

RESOLUTION NO. 3582

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT
BETWEEN THE CITY OF MILES CITY AND WILLIAM MATZEN FOR CONTINUED
USE OF REAL PROPERTY FOR A CITY IMPOUND LOT**

WHEREAS, the City of Miles City currently leases real property from William Matzen consisting of Lots 6 and 7 in Block 12 of the Original Townsite of Miles City, Montana;

AND WHEREAS, certain provisions of the existing lease require updating and modification;

AND WHEREAS, an updated lease has been drafted incorporating the necessary changes;

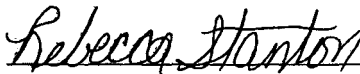
**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MILES CITY, MONTANA AS FOLLOWS:**

The City Council hereby authorizes and approves the revised terms and conditions of the Lease Agreement between the City of Miles City and William Matzen, attached hereto as Exhibit "A," and made a part hereof, 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 A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY,
MONTANA, THIS 26TH DAY OF FEBRUARY, 2013.**


C.A. Grenz, Mayor

ATTEST:


Rebecca Stanton, City Clerk

22. **BINDING EFFECT.** This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto. Nothing herein shall be construed as waiving or otherwise modifying the prohibition against assignment or subletting contained herein.


IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above set forth.

LESSOR



William Matzen

CITY OF MILES CITY – LESSEE

By: 

C. A. Grenz – Its Mayor

ATTEST:



City Clerk

LEASE AGREEMENT

NOTICE: THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO TITLE 27,
CHAPTER 5, MONTANA CODE ANNOTATED

THIS AGREEMENT, made and entered into this 26th day of February, 2013, by and between WILLIAM MATZEN, of 1900 N. Strevell, Miles City, Montana 59301, hereinafter called "*Lessor*", and CITY OF MILES CITY, MONTANA, a political subdivision of the State of Montana, of P. O. Box 910, Miles City, Montana, hereinafter called "*Lessee*".

1. DESCRIPTION OF LEASEHOLD PREMISES. The Lessor hereby leases to the Lessee to occupy and use for the purpose stated below, the following described property located in Miles City, Custer County, Montana, to-wit:

Lots 6 and 7 in Block 12 of the original Townsite of the Town, now City, of Miles City, Montana, according to the official plat and survey thereof on file and of record in the office of the Clerk and Recorder of Custer County, Montana.

Together with the right of ingress and egress to the leasehold premises.

2. TERM OF LEASE. This lease shall be for a period of one (1) year. The effective date of this lease shall be the 1st day of October, 2012 and this lease shall terminate at midnight on the 30th day of September, 2013, subject to earlier termination as provided for herein.

3. CONSIDERATION. The Lessee agrees to pay the Lessor as rent for said parking spaces the sum of Four Thousand Five Hundred and no/100 Dollars (\$4,500.00) per year, payable in advance at the execution of this Lease.

4. USE OF PREMISES BY LESSEE. Lessee shall use the leasehold premises leased hereunder for impoundment of motor vehicles and such other personal property as the Lessee may elect to store or impound upon the leasehold premises.

5. POSSESSION. The Lessee shall be entitled to possession of the leasehold premises immediately upon commencement of the term of this lease and shall surrender possession immediate upon termination of the term of this lease, or upon termination as otherwise provided for in this Agreement. Provided, however, that upon termination of this lease, either by expiration or earlier termination, Lessee shall have thirty (30) days after the date of termination in which to remove any vehicles or other personal property stored or impounded upon the leasehold premises.

6. INGRESS AND EGRESS. Lessor shall provide to Lessee ingress and egress to the leasehold premises sufficient to allow towing of motor vehicles on to the leased premises.

7. MAINTENANCE OF FENCE. The leasehold premises is currently enclosed with a fence. During the term of this Lease, Lessor, at Lessor's sole expense, shall maintain the fence enclosure around the leasehold premises in at least as good condition as it was at the commencement of this lease and shall promptly repair any damage or deterioration to such fence. It is the intent of this paragraph that such fence be maintained in such condition as to provide a secure impoundment area of the vehicles and other property impounded or stored upon the leasehold premises by Lessee.

8. CONTROL OF WEEDS AND VERMIN. Lessee, at its sole expense, shall, during the term of this lease, control weeds, vegetation and vermin upon the leasehold premises.

9. TAXES AND ASSESSMENTS. The Lessor shall pay all taxes and assessments upon the real property that is the subject of this Lease.

10. SNOW REMOVAL. Lessee, at its expense, shall be responsible for snow removal upon the leasehold premises during the term of this lease. Lessor shall not accumulate or place upon the leasehold premises snow removed from Lessor's property.

11. INSURANCE. Lessee, at Lessee's expense, shall maintain such premises liability insurance and other forms of insurance upon the leasehold premises as Lessee deems appropriate.

12. PROTECTION OF IMPOUNDED PROPERTY. Lessor shall not be obligated nor responsible for the protection or security of vehicles or other personal property impounded or stored upon the leasehold premises and Lessee shall indemnify, defend and hold Lessor harmless from any and all claims arising from damage or loss to vehicles or other personal property impounded or stored on the leasehold premises unless such damage or loss is the result of the intentional act of Lessor or his agents. Provided, however, that nothing herein shall be construed as imposing any obligation of Lessee to any third party or parties for the protection of vehicles or other personal property impounded or stored upon the leasehold premises.

13. ASSIGNMENT. This lease may not be assigned or sublet by Lessee without the prior written consent of the Lessor, which consent shall not unreasonably be withheld.

14. BREACH OF LEASE. Upon failure of either party to carry out any material provision of this lease, the non-defaulting party shall serve written notice upon the defaulting party specifying the default. The defaulting party shall have thirty (30) days to correct the default and, if the default is not corrected as charged, the non-defaulting party may, at its option, either correct the default and collect the cost from the defaulting party, or cancel this lease and collect damages caused by the default from the defaulting party. In the event that Lessee is the defaulting party and the default remains uncured as provided herein, Lessee agrees to immediately redeliver possession of the premises to the Lessor, subject to Lessee's right to remove personal property provided for in Section 5 of this Lease.

15. EARLY TERMINATION. Either party may terminate this lease prior to the end of the term of this Lease, by providing to the other party sixty (60) days advanced written notice of its intent to terminate this lease. In the event of early termination of this lease, rental shall be prorated to the effective date of termination and Lessor shall, upon the effective date of termination, tender to Lessee the prorated rentals for the unused term of the lease. "Effective date of termination" shall be sixty (60) calendar days after the date notice was given of intent to terminate this lease.

16. OPTION TO RENEW. At lease sixty (60) days prior to the expiration of the initial lease term, Lessee, may, at Lessee's option, offer, in writing to Lessor, to renew this lease for one additional term of one (1) year from and after the date of expiration of the original term. Such renewal shall be under the same terms and conditions of the original term of this lease. In the event that Lessee exercises this Option to Renew, Lessee shall tender to the Lessor the annual rental for the renewal term on or before October 1, 2013.

17. NOTICES. 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 Lessor at the following address:

William Matzen
1900 N. Strevell
Miles City, Montana 59301

and to Lessee at the following address:

c/o Mayor
City of Miles City
P. O. Box 910
Miles City, Montana 59301

If either party changes their address then they shall give written notice to the other party of the change of address. Any notice given under this contract shall be deemed complete when deposited in a United States post office.

18. LITIGATION. Any controversy between the parties under this Agreement involving sums in dispute of less than \$3,000.00 shall be submitted to arbitration pursuant to the provisions of the Uniform Arbitration Act, Title 27, Chapter 5, M.C.A. If it is necessary for either party to institute legal proceedings to compel the other party to comply with the arbitration provisions of this Section, then the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred in compelling the resisting party to arbitrate. If the sum in controversy exceeds the sum of \$3,000.00 then either party may proceed to seek redress through judicial proceedings and each party shall pay their own attorneys' fees incurred in such proceedings.

19. FUTURE DOCUMENTS. Both parties shall cooperate fully and in good faith in executing such other and further documents as may be necessary to carry out the intent and purpose of this Lease.

20. RECORDING FEES. Should Lessee desire to record or file this Lease, Lessee shall pay all costs of recording or filing. In the event that Lessee records or files this Lease, Lessee, at the termination of this lease, shall file or record a Surrender of Lease in all governmental offices in which it has filed or recorded the Lease.

21. ENTIRE AGREEMENT AND MODIFICATION. This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, agreements and memoranda. This Agreement may be modified only by written instrument executed by all parties to this Agreement.