIETARY INFORMATION by Recipient in response to a public records request where MONTANA-DAKOTA has determined that the requested information is not subject to disclosure shall constitute a breach of this AGREEMENT.

The duly authorized officers of the Parties have executed this AGREEMENT on the date first set forth above.

MONTANA-DAKOTA UTILITIES CO., a division of MDU Resources
Group, Inc.

By: [Signature]

Date: 9/6/2018

Attest: [Signature]

Recipient: CITY OF MILES CITY

By: [Signature]

Date: 8-28-18

Attest: [Signature]

EXHIBIT "A"

MONTANA-DAKOTA UTILITIES CO.

This document is an attachment to the Data Exchange License Agreement dated August 28, 2018, between MONTANA-DAKOTA UTILITIES CO. (MONTANA-DAKOTA) and City of Miles City (Recipient).

Description of PROPRIETARY INFORMATION

- SHAPEFILE OF STREETLIGHTS IN MILES CITY