

RESOLUTION #4100

A RESOLUTION ESTABLISHING PROCEDURES FOR THE SALE OR LEASE OF CITY LANDS

WHEREAS, the City of Miles City ("*the City*") owns certain lands that are available for lease or sale;

AND WHEREAS, the City desires to establish a uniform procedure that provides public notice of lands for sale or lease, and seeks to obtain a fair return and reasonable compensation to the City from such leases or sales;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY as follows:

Section 1. Notice of Intent To Lease City Real Property. Except as set forth in Section 4, the City shall give notice of its intent to lease City real property by publication in a newspaper of general circulation in the county, once each week, for four (4) consecutive weeks, with at least five (5) days between each publication. The notice shall solicit written proposals for the lease of such property and give a date and time by which all such proposals must be deposited with the City Lease Administrator. The notice shall give the legal description of any tract of real property offered for lease, a description of any improvements included within such lease, and the amount of current annual rental rates for such real property. If the property is offered for lease under a standard form of lease, the notice shall state that the standard form of lease is available for review at the City Lease Administrator's office, setting forth the name, telephone number and business address of the City Lease Administrator.

Section 2. Notice of Intent to Sell City Real Property. Except as set forth in Section 5, the City shall give notice of its intent to sell City real property by publication in a newspaper of general circulation in the county, once each week, for four (4) consecutive weeks, with at least five (5) days between each publication. The notice shall solicit written proposals for the purchase of such property and give a date and time by which all such proposals must be deposited with the City Lease Administrator. The notice shall give the legal description of any tract of real property offered for sale, a description of any improvements included within such sale, and the estimated fair market value of such real property and the lowest bid the City will consider accepting.

Section 3. Appraisal.

a. If real property considered for sale by the City has an estimated fair market value:

In excess of \$25,000.00, prior to the consideration of any sale of such property, the City shall have it appraised by a qualified real estate appraiser;

Between \$10,000.00 and \$24,999.99, prior to the consideration of any sale of such property, the City shall first obtain a real estate broker's opinion of value.

b. If the real property considered for sale was transferred to the City via a Federal Land Patent or includes any deed restrictions, any appraisal must be conducted in accordance with the stated requirements.

Section 4. Extension of Leases With Substantial Permanent Improvements.

The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate, any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.

Section 5. Sale of Leased Property With Substantial Permanent Improvements Owned by Tenant. The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Should the City determine that it wishes to sell the underlying real property of a leasehold to a current tenant who has constructed substantial permanent improvements upon the leasehold, the City may order an appraisal of the real property, less improvements, and enter into a contract to sell said property to the tenant at the appraised price, and without complying with the provisions set forth in Section 2. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.

Section 6. Transmittal of Offers to Finance Committee. Following the date and time specified in the published notice for submission of written proposals, the City Lease Administrator shall transmit a copy of all written proposals timely received, to the chair of the Finance Committee of the City Council.

Section 7. Review and Recommendation of Finance Committee. The Finance Committee shall then meet, review all such proposals, conduct such interviews of proposed lessees or purchasers as it deems necessary, and shall pass on to the City Council all such proposals, with the Committee's recommendations for action thereon.

Section 8. Council Consideration. Upon receipt of the recommendation of the Finance Committee, the City Council shall take such action upon such proposed lease or purchase as it deems in the best interests of the City. Nothing herein shall be construed as requiring the Finance Committee or the City Council to accept any written proposal for lease or purchase.

Section 9. Payment of Costs Incidental to Transfer. Unless otherwise agreed by resolution of the City Council, applicants to purchase City lands shall pay all charges incident to the

conveyance and transfer of the lands from the City to the purchaser, including counsel fees incurred by the City, fees of the closing agent, recording fees, title insurance premiums, survey expenses and platting expenses (not related to any subdivision costs), appraisal fees (if required), financing costs and expenses of applicant, and all applicable federal, state, and local taxes which may be incurred or imposed by reason of such conveyance and transfer and by reason of the delivery of said deed and other instruments. Such charges shall be paid by the applicant as they are incurred by the City and are payable by the applicant whether or not the transaction closes. In addition, the City may require the applicant to provide a deposit for the payment of such costs prior to their being incurred.

Section 10. Two-Thirds Majority Vote Required to Lease or Sell. Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.

Section 12. Previous Policies. This policy replaces Resolution 2989 and any other conflicting policies governing the lease and sale of City property.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22ND TH DAY OF AUGUST, 2017.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Standard Form of Lease
CITY PROPERTY LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of Month Year, by and between the **CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as the "CITY" and _____ Name, a [state of creation & type, i.e. a Montana limited liability company], of [Company Address], hereinafter referred to as "TENANT".

RECITALS:

WHEREAS the CITY owns certain real property located in the City of Miles City, Custer County, Montana, more particularly described as follows:

Legal Description: legal description in Miles City, Montana, (or Custer County) containing approximately xxx,xxx square feet, more or less;

AND WHEREAS it is the desire of TENANT to lease the above described Leasehold for a term of xxx (x) years, subject to the option to renew as hereinafter provided.

AND WHEREAS CITY is agreeable to providing such # of years year term lease, together with the option to renew for additional # of years year terms, upon the Leasehold under the following terms and conditions;

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

I. AGREEMENT

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 real property located *insert location here* and more particularly described as follows:

(Legal Description) in the of Miles City, Montana, (or Custer County) containing approximately _____ square feet or acres, as applicable, more or less, hereinafter "Leasehold".

II. INITIAL TERM

The term of this Agreement shall be for a period of # of years years, beginning on July 1, _____ and expiring at midnight on June 30, _____, hereinafter, "*the initial lease term*", subject to the option to renew this lease as provided for in Article IV of this lease.

III. RENTAL

The annual rental for the initial lease term described in Section II. shall be in accordance with the rates established by the CITY, as follows:

Legal Desc containing _____ sq. ft. *applicable lease rate description@ \$0.00 dollars* per sq. ft.) for a total rental of _____ and ___/100 Dollars (\$ _____) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date. (*Any proration will be stated here.*) Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1st of each subsequent year of the lease term, commencing July 1, 20xx through June 30, 20xx.

THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL:

IV. OPTION TO RENEW.

FOLLOWING the "INITIAL TERM", THIS agreement shall be automatically renew for a period not to exceed # of years years upon the same terms and conditions herein unless the CITY or TENANT gives to the other party written notice of cancellation of said agreement not less than thirty (30) days prior to the expiration of the initial or any renewal term. Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council.

V. RESPONSIBILITIES OF THE TENANT

TENANT does hereby acknowledge, covenant and agrees as follows:

A. Purpose.

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

PURPOSE OF THE LEASE/NATURE OF THE BUSINESS IS STATED HERE

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 extrahazardous due to 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 or 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 excepted, and further agrees neither to permit nor cause any waste on the property, or with respect to any improvements thereon. Tenant shall not create any condition which would be considered a public nuisance as defined in Chapter 15 of the Miles City Code of Ordinances. TENANT shall keep the premises in a clean and orderly condition and not allow accumulations of junked or inoperable automobiles, trucks, farm equipment, or scrap upon the premises. CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

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 a debris free condition. "Improvements" shall not include stormwater drainage facilities or other permanent improvements provided as City Services. If inclement weather during such 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 such 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, 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 agreement 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 providing twenty-four (24) hours' written notice and during normal business hours, in order to inspect and determine whether TENANT complies 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. Taxes and Assessments.

TENANT shall pay any and all taxes and assessments which may be lawfully levied against TENANT'S occupancy or use of the premises or any improvements thereon as a result of TENANT'S occupancy.

I. 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.

J. Insurance.

TENANT agrees to maintain with a good and reputable insurance company a policy of fire and extended coverage insurance covering the improvements on the premises involved herein to the maximum insurable value, and said policy of insurance shall have a loss-payable clause specifically naming and covering the interests of the CITY. TENANT further agrees to carry minimum liability insurance in the amount of ONE MILLION AND NO/100THS DOLLARS (\$1,000,000.00) each accident, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana. TENANT shall provide evidence of such current and valid insurance upon approval of this lease by the City Council of Miles City and, thereafter, each year on or before July 1, or upon demand by the lease administrator of the CITY.

K. Environmental Warranty.

Document reference

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 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 to be 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.

Should the occupancy involve activities that include hazardous materials, the City may require the TENANT to store those materials in a separate containment unit in accordance with local building and fire codes.

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

L. Compliance with ADA.

TENANT agrees to comply with the Americans with Disabilities Act as the same may apply to TENANT.

M. Non-Discrimination.

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.

VI. ASSIGNABILITY OF INTEREST

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

VII. 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 this 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 repossesses 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 CITY (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 covenants or provision 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 an additional sixty (60) days after the expiration of the initial thirty (30) day cure period. Payments not received by the City within thirty (30) calendar days of the annual due date shall be subject to a late fee at a rate of 10% per annum.

IX. MISCELLANEOUS PROVISIONS

If is further mutually understood and agreed as follows:

A. Notice.

Any notice hereunder shall be in writing and may be delivered personally or by registered or certified mail with postage prepaid. Postal notice shall be deemed complete when deposited in a United States Post Office addressed to the tenant with proper postage attached.

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 hereof shall vest in the assignee(s) any right, title, or interest whatsoever.

E. Time of the Essence.

Time is of 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 hereof 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. Contingent Upon Approval of City Council.

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

IN WITNESS WHEREOF, the parties hereto have executed the Agreement the date and year first hereinabove written.

CITY OF MILES CITY

By: _____
IT'S MAYOR

ATTEST:

CITY CLERK

TENANT:
(Legal title of tenant goes here)

By: _____
(title of authorized signer or name if individual)

STATE OF MONTANA)
 : SS.
COUNTY OF CUSTER)

This instrument was acknowledged before me on the ____ day of July, ____
by _____ in his capacity as Mayor of the City of Miles City, Montana, a
Montana municipal corporation.

(Notarial Seal)

(Printed name of notary)
Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission expires: ____ / ____ / ____

STATE OF MONTANA)
 : SS.
COUNTY OF CUSTER)

This instrument was acknowledged before me on the ____ day of _____,
2008 by _____ in his capacity as President of The Tire
Guys, a Montana company.

(Notarial Seal)

(Printed name of notary)
Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission expires: ____ / ____ / ____