

DIRECTOR AND EMPLOYEE INDEMNIFICATION AND DEFENSE
Approved July 20, 1999

AN ORDINANCE ESTABLISHING INDEMNIFICATION AND DEFENSE OF DIRECTORS, OFFICERS AND EMPLOYEES CIVILLY SUED FOR ACTIONS TAKEN WITHIN THE COURSE AND SCOPE OF THEIR EMPLOYMENT WHICH ARE NOT PROTECTED BY ANY INSURANCE PURCHASED BY THE DISTRICT.

WHEREAS, Montana Code Annotated, § 2-9-305 requires that public entities such as the Big Sky County Water & Sewer District No. 363 ("District") defend and indemnify all District directors, officers and employees who are sued civilly for their actions taken within the course and scope of their employment with the District.

NOW, THEREFORE, be it ordained and enacted by the Board of Directors of the Big Sky County Water & Sewer District No. 363, State of Montana, pursuant to the authority granted by Montana Code Annotated, § 2-9-305, as follows:

Section 1. In any non-criminal action brought against any District director, officer or employee for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the director, officer or employee committed while acting within the course and scope of their office or employment, the District, except as provided in section 5 below, shall defend the action on behalf of the director, officer, or employee, and shall indemnify the director, officer or employee.

Section 2. Upon receiving service of a summons and complaint in a non-criminal action against him or her, a District employee shall give written notice to his or her supervisor requesting that a defense to the action be provided by the District. If the employee has no supervisor, the employee shall give notice of the action to the President of the District's Board of Directors. Upon receiving service of a summons and a complaint in a non-criminal action against him or her, a District director or officer shall also give notice to the President of the District's Board of Directors. Except as provided in Section 5 below, the District shall offer a defense to the action on behalf of the director, officer or employee. The defense may consist of a defense provided directly by the District. The District shall notify the director, officer or employee within fifteen (15) days after receipt of notice whether a direct defense will be provided. If the District refuses or is unable to provide a direct defense, the director, officer or employee must retain his or her own legal counsel. Except as provided in Section 5 below, the District shall pay all expenses relating to the retained defense and shall pay any judgment for damages entered in the action that may be otherwise payable under this Section 2.

Section 3. In any non-criminal action in which a director, officer or employee is a party defendant, the director, officer or employee shall be indemnified by the District for any money judgments or legal expenses, including attorney's fees, either incurred by the director, officer or employee or awarded to the

claimant, or both, to which the director, officer or employee may be subject as the result of the suit unless conduct of the director, officer or employee falls within the exclusions provided in Section 5.

Section 4. Recovery against the District under the provisions of parts 1 through 3 of Title 2, Chapter 9 of the Montana Code Annotated constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against a director, officer or employee of the District whose negligence or wrongful act, error or omission or other actionable conduct gave rise to the claim. In any such action against the District, the director, officer or employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the District acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employment of the director, officer or employee unless the conduct falls within the exclusions provided in Section 5.

Section 5. In a non-criminal action in which a District director, officer or employee is a party defendant, the director, officer or employee shall not be defended by the District or indemnified by the District for any money judgments or legal expenses, including attorney's fees, to which the director, officer or employee may be subject as a result of the suit if a judicial determination is made that:

- (1) The conduct upon which the claim is based constitutes oppression, fraud or malice, or for any other reason does not arise out of the course and scope of the director, officer or employee's employment;
- (2) The conduct of the director, officer or employee constitutes a criminal offense as defined in Title 45, Chapters 4 through 7 of the Montana Code Annotated;
- (3) The director, officer or employee compromised or settled the claim without the consent of the District; or
- (4) The director, officer or employee failed or refused to cooperate reasonably in the defense of the case.

Section 6. If no judicial determination has been made that the conduct of a director, officer or employee falls within the exclusions set forth in Section 5, the District itself may determine whether the Section 5 exclusions apply. However, if there is a dispute as to whether the exclusions of Section 5 apply, and the District concludes that it must clarify its obligations to the director, officer or employee arising under this Ordinance and Montana Code Annotated § 2-9-35 by commencing a declaratory judgment action or other legal action, the District shall provide a defense or assume the cost of the defense of the director, officer or employee until a final judgment is rendered in such action holding that the District has no obligation to defend the director, officer or employee. The District, however, has no obligation to provide a defense for the director, officer or employee in a declaratory judgment action or other legal action

brought against the director, officer or employee by the District to determine the District's duties or obligations under this Ordinance or Montana Code Annotated, § 2-9-305.

Passed and adopted by the Board of Directors of the Big Sky County Water & Sewer District No. 363 as Ordinance No. 99-1004.

State of Montana on the 20th day of July, 1999, by the following vote:

X
YES NO

Wendell Ingraham
WENDELL INGRAHAM, President

X
YES NO

William F. Neece
WILLIAM F. NEECE, Vice President

X
YES NO

Dee Rothschiller
DEE ROTHSCILLER, Secretary

X
YES NO

Paul 'Packy' Cronin
PAUL 'PACKY' CRONIN, Director

X
YES NO

Jack Crowther
JACK CROWTHER, Director

X
YES NO

Stewart Peacock
STEWART PEACOCK, Director

X
YES NO

John 'Skip' Radick
JOHN 'SKIP' RADICK, Director

ATTEST:

Dee Rothschiller
Dee Rothschiller, Secretary

July 27, 1999
Date

[S E A L]



CERTIFICATION

The undersigned, Dee Rothschiller, hereby certifies that I am the Secretary of the Big Sky County Water & Sewer District No. 363, and that the foregoing Ordinance 99-1004 was adopted at a duly convened meeting of the Board of Directors of the Big Sky County Water & Sewer District No. 363 on July 20, 1999. I further certify that, upon a vote being taken on the Ordinance at said meeting, the following Directors voted in favor thereof: Wendell Ingraham, William Neece, Stewart Peacock, Jack Crowther, Skip Radick and Packy Cronin; voted against the same: _____; abstained from voting thereon: _____; or were absent: Dee Rothschiller. I further certify that I signed the Ordinance after the July 20, 1999 meeting as evidence of my support for the Ordinance 99-1004.

Witness my hand and seal officially this 27th day of July, 1999.

Dee Rothschiller
Dee Rothschiller, Secretary