

RESOLUTION NO. 4368

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN
“AGREEMENT TO SELL AND PURCHASE” CERTAIN REAL PROPERTY OWNED
BY THE CITY OF MILES CITY.**

WHEREAS, the City of Miles City is the owner of certain real property located within Custer County, Montana, to wit:

TOWNSHIP 8 NORTH, RANGE 47 EAST, P.M.M.

A parcel of land being a portion of the southwest quarter, Section 29, Township 8 North, Range 47 East, P.M.M., Custer County, Montana, with the outer perimeter more particularly described as follows:

Beginning at the south quarter corner of said Section 29, said point being the POINT OF BEGINNING; thence South 89 degrees, 55'37" West, a distance of 250.7 feet; thence North 23 degrees 59'09" East, a distance of 616.4 feet; thence South 00 degrees 01'08" East, a distance of 562.8 feet to the POINT OF BEGINNING. Containing 1.62 acres, more or less;

AND WHEREAS said real property is used and controlled by the Miles City Airport as part of Frank Wiley Field, but has been leased to Ben Holmen for a number of years, as said property is not in actual use by the airport;

AND WHEREAS the Miles City Airport Commission desires to sell said property to Ben Holmen, and Ben Holmen desires to purchase the same, with the proceeds of such sale to be deposited with the Miles City Airport Commission;

AND WHEREAS Ben Holmen has made substantial improvements to the property during the tenure of his leasehold, with approval of both the City and the Miles City Airport Commission, and as such may purchase said property for fair market value without going to bid, pursuant to City of Miles City Resolution #4100;

AND WHEREAS as the property value is less than \$25,000, fair market value may be determined by a real estate broker's opinion of value;

AND WHEREAS, the City has obtained opinions of value from four different real estate brokers, and has determined based on said opinions that the fair market value of said property for purposes of sale is Five Thousand Dollars (\$5,000.00);

AND WHEREAS the terms and conditions of purchase, including certain restrictions to be placed upon said property to ensure that the same will not interfere in airport operations, have been reduced to writing by the City Attorney in a certain "Agreement to Sell and Purchase" attached hereto as Exhibit "A," and the City Council finds it in the best interests of the City to enter into the same;

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

1. The "Agreement to Sell and Purchase" 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, and to execute any subsequent documents necessary in order to close said transaction.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A TWO-THIRDS VOTE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22ND day of SEPTEMBER, 2020.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Exhibit "A"

AGREEMENT TO SELL AND PURCHASE

THIS AGREEMENT TO SELL AND PURCHASE made and entered into this 22nd day of September, 2020, by and between **THE CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. 8th Street, Miles City, Montana 59301, hereinafter referred to as "SELLER", and **BEN HOLMEN**, of 115 Champion Lane, Miles City, Montana 59301, hereinafter collectively referred to as "PURCHASER".

WITNESSETH:

WHEREAS, SELLER is the owner of certain real property located in Custer County, Montana and desires to sell the same to PURCHASER;

WHEREAS, PURCHASER desires to purchase the aforementioned real property from SELLER;

WHEREAS, the parties hereto desire to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. DESCRIPTION OF REAL PROPERTY SOLD. SELLER agrees to sell to PURCHASER and PURCHASER agrees to purchase from SELLER, upon the terms and conditions hereinafter set forth, the following described real property, hereinafter "Property," located in Custer County, Montana and described as follows:

TOWNSHIP 8 NORTH, RANGE 47 EAST, P.M.M.

A parcel of land being a portion of the southwest quarter, Section 29, Township 8 North, Range 47 East, P.M.M., Custer County, Montana, with the outer perimeter more particularly described as follows:

Beginning at the south quarter corner of said Section 29, said point being the POINT OF BEGINNING; thence South 89 degrees, 55'37" West, a distance of 250.7 feet; thence North 23 degrees 59'09" East, a distance of 616.4 feet; thence South 00 degrees 01'08" East, a distance of 562.8 feet to the POINT OF BEGINNING. Containing 1.62 acres, more or less.

EXCEPTING AND RESERVING to SELLER, its successors and assigns, all right, title and interest now owned by SELLER in and to all oil, gas, coal and other minerals in and under said lands, together with the right of ingress and egress to the real estate for purpose of exploring, developing and producing said minerals.

SUBJECT TO: The right of Seller to cause any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace, or landing at, or taking off from, or operation at Frank Wiley Field airport; The right of Seller to prohibit the erection or structures or growth of natural objects that would constitute an obstruction of air navigation to and from the said airport The right of Seller to prohibit any activity on the purchased lands that would interfere with or be a hazard to the flight of aircraft over the land or to and from said airport or that interferes with air navigation and communication facilities serving the said airport; The right of Seller to impose necessary height limitations and land-use restrictions in accordance with current and future FAA criteria as applied to the said airport.

2. PURCHASE PRICE. PURCHASER agrees to pay a purchase price of FIVE THOUSAND DOLLARS (\$5,000.00), due and payable at closing.

3. APPRAISAL AND INSPECTION CONTINGENCIES. This agreement shall not be contingent on appraisal or any other contingency.

4. CLOSING. PURCHASER has selected Security Abstract & Title Co. to act as the closing agent for this transaction. Closing shall occur at the offices of said title company in Miles City, Montana, no later than December 31, 2020. *The closing agent's fees shall be paid by*

PURCHASER.

5. POSSESSION. SELLER shall deliver possession of the Property upon closing.

6. DELIVERY OF DEED. At time of closing and contemporaneously with receiving the final payment hereunder, SELLER will execute and deliver to PURCHASER a good and sufficient warranty deed conveying marketable title to the Property. *SELLER shall direct the City Attorney to draft said warranty deed and an accompanying realty transfer certificate at the City's expense.* PURCHASER directs that said deed shall vest title in the name of the PURCHASER.

7. PRORATION OF TAXES. PURCHASER shall be responsible for all taxes and assessments which become due following final closing.

8. SELLERS' REPRESENTATIONS AND WARRANTIES. SELLER represents and warrants to PURCHASER, which representations and warranties shall be true as of the closing date, as follows:

- (a) SELLER has full power and authority, and has been authorized by the City Council of Miles City, Montana, to enter into this contract and to carry out the transactions contemplated by this contract.
- (b) All mortgages, judgments, and liens shall be paid or satisfied by the SELLER. SELLER agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the preliminary title insurance commitment approved by PURCHASER.

The foregoing representations, warranties and covenants shall survive closing and shall not be deemed merged in any other contract, document or instrument. There are no other representations, warranties express or implied, except as set forth herein.

9. RESERVATIONS AND EXCEPTIONS. Except as herein provided, any

conveyance hereunder shall also be subject to:

- a) All recorded and visible easements and rights of way;
- b) Mineral and royalty reservations or conveyances of record;
- c) Reservations and exceptions in patents and other conveyances of record;
- d) Any unpaid installment and unmatured installment and interest thereon, for any special improvements or purposes of a like nature, from and after January 1, 2020;
- e) General real estate taxes from and after January 1, 2020;
- f) All building, use, zoning, sanitary and environmental restrictions, if any;
- g) Federal, state and local laws and regulations affecting this property, including zoning and land use regulations;
- h) Questions of boundary or fence lines dependent upon actual survey for determination;
- i) Adjudications, re-adjudications or determinations in accordance with Montana law regarding any water rights appurtenant to the property which are currently before the Montana Water Courts or may be brought before the Montana Water Courts at some future time.

10. DEFAULT. This Agreement shall be enforceable by either party by means of the remedy of specific performance.

11. PURCHASER'S INVESTIGATION. PURCHASER acknowledges that PURCHASER has made a full and complete investigation and inspection of the Property, and is, or will be at closing, thoroughly acquainted with its condition and status. PURCHASER acknowledges that neither SELLER nor anyone acting, or purporting to act, on behalf of SELLER has made any representation with respect to the Property, including but not limited to physical condition, boundaries, encroachments, the state of repair or maintenance of the Property, or any other matter concerning the Property. PURCHASER acknowledges that any information or documentation provided by SELLER with respect to ownership of the Property, or matters pertaining to any of the Property is not warranted by SELLER to be complete or accurate.

PURCHASER SPECIFICALLY UNDERSTANDS THAT THE PROPERTY IS BEING SOLD "AS IS", EXCEPT AS PROVIDED HEREIN, AND AGREES TO ACCEPT THE PROPERTY "AS IS", EXCEPT AS PROVIDED HEREIN, AND IN ITS PRESENT CONDITION AND STATE OF REPAIR, AND ACKNOWLEDGES THAT SELLER IS MAKING NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS OR A PARTICULAR PURPOSE, EXCEPT THE WARRANTIES OF TITLE AS HEREINBEFORE SET FORTH. The provisions of this paragraph shall survive Closing or termination of this Agreement.

12. LEGAL COSTS AND EXPENSES. In the event legal or equitable action is taken to enforce any provision of this Sale and Purchase Agreement, the prevailing party is to be awarded their court costs and reasonable attorneys' fees, all as determined by the appropriate court.

13. RISK OF LOSS UNTIL POSSESSION. SELLER agrees to keep said property in at least the condition as the same existed on the date of the full signing of this Agreement. The risk of loss or damage from any cause shall be in SELLER until possession is delivered to PURCHASER. In the event of minor damage, SELLER shall restore the premises to the condition they were in at the time of sale, and this Agreement shall remain in full force and effect.

14. GOVERNING LAW. This contract shall be governed by and construed in accordance with the laws of Montana. The parties agree to confer jurisdiction and venue for any actions with the District Court of the Sixteenth Judicial District of the State of Montana in and for the County of CUSTER.

15. NOTICE. All notices hereunder may be given by registered or certified mail, or by personal service thereof, and the time shall commence to run on the date of mailing, if mailed, or the date of service, if served. Until written notice is given of change of address, any notice to any of the parties may be given as hereinbefore provided to the parties at the addresses stated above. Notice shall be deemed complete when deposited in the United States Post Office.

Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice. Any change of address must be by notice pursuant to this paragraph.

16. PURCHASER'S AND SELLER'S CERTIFICATION. By entering into this Agreement, each person or persons executing this Agreement, as PURCHASER or SELLER represent that they have the legal capacity and authority to own or transfer real property in the State of Montana.

17. ENTIRE AGREEMENT - MERGER OF PREVIOUS UNDERSTANDING. This Agreement embodies and constitutes the entire understanding between the parties hereto with respect to the transaction contemplated herein, and all prior or contemporaneous negotiations, communications, conversations, understandings and agreements had between the parties hereto, oral or written, are merged in this Agreement.

18. TITLE INSURANCE. SELLER agrees to furnish a standard Purchaser's Title Insurance Policy with standard printed exceptions, in a sum equal to the purchase price, disclosing merchantable title to said lands as of the date of this contract, except as may be herein otherwise provided. *Said title insurance premium shall be paid by PURCHASER.*

19. ADDITIONAL COSTS. PURCHASER shall be responsible for any costs

associated with PURCHASER'S financing, to include lender's title premiums, inspections, appraisals, and any costs not directly attributed to SELLER herein.

20. PARAGRAPH HEADINGS. The paragraph headings herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

21. COUNTERPARTS. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein "counterparts" shall include full copies of this Agreement signed and delivered by facsimile transmission as well as photocopies of such facsimile transmission.

22. TIME AND BINDING EFFECT. It is mutually agreed that the time of payment shall be an essential part of this contract and that all of the terms and conditions herein contained shall extend to and be obligatory upon the heirs, executors, administrators, personal representatives and assigns of the respective parties hereto.

23. PREPARATION BY SELLER'S ATTORNEY. This Agreement has been drafted by the City Attorney of the City of Miles City, Montana, and on behalf of the SELLER. PURCHASER acknowledges that they have had the opportunity to seek independent legal advice with regards to this Agreement, and has either done so, or chosen not to do so, and waives any conflict of interest.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF MILES CITY


By: **JOHN HOLLOWELL, Mayor**


PURCHASER

ATTEST:


LORRIE PEARCE, City Clerk