

**RESOLUTION NO. 3698**

**A RESOLUTION AUTHORIZING THE MILES CITY TO ENTER INTO A GRAVEL STOCKPILE LEASE AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION**

*WHEREAS*, the City of Miles City owns certain real property upon which the Montana Department of Transportation presently stores gravel stockpiles and other construction materials pursuant to a lease agreement with the City which expires on the 30<sup>th</sup> day of June, 2014;

*AND WHEREAS* the City of Miles City wishes to enter into a lease with the Montana Department of Transportation for an additional 10 year term;

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

1. The Lease Agreement attached hereto as Exhibit "A" is hereby approved and adopted by the Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreements 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 24<sup>TH</sup> DAY OF JUNE, 2014.**

  
\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

  
\_\_\_\_\_  
Lorrie Pearce, City Clerk

Lorrie Pearce, City Clerk

**EXHIBIT "A"**  
**LEASE AGREEMENT**



**THIS AGREEMENT**, made entered into this 24<sup>th</sup> day of July, 2014, by and between the **CITY OF MILES CITY**, a Montana municipal corporation of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as the "**CITY**" and **THE STATE OF MONTANA**, acting through its **MONTANA DEPARTMENT OF TRANSPORTATION**, of 217 N 4<sup>th</sup> Street, Miles City, Montana 59301, hereinafter referred to as "**TENANT**".

**RECITALS:**

**WHEREAS**, CITY owns certain real property in Section 19, Township 8 North, Range 47 East, MPM, Custer County, Montana, and more particularly described as follows:

A portion of NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 19, Township 8 North, Range 47 East, MPM, Custer County, Montana, south of State Highway 59 right-of-way, more particularly set forth in the diagram attached hereto as Exhibit "A" and made a part hereof. Such property is hereinafter referred to as "*Leasehold*".

**AND WHEREAS** it is the desire of TENANT to lease the above described Leasehold for a term of ten (10) years.

**AND WHEREAS** CITY is agreeable to providing such ten (10) year term lease upon the Leasehold under the following terms and conditions.

**NOW, THEREFORE**, the parties hereto mutually covenant and agree as follows:

**I. AGREEMENT TO LEASE**

The CITY, for and in consideration of the rents to be paid and the covenants to be performed by TENANT, does hereby demise, lease, and let unto TENANT the above described Leasehold.

**II. TERM**

The term of this Agreement shall be for a period of ten (10) years, beginning on the 1st day of July, 2014 and expiring at midnight on the 30<sup>th</sup> day of June, 2024, hereinafter, “*the lease term*”.

### III. RENTAL

The annual rental for the initial lease term shall be the following: \$100.00 per year, due and payable in advance on July 1<sup>st</sup> of each year of the lease term, commencing July 1, 2014 through June 30, 2024.

### IV. RESPONSIBILITIES OF THE TENANT

TENANT does hereby acknowledge, covenant and agrees as follows:

#### A. Purpose

TENANT desires to lease the premises for the following general purposes:

Gravel stockpile and construction materials storage for highway construction and maintenance.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that it will not use or occupy said premises, or allow the same to be used or occupied, for any unlawful purpose or any purpose deemed extra-hazardous on account of fire or otherwise.

#### B. Compliance with Laws

TENANT shall comply with, conform to, and obey all present and future laws, ordinances, rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the premises.

#### C. Independent Investigation

TENANT acknowledges that it has carefully examined and inspected the premises and improvements and it is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that it is not leasing the premises because of any warranty, representation, information or promises made by the CITY or anyone acting for on behalf of the CITY, which are not specifically set forth in this Agreement.

#### D. Maintenance

TENANT agrees to keep the premises and improvements thereon in good repair and upkeep, reasonable wear and tear alone accepted, and further agrees neither to permit nor cause

any waste on the property, or with respect to any improvements thereon. Tenant shall keep the premises reasonably clean and in orderly condition, considering the nature of the business conducted thereon.

**E. Improvements to Remain**

Within sixty (60) days immediately following the expiration of this lease, the TENANT shall remove any improvements located on the leasehold and shall restore, at TENANT'S expense, the leasehold premises to level with the adjoining property and in such debris free condition. If inclement weather during the sixty (60) day period delays such removal and restoration, CITY shall provide TENANT with a reasonable time, not to exceed an additional sixty (60) days in which to remove the improvements and restore the leasehold. If TENANT fails to remove such improvements within sixty (60) day period, CITY, at its option, may (1) cause the removal of such improvements and restoration of the leasehold premises to be done and shall be entitled to recover all costs and expenses of such removal and restoration from TENANT, or (2) may retain all such improvements as property of CITY without compensation to TENANT. Provided, however, that upon termination of the Lease Agreement, TENANT, within such same sixty (60) day period, shall have the right to sell the improvements upon the Leasehold to a successor tenant.

In the event that any financial institution holds a security interest upon any of the improvements hereon, then, in the event of termination of this lease, whether by expiration of term or uncured default, the financial institution holding such security interest shall be allowed to remove any improvements upon which it holds a security interest within the times provided for the TENANT to remove improvements, as set forth in the first paragraph of this subsection.

**F. Right to Inspect**

The CITY or the CITY'S authorized agents shall have the right to enter upon the premises after written notice and during normal business hours, in order to inspect and determine whether TENANT is in compliance with the terms of this Agreement.

**G. Utilities**

TENANT agrees to pay for the use and maintenance of all utility services on the premises, including gas, electricity, telecommunications, water, sewer, and solid waste disposal, if applicable.

**H. Indemnification**

TENANT shall indemnify and hold the CITY harmless for any loss, damage, claim and/or liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortious or negligent act on the part of TENANT, its agents, employees or customers, and TENANT hereby agrees to indemnify and hold harmless the CITY for any such loss or damage. The obligations hereunder shall survive the termination of this lease.

## **I. Environmental Warranty**

TENANT warrants and agrees to neither cause nor allow to be caused any release of hazardous substances from, into, or upon the premises, nor to cause or allow to be caused any contamination by hazardous waste or substances with respect to the premises, and that, when applicable, TENANT shall comply with all local, state and federal environmental laws and regulations.

TENANT agrees to indemnify, defend and hold harmless the CITY, its employees, agents, members, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorneys' fees and other fees, arising out of, or in any way connected to, any condition in, on or of the property, that is caused or allowed to be caused by TENANT, its agents, employees or customers. Such duty of indemnification shall include, but not limited to, damage, liability or loss pursuant to all local, state and federal environmental laws and regulations, strict liability and common law. The obligations hereunder shall survive the termination of this lease.

TENANT shall not be responsible under the Section for preexisting environmental hazards, if any.

## **J. Nondiscrimination**

TENANT hereby agrees that the premises not be used in any manner that would discriminate against any person or persons on the basis of sex, age, physical or mental handicap, race, creed, religion, color, or national origin.

## **V. ASSIGNABILITY OF INTEREST**

TENANT shall not assign the Lease, nor sublet the premise, nor any part thereof, without the prior consent of the CITY, which consent shall not be unreasonably withheld. No permitted sublease shall release TENANT from its obligations under this Lease.

## **VI. DEFAULT**

If TENANT shall at any time be in default in the payment of rent due hereunder, or in the performance of any of the covenants or provisions of the Lease, and TENANT shall fail to remedy such default within thirty (30) days after receipt of written notice thereof from the CITY, then it shall be lawful for the CITY to enter upon the premises, and again repossess and enjoy the same as if the Lease had not been entered into, and thereupon this Lease and everything herein contained on the part of the CITY to be done and performed shall cease and terminate, without prejudice, however, to the right of the CITY to recover from TENANT all rent due up to the time of such entry. In the case of such default and entry by the CITY, the ownership of any and all

improvements on the premises shall vest in the COMMISSION (if the same shall not have already vested), and the CITY may re-let the premises for the remainder of TENANT'S term for the highest rent obtainable and may recover from TENANT any deficiency between the amount so obtained and the rent due hereunder from TENANT. If the default is in the performance of any of the covenants or provisions of this Lease, other than failure to timely pay the rental called for herein, and, by the nature of the default, it cannot reasonably be cured within a thirty (30) day period, so long as TENANT commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then TENANT shall have a further reasonable time to complete such cure, not to exceed and additional sixty (60) days after the expiration of the initial thirty (30) day cure period.

## VII. MISCELLANEOUS PROVISIONS

It is further mutually understood and agreed as follows:

### A. Notice

TENANT shall, at the commencement of this Lease provide the CITY lease administrator with the name and address of the person to whom notices by CITY to TENANT under this Lease are to be addressed. Notice addressed to such person shall constitute notice to TENANT until such time as TENANT provides the CITY'S lease administrator, in writing, the name and address of some other person to whom notice to TENANT shall be directed. All notices hereunder to CITY shall be addressed as follows:

Lease Administrator  
City of Miles City  
P.O. Box 910  
Miles City, MT 59301

Any notice hereunder shall be in writing and may be delivered personally or by registered or certified mail with postage prepaid. Notice shall be deemed complete when deposited in a United States Post Office addressed to the contact person as set forth above.

### B. Oral Modification Prohibited

No modification or alteration of this Agreement shall be valid unless evidenced by a writing signed by the parties hereto.

### C. Attorneys' Fees and Costs

Should either party incur any costs or expenses, including reasonable attorney fees, in enforcing this Agreement or any provision hereunder, or protecting its rights and interest hereunder, the other or unsuccessful party shall reimburse the prevailing party upon demand.

**D. Binding Effects**

This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under TENANT in violation of the provisions

**E. Time of the Essence**

Time is the essence of this Agreement and all obligations of this Agreement shall be performed on or before the dates set forth herein.

**F. Incorporation of Recitals**

The Recitals set forth above are incorporated into the terms and conditions of this Agreement and made a part thereof by reference.

**G. Executed Copy**

Each of the parties hereby acknowledges receiving an executed copy of this Agreement.

**H. Interpretation**

This Agreement shall be governed and construed in all respects according to the laws of the State of Montana.

**I. Warranty of Authority**

Each party executing this Agreement represents and warrants to the other party, that this person signing this Agreement on behalf of such party, has full legal authority to bind the party to the terms set forth in this Agreement, that all actions necessary to invest said person with such authority have been taken by the party, and that the signature of said person upon this Agreement binds the party to the terms and conditions of this Agreement.

**J. Contingent Upon Arrival of the City Council of City of Miles City**

This Agreement shall not become effective until a resolution approving this lease has been adopted by the affirmative vote of two-third of the membership of the City Council of the City of Miles City, pursuant to §7-8-4201(2) MCA.

29<sup>th</sup> IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the  
day of July, 2014.

CITY OF MILES CITY

By: C.A. Grenz  
MAYOR

ATTEST:

Loise Peace  
CITY CLERK

STATE OF MONTANA, acting through its  
MONTANA DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Title: District Administrator

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER    )

This instrument was acknowledged before me on the 29<sup>th</sup> day of July, 2014 by  
C.A. Grenz in his capacity as Mayor of the City of Miles City.

[Signature]  
Notary Signature

(Printed Name of Notary) CONNIE L. WATTS  
NOTARY PUBLIC for the State of Montana  
Residing at Miles City, Montana  
My Commission Expires December 22, 2015  
Residing at Miles City, Montana  
My Commission Expires:     /     /



