



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*February 25, 2020
6:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
 - A. Regular City Council Meeting 02/11/2020
 - B. Finance Committee Meeting 02/13/2020
 - C. Public Safety Meeting 02/18/2020

2. **SCHEDULE MEETINGS**

3. **REQUEST OF CITIZENS & PUBLIC COMMENT**

Cassie Reid- Wild Horses Building Beef Program

4. **APPOINTMENTS**

5. **PROCLAMATIONS**

6. **STAFF REPORTS**

7. **CITY COUNCIL COMMENTS**

8. **MAYOR COMMENTS**

9. **COMMITTEE RECOMMENDATIONS**

10. **BID OPENINGS**

11. **BID AWARDS**

12. **PUBLIC HEARINGS**

- A. **ORDINANCE NO. 1337- An Ordinance Adopting Revised Building Codes in Accordance With State of Montana Building Codes Program Requirements, and General Revisions to Chapter Including Penalty Section, and Removal of Antiquated Codes**
- B. **ORDINANCE NO. 1338- An Ordinance Removing Reference to 2006 International Fire Code in the Penalty Section of the City Fire Prevention Code**

13. **UNFINISHED BUSINESS**

- A. **ORDINANCE NO. 1337- (Second Reading) An Ordinance Adopting Revised Building Codes in Accordance With State of Montana Building Codes Program**

Requirements, and General Revisions to Chapter Including Penalty Section, and Removal of Antiquated Codes

- B. **ORDINANCE NO. 1338- *(Second Reading)* An Ordinance Removing Reference to 2006 International Fire Code in the Penalty Section of the City Fire Prevention Code**

14. NEW BUSINESS

- A. **Approval on proceeding with the \$750,000 EDA grant for the flood project. City to provide 20 percent match (\$150,000) in Fiscal Year 2021**
- B. **RESOLUTION NO. 4309- A Resolution Approving a Leasehold Assignment of a One-Half Interest in a Portion of Tract S of the Industrial Site, and Amended Lease Agreement, With Cowtown AG Supply, LLC, for Lease of Real Property Owned by the City of Miles City**
- C. **RESOLUTION NO. 4310- A Resolution Authorizing the City of Miles City to Enter Into a Construction Maintenance Agreement With the Montana Department of Transportation**

15. ADJOURNMENT

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

Minutes

REGULAR COUNCIL MEETING February 11, 2020

6:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, February 11, 2020, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, Ken Gardner, John Uden, Rick Huber, Austin Lott, and Curtis Reese. Council Member Kathy Wilcox was excused.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Police Chief Doug Colombik, Fire Chief Branden Stevens, Planner In Training/TIFD/HD Officer Ally Capps, Flood Plain Administrator/Auto Cad/Assistant PWPV Samantha Malenovsky, Public Utilities Director Tom Speelmon, RSVP Director Betty Vail, Mechanic Clint Backlund and City Clerk/Minute Recorder Lorrie Pearce.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 1/28/2020

- **** *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of January 28, 2020, subject to any changes, and seconded by Councilperson Kassner. The motion **passed** unanimously, 7-0*

Human Resource Committee Minutes: 1/23/2020

- **** *Councilperson Kassner moved to approve the minutes of the Human Resource Committee Meeting of January 23, 2020, and seconded by Councilperson Gardner. The motion **passed** unanimously, 7-0*

Finance Committee Minutes: 1/30/2020

- **** *Councilperson Reese moved to approve the minutes of the Finance Committee Meeting of January 30, 2020, and seconded by Councilperson Lott. The motion **passed** unanimously, 7-0*

Flood Control Minutes: 2/04/2020

****** *Councilperson Gardner moved to approve the minutes of the Flood Control Meeting of February 4, 2020, and seconded by Councilperson Kassner. The motion **passed** unanimously, 7-0*

SCHEDULE MEETINGS

The following meetings will be held in the City Hall Conference Room:

Public Safety Meeting	February 18, 2020 @6 pm
Finance Committee Meeting	February 13, 2020 @6 pm

REQUEST OF CITIZENS & PUBLIC COMMENT

Clint Backlund, 519 Eichler Street representing Torez Motocross Club presented a proposal to reopen Spotted Eagle riding area. He felt that there are very few areas designated to legally ride bikes in a safe and controlled manner. The club would like to build a mini bike track and a BMX track. The following are items that were discussed:

- The Torez Motocross club is nonprofit
- The area would be maintained by the club
- Members would enter the area through two locked gates, the club would police the area and nobody would be allowed to ride outside the fenced area
- The money collected through annual fees would pay for the cost of up keep and other expenses to the area
- The club is willing to pay for the insurance that is mandated by the City

Attorney Rice thought issuing a lease agreement would be the best option. He will call MMIA and see if it is even possible and look to see if it needed to go out for bid since it is a unique situation. The other option would be for the City to open it as a park.

****** *Councilperson Lott moved to refer the issue to finance, seconded by Councilperson Huber. The motion **passed** unanimously, 7-0*

Miles City Area Economic Development Council (MCAED) representative Elizabeth Patten, 612 South Montana Street, presented MCAED's annual report and shared census 2020 flyers. She said the State is very close to gaining another seat in the House of Representative

and would like everyone to spread the word as to the importance of the census.

Troy Hargrave 121 N 9th Street explained to Council that he rents an apartment in a duplex. He is the only one living there at the moment. He said he heard a disturbance in the apartment above him and called dispatch. The dispatcher asked him if someone was trespassing and he told the dispatcher yes. The dispatcher told him to have his landlord call him the next day. No policeman ever showed up on the complaint and the upstairs apartment was completely demolished.

Craig Dalakow, 814 Wells Street, said he followed up with dispatch the next day, and it sounds like the note with the information might be lost.

Mayor Hollowell said he would look into it and get back with the property owner.

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Samantha Malenovsky explained that Intercap is asking if the City wants to continue with a loan request for the flood Section 205 project. She did not have a definite number that the City would need to borrow, but felt it could be up to \$200,000. She explained that the City gets reimbursed 30 percent from the County for the project. Mayor Hollowell said that if the project stops now, the City would not be able to proceed with the planning and the program goes away, unless the Army Corp is willing to delay again.

*** Councilperson Uden moved to approve to continue with Intercap fund, continuation on the flood project, seconded by Councilperson Kassner. The motion passed 5-2, with Councilperson Andrews and Huber voting no*

Administrator Malenovsky asked the Council for approval to apply for a \$750,000 Economic Development Assistance (EDA) grant for the flood project. The match is 20% for the City and the money would be used for building a portion of the levy on the Yellowstone. The City could petition them to see if it could receive 100 percent funded, but there is no guarantee on that. Mayor Hollowell said it was put on the agenda for information only and will be on the next agenda with recommendations.

Ally Capps announced that the Tax Increment Financial District received a \$10,000 grant from the Montana Main Street Program. The money will be used to improve facades on businesses that are in the district.

Branden Stevens reported the following:

- The department is one full time firefighter/EMT position down. The replacement will start February 26th. This position has been open since mid-November, and that is why the overtime is high
- Ambulance 20 has diesel fuel in the coolant, and it was recommended to not fix it
- Was not awarded \$10,785 grant from State Farm
- Community EMT classes are up and running full swing

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

None

COMMITTEE RECOMMENDATIONS

Flood Control- Proceed with Section 1316 (Violation Declaration) of the National Flood Insurance Act on 1415 N. 6th Street

*** Councilperson Kassner moved to proceed with Section 1316 (Violation Declaration) of the National Flood Insurance Act on 1415 N. 6th Street, seconded by Councilperson Gardner*

Administrator Malenovsky explained that Section 1316 is in our City ordinance and she had to start the procedure. The City needs to reply back to FEMA by February 28th as to what our corrective action plan is and a decision needs to be made by the middle of March. After

the decision is filed with FEMA, they will let the City know if it is acceptable.

Mayor Hollowell said the City has three options:

- a) Do nothing
- b) Proceed with the Section 1316, which would allow the building/violation to stay, but the property would have to be in compliance. This would also involve a survey study with a cost of approximately \$30,000-\$40,000
- c) Civil action, which would remove the building/violation

Attorney Rice informed Council that he is talking with the property owner's attorney on the options and cost to find a solution. He will present the decision to Council. If no solution is found, then the Council would need to decide if it wants to go ahead with the encroachment analysis or a civil action to have the building abated. Any cost would be paid from the General Fund.

Councilperson Gardner said that if the City did not proceed with Section 1316 there would be a lot of consequences that would be absorbed by the community. If the City did nothing it would be put on probation, and if there was no action after that, the City would be on suspension. Everyone needs to know that it is a very serious matter.

Consensus of the Council and public was that the taxpayers of Miles City should not pay for any of the options, and it should be paid by the property owner. Also, there was some concern that if the City filed the Section 1316, it would create a precedent and encourage others to start building without a permit from the City.

*** Councilperson Uden moved to amend the main motion to include, provide the option of Encroachment Analysis/compliance and/or second option Civil Action by May 5, 2020, seconded by Councilperson Kassner. The amended motion **passed** unanimously. 7-0*

*** The original motion **passed** unanimously, 7-0*

BID OPENINGS

None

BID AWARDS

None

PUBLIC HEARINGS

- A. **RESOLUTION NO. 4303- A Resolution Pursuant to § 7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY2019-2020 to Increase the Budgeted Amount in the Funds for HB473 Fuel Tax, Police, Fire and Ambulance Unbudgeted Revenues and Expenditures**

Mayor Hollowell called for comments from proponents three times, then opponents three times and, hearing none, the hearing was closed.

UNFINISHED BUSINESS

- A. **RESOLUTION NO. 4303- (Second Reading) A Resolution Pursuant to § 7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY2019-2020 to Increase the Budgeted Amount in the Funds for HB473 Fuel Tax, Police, Fire and Ambulance Unbudgeted Revenues and Expenditures**

** *Councilperson Lott moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by unanimous consent, 7-0. Resolution No. 4303 passed.*

NEW BUSINESS

- A. **RESOLUTION NO. 4305- A Resolution Approving a Revocable License for Non-Federal Use of Real Property Between the City of Miles City and the U.S. Department of Veterans Affairs for Police Department Offices**

** *Councilperson Uden moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed unanimously, 7-0. Resolution No. 4305 passed.*

- B. **RESOLUTION NO. 4306- A Resolution Requesting Distribution of Bridge and Road Safety and Accountability Program Funds**

** *Councilperson Gardner moved to approve the Resolution, read by title only,*

and seconded by Councilperson Andrews. On roll call vote, the motion passed unanimously, 7-0. Resolution No. 4306 passed.

- C. RESOLUTION NO. 4307- A Resolution of the City of Miles City Approving a Loan in the Amount of \$35,000, Together with Interest Thereon at the Rate of 2.375 Per Annum on the Unpaid Balance of the Principal Until Paid, From the Aeronautics Division of the Department of Transportation of the State of Montana to the City of Miles City, For the Purpose of: Construction Improvement at the Frank Wiley Airport, Located in Miles City Montana, Providing for the Repayment of Loan, and the Terms Thereof**

*** Councilperson Gardner moved to approve the Resolution, read by title only, and seconded by Councilperson Reese. On roll call vote, the motion passed unanimously, 7-0. Resolution No. 4307 passed.*

- D. RESOLUTION NO. 4308- A Resolution Approving a Revocable License for Non-Federal Use of Real Property Between the City of Miles City and the U.S. Department of Veterans Affairs for RSVP Offices**

*** Councilperson Andrews moved to approve the Resolution, read by title only, and seconded by Councilperson Huber. On roll call vote, the motion passed unanimously, 7-0. Resolution No. 4308 passed.*

- E. ORDINANCE NO. 1337- (First Reading) An Ordinance Adopting Revised Building Codes in Accordance With State of Montana Building Codes Program Requirements, and General Revisions to Chapter Including Penalty Section, and Removal of Antiquated Codes**

*** Councilperson Uden moved to approve the Ordinance, read by title only, and seconded by Councilperson Gardner.*

*** Councilperson Kassner moved to amend the Ordinance in Section 4 (5-61) by removing all but the existing building code (f) and international swimming pool and spa code (g), seconded by Councilperson Lott.*

Attorney Rice explained that all the items need to be struck except for f and g because the State enforces them.

*** The amended and main motion passed unanimously, 7-0 Ordinance No. 1337 passed first reading and was referred to Public Safety to review*

- F. ORDINANCE NO. 1338- (First Reading) An Ordinance Removing Reference to 2006 International Fire Code in the Penalty Section of the**

City Fire Prevention Code

****** *Councilperson Gardner moved to approve the Ordinance, read by title only, and seconded by Councilperson Lott. On roll call vote, the motion passed unanimously, 7-0. Ordinance No. 1338 passed first reading and was referred to Public Safety to review*

G. Approve write offs for Ambulance in an amount of \$ 3,617.53

****** *Councilperson Andrews moved to approve the write offs for ambulance at an amount of \$3,716.53 and seconded by Councilperson Kassner. The motion passed unanimously, 7-0.*

H. Approve sending to collection a total of \$69,418.58 in Ambulance Fund

****** *Councilperson Kassner moved to approve sending to collection a total of \$69,418.58 in the ambulance fund and, seconded by Councilperson Lott. The motion passed unanimously, 7-0.*

I. Approve to send to collections a total of \$ 74.48 on Bulk Water Accounts

****** *Councilperson Kassner moved to approve sending to collections a total of \$74.48 on the bulk water account and, seconded by Councilperson Andrews. The motion passed unanimously, 7-0.*

J. Approval of January Claims

****** *Councilperson Lott moved to approve the claims, and seconded by Councilperson Kassner. The motion passed unanimously, 7-0.*

ADJOURNMENT

****** *Councilperson Uden moved to adjourn the meeting, seconded by Councilperson Huber and passed unanimously.*

The meeting was adjourned at 7:30 p.m.

John Hollowell, Mayor

Lorrie Pearce, City Clerk

Finance Committee Meeting

February 13, 2020

The Finance Committee met Thursday, February 13, 2020 at 6:00 p.m. in the City Hall Conference room. Present were Committee Members Austin Lott, Brant Kassner, John Uden and Curtis Reese.

Also present were: Fire Chief Branden Stevens, Planner in Training Ally Capps and City Clerk/Recorder Lorrie Pearce.

Chairperson Lott called the meeting to order.

1. Request of Citizens and Public Comment: Chief Stevens presented four grants to the Committee asking for feed back as to whether the departments should apply for them. He said they all involve a match from the City and would affect fiscal year 2021. There are two grants for Federal Emergency Management Agency(FEMA) and two for Aid to Firefighter (AFG). They are as follows:

- Safer grant- This grant would allow the ambulance to take more out of town transfers. It would allow the City to hire three to four more firefighter/EMT/paramedics with a reduced cost to the City. The matching fund on a \$250,000 grant would be 30 to 50 percent. Having a working fire tender will help with the Insurance Service Office(ISO) rating.
- Fire Tender grant- This grant could help the department purchase a fire tender up to \$300,000. The match is 5 percent or \$15,000. Having a working fire tender will help with the ISO rating.
- Fire prevention and safety micro grant- This grant is for \$50,000 with a 5 percent match or \$2,500. This grant would help buy fire prevention material and equipment
- AFG EMS equipment for \$50,000 with a 5 percent match or \$2,500. This grant would be 100 percent out of the Ambulance fund to buy power cots and power loaders.

Chief Stevens said if he had to pick two, he would choose the Fire Tender and EMS equipment grant. He could also ask for a smaller amount on the grant for the fire tender. He thought that he would put in for the fire tender grant because he had applied last year with a rejection and it just needs updated. If the City was awarded the grant and it did not have the money for the match, then he would deny accepting the grant.

Committee Member Uden appreciated that the Chief is looking into grants, but felt it is to soon to approve or disapprove any money spending for fiscal year 2021.

After a short discussion it was decided that the Committee will look at the fiscal year 2020 budget at the next scheduled meeting and try to get an answer for him.

2. **Discuss and recommendation on Resolution No. 4309:** A Resolution Approving a Leasehold Assignment of a one-half Interest in a Portion of Tract S of the Industrial Site, and Amended Lease Agreement, with Cowtown AG Supply, LLC, for Lease of Real Property Owned by the City of Miles City

*** Committee Member Kassner moved to recommend to Council to approve the resolution, seconded by Committee Member Uden.*

Planner Capps explained that there was a co-lease between Jerry Singleton and Gary Haynes. Mr. Haynes has passed and his spouse wants to let go of her portion of the lease. The resolution and agreement will update with the new rates and combines Mr. Singleton leases. It changes the name from Jerry Singleton to Cowtown Ag Supply. It would go into effect July 2020 with rates in compliance with the Cities.

*** The motion passed by roll call, 4-0*

3. Adjournment

*** Committee Member Uden moved to adjourn the meeting, seconded by Committee Member Kassner and passed unanimously*

The meeting was adjourned at 6:25 p.m.

Austin Lott, Committee Chairperson

Lorrie Pearce, Recorder

**Public Safety Committee Meeting
February 18, 2020**

The Public Safety Committee met Tuesday, February 18, 2020, at 6:00 pm in the City Hall Conference Room, 17 S. 8th. Present were Committee Members John Uden, Kathy Wilcox, Ken Gardner and Austin Lott. Also present were: Building Inspector Dennis Hirsch and Human Resources Officer/Recorder Linda Wilkins.

Chairperson Uden called the meeting to order.

1. Election of Committee Chair Person

As last years Chair John Uden called for nominations.

***Committee Member Garner nominated Committee Member Lott, seconded by Committee Member Uden and passed by unanimous consent 4-0.*

2. Request of Citizens

None

3. Committee Member Comments

None

4. Unfinished Business

None

5. New Business

- A. Review and Recommend Ordinance No. 1337 AN ORDINANCE ADOPTING REVISED BUILDING CODES IN ACCORDANCE WITH STATE OF MONTANA BUILDING CODES PROGRAM REQUIREMENTS, AND GENERAL REVISIONS TO CHAPTER INCLUDING PENALTY SECTION, AND REMOVAL OF ANTEQUATED CODES.

***Committee Member Wilcox moved to recommend to Council adoption of Ordinance 1337 as read, seconded by Committee Member Uden.*

Committee Member Lott stated this ordinance was cleaning up language, and to include the penalty of \$500/day with each day being a new violation. Committee Member Uden stated this brought the ordinance in compliance with building code.

***The motion passed by unanimous consent 4-0.*

- B. Review and Recommend Ordinance No. 1338 and ORDINANCE REMOVING REFERENCE TO 2006 INTERNATIONAL FIRE CODE IN THE PENALTY SECTION OF THE CITY FIRE PREVENTIONS CODE.

***Committee Member Wilcox moved to recommend to Council adoption of Ordinance 1338 as read, seconded by Committee Member Gardner.*

Inspector Hirsch stated this removed reference to older code. Committee Member Uden asked if this brought the ordinance in compliance with International Fire Code. Inspector Hirsch stated it would bring it in compliance with 2012 International Fire Codes.

***The motion passed by unanimous consent 4-0.*

6. Adjournment

***Committee Member Gardner moved to adjourn the meeting, seconded by Committee Member Wilcox and passed unanimously, 4-0.*

The meeting was adjourned at 6:20 p.m.

Respectfully Submitted:

Austin Lott, Chairperson

Linda Wilkins, Recorder

Public Hearing
&
Unfinished Business

ORDINANCE NO. 1337

AN ORDINANCE ADOPTING REVISED BUILDING CODES IN ACCORDANCE WITH STATE OF MONTANA BUILDING CODES PROGRAM REQUIREMENTS, AND GENERAL REVISIONS TO CHAPTER INCLUDING PENALTY SECTION, AND REMOVAL OF ANTEQUATED CODES.

WHEREAS, the State of Montana Building Codes Program has adopted administrative rules to adopt new building codes, and directed the City of Miles City to adopt the same.

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

Section 1. Section 5-26 is hereby amended to read as follows:

Sec. 5-26. – Adoption, Amendments. The city council hereby adopts the International Building Code, 2018 Edition, as amended by Administrative Rules of Montana (hereinafter "ARM"): ARM 24.301.146, (1—49) and ARM 24.301.151 together with the following: Appendix Chapters B, C, and H.

To the extent the provisions of the International Building Code 2018 Edition conflict, the following shall apply to appeals related to said code:

- (a) In order to hear and decide appeals of orders, decisions or determinations of building related codes adopted by the City Council of the City of Miles City, there shall be and hereby is created a Board of Appeals consisting of the City Council of the City of Miles City.
- (b) All Code questions will be submitted to the Department of Labor and Industry, Building Codes Division for an interpretation. The Division's interpretation will then be used as the basis for the Board's decision.
- (c) The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with duplicates to the Building officials and the Building Code Division.
- (d) The Board of appeals shall have no authority relative to interpretation of the administrative provisions of the building related codes adopted by the City of Miles City nor shall the board be empowered to waive requirements of these Codes.
- (e) Anyone wishing to appeal a decision made by the City of Miles City Building Inspector regarding building code issues, shall follow the procedure outlined below:
 - i. Property owner shall make his or her appeal of the decision to the building inspector, who will then forward the appeal to the State of Montana Building Codes Division, Department of Labor and Industry, prior to the Board of Appeals review.

- ii. The present Board of Adjustments for the City of Miles City shall also serve as the Board of Appeals for the purpose of rendering decisions concerning building code issues.
- iii. The Department of Labor and Industry, Building Codes Division, will render an interpretation of the building inspector's decision as it pertains to the building code. The building inspector will submit the appeal and the interpretation provided by the Building Codes Division to the Board of Appeals. The interpretation will then be used as the basis for the board's decision.
- iv. The property owner or an authorized representative may be present at the Board of Appeals meeting to provide any additional information as needed.
- v. The board shall make its decision and render all decisions and findings in writing to the appellant with duplicates to the building inspector and the State of Montana Building Codes Division.

Section 2. Section 5-46 is hereby amended to read as follows:

Sec. 5-46. – Adoption, Amendments. The city council hereby adopts the International Residential Code, 2018 Edition.

Section 3. Article IV is amended to read as follows:

“ARTICLE IV. – ADDITIONAL MODEL TECHNICAL CODES.”

Section 4. Section 5-61 is hereby amended to read as follows:

Sec. 5-61. – Adoption, Amendments. The city council hereby adopts the following model technical codes:

- (a) 2018 Existing Building Code
- (b) 2018 International Swimming Pool and Spa Code

Section 5. Section 5-62 – “Appendixes to International Building Code” is hereby REPEALED.

Section 6. Section 5-76 is amended to read as follows:

Sec. 5-76. – Adoption, Amendments. The city council hereby adopts the International Energy Conservation Code, 2012 Edition.

Section 7. Article VI “Uniform Code for the Abatement of Dangerous Buildings” and Section 5-91 – “Adoption” are hereby REPEALED.

Section 8. Section 5-101 is amended to read as follows:

Sec. 5-101. – Adoption, Amendments. The city council hereby adopts the International Energy Conservation Code, 2012 Edition.

Section 9. Article VII-I “Uniform Code for Building Conservation” and Section 5-116 – “Adopted” are hereby REPEALED.

Section 10. Section 5-3 is hereby amended to read as follows:

Sec. 5-23. – Penalty for violation of chapter. Unless otherwise specified by the provisions of this chapter, any person who violates the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed six months, or both. Each day that a violation exists shall be deemed a distinct and separate offense.

Section 11. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 11th day of February, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 25th day of February, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

ORDINANCE NO. 1338

AN ORDINANCE REMOVING REFERENCE TO 2006 INTERNATIONAL FIRE CODE IN THE PENALTY SECTION OF THE CITY FIRE PREVENTION CODE.

WHEREAS, the Code of Ordinances of the City of Miles City references the 2006 International Fire Code in the penalty section of said code, and said reference to the year of the code adopted is properly removed;

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

Section 1. Section 11-82 is hereby amended to read as follows:

Sec. 11-82. - Violation of code.

Any person who violates the provisions of the International Fire Code, as adopted, or of any of the appendices adopted in this chapter, or fails to comply with any order made thereunder, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed six months, or both. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All persons shall be required to correct such violation within a reasonable time. When not otherwise specified, each ten days that the violation continues shall constitute a separate offense. The application of the penalty set out in this section shall not be held to prevent the enforced removal of the prohibited conditions.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 11th day of February, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 25th day of February, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

New Business

RESOLUTION NO. 4309

A RESOLUTION APPROVING A LEASEHOLD ASSIGNMENT OF A ONE-HALF INTEREST IN A PORTION OF TRACT S OF THE INDUSTRIAL SITE, AND AMENDED LEASE AGREEMENT, WITH COWTOWN AG SUPPLY, LLC, FOR LEASE OF REAL PROPERTY OWNED BY THE CITY OF MILES CITY.

WHEREAS, Cowtown Ag Supply currently leases several tracts of City owned real property in the Industrial Site west of Miles City, to include Tract R, a one-half interest in a portion of Tract S, and Tract T;

AND WHEREAS, Gary Haynes' successors in interest to the remaining one-half interest in the leasehold for the shared portion of Tract S have requested City approval to assign the same to Cowtown Ag Supply, LLC;

AND WHEREAS, the City and Cowtown Ag Supply, LLC, wish to approve said assignment, and to incorporate said one-half interest in the leasehold of the shared portion of Tract S, into one lease agreement covering all City property currently leased to Cowtown Ag Supply, LLC;

AND WHEREAS, the City finds that assignment of said leasehold to co-tenant Cowtown Ag Supply, LLC may be approved without going to public bid, is allowed under the City's lease policy; as Cowtown Ag utilizes said leasehold in conjunction with other Industrial Site leaseholds upon which Cowtown Ag Supply, LLC owns and has constructed permanent substantial improvements;

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

1. The City Council adopts the City Planning Department Staff Report as Findings of Fact in support of this approval, said report attached hereto as Exhibit "A" and made a part hereof by this reference.
2. The City Council hereby approves the assignment of a one-half interest in the lease of the former shared portion of Tract S of the Industrial Site west of Miles City from Gary Haynes' successors in interest, to Cowtown Ag Supply, LLC.
3. The City Council hereby approves the terms and conditions of the Lease Agreement between the City of Miles City, and Cowtown Ag Supply, LLC, attached hereto as Exhibit "B", which is 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.

4. Upon execution of the attached Lease Agreement between the City of Miles City and Cowtown Ag Supply, LLC, Gary Haynes and his heirs, successors, including specifically Beverly Haynes, shall be released of all obligations and interests in the lease agreement attached to Resolution No. 2790.
5. Furthermore, upon execution of the attached Lease Agreement between the City of Miles City and Cowtown Ag Supply, LLC, Jerry Singleton, in his capacity as an individual and joint lease holder of those portions of Tract S pursuant to the lease agreement attached to Resolution No. 2790, shall be released of all obligations and interests in the lease agreement attached to Resolution No. 2790 and all such interests and obligations shall be released and incorporated into and made part of the attached Lease Agreement with Cowtown Ag Supply, LLC, by Jerry Singleton as owner and operator of said business entity.

**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
FEBRUARY, 2020.**

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT "B" TO RESOLUTION NO. 4309
CITY PROPERTY LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, and with an effective date of July 1, 2020, 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 SE1/4 SW1/4 Sec 32 T8N R47E Custer County, Montana, presently leased by TENANT pursuant to a lease agreement entered into in association with Miles City Resolution No. 4191, and 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

A one-half interest in the lease of portions of 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 the CITY owns certain real property located in SE1/4 SW1/4 Sec 32 T8N R47E Custer County, Montana, presently under a lease agreement pursuant to a lease agreement entered into in association with Miles City Resolution No. 2790 between the CITY and Jerry Singleton (owner of Cowtown Ag Supply, LLC, the 'TENANT' herein) and Gary Haynes, who is deceased, jointly, in the other portions of Tract S of the Industrial Site west of Miles City, Montana, containing 111,512.55 square feet, more or less;

AND WHEREAS it is the desire of TENANT to include a portion of the one-half interest in Tract S previously leased by Gary Haynes, and assigned to TENANT subject to City approval, in their current lease of the above described property, which is for a term of twenty five (25) years from July 1, 2018, with 23 years remaining on said initial term as of the effective date of this agreement, with rate adjustments at five (5) year increments during said 25 year period, and subject to the option to renew as hereinafter provided.

AND WHEREAS CITY is agreeable to TENANT receiving an assignment of the Haynes leasehold, and the incorporation of said Haynes lease interest into TENANT'S current leasehold, and the general terms of TENANT'S current agreement, which is restated, clarified, and modified, herein;

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

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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 containing 142,441.2 square feet, more or less; and,

Tract S containing 236,529.75 square feet (125,017.20 square feet per Cowtown Ag Supply, LLC lease agreement attached to Resolution No. 4191, plus 111,512.55 square feet per Singleton/Haynes lease agreement attached to Resolution No. 2790), or 5.43 acres, more or less; and,

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

II. INITIAL TERM

The term of this Agreement shall be for a period of twenty three (23) years, beginning on July 1, 2020 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.

III. RENTAL

The annual rent payable under this Agreement from July 1, 2020 through June 30, 2023, shall be in accordance with the current lease rates established by the CITY, as follows:

Tract R - \$ 2,848.82

Tract S - \$ 4,730.59

Tract T - \$ 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, and continuing through June 30, 2043. The rental rate shall be calculated in accordance with the City's lease rates then in effect, every five years, at the beginning of lease years 2023, 2028, 2033, and 2038; as well as during each five year period during any renewal term, as set forth herein.

IV. OPTION TO RENEW.

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

FOLLOWING the "INITIAL LEASE TERM", THIS agreement shall automatically renew for a period of 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 ninety (90) days and 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: Commercial uses associated with the manufacturing of agricultural products; and 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.

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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.

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,

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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:

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

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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, 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

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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.

EXHIBIT "B" TO RESOLUTION NO. _____
CITY PROPERTY LEASE AGREEMENT

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.

J. Acceptance of Assignment.

TENANT hereby accepts assignment of Gary Haynes' successors' interest in a ½ lease interest of Tract S, as hereinbefore described, and assumes responsibility for rents and responsibilities of the same, as set forth herein.

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:

Cowtown Ag Supply, LLC

By: _____

Printed Name / Title: _____

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

I. General Information

Type of Request: Request to Cancel Interests/Obligations in portions of a lease agreement for leased land in the city-owned Industrial Site; lease administrator proposal to assign to co-tenant by adding to another lease agreement

Requestor: Beverly Haynes, heir to Gary Haynes, deceased

Date of Finance Committee meeting: February 13, 2020

Date of City Council meeting: February 25, 2020 (tentative)

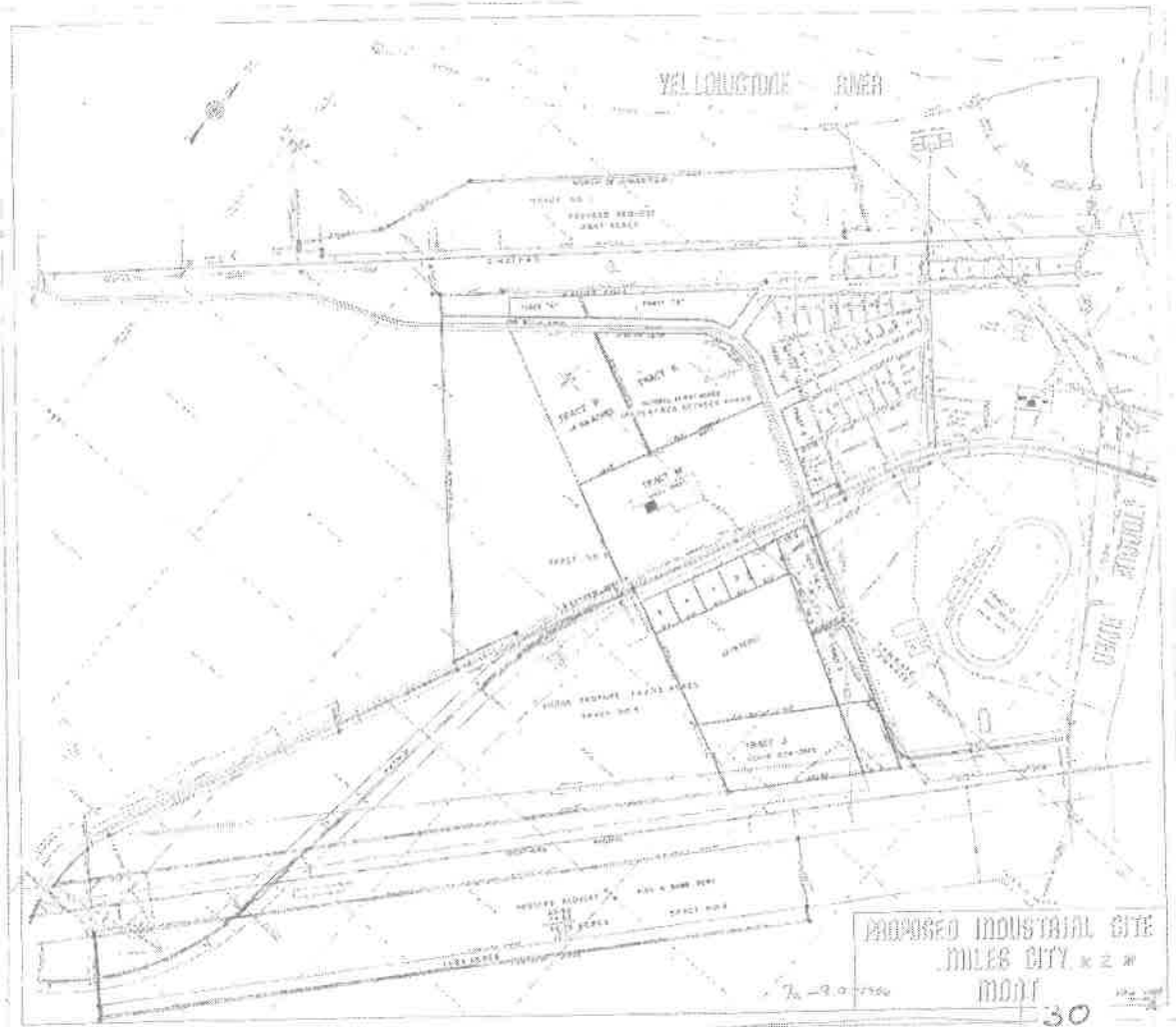
II. Introduction/History

The City of Miles City owns and operates what is known as the 'Industrial Site', which is an area of lots, some of which exist as tracts of record¹, and some of which are leased lots that have never been recorded with the Custer County Clerk & Recorder as tracts of record. The Industrial Site property was granted to the City of Miles City in 1946 for industrial and recreational purposes and for use as a museum site (now the Range Riders Museum). The Industrial Site is located along US Highway 12 just west of downtown, outside the city limits. The following 'Map 1' is a 1956 map of the Industrial Site that is often used for administration of the leased lots, and 'Map 2' (page 4) is 'zoomed in' to show the leased lots in question, being Tracts R, S, and T as explained further below.

¹ The Montana Subdivision and Platting Act defines a 'tract of record' as, "an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office." 76-3-103(17)(a), MCA. Note that Tracts R, S, and T are among tracts in the Industrial Site that have never been recorded as 'tracts of record' at the clerk and recorder's office.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

Map 1: 1956 Map of Industrial Site



Currently, various lease agreements exist between the City of Miles City and numerous tenants. Some of these lease agreements have been in place for decades. Over the years, the city has operated the Industrial Site and other city-owned leased property according to policies and fee structures set by City Council. Typically, as new lease agreements are entered into, the city and lessees enter into new lease agreements according to the latest adopted policies and fee structures. The current resolutions that govern the city's operation of the leased lots include Resolution No. 4123 (a resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City) and Resolution No. 4124 (a resolution establishing minimum base rent for Industrial Site and other city leaseholds). These resolutions were adopted and made effective in January 2018.

Jerry Singleton and Gary Haynes began co-leasing Tract S in 1986. The lease agreements with Singleton

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

and Haynes were joint agreements, with Mr. Singleton and Mr. Haynes co-tenants of Tract S. However, two lease agreements were used: Resolution No. 2337 and Resolution No. 2338. These two agreements provided for different agreements for portions of Tract S, and different lease rates: 'animal' and 'commercial' (based on the use of each portion being for livestock or commercial usage). In 1997, Jerry Singleton (without Mr. Haynes) entered into a new lease agreement (Resolution No. 2789) for portions of Tract S at the 'animal' rate, as well as Tract R and Tract T; at the same time, Jerry Singleton and Gary Haynes entered into a new lease agreement (Resolution No. 2790) for the other portions of Tract S, with portions at the 'animal' rate and portions at the 'commercial' rate. The 1997 Singleton lease agreement (Resolution No. 2789) was replaced with a new lease agreement in 2018, Resolution No. 4191, which also provided for rate adjustments to align with the current fee schedule and placed the lease in the name of Jerry Singleton's business, Cowtown Ag Supply, LLC. The 1997 Singleton/Haynes lease agreement (Resolution No. 2790) is still the effective lease agreement for approximately the southwest half of Tract S, and this lease still enjoys the old, lower lease rates.

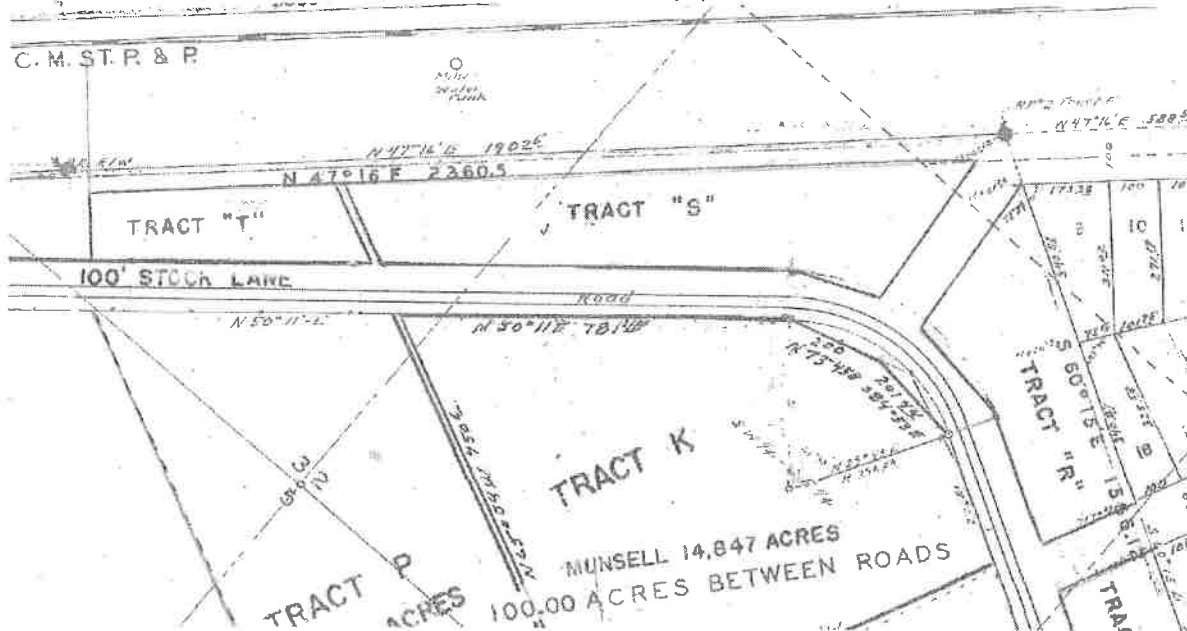
Beverly Haynes, the apparent heir of Gary Haynes, has submitted a written request to cancel the Haynes portion of the Singleton/Haynes lease, Resolution No. 2790. Gary Haynes is deceased, and Mrs. Haynes lives in Wyoming and is requesting to be removed from any further financial obligation from the lease. Mrs. Haynes's written request to cancel the lease is attached as Attachment 1.

Contact has been made with Jerry Singleton and he has verbally indicated he is willing to accept the Haynes obligation and interest in the joint lease agreement. Attached is the lease administrator's letter to Mr. Singleton (Attachment 2); no written response from him has been received as of the date of this report.

At this time, the lease administrator is proposing that if the Finance Committee, City Council, and Jerry Singleton are amenable to assigning the Haynes interest and obligations to Mr. Singleton or his business entity, that a new lease agreement be entered into according to Resolution No. 4123 and that the lease rate be adjusted according to Resolution No. 4124. For simplicity purposes, the lease administrator is also recommending the Cowtown Ag Supply, LLC lease agreement involving Tract S, and Tracts R & T (Resolution No.4191), be replaced with a single lease agreement that consolidates the applicable leases for Tracts R, S, and T. As proposed by the lease administrator with consultation from the City Attorney, the new lease agreement and lease rates would go into effect at the start of the next fiscal year 2020 – 2021, which aligns with an effective date of changes to lease rates in Resolution No. 4191.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

Map 2: 1956 Map of Industrial Site, zoomed in to Tracts R, S, and T



III. Applicable City Policies/Regulations

Because the Industrial Site and subject leased lots are located entirely outside the city limits of Miles City, city ordinances generally do not apply, but adopted administrative policies of the city do apply. Specifically, the resolutions for city management of city-owned lease properties apply. Those include Resolution No. 4123 (a resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City) and Resolution No. 4124 (a resolution establishing minimum base rent for Industrial Site and other city leaseholds). Copies of both documents are attached to this report as Attachments 3 & 4.

The primary sections of the lease management resolutions cited above that apply to this matter are as follows:

- Resolution No. 4123:
 - Section 2.g states, "Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council."
 - Section 2.i states, "Lessees who own substantial permanent physical improvements which have been constructed upon the leasehold with City permission, may be granted a preferential right to renew their lease, at a rate to be determined by the City, which shall be not less than the minimum rental rate established by the City Council, as adjusted from time to time." The area of Tract S subject to the Singleton/Haynes lease agreement adopted by Resolution No. 2790 does not contain substantial improvements, but the other lots leased by Mr. Singleton and Cowtown Ag Supply, LLC do have substantial improvements.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
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- Resolution No. 4124:
 - Section 1, entitled 'Lease Rate for City Owned Leaseholds' states, *"Industrial Site leases entered into during and subsequent to FY 2017-2018 shall utilize the following minimum rentals:*

...Tracts with gravel road frontage \$0.20 per square foot per year.

Rates above these minimal base rates may be charged based on the cost of city services or city owned improvements provided as part of the lease..."

Also effective are the sections of the Code of Ordinances that govern the Finance Committee, a.k.a., the committee on finance. The following are the applicable sections of city code:

Sec. 2-54. - Standing committees—Created and designated.

At the first regular meeting of the city council after the first Monday in January of each year, the mayor, with the approval of a majority of the membership of the city council, shall appoint standing committees each consisting of four members of the city council, one from each ward, for the ensuing year as follows:

- (1) Committee on finance.

Sec. 2-55. - Same—Duties.

- (a) To the committee on finance shall be referred all policy matters related to the financial condition of the city including regular revenue and expenditures reviews; department budget preparation and reviews; auditing and passing upon all bills and claims presented against the city; and auditing of all books of accounts of all city officers. This committee shall also consider all policy matters related to apportionment, property rented or leased by the city and all zoning matters.

IV.Applicable Lease Agreements

As stated previously, the effective resolutions for the applicable lease agreements that are currently in place include the 1997 Resolution No. 2790, which applies to the Singleton/Haynes lease of portions of Tract S, and the 2018 Resolution No. 4191, which applies to the Cowtown Ag Supply, LLC lease of portions of Tract S, and all of Tracts R & T. Both lease agreement resolutions are attached to this report – see Attachments 5 & 6. Resolution No. 4191 applies because of the proposal to offer a lease agreement to Jerry Singleton and/or his business Cowtown Ag Supply, LLC to assign the Haynes interest and obligations of the Singleton/Haynes lease to Singleton or Cowtown Ag Supply, LLC. The following are the primary sections/provisions of these lease agreements that are applicable to the proposed lease assignment:

- Resolution No. 2790 (Singleton/Haynes lease):
 - [Applicable to:] Tract S (Commercial) of the Industrial Site West of Miles City, Montana, containing 64,468.80 square feet, more or less; and Tract S (Animal) of the Industrial Site West of Miles City, Montana, containing 47,043.75 square feet, more or less.
 - "Tenants" are listed as Jerry Singleton and Gary Haynes.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

- Article II. TERM: The term of this Agreement shall be for a period of one (1) year, beginning on July 1, 1997, and expiring on June 30, 1998, subject to the option to renew as hereinafter provided.

- Article III. RENTAL: Rental for the Lease Shall be as follows:

	<u>Singleton</u>	<u>Haynes</u>
Tract S - Commercial -	\$241.76	\$241.76
Tract S - Animal -	\$ 58.80	\$ 58.80

Said rents shall be payable on or before the 1st day of July. Each TENANT is jointly and severally liable for the full amount of the rental.

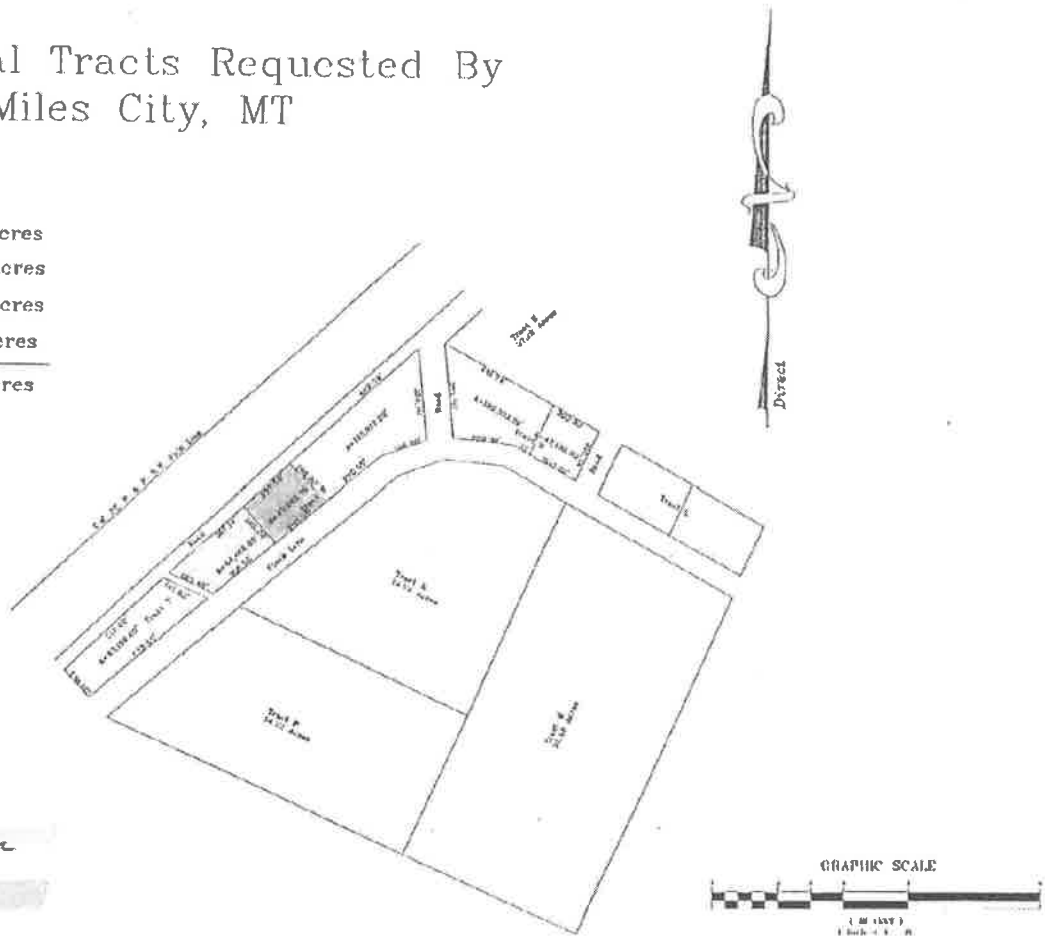
- Article V. ASSIGNABILITY OF INTEREST: TENANTS shall not assign this Lease, nor sublet the premises, nor any part thereof, without the prior written consent of the CITY.
- Article VII. MISCELLANEOUS PROVISIONS.
 - A. Oral Modification Prohibited. No modification or alteration of this Agreement shall be valid unless evidenced by a writing signed by the parties thereto.
 - B. Renewal. This Agreement shall be automatically renewed each year for a period not to exceed one (1) year upon the same terms and conditions herein unless the CITY or TENANTS give to the other party written notice of cancellation of said Agreement. Said notice shall be given at least thirty (30) days prior to the termination date of this Agreement or any subsequent renewal termination date.
 - 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; provide, however, that no assignment by, from, through or under TENANTS in violation of the provisions hereof shall vest in the assignee(s) any right, title, or interest whatsoever.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

- o Map attachment:

Industrial Tracts Requested By
City Of Miles City, MT

Tract Q	1.50 Acres
Tract R	3.27 Acres
Tract S	5.43 Acres
Tract T	1.91 Acres
Total	12.11 Acres



- Resolution No. 4191 (Cowntown Ag Supply, LLC lease):
 - o [Applicable to:]
 - 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.
 - o Article 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

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

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.
- Article 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:

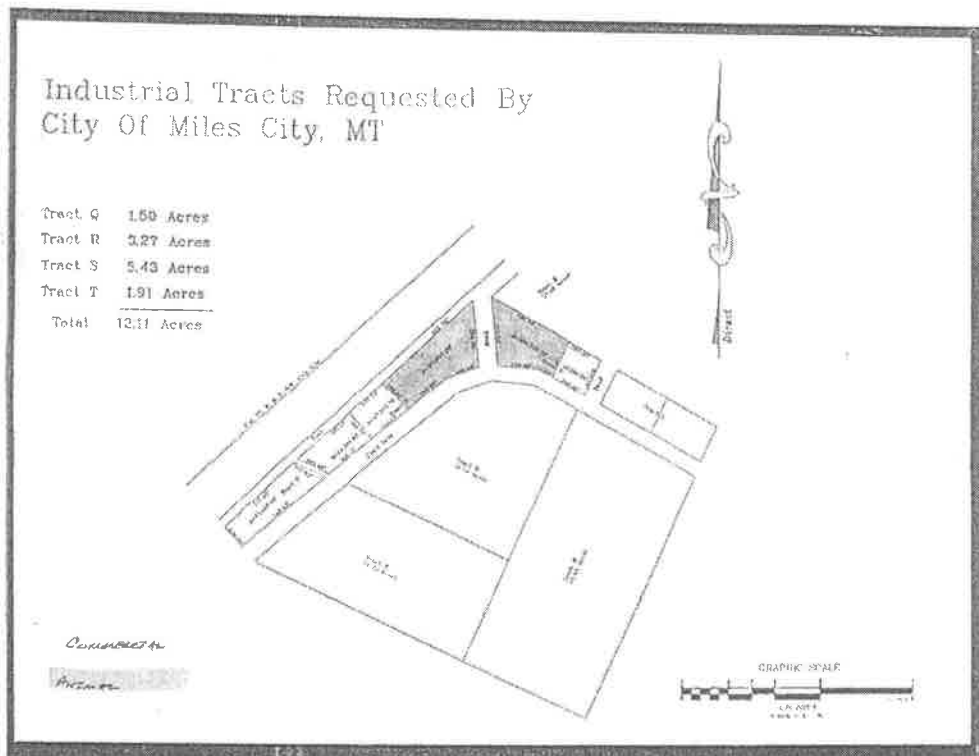
- Tract R (Commercial) - \$ 2,848.82
- Tract S (Animal) - \$ 2,500.34
- Tract T (Commercial) - \$ 1,663.99

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.

- Article 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 (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.
- Article 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.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

- Article 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.
 - 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.
- Resolution No. 4191 did not include a map attachment, but the staff report associated with its review included the following map:



Rev Date: 8/24/18 KDC

Page 10 of 10

City Council Staff Report
Industrial Site Lease
Renewal of Singleton Lease
Meeting Date: Aug 28, 2018

Resolution No. 4191 essentially applied to the lease of the portions of Tract S not included in the previously-discussed Singleton/Haynes lease, as well as all of Tracts R & T.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

V. Staff Analysis

- A. Co-tenants of the lease entered into with Resolution No. 2790 for portions of Tract S of the Industrial Site are Jerry Singleton and Gary Haynes. Mr. Haynes has deceased since the 1997 lease was entered into, but the lease agreement is binding on Mr. Haynes' heirs. Mr. Singleton's business, Cowtown Ag Supply, LLC, currently occupies and uses Tract S, as well as Tracts R & T per a 2018 lease agreement attached to Resolution No. 4191. Mr. Haynes' heir, Beverly Haynes, is requesting to be released from the 1997 Singleton/Haynes lease agreement. The lease is not in default, and payments are current through June 30, 2020.
- B. Jerry Singleton has verbally indicated a willingness to take over the Haynes interest and obligation in the Singleton/Haynes lease. Because there are details to work out for the city to assign the Haynes interest in the lease to Mr. Singleton and/or his business entity, the city lease administrator has placed this on the Finance Committees agenda for a recommendation to City Council, during which time the parties to the existing and proposed lease agreements can participate in the discussion over the new lease agreement and associated terms, which are subject to approval by Mr. Singleton (as proposed) and City Council.
- C. According to Article V of the Singleton/Haynes lease agreement, the tenants shall not assign the lease without the prior written consent of the city. Similarly, city Resolution No. 4123 (which provides the procedures to manage and monitor leases), Section 2.g states, "*Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council.*" Therefore, for the Haynes interest in the lease to be assigned to Mr. Singleton or his business, Cowtown Ag Supply, LLC, the city must approve the proposed assignment.
- D. According to Sec. 2-55 of the City Codes, the Finance Committee's duties shall include consideration of all policy matters related to property rented or leased by the city. That subjects this matter to review by the Finance Committee before the City Council will act.
- E. To effectuate the assignment of the Haynes interest in the Singleton/Haynes lease agreement to Mr. Singleton or his business, Cowtown Ag Supply, LLC, a new lease agreement must be entered into between the tenant who is to receive the lease interest assignment. The lease administrator and City Attorney are not of the opinion that the interest in the lease be put out to bid before reassigning the interest in the lease agreement to the existing co-tenant, being Mr. Singleton or his business, Cowtown Ag Supply, LLC. Furthermore, seeking other potential co-tenants to occupy the property jointly with Mr. Singleton's operations would likely be undesirable and troublesome for Mr. Singleton and potential other co-tenants.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

- F. According to Resolution No. 4124, which sets rental/lease rates for city-owned leaseholds, Section 1, Industrial Site leases entered into during and subsequent to FY 2017-2018 shall utilize the minimum rentals listed in the resolution, which for Tracts with gravel road frontage (which applies to Tract S), \$0.20 per square foot per year. This rate will be considerably more than current lease rates being paid under the 1997 Singleton/Haynes lease agreement. Below and within the attached draft resolution (Attachment 7) and lease agreement (Attachment 8) for the assignment are calculations of the increased lease rates. Please also note that according to Resolution No. 4124, Section 1, *“Rates above these minimal base rates may be charged based on the cost of city services or city owned improvements provided as part of the lease...”* The lease administrator is not aware of city services or city-owned improvements that are provided specific to Tract S that could warrant exercising this option to assess rates above the ‘minimal base rates’.
- G. The lease administrator is proposing that if the Finance Committee, City Council, and Jerry Singleton are amenable to assigning the Haynes interest and obligations in the Singleton/Haynes lease agreement to Mr. Singleton or his business entity, that a new lease agreement be entered into according to Resolution No. 4123 and that the lease rate be adjusted according to Resolution No. 4124. For simplicity purposes, the lease administrator is also recommending the Cowtown Ag Supply, LLC lease agreement involving Tract S, and Tracts R & T (Resolution No.4191), be replaced with a single lease agreement that consolidates the applicable leases for Tracts R, S, and T. As proposed by the lease administrator with consultation from the City Attorney, the new lease agreement and lease rates would go into effect at the start of the next fiscal year 2020 – 2021, which aligns with an effective date of changes to lease rates in Resolution No. 4191.
- H. The Cowtown Ag Supply, LLC lease agreement approved by Resolution No. 4191 is for a 25 year term: beginning on July 1, 2018 and expiring at midnight on June 30, 2043, called *“the initial lease term”*, subject to the option to renew the lease as provided for in Article IV of the lease. The agreement also outlines the annual rents to be paid by Cowtown Ag Supply during two terms within that initial 25 year term: (1) the first two years, from July 1, 2018 through June 30, 2020, during which the old rates from Resolution No. 2789 applied (the entire annual rate for all of the Cowtown Ag Supply lease areas is \$1,503.18, which has been paid through June 30, 2020, after which time the rents will increase to the new rates); and (2) from July 1, 2020 through June 30, 2024, which will use annual lease rates of \$2,848.82 for Tract R, \$2,500.34 for Cowtown Ag’s portion of Tract S, and \$ 1,663.99 for Tract T. The total annual rate for the existing lease to Cowtown Ag will therefore be \$7,013.15 during that period. To include the shared Singleton/Haynes lease into the Cowtown Ag Supply lease agreement will change the rates as of July 1, 2020 per below.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

- I. Pursuant to Section 1 of Resolution No. 4124, because a new lease would be entered into between Cowtown Ag Supply, LLC or Mr. Singleton and the City for the Haynes interest in the joint lease for portions of Tract S, the lease rate for that portion of Tract S (which has gravel road frontage) will increase to \$0.20 per square foot per year. Per Resolution No. 2790, the portions of Tract S under the Resolution No. 2790 lease agreement total 111,512.55 square feet (64,468.80 sf Commercial and 47,043.75 Animal). Based on Res. 4124, which sets a rate of \$0.020 per sf/yr, the rate for that part will be \$2,230.25. Added to \$2,500.34 (Cowtown's current share of Tract S covered by the Resolution No. 4191 lease agreement), that would be \$4,730.59 for all of Tract S. The attached draft resolution (Attachment 7) and new lease agreement (Attachment 8) prepared by the City Attorney, includes that proposed rate adjustment. The rate adjustment would go into effect July 1, 2020, which aligns with the beginning of FY 2020-2021, as well as the rate increases under the Cowtown Ag Supply, LLC lease agreement (Res. 4191) and the proposed termination date of the joint Singleton/Haynes lease agreement (Res. 2790) and the conclusion of the rates paid by Beverly Haynes, which are current through June 30, 2020.

VI. Finance Committee Action

The Finance Committee is asked to review the proposed lease rates involved in the lease assignment and make a recommendation to the City Council. Potential City Council actions are found in Section VII of this staff report, and the staff recommendation from the lease administrator is found in Section VIII.

VII. City Council Action

The City Council could approve, deny or table the proposal to assign the Haynes interest in the Singleton/Haynes lease agreement per the draft resolution (Attachment 7) and new lease agreement (Attachment 8) prepared by the City Attorney. The following are the potential actions that the City Council could take to approve or deny:

A. Approval:

Approval of cancelling the interest and obligations of co-tenant Gary Haynes and his heirs, legal representatives, successors and assigns, including Beverly Haynes, in portions of Tract S of the Industrial Site and assigning the interest and obligations of Haynes as co-tenant per the lease agreement adopted by Resolution No. 2790 to Cowtown Ag Supply, LLC (or Jerry Singleton) and adding the assignment of the lease to the lease agreement with Cowtown Ag Supply, LLC adopted by Resolution No. 4191, subject to similar terms as those found in the lease agreement adopted by Resolution No. 4191, and with updated lease rates for the assigned interest in Tract S in accordance with the rental rates detailed in Resolution No. 4124, which shall become effective July 1, 2020 and payable by June 30, 2020.

**Staff Report to Miles City Finance Committee
Industrial Site Lease Amendment:
Singleton/Haynes Lease of Tract S
Proposed Cancellation/Assignment of Haynes Portion
Report Date: February 6, 2020**

B. Denial:

Should Council decide not to agree to the lease assignment and lease agreement, the City Council may take other action outline what additional information is needed, or pursuant to Mrs. Haynes' written notice and the terms of the Singleton/Haynes lease agreement, upon completion of the paid lease term, the Haynes portion of the lease agreement should terminate and Mr. Haynes' and his heirs' interest and obligations removed. The lease administrator would then initiate the process to put the former Haynes interest out to bid and accept new applications for the leasehold.

VIII. Staff Recommendation

Through review of leasing policies and considering the potential of this project, the lease administrator (staff) recommends that the City Council adopt this staff report as findings of fact and recommend approval of granting Cowtown Ag Supply, LLC a lease with 5 year rate adjustments for at least the next twenty (25) years including a renewal option for an additional 25 years. A draft resolution and lease agreement prepared by the City Attorney are attached to this report (see Attachments 7 & 8).

IX. List of Attachments

Attachment 1: Mrs. Haynes request

Attachment 2: City lease administrator letter to Jerry Singleton

Attachment 3: Resolution 4123

Attachment 4: Resolution 4124

Attachment 5: Resolution 2790 and Singleton/Haynes Lease Agreement

Attachment 6: Resolution 4191 and Cowtown Ag Supply, LLC Lease Agreement

Attachment 7: DRAFT Resolution for NEW Lease Agreement with Cowtown Ag Supply, LLC

Attachment 8: DRAFT NEW Lease Agreement with Cowtown Ag Supply, LLC



CITY OF MILES CITY
P.O. BOX 910
MILES CITY, MT 59301

HAYNES, GARY
 PO BOX 6734
 SHERIDAN WY 82801

Customer # 380

INVOICE NUMBER: 11390
INVOICE DATE: July 01, 2019

EFFORT:

CHARGES

PRODUCTS AND SERVICES:

LEASE-INDUSTRIAL LEASE - 07/01/2019 TRS, ANIMAL UNIT	58.50
LEASE-INDUSTRIAL LEASE - 07/01/2019 TRS, COMMERCIAL UNIT	241.76
Total	300.26

To whom it may concern,
 These lease is in Gary Haynes name and I would like to cancel this lease since he is deceased. It has been a financial burden to me so I am requesting to cancel it. Please send me the information how to do this. I do have both certificates.
 Thank you for your consideration in this matter.

Sincerely,
Beverly Haynes
 Page: 1

PLEASE PROVIDE THE CITY A CERTIFICATE OF LIABILITY WITH YOUR PAYMENT!



CITY OF MILES CITY



17 S. 8th, P.O. Box 910
Miles City, MT 59301-0910

Community Service and Planning

Telephone: 406-234-3462
Fax: 406-234-2903

August 16, 2019

Jerry Singleton
501 Pleasant
Miles City, Montana 59301

RE: Gary Haynes / Singleton Lease

Dear Mr. Singleton,

The City has received a notice from Mrs. Haynes asking to cancel her portion of the shared lease. The lease agreement containing Tract S (commercial) for \$241.76 and Tract S (animal) \$58.80. Totaling \$300.26, due June 30th annually. Mrs. Haynes is current on her portion of the lease and has given her 30 day written notice of cancellation, requesting to be removed from any further financial obligation.

Is the Haynes portion of the lease something you would be interested in leasing? If so, could you please provide a written letter of interest and I then will get back in touch with you regarding Mrs. Haynes assigning her portion of your joint lease agreement to yourself solely.

Sincerely,

Ally Capps
City of Miles City
Community Service and Planning
Lease Administrator

mcplanner@milescity-mt.org

406-874-8613

mailed 8.19.19

COPY

Attachment 2

RESOLUTION NO. 4123

**A RESOLUTION PROVIDING FOR PROCEDURES TO MANAGE AND MONITOR
LEASES OF PROPERTY OWNED BY THE CITY OF MILES CITY**

WHEREAS, the City of Miles City owns various lands, facilities and improvements;

AND WHEREAS, the City desires to lease these lands, facilities and improvements for the benefit of the general community, to provide for appropriate areas for the location of industrial businesses, recreational areas, and similar entities, to manage special use properties, and to generate appropriate public revenues therefrom;

AND WHEREAS, the City Council of the City of Miles City desires to establish procedures to monitor and manage such various leases;

AND WHEREAS, the City of Miles City desires to establish a fair and consistent policy with which to administer the leasing of such lands, facilities and improvements;

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

1. **Lease Administrator.** The Mayor shall designate a lease administrator to administer the leasing of City owned property, including, but not limited to, the Industrial Site tracts. The lease administrator shall have the following responsibilities:
 - a. Provide and update an official map of lands available for lease, in the format set forth in Attachment A
 - b. develop and maintain a record of each leased property containing, at a minimum:
 - (1) an appropriately signed and acknowledged standard form of lease together with a copy of the resolution of the City Council approving such lease;
 - (2) a legal description of the leased parcel;
 - (3) a map of the leased parcel;
 - (4) proof of insurance in compliance with the lease;
 - (5) a listing of City services provided to the property;
 - (6) a brief description of the use for which the property was leased;
 - (7) the full name, address and telephone number of the current lessee;
 - (8) any approved assignments of the lease together with a copy of the resolution of the City Council approving such assignment;
 - (9) all correspondence associated with the parcel including all notices of lease violations;
 - (10) all inspection reports as to compliance with lease terms by lessee;
 - (11) an historical record of lease payments upon the parcel;
 - c. serves as the single point of contact for current leaseholders and for lessees desiring to lease City property;
 - (1) City Clerk's office shall be responsible for billing notices and collection
 - d. develops and present to the City Council an annual lease status report and recommendations as to changes in leases or lease policies;
 - e. conduct on-site inspections of leased tracts at least annually to verify compliance

with lease terms, use for stated lease purpose, occupancy and use by named lessee or approved assignee, condition of leased property, proof of complying insurance, and any environmental degradation; and

- f. such other and further duties and responsibilities as the Mayor or Council may assign from time to time.

2. **Lease Standards.** Leases granted by the City of Miles City shall comply with the following general standards, unless expressly authorized by action of the City Council:

- a. The term of the lease shall be for a period between one to five years. Renewable leases shall be permitted. Leases with terms greater than five years or with renewal options beyond five years shall be set as provided in Section 2(c) and 2(d) below.
- b. The termination dates for leases shall be set for June 30, to coincide with the City's fiscal year. The first year of a lease shall require prorated rentals through June 30 of the subsequent year, due upon commencement of the lease, and subsequent rentals shall be for annual periods from July 1 to June 30, payable in advance of July 1 of each year of the lease term. Proof of Insurance shall be provided with payment.
- c. The minimum base rate for Industrial Site leases shall be established from time to time by resolution of the City Council. Industrial Site leases entered into shall utilize the minimal rental rate as established by City Council.

Rates above these minimal rates may be charged based on the cost of city services or city owned improvements provided as part of the lease.

- d. Rates for leases of City owned property outside of the Industrial Site will be evaluated on a case by case basis.
- e. Lease may provide special considerations for lessee investment in tract cleanup, land surface improvements, or improvements to city service systems. All agricultural leases shall include the following animal husbandry clause: "TENANT shall maintain the property with good husbandry and in good farmer-like manner consistent with the prevailing standards for Custer County, Montana. TENANT will abide by all local, state and federal rules, regulations and laws respecting the use of real property, pesticides, soil erosion, hazardous materials, and chemicals and farming practices. TENANT will take all necessary steps to ensure proper weed control for all property subject to this lease. Fences and other improvements will be maintained in good condition.
- f. Governmental entities, or nonprofit corporations that are determined to be of special benefit to the greater Miles City community, may receive more favorable lease terms or lease rental rates. Any nonprofit entity seeking such benefits shall file with the Lease Administrator a copy of its IRS tax exempt determination and any determination by the IRS that such entity qualifies as a charity.
- g. Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council.

- h. If a Lessee desires to eliminate or modify these standards and the Council is agreeable, then the rental provisions may be revised upward from the minimal base rates, or other provisions for rental adjustment may be included in the lease to assure that the City is receiving fair market value for the leasehold.
 - i. Lessees who own substantial permanent physical improvements which have been constructed upon the leasehold with City permission, may be granted a preferential right to renew their lease, at a rate to be determined by the City, which shall be not less than the minimum rental rate established by the City Council, as adjusted from time to time.
3. **Minimum Documentation for New Leases or requests for modification.** New applications to lease City property, or requests to modify improvements on existing leases, or requests to change the use of existing leases must submit documentation in support of the proposal.

All requests to modify improvements on existing leases must comply with applicable state and federal regulations, and local zoning and building codes.

All requests for change of use for existing leases must have Council approval.

Applications to lease City property or modify existing improvements must include, at minimum, the following documentation:

- a. Legal description of the property;
 - b. Brief description of the intended use or changes in existing use to the property;
 - c. Plot plan showing multiple uses, if any;
 - d. Scaled site plan showing:
 - (1) all existing and proposed improvements, both permanent and temporary;
 - (2) engineering plans for new improvements or modifications to existing improvements;
 - (3) existing and proposed utilities; and
 - e. Description of any extraordinary requirements for physical access, security, water, sanitary sewer, waste storage or disposal or other public utility or environmental need;
 - f. Listing of federal, state, and local permits required for construction or operation;
 - g. Proposals to amend boundaries of existing parcels must be surveyed at the applicant's expense;
 - h. Site preparation for new leases will be the responsibility of the applicant;
4. **Variation from Standards.** The above standards are intended as general guidelines for the Lease Administrator and potential lessees. Nothing herein shall preclude the approval by the City Council of a lease that varies from the above standards should the Council determine that such lease is in the best interests of the City.
5. **Effective Date.** This Resolution supersedes #4053 and shall become effective

January 10, 2018,

SAID RESOLUTION FINALLY PASSED AND ADOPTED AS AMENDED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 9TH DAY OF JANUARY, 2018.



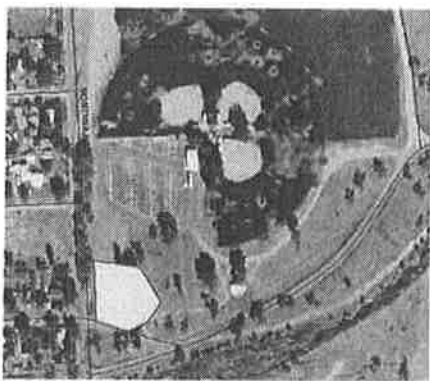
Mayor

Attest: 

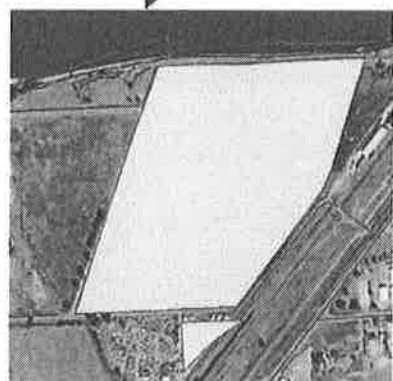
City Clerk

Attachment "A"

City Owned Lease Properties



Bender Park



Sewer Lagoons

-  Owner Parcels
-  Lease Parcels

RESOLUTION NO. 4124

A RESOLUTION ESTABLISHING MINIMUM BASE RENT FOR INDUSTRIAL SITE AND OTHER CITY LEASEHOLDS

WHEREAS, the City of Miles City owns various lands, facilities and improvements;

AND WHEREAS, the City leases these lands, facilities and improvements for the benefit of the general community, to provide for appropriate area for the location of industrial businesses and similar entities, to manage special use properties, and to generate appropriate public revenues therefrom;

AND WHEREAS, the City Council of the City of Miles City, pursuant to its lease policies, shall from time to time establish minimum base rent for certain leaseholds within the Industrial Site, and other leaseholds owned by the City, and the City Council desires to do so at this time.

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

1. **Lease Rate for City Owned Leaseholds.** Industrial Site leases entered into during and subsequent to FY 2017-2018 shall utilize the following minimal rentals:

Tracts with Highway 10 & 12 frontage \$.04 per square foot per year

Tracts with paved road frontage \$.025 per square foot per year

Tracts with gravel road frontage \$.020 per square foot per year

Rates above these minimal base rates may be charged based on the cost of city services or city owned improvements provided as part of the lease.

Rates for leases of City owned property outside of the Industrial Site will be evaluated on a case by case basis.

2. **Effective Date.** This Resolution shall become effective July 1, 2017.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 9TH DAY OF JANUARY, 2018.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

RESOLUTION NO. 2790

A RESOLUTION AUTHORIZING THE LEASING TO JERRY SINGLETON AND GARY HAYNES, OF MILES CITY, MONTANA, OF A TRACT OF LAND OWNED BY THE CITY OF MILES CITY, MONTANA.

WHEREAS, JERRY SINGLETON AND GARY HAYNES, of Miles City, Montana, has hereunto made application for a lease of the following described real property located in Custer County, Montana:

Tract S (Commercial) of the Industrial Site West of Miles City, Montana, containing 64,468.80 square feet, more or less; and

Tract S (Animal) of the Industrial Site West of Miles City, Montana, containing 47,043.75 square feet, more or less; and

WHEREAS, the City Council hereby finds that the area applied for is reasonably necessary for the use of the Lessee as a site for the purpose described in the attached Lease and the application of said Lease should be granted.

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


That it does hereby authorize the leasing to **JERRY SINGLETON AND GARY HAYNES**, of Miles City, Montana, the property owned by the City of Miles City and described above, in accordance with the terms, covenants, purposes, and conditions set forth in the copy of the Lease Agreement, attached hereto, made a part hereof and marked Exhibit "A".

PASSED AND ADOPTED this 10th day of November, 1997.



GEORGE T. KURKOWSKI, Mayor

ATTEST:



PATRICIA D. HUSS, CITY CLERK

LEASE AGREEMENT

THIS AGREEMENT, made entered into this 9th day of September, 1997, 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 **JERRY SINGLETON**, of Route 1, Box 2008, Miles City, Montana 59301, and **GARY HAYNES** of 2105 Main Street, Miles City, Montana 59301, hereinafter referred to as "TENANTS".

WHEREAS, the CITY owns certain real property located in the "Industrial Site" which it desires to lease to an appropriate TENANTS; and

WHEREAS, TENANTS desire lease said property in order to conduct their business thereon;

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 TENANTS, does hereby demise, lease, and let unto TENANTS the real property located in Custer County, Montana, in the Industrial Site West of Miles City, and more particularly described as follows:

Tract S - Commercial - "Containing approximately 64,468.80 square feet, more or less

Tract S - Animal - Containing approximately 47,043.75 square feet, more or less

See map marked Exhibit "A" attached hereto and incorporated herein.

II. TERM.

The term of this Agreement shall be for a period of one (1) year, beginning on July 1, 1997, and expiring on June 30, 1998, subject to the option to renew as hereinafter provided.

III. RENTAL.

Rental for the Lease shall be as follows:	<u>Singleton</u>	<u>Haynes</u>
Tract S - Commercial -	\$241.76	\$241.76
Tract S - Animal -	\$ 58.80	\$ 58.80

Said rents shall be payable on or before the 1st day of July. Each TENANT is jointly and severally liable for the full amount of the rental.

IV. RESPONSIBILITIES OF THE TENANT.

TENANTS do hereby acknowledge, covenant and agree as follows:

A. Purpose.

TENANTS desire to lease the premises described above for the following purposes:

1. Commercial _____
2. Animal _____

TENANTS agree 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.

TENANTS 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.

TENANTS acknowledge that they have carefully examined and inspected the premises and improvements and they are fully familiar and acquainted therewith, and agree to accept the same in their present conditions, and that they are 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.

TENANTS agree to keep the premises and improvements thereon in good repair and upkeep and to preserve the same in at least as good condition as they were at the date of this Agreement, 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.

E. Improvements.

Improvements now located on the described real property shall not be removed or significantly altered. Upon the expiration of this lease, the TENANTS may remove any improvements which they placed upon the premises within ninety (90) days of the expiration date (during which period TENANTS shall pay a prorated monthly rental); provided, however, that the premises shall be restored as nearly as possible to its original condition at the TENANTS' expense.

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 TENANTS are in compliance with the terms of this Agreement.

G. Utilities.

TENANTS agree to pay for the use and maintenance of utility services on the premises, including gas, electricity, water and sanitation, if applicable.

H. Taxes and Assessments.

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

I. Indemnification.

TENANTS 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 TENANTS, their agents, employees or customers, and TENANTS hereby agree to indemnify and hold harmless the CITY for any such loss or damage.

J. Insurance.

TENANTS agree 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. TENANTS further agree to carry minimum liability insurance in the amount of FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$500,000.00) for each accident, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana. TENANTS shall provide evidence of said current and valid insurance on demand of the CITY.

K. Environmental Warranty.

1. General. TENANTS warrant and agree 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, TENANTS shall comply with all local, state and federal environmental laws and regulations.

TENANTS agree 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 TENANTS, their 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.

2. Trucks. TENANTS shall not wash out or clean truck boxes on the premises.

If TENANTS desire to resume such operation, it must **first** obtain **written** approval from the CITY, which approval shall not be given unless and until:

- a. TENANTS have obtained a discharge permit from the State of Montana, **and**
- b. The CITY is satisfied that the operation can be conducted without any damage to the environment and without any violation of any local, state or federal environmental law or regulation.

Furthermore, TENANT SINGLETON agrees that if it violates this § K.2., that the Default provisions under Article VI shall be amended so that no Notice of Default is necessary and the CITY shall have the right to immediately reenter and repossess the premises as against TENANT SINGLETON. All other provisions of Article VI shall remain applicable.

TENANT SINGLETON agrees to indemnify, defend and hold harmless TENANT HAYNES, his employees, agents, heirs 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 the washing of truck boxes by TENANT SINGLETON, his 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.

L. Compliance with ADA.

TENANTS agree to comply with the Americans with Disabilities Act as the same may apply to TENANTS.

M. Non-Discrimination.

TENANTS hereby agree 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.

TENANTS shall not assign this Lease, nor sublet the premises, nor any part thereof, without the prior written consent of the CITY.

VI. DEFAULT.

If TENANTS 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 TENANTS shall fail to remedy such default within twenty (20) 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 TENANTS 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 relet the premises for the remainder of TENANTS' term for the highest rent obtainable and may recover from TENANTS any deficiency between the amount so obtained and the rent due hereunder from TENANTS.

VII. MISCELLANEOUS PROVISIONS.

If is further mutually understood and agreed as follows:

A. Oral Modification Prohibited.

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

B. Renewal.

This Agreement shall be automatically renewed each year for a period not to exceed one (1) year upon the same terms and conditions herein unless the CITY or TENANTS give to the other party written notice of cancellation of said Agreement. Said notice shall be given at least thirty (30) days prior to the termination date of this Agreement or any subsequent renewal termination date.

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; provide, however, that no assignment by, from, through or under TENANTS in violation of the provisions hereof shall vest in the assignee(s) any right, title, or interest whatsoever.

E. Executed Copy.

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

F. Interpretation.

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

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

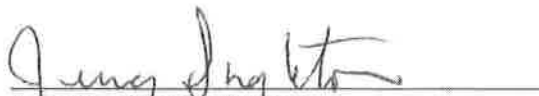

CITY OF MILES CITY

By: 
ITS MAYOR

ATTEST:

By: 
PATRICIA D. HUSS, CITY CLERK

TENANT:


JERRY SINGLETON

GARY HAYNES

Industrial Tracts Requested By City Of Miles City, MT

Tract Q	1.50 Acres
Tract R	3.27 Acres
Tract S	5.43 Acres
Tract T	1.91 Acres
Total	12.11 Acres



GRAPHIC SCALE



Commercial

Industrial

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.

CITY PROPERTY LEASE AGREEMENT

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

CITY PROPERTY LEASE AGREEMENT

(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.

CITY PROPERTY LEASE AGREEMENT

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.

CITY PROPERTY LEASE AGREEMENT

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:

CITY PROPERTY LEASE AGREEMENT

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,

CITY PROPERTY LEASE AGREEMENT

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.

CITY PROPERTY LEASE AGREEMENT

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)

RESOLUTION NO. 4310

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION MAINTENANCE AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Montana Department of Transportation (MDT) is completing a construction project at the intersection of North 7th Street, and requires that the City provide certain agreements and assurances as to maintenance matters falling within the City's jurisdiction and purview, related to said project;

AND WHEREAS, MDT has provided an agreement setting for the obligations of MDT and the City related to said project;

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

1. The "Construction Maintenance Agreement" between the City of Miles City and the Montana Department of Transportation, attached hereto as Exhibit "A", and made a part hereof, 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 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 25TH DAY OF FEBRUARY, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit A

Construction & Maintenance Agreement

NH 18-1(15)0
Miles City – North
UPN 8710000

This Agreement by and between the City of Miles City (City), and the Montana Department of Transportation (MDT, Department, or State), establishes the responsibilities and duties of the parties in respect to project activities on a portion of North 7th Street (N-18) located within the City of Miles City, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 8710000, Federal-Aid Project Number NH 18-1(15)0, titled Miles City – North (Project) located on North 7th Street (N-18) between 0.0 and 2.2; and,

Whereas, State and/or Federal Highway Administration (FHWA) funds will be used to pay for the construction, the City and State must ensure that federal and state requirements are met in fulfilling its obligations to the FHWA and for the project to remain eligible for state and/or federal funding; and,

Whereas, the Project lies on the designated National Highway System under the jurisdiction of the Montana Transportation Commission and MDT as per Mont. Code Ann. 60-2-110; and,

Whereas, the City and MDT recognize the need to construct the Project and to duly execute this Agreement in advance of construction phase programming; and,

Whereas, the City desires to have the Project constructed, the City deeming it to be a valuable and beneficial consideration, and it will perform the functions, duties and responsibilities as set forth in Agreement;

Now, therefore, the parties agree as follows:

ARTICLE I. GENERAL OBLIGATIONS OF MDT

1. MDT will design and award a Contract to construct the Project.
2. MDT will provide the City opportunities to participate in the Project's development, including invitation to the final inspection of the project.
3. MDT will maintain the roadway surface, including pavement repair, pavement preservation, and snowplowing, and will maintain all features, including signals (if present) and non-decorative roadway lighting, within the roadway prism unless otherwise noted herein.
4. If the City does not fulfill any maintenance requirements stated herein, MDT may complete the required maintenance and seek compensation from the City. In doing so, MDT must first provide notice to the City allowing time to complete any such

maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.

5. For any maintenance requirements that are the obligation of the City, as stated herein, MDT may complete any maintenance required due to a public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the City.
6. MDT is the issuing authority for all future encroachment and approach permits.

ARTICLE II. GENERAL OBLIGATIONS OF THE CITY

1. The City agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.
2. The City will provide appropriate and timely input during the Project's development.
3. The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the project.
4. The City, at its sole expense, will maintain the City signs installed as part of this project. For the purposes of this Agreement, "maintenance of signs", is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, the wind, or other means.
5. The City agrees no fixture, building, structure, or other permanent installation other than those approved by MDT shall be constructed or placed within MDT right-of-way without prior written approval from MDT.
6. Unless specified otherwise herein, the City agrees it will fund any additional costs MDT may incur on future MDT projects due to any amenities the City places in the MDT right-of-way.
7. The City agrees that any City-performed maintenance that occurs within MDT right-of-way must be reviewed and approved by the appropriate MDT District Maintenance Office prior to initiation of the maintenance.

ARTICLE III. PROJECT-SPECIFIC FEATURES

1. Sidewalks

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the sidewalk within the project limits, such that it does not negatively impact the operation of the sidewalk or the safety of the traveling public. If all or part of the Project becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
- b. For the purposes of this Agreement, “maintenance of a sidewalk” is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged sidewalk; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.

2. Storm Drain System

- a. The existing storm drain inlets, manholes and piping will be perpetuated or upgraded as determined necessary with this project.
- b. Upon completion of the Project by the State and its Contractor, the City agrees that it will continue to be responsible, at no cost to MDT, to service, maintain and repair the storm drain system that is within the boundaries of, or is related to, this project and which may or may not have been constructed with Federal-aid and/or State funds.
- c. For the purposes of this Agreement, “maintenance of storm drain system”, is defined as: The inspection, cleaning, repair and replacement of the storm water inlets, piping, manholes and appurtenances making up the Storm Drain System.
- d. The City will maintain the storm drain system agreed to in this agreement to the same condition as completed. In the event the City contracts for work of any kind to be performed for the maintenance of the facilities described herein, the City will comply with all state and federal laws and regulations.

ARTICLE IV. GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.

2. **Termination** – This Agreement may be terminated by MDT if the City violates or breaches any term, condition, or article of this Agreement and the City has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the City’s representative, of such violation or breach of any term, condition, or article of this Agreement. If this Agreement is terminated, the improvements become the property of MDT, without reimbursement. MDT will maintain the property as it sees fit and may remove the improvements without City or landowner approval. MDT may seek compensation for maintenance or removal of the improvements from the City.

3. **Other Agreements** – Other Agreements pertaining to the project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.

4. **Hold Harmless & Indemnification**
 - a. The City agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City’s employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the City, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.

 - b. The State and Department of Transportation agrees to protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT’s employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the City.

5. **Insurance**
 - a. **General Requirements:** Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each

party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

- b. **General Liability Insurance:** Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
- c. **General Provisions:** All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.
- d. **Workers' Compensation Insurance:** The City must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

6. Public Safety

It is agreed, if any repairs to the elements of the Project must be performed to address or prevent a public hazard, the City will immediately protect the area from public access, contact the appropriate MDT District Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the City and the City shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct project costs. MDT's IDC rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 10.41% for fiscal year 2020 (July 1, 2019 to June 30, 2020). If the work

occurs or extends into fiscal year 2021 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

i. Invoice will be sent to:

City of Miles City
P.O. Box 910
Miles City, MT 59301-0910

ii. Payments shall be made to:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

8. Choice of Law and Venue – This Agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this agreement. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.
9. Binding Effect -- The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.
10. Relationship of Parties -- Nothing contained in this Agreement shall be deemed or construed (either by the parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.
11. Non-Discrimination – The City will require that during the performance of any work arising out of this Agreement the City, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment “A” attached hereto and made part of this Agreement.
12. ADA - MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessibility Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT’s detailed drawings, 608 series.
13. Audit – The City grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the City maintains in connection with this Agreement.

14. Utilities -- This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
15. Amendment and Modification -- This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. Representatives
 - a. City's Representative: The City's Representative for this Agreement shall be the City Manager or designee or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, MDT may direct its communication or submission to other designated City personnel or agents.
 - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, City may direct its direction or communication or submission to other designated MDT personnel or agents.
17. Counterpart Execution -- This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

IN WITNESS WHEREOF, MDT's authorized representative has hereunto signed on behalf of the State of Montana, and the City's authorized representative on behalf of the City, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____
Montana Department of Transportation Date _____

Approved for Legal Content

Approved for Civil Rights

CITY OF _____

Name
Title

Attest:

Name
Title

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital
status, pregnancy, childbirth, or medical
conditions related to pregnancy or childbirth,
religion/ creed, social origin or condition,
genetic information, sex, sexual orientation,
gender identification or expression, national
origin, ancestry, age, disability mental or
physical, political or religious affiliations or
ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statues and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.