

## RESOLUTION NO. 4402

### **A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND BIG SKY CREMATION SERVICES L.L.C., LOCATED WITHIN THE INDUSTRIAL SITE OWNED BY THE CITY OF MILES CITY.**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" which desires to lease to an appropriate tenant the following;

**Legal Description:** Lots 4 and 5 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 50,000 square feet, more or less.

**AND WHEREAS**, the CITY presently leases the foregoing property to TENANT Big Sky Cremation Services, LLC, which is the successor in interest to Bullis-Graves Memorial Chapel/Eastern Montana Cremation Service, pursuant to a certain lease agreement dated August 9, 1996;

**AND WHEREAS**, TENANT desires to make additional use of the leasehold for cremation of human remains and to erect a human crematorium, and has requested that an amended lease be approved by the CITY;

**AND WHEREAS** it is the desire of TENANT and the CITY to lease the above described Leasehold to TENANT for a term of five (5) years with updated lease terms and use, subject to the option to renew as hereinafter provided.

**AND WHEREAS**, The annual rental for the initial lease term described in Section II. shall be in accordance with the rates established by the CITY, as follows:

**Lot 4 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.025 per sq. ft.) *Paved frontage roads*, for a total rental of six hundred and twenty five and Dollars (\$625.00)

**Lot 5 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.020 per sq. ft.) *Gravel frontage roads*, for a total rental of five hundred and 00/100 Dollars (\$550.00) for each year of the initial lease term.

*Total annual payments for lot 4 and 5 will total One thousand one hundred 75/100 dollars (\$1,175.00).* Payments in subsequent years shall be due and payable in advance of July 1 of each subsequent year of the lease term, commencing July 1, 2021 through June 30, 2026.

**AND WHEREAS** the City Council finds that it is in good interest of the City to accept the request for the assignment of such lease and should be granted;

**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 Big Sky Cremation Services L.L.C., attached hereto as Exhibit "A", and made a part hereof, and hereby authorizes the Mayor of the City of Miles City to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OR THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

**ATTEST:**

**CITY OF MILES CITY**

  
\_\_\_\_\_  
Mary Rowe, CITY CLERK

  
\_\_\_\_\_  
John Hollowell, MAYOR

## ***CITY PROPERTY LEASE AGREEMENT***

**THIS AGREEMENT** made and entered into this 11<sup>th</sup> day of May 2021 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 Big Sky Cremation Services LLC, of 1806 Main Street, Miles City, MT 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" which desires to lease to an appropriate tenant the following;

**Legal Description:** Lots 4 and 5 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 50,000 square feet, more or less.

**AND WHEREAS**, the CITY presently leases the foregoing property to TENANT Big Sky Cremation Services, LLC, which is the successor in interest to Bullis-Graves Memorial Chapel/Eastern Montana Cremation Service, pursuant to a certain lease agreement dated August 9, 1996;

**AND WHEREAS**, TENANT desires to make additional use of the leasehold for cremation of human remains and to erect a human crematorium, and has requested that an amended lease be approved by the CITY;

**AND WHEREAS** it is the desire of TENANT and the CITY to lease the above described Leasehold to TENANT for a term of five (5) years with updated lease terms and use, subject to the option to renew as hereinafter provided.

**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 the Miles City Industrial Site and more particularly described as follows:

Lots 4 and 5 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 50,000 square feet, more or less, hereinafter "*Leasehold*".

### ***II. INITIAL TERM***

The term of this Agreement shall be for a period of five (5) years, beginning on May 11, 2021 and expiring at midnight on June 30, 2026, hereinafter, "*the initial lease term*", subject to the option to renew this lease as provided for in Article IV of this lease.

### ***III. RENTAL***

The annual rental for the initial lease term described in Section II. shall be in accordance with the rates established by the CITY, as follows:

**Lot 4 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.025 per sq. ft.) *Paved frontage roads*, for a total rental of six hundred and twenty five and Dollars (\$625.00)

**Lot 5 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.020 per sq. ft.) *Gravel frontage roads*, for a total rental of five hundred and 00/100 Dollars (\$550.00) for each year of the initial lease term.

*Total annual payments for lot 4 and 5 will total One thousand one hundred 75/100 dollars (\$1,175.00).* Payments in subsequent years shall be due and payable in advance of July 1 of each subsequent year of the lease term, commencing July 1, 2021 through June 30, 2026.

#### ***IV. OPTION TO RENEW.***

FOLLOWING the "INITIAL LEASE TERM", TENANT shall have the option to renew this lease a maximum of four (4) times, for renewal periods of (5) years each. TENANT shall provide notice to the CITY of TENANT'S intent to renew not more than 90 days and not less than 30 days prior to the expiration of the initial or 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:

*Operate Big Sky Cremation Services (crematory) and holding facility (refrigerated unit)*

- o Commercial Building "A" existing pet crematorium 27'X36'
- o Commercial Building "B" newly erected human crematorium 30'X50'

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 extra hazardous 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.

**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 storm water 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' written 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, 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.**

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.

**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 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.**

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.


ATTEST:

CITY OF MILES CITY

  
\_\_\_\_\_  
Mary Rowe, CITY CLERK

By:   
\_\_\_\_\_  
John Hollowell, MAYOR

TENANT:  
BIG SKY CREMATION SERVICES L.L.C.

By:   
\_\_\_\_\_  
Joe Stevenson, Individual