

CERTIFICATE  
ESTABLISHING THE PROPOSED PLAN OF GOVERNMENT  
FOR  
CUSTER COUNTY

Upon approval of the majority of voters the government of Custer County shall be organized under the following provisions of Section 47A-3-208 Revised Codes of Montana, 1947.

This section establishes the following form of government which shall be called a COMMISSION-EXECUTIVE-CHARTER form in this county.

PREAMBLE

We, the people of Custer County, State of Montana, in accordance with Article XI, Section 5 of the Constitution of Montana do adopt this charter.

ARTICLE I

GENERAL PROVISIONS

Section 1.01 - Powers of Custer County

Custer County shall have all powers not prohibited by the Constitution of Montana, the laws of Montana, or this charter.

Section 1.02 - Interpretation of Powers

The powers and authority of this self-government unit shall be liberally construed. Every reasonable doubt as to the existence of a county power or authority shall be resolved in favor of the existence of that power or authority.

Section 1.03 - Charter Supremacy

As provided by Article XI, Section 5 of the Constitution of Montana, provisions herein establishing executive, legislative and administrative structure and organization are superior to statutory provisions.

Section 1.04 - Intergovernmental Cooperation

(1) As provided by Article XI, Section 7 of the Constitution of Montana, Custer County, unless prohibited by law or this charter, may:

- (a) Cooperate in the exercise of any function, power or responsibility with;
- (b) Share the services of any officer or facilities with;
- (c) Transfer or delegate any function, power, responsibility or duty of any officer to one or more other local governmental units, school districts, the state or the United States.

Section 1.05 - Oath of Office

Before entering upon the duties of office, all elected county officials shall take and subscribe the oath of office as prescribed in Article III, Section 3 of the Constitution of Montana.

Section 1.06 - Mill Levy

(1) The County of Custer shall not impose a real or personal property tax which exceeds that allowed by state law for general power county governments, without a prior approval of the people through referendum.

(2) All other forms of taxation not prohibited by state law are permissible.

ARTICLE II

COUNTY COMMISSION

Section 2.01 - Composition, terms, election, qualifications,  
compensation, removal, filling of vacancies.

- (1) There shall be a commission of Custer County composed of five (5) members, at least two (2) of whom shall be elected every two (2) years.
- (2) Members of the commission shall be elected for terms of four (4) years.
- (3) Elections for the commission shall be non-partisan.
- (4) As provided by Article VIII of this Charter, three (3) commissioners shall be nominated and elected by district and two (2) commissioners shall be nominated and elected at large. Nominees for commissioner elected by district shall reside in such district.
- (5) By ordinance adopted at least six (6) months prior to the next county general election, the commission shall determine the annual salary of its members, which shall not exceed twenty percent (20%) of the annual salary of the executive. Commissioners shall receive their actual and necessary expenses incurred in the performance of their duties of office, or the commission may establish per diem and mileage allowances in lieu of such expenses.
- (6) (a) The office of commissioner shall become vacant upon his death, resignation, removal from office in any manner authorized by law or forfeiture of his office;  
(b) A commissioner shall forfeit his office if he:
  - (i) loses his eligibility for election to his commission seat;

- (ii) violates any express prohibition of this charter;
- (iii) is convicted of a felony or other offense involving moral turpitude;
- (iv) without commission approval, fails to attend two consecutive regularly scheduled commission meetings or absents himself from the county continuously for thirty (30) days without consent of the commission.

(7) In the event of vacancy, the commission shall by majority vote of the remaining members, within thirty (30) days, appoint a person, eligible to hold such commission seat, to fill the vacancy until the next county election at which time the remainder of the term shall be filled as provided by law.

(8) The commission shall be the judge of the election and qualifications of its members and of the grounds of forfeiture of their office. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand and notice of such hearing shall be published in a manner consistent with state law. No member, former member, or member elect of the commission shall be appointed to any paid county administrative office or paid county position during the period beginning with the date of his election to the commission and ending with the expiration of the term for which he was elected to the commission.

(9) The commission shall elect from its members a chairman and vice-chairman each of whom shall serve at its pleasure. The chairman shall preside at the commission meeting. If at any meeting the chairman is not present, or is unable to act, the vice-chairman shall preside at the meeting.

Section 2.02 - Powers of County Commission

(1) The county commissioners shall be the legislative and policy determining body of the county. Except as otherwise provided by this charter, the commission shall have all powers of the county.

(2) At least once every two (2) years and at any other time as may be deemed necessary, the commission shall cause an independent audit of all county funds and accounts to be made by a certified public accountant or firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the chairman which shall provide for the completion of the audit within a reasonable time. If the state makes such an audit, the commission may accept it as satisfying the requirements of this section. The audit shall be a matter of public record.

Section 2.03 - Restriction on the County Commission

(1) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the executive or any of his subordinates are empowered to appoint.

(2) Except for the purpose of inquiry or investigation under this charter or the code of local government, the commission or its members shall deal with county employees who are subject to the direction and the supervision of the executive, solely through the executive, and neither the commission nor its members may give orders to any such employee either publicly or privately. Any willful violation of the provisions of this sub-section by a member of the commission shall be sufficient grounds for an action for his removal from office.

Section 2.04 - Commission Procedure, Public Participation

- (1) Commission procedure shall be as prescribed by law.
- (2) The commission shall determine its own rules and order of business and shall provide for the keeping of a journal of its proceedings.
- (3) All meetings shall be open to the public except in such circumstances as are prescribed in state law.
- (4) All documents and records of the commission shall be public records and shall be made available for examining or copying, upon request.
- (5) The commission shall meet regularly at least once in every month. Special meetings may be held on call of the executive, or the chairman, or three (3) or more commissioners, and whenever practical upon no less than twelve (12) hours effective notice to each member.

ARTICLE III

COUNTY EXECUTIVE

Section 3.01 - Election, term, compensation, vacancy,  
removal and acting executive.

- (1) The county executive shall be nominated and elected at large by the qualified electors of the county.
- (2) The county executive shall be elected for a term of four (4) years.
- (3) Elections for the county executive shall be non-partisan.
- (4) By ordinance adopted at least six (6) months prior to the next county general election, the commission shall determine the annual salary of the executive. The executive shall receive the actual and necessary expenses incurred in the performance of his duties of office, or the commission may establish per diem and mileage allowances in lieu of such expenses.
- (5) The office of county executive shall be deemed vacant or forfeit for the same reason that a commissioner's office shall be deemed vacant or forfeit as prescribed in Section 2.01 of this charter.
- (6) The commission shall be the judge of grounds of forfeiture of the office of chief executive. A chief executive charged with conduct constituting grounds for forfeiture of this office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in a manner consistent with state law.
- (7) In the event of a vacancy in the office of county executive, the commission, by majority vote of all its members, shall appoint a

person eligible to hold the position of county executive to fill the vacancy until the next regular county election, at which time the remainder of the term shall be filled as provided by law for the election of the county executive. Appointment shall be made within thirty (30) days of the vacancy.

(8) In the event of temporary absence or disability, the head of one of the county departments, previously designated by the county executive as his substitute, shall serve as acting county executive.

Section 3.02 - Powers and Duties of County Executive

(1) The county executive shall be the chief executive and administrative officer of the county.

(2) The county executive shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by this charter, law, ordinance or resolution;
- (c) administer affairs of the county;
- (d) carry out policies established by the commission;
- (e) recommend measures to the commission;
- (f) report to the commission of the affairs and financial conditions of the county;
- (g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission.
- (h) report to the commission as the commission may require;
- (i) attend commission meetings and may take part in discussions;



- (j) execute the budget adopted by the commission;
- (k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees, established by the executive;

(1) prepare the budget and present it to the commission for adoption;

(m) exercise control and supervision of the administration of all departments and boards;

(3) The county executive may:

(a) appoint and remove, with the approval of a majority of the commission, all non-elected department heads. The executive may appoint and remove all other employees of the county;

(b) veto ordinances and resolutions, subject to over-ride by a majority plus one of the whole number of the commission.

- (2) (n) (shall) The question of whether the county executive or may or shall hire an administrative assistant
- (3) (c) (may) will be presented to the voters as a sub-option to be voted on. The option approved by the voters will become a part of this charter.

ARTICLE IV

LAW ENFORCEMENT

Section 4.01 - Election, term, compensation,  
vacancy and removal:

(1) The chief law enforcement official, who shall be known as sheriff, shall be nominated and elected at large by the qualified electors of the county.

(2) The sheriff shall be elected for a term of four (4) years.

(3) Election for the sheriff shall be non-partisan.

(4) The salary for sheriff shall be established by the method prescribed in Article III, Section 3.01 of this charter.

(5) (a) The office of sheriff shall become vacant upon his death, resignation, removal from office in any manner authorized by law or forfeiture of his office.

(b) The sheriff shall forfeit his office if he:

(i) loses his eligibility for election to the position of sheriff;

(ii) violates any express prohibition of this charter;

(iii) is convicted of a felony or other offense involving moral turpitude.

(6) The commission shall be the judge of the grounds of forfeiture of the office of sheriff. A sheriff charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand and notice of such hearing shall be published in a manner consistent with state law.

(7) In the event of a vacancy in the office of sheriff, the commission, by majority vote of all of its members, within thirty (30) days, shall appoint a person eligible to hold the position of sheriff to fill the vacancy until the next regular county election, at which time the remainder of the term shall be filled as provided by law for the election of sheriff. The commission shall direct a deputy to serve as sheriff during the period of vacancy before the appointment of a sheriff.

(8) In the event of temporary absence or disability, a deputy sheriff, previously designated by the sheriff as his substitute, shall serve as acting sheriff.

#### ARTICLE V

##### COUNTY ATTORNEY

##### Section 5.01 - Election, term, compensation, vacancy and removal

(1) There shall be elected in the county a county attorney who shall possess the qualifications prescribed by state law, and who shall be nominated and elected in the same manner as is prescribed for the chief law enforcement officer in Article IV, Section 4.01 of this charter.

(2) The term of office, establishment of compensation, grounds for removal, vacancy of office, and filling of vacancies shall be in the same manner as is prescribed for the chief law enforcement officer in Article IV, Section 4.01 of this charter.

Section 5.02 - Powers and Duties

The county attorney shall be the chief legal advisor and criminal prosecutor of the county and shall perform such duties as may be prescribed according to this charter or by state law.

ARTICLE VI

ASSESSOR

Section 6.01 - Election, term, compensation, vacancy and removal

(1) The assessor shall be nominated and elected in the same manner as is prescribed for the chief law enforcement officer in Article IV, Section 4.01 of this charter.

(2) The assessor shall be nominated and elected for a four (4) year term.

(3) Election for assessor shall be non-partisan.

(4) Compensation shall be as established by state law.

(5) The office of assessor shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.

(a) The assessor shall forfeit his office if he:

(i) loses his eligibility for election to the position of assessor;

(ii) violates any express prohibition of this charter;

(iii) is convicted of a felony or other offense involving moral turpitude.

(6) The commission shall be the judge of the grounds of forfeiture of the office of assessor. An assessor charged with conduct constituting grounds for forfeiture of his office shall be entitled to public hearing on demand and notice of such hearing shall be published in a manner consistent with state law.

(7) In the event of a vacancy in the office of assessor, the commission, by majority vote of all of its members, within thirty (30) days, shall appoint a person eligible to hold the position of assessor to fill the vacancy until the next regular county election, at which time the remainder of the term shall be filled as provided by law for the election of assessor.

#### ARTICLE VII

##### ADMINISTRATIVE DEPARTMENTS

###### Section 7.01 - General

The activities under the direction and supervision of the county executive shall be distributed among such departments, agencies, and offices as are established by this charter or may be established thereunder by ordinance of the county commission in order to execute and enforce policies as determined by the commission and to carry out obligations imposed on the county by state law.

#### ARTICLE VIII

##### NOMINATIONS AND ELECTIONS

###### Section 8.01 - Elected County Offices

The procedure for the nomination and election of all elected county offices shall be as prescribed by state law for non-partisan elections.

Section 8.02 - Elections

Persons desiring to run for any elected county office shall follow nominating procedures as prescribed by state law. The names of the two persons receiving the greatest number of votes in the primary elections for the offices of Commissioners, County Executive, County Attorney, Sheriff, and County Assessor shall be placed on the ballot for the general election. In the case of a tie between the second and third top vote getters for any county position, both names in addition to the name of the top vote getter shall be placed on the ballot for the general election.

Section 8.03 - Districts

For purposes of representation on the county commission, Custer County shall be divided into three (3) districts. Boundaries of commission districts may be changed in accordance with this charter.

Section 8.04 - Reapportionment of commission districts

(1) Within six (6) months after an official United States census establishes that population of any district differs in number from the average population of all districts by more than 10%, the commission shall modify the boundaries of districts so that such difference is eliminated.

(2) For the purpose of this section the six (6) month period shall begin upon the availability of the most recent official United States Census Bureau's statistics.

(3) If the commission fails to perform the modifications required by sub-section one (1) of this section within the specified time, the members of the commission shall forfeit all pay and allowances until they

enact modifications, at which time their pay and allowances shall resume unaffected by court challenge to those modifications.

Section 8.05 - Redistricting

District boundaries may be changed by ordinance, provided that any such revised districts' boundaries must comply with the population standards prescribed in section 8.04 of this charter. In the event of a judicial challenge to the ordinance, the burden of proving compliance shall rest upon the county.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01 - Amendment of Charter

This charter may be amended only as prescribed by state law.

Section 9.02 - Effective Date

This charter shall become effective on May 2, 1977.

Section 9.03 - Words "shall" and "may"

In this charter the word "shall" is considered mandatory and the word "may" is considered permissive.

Section 9.04 - Separability

If any provision of this charter is held invalid, the other provisions of this charter shall not be affected thereby. If the application of the charter, or any part of its provisions, to any person or circumstance is held invalid, the application of the charter and its provision to other persons or circumstances shall not be affected thereby.

ARTICLE X

TRANSITIONAL PROVISIONS

Section 10.01 - General Transition

Transition to this charter form of government shall be as prescribed by state law. The commission may provide for such transition by ordinance, rule, or resolution not inconsistent with state law. The provisions of this transition article shall not be published as part of the charter after July 1, 1978.

Section 10.02 - Commission Districts

All commission districts shall remain the same as presently recorded in the Clerk and Recorder's office with the exception of changes within the city limits of Miles City, Montana.

The division of Miles City shall be as follows:

- (a) Commission district number one (1) includes all area west of Montana Avenue.
- (b) Commission district number two (2) includes all area north of Main Street and east of Montana Avenue.
- (c) Commission district number three (3) includes all area south of Main Street and east of Montana Avenue.

Section 10.03 - Elections

For the purpose of the special local government primary election on February 8, 1977, persons desiring to run for any elected county office shall follow nominating procedures as prescribed by state law.



The names of the two persons receiving the greatest number of votes in the primary elections for the offices of: each of the commissioners, elected by district, county executive, county attorney, sheriff, and county assessor, shall be placed on the ballot for the special local government general election on April 5, 1977. In the case of a tie between the second and third top vote getters for these aforementioned county positions both names in addition to the name of the top vote getter shall be placed on the ballot for the general election.

The names of the four persons receiving the greatest number of votes in the primary election for the two offices of the county commissioner elected at-large shall be placed on the April 5, 1977 general election ballot. In the case of a tie between the fourth and fifth top vote getters both names in addition to the names of the top three vote getters shall be placed on the general election ballot. In the general election, the top two vote getters shall be elected to the at-large county commissioner positions.

Section 10.04 - Salaries and Expenses

(1) The initial expenses of the commission shall be paid by the county on claims signed by the chairman of the commission.

(2) Members of the newly elected commission shall receive an annual salary in the amount of Twenty-five Hundred Dollars (\$2,500.00) until such amount is changed by the commission in accordance with the provisions of this charter.

(3) The executive shall receive an annual salary in the amount of Sixteen Thousand Dollars (\$16,000.00) until such amount is changed by the commission in accordance with the provisions of this charter.

Section 10.05 - Commission Terms

(1) The county commissioner elected on November 7, 1972, shall continue to hold office as a commissioner until his successor is elected in 1978 and qualified in 1979. Such commissioner retains his office under the provisions of 16-5115.13, paragraph (5) R.C.M. Such commissioner shall continue to represent the district from which he was nominated and shall receive his current salary. If such office should become vacant for any reason the replacement commissioner shall receive the annual salary of Twenty-five Hundred Dollars (\$2,500.00).

(2) (a) The two commissioners elected to represent the county at large in the April 5, 1977 election shall, at the first regularly convened commission meeting draw lots to determine their respective length of term. One commissioner shall serve a two (2) year term and the other commissioner shall serve a four (4) year term.

(b) The two commissioners each elected to represent a single member district in the April 5, 1977 election shall at the first regularly convened commission meeting draw lots to determine their respective length of term. One commissioner shall serve a two (2) year term and the other commissioner shall serve a four (4) year term.

Section 10.06 - Grandfather clause

Former elected county officials whose offices are abolished or made appointive by the adoption of this charter and who hold such offices on May 2, 1977 may be continued in county employment and continue to draw the salary of their office until the normal expiration date of their term.

Certificate of Proposed Plan of Government

We, the Study Commissioners of Custer County, do hereby certify that this is the Proposed Plan of Government approved by the Study Commissioners of Custer County.

In testimony whereof, we set our hands.

Done at Miles City, Montana, this 19<sup>th</sup> day of May, 1976.

LOCAL GOVERNMENT STUDY COMMISSION



James A. Graham  
Irma L. Schaefer  
Gary S. Ochsner

Attest:

L. J. Nuss

Clerk and Recorder  
Custer County