

RESOLUTION NO. 4191

A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, COWTOWN AG SUPPLY, LLC, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.

WHEREAS, the City of Miles City leases certain property to COWTOWN AG SUPPLY, LLC, a Montana limited liability company, hereinafter referred to as "Tenant," for certain real property located in Custer County, Montana, to wit:

Legal Description: Tracts R, S, and T of the Industrial Site west of Miles City, Montana;

AND WHEREAS, Tenant owns substantial permanent improvements upon said leasehold, including a manufacturing plant and a truck washout facility, and desires to continue leasing said property at the current lease rates adopted by the City of Miles City, as authorized by Resolution 4100 regarding leaseholds upon which tenants own substantial permanent improvements;

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

The City Council hereby authorizes and approves the terms and condition of the Lease Agreement between the City of Miles City, and Cowtown Ag Supply, LLC, attached hereto as Exhibit "A", and adopts the Staff Report prepared by City Planner Dawn Colton, attached hereto as Exhibit "B", both of which are made a part hereof by this reference; and hereby authorizes the Mayor of the City of Miles City to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OR THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 28TH DAY OF AUGUST, 2018.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

CITY PROPERTY LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 28 day of August 2018, 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 **Cowtown Ag Supply, LLC** a Montana limited liability company, located at 240 Garryowen Road, mailing address 501 Pleasant St., Miles City, MT 59301 hereinafter referred to as "**TENANT**".

RECITALS:

WHEREAS the CITY owns certain real property located in SE1/4SW1/4 Sec 32 T8N R47E Custer County, Montana, more particularly described as follows:

Tract R of the Industrial Site west of Miles City, Montana, containing 142,441.2 square feet, more or less; and

Tract S of the Industrial Site west of Miles City, Montana, containing 125,017.20 square feet, more or less; and

Tract T of the Industrial Site west of Miles City, Montana, containing 83,199.60 square feet, more or less.

AND WHEREAS it is the desire of TENANT to lease the above described Leasehold for a term of twenty five (25) years, with rate adjustments at five (5) year increments, subject to the option to renew as hereinafter provided.

AND WHEREAS CITY is agreeable to providing such twenty five (25) year term lease, together with the option to renew for additional twenty five (25) year term, 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 *in Sec 32, T8N R47E, Custer County, Montana, hereinafter "Leasehold"* and more particularly described as follows:

Tract R (Commercial) containing 142,441.2 square feet, more or less; and,

Tract S (Animal) containing 125,017.20 square feet, more or less; and,

Tract T (Commercial) containing 83,199.60 square feet, more or less.

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II. INITIAL TERM

The term of this Agreement shall be for a period of twenty five (25) years, beginning on July 1, 2018 and expiring at midnight on June 30, 2043, hereinafter, “*the initial lease term*”, subject to the option to renew this lease as provided for in Article IV of this lease.

A. Special Circumstance. This lease agreement supersedes the agreement dated 9/9/97, Resolution #2789. That agreement renewed yearly and was renewed by the TENANT on July 1, 2018 and the rent has been paid for FY 18-19. However, in order to honor yet overlap the previous agreement and to enable construction of a large manufacturing facility on Tract R, the lease rate for the first two years of the Initial Lease term shall continue as set forth in Resolution #2789. Construction completion is expected by September 30, 2019. The remainder of the first 5-year payment period will be charged as noted below.

III. RENTAL

The annual rental for the first two years of the initial lease term described in Section II (A) shall be in accordance with the rates established by Resolution #2789, as follows:

Tract R (Commercial) -	\$ 315.81
Tract R (Animal) -	\$ 250.83
Tract S (Animal) -	\$ 312.54
Tract T (Commercial) -	\$ 624.00

The annual rental for the remainder of the payment period as described in Section II (A), from July 1, 2020 through June 30, 2024, shall be in accordance with the rates established by the CITY, as follows:

Tract R (Commercial) -	\$ 2,848.82
Tract S (Animal) -	\$ 2,500.34
Tract T (Commercial) -	\$ 1,663.99

Payments in subsequent years shall be due and payable in advance of July 1st of each subsequent year of the lease term, with the first payment being due on July 1, 2020 through June 30, 2043.

IV. OPTION TO RENEW.

FOLLOWING the “INITIAL LEASE TERM”, THIS agreement shall be automatically renew for a period not to exceed twenty five (25) years, with rate adjustments in five (5) year increments, 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 more than 90 days and not less than thirty

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(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:

1. Commercial: Tracts R & T to be utilized for commercial purposes (manufacturing of agricultural products).
2. Animal: Tract S will continue use as a truck wash-out facility.

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 agree 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.

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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' 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.

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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.

1. General. 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.

2. Trucks. TENANT may operate a truck wash-out operation on the premises under the following conditions as approved by Resolution 3885:

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A. The City of Miles City has determined that truck washing operations are able to be conducted on the leased property in such a manner as to not cause damage to the environment or to adjoining properties so long as certain conditions are met, and the City hereby approves the washing of trucks on said leaseholds, according to certain standards which shall be established by the Public Utilities Director for the City of Miles City, and which may be amended by the Public Utilities Director or the City Council from time to time.

B. This approval is conditioned on a requirement that the Tenant promptly reclaim any damage caused by runoff to the neighboring property owned by Bert Boughton; and is further conditioned by a requirement that the Tenant drain and reclaim the holding pond on the leasehold at the termination of his lease, that the berm on the north end of the pond be increased by a height of four feet and be sloped, that the berm be wide enough that an ATV can be operated along the top of the berm, and that the Tenant complete a plan for maintenance and dewatering at the site which shall be approved by the Public Works Director.

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,

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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.

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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)