

RESOLUTION NO. 4205

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN RONALD L. ASKIN DRILLING AND THE CITY OF MILES CITY FOR THE LEASE OF REAL PROPERTY FOR FIRE AND EMS STORAGE AND USE.

WHEREAS, the City Fire Department's building has been partially condemned, and temporary storage for vehicles and equipment, and other incidental fire and EMS uses, is needed;


AND WHEREAS, Ronald L. Asking Drilling ("Askin") has offered to lease certain real property to the City for the storage of a portion of the City's fire and EMS equipment, some of which is so large that there are few buildings in the area which are able to accommodate the storage of said equipment;

AND WHEREAS, although Askin's property is located outside of the City of Miles City's corporate limits, the City will still have primary response equipment and personnel located within City at the current fire hall location, and response times for additional equipment and personnel are not anticipated to be significantly delayed given the close proximity of Askin's property to the city limits;


NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

1. The "Lease Agreement" between Askin and the City, attached hereto as Exhibit "A" and incorporated by this reference, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Lease Agreement 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, AT A DULY CALLED MEETING THIS 9TH DAY OF OCTOBER, 2018.


John Hollowell, Mayor

ATTEST:


Lorrie Pearce, City Clerk

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of November 2018 by and between **RONALD L. ASKIN DRILLING**, a Montana corporation, of 60 Green Acres Drive, Miles City, Montana 59301, hereinafter "**LANDLORD**," and the **CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as "**TENANT**".

RECITALS:

WHEREAS the LANDLORD owns certain real property located in County, Montana, located at the following address: 1084 US-12, Miles City, Montana 59301;

AND WHEREAS it is the desire of LANDLORD and TENANT that TENANT lease the above described Leasehold for a term of One (1) year, subject to the options to renew as hereinafter provided.

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

I. AGREEMENT

The LANDLORD, 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, certain portions of both land and improvements located at 1084 US-12, Miles City, Montana 59301, and more particularly described as follows:

The "insulated mix building" and surrounding curtilage, along with the right of ingress and egress thereto, said building and curtilage referred to hereinafter as the "*Leasehold*".

II. INITIAL TERM

The term of this Agreement shall be for a period of One (1) year, beginning on December 1, 2018, and expiring at midnight on November 30, 2019 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 shall be at the rate of \$2,500.00 per year, payable in advance.

Additionally, TENANT agrees to make a one time payment in the sum of \$5,000.00 to LANDLORD to cover ½ of the cost of installing a new overhead door in the leased building.

IV. OPTION TO RENEW.

FOLLOWING the "INITIAL TERM", TENANT shall have the option to renew this Agreement for two additional One (1) year terms, by providing written notice of renewal to LANDLORD not less than thirty (30) days prior to the expiration of the Initial Term or Renewal Term.

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: Storage of fire and EMS equipment, to include trucks and equipment; office and administrative purposes; uses incidental to the operation of a Fire and EMS service.

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 LANDLORD or anyone acting for or on behalf of the LANDLORD, 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.

E. Right to Inspect.

LANDLORD 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.

F. 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.

G. Indemnification.

TENANT shall indemnify and hold the LANDLORD 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 LANDLORD for any such loss or damage. The obligations hereunder shall survive the termination of this lease.

H. 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 LANDLORD.

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 LANDLORD, 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.

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

J. Compliance with ADA.

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

K. 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 LANDLORD, 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 LANDLORD, then it shall be lawful for the LANDLORD 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 LANDLORD to be done and performed shall cease and terminate, without prejudice, however, to the right of the LANDLORD 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 LANDLORD (if the same shall not have already vested), and the LANDLORD 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.

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 majority vote 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.

RONALD L. ASKIN DRILLING - LANDLORD

By:  _____

CITY OF MILES CITY - TENANT

By:  _____

IT'S MAYOR

ATTEST:


CITY CLERK

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