



# CITY OF MILES CITY AGENDA

*Regular Council Meeting  
City Council Chambers  
and zoom.us*

*May 23, 2023  
6:00 p.m.*

## CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
  - A. Regular City Council Meeting 05/09/2023
  - B. Human Resources Committee Meeting 04/06/2023
  - C. Finance Committee Meeting 05/10/2023
  - D. Public Service Committee Meeting 05/11/2023
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS

Building Inspector ~ Christopher Horton
5. STAFF REPORTS
6. CITY COUNCIL COMMENTS
7. MAYOR COMMENTS
8. COMMITTEE RECOMMENDATIONS

Finance Committee recommends approving items C-F under new business
9. BID OPENINGS

Wastewater Generator Replacement
10. NEW BUSINESS
  - A. **REQUEST FOR LETTER OF SUPPORT FOR ONE HEALTH.**
  - B. **APPROVE PROPOSAL AND CONCEPT OF BOAT RAMP ON RIVER BY WALLEYES UNLIMITED.**
  - C. **RESOLUTION NO. 4509 - A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND TODD NEIFFER AND ELIZABETH NEIFFER, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**
  - D. **RESOLUTION NO. 4510 – A RESOLUTION TO CORRECT LEGAL DESCRIPTIONS IN RESOLUTION NO. 4118 AND RESOLUTION NO. 4119, TO AGREE TO RENEW A LEASE AGREEMENT WITH THE ASSIGNED**

**TENANT IN THE ASSIGNED TENANT'S NAME, AND TO APPROVE A NEW LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND CENTER AG SUPPLY, LLC, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

- E. RESOLUTION NO. 4511 - A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND DAVID P. JERREL, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**
- F. RESOLUTION NO. 4512 - A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND HUGO MUGGLI INC., FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**
- G. APPROVAL OF APRIL CLAIMS**

**11. 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 May 9, 2023**  
**6:00 p.m.**

**CALL TO ORDER**

The Regular Council meeting was held Tuesday, May 9, 2023, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana and online at zoom.us. Mayor John Hollowell called the meeting to order. Council Members present were Pamela Bovee, Ken Gardner, Rick Huber, Mathew Regan, Kathy Wilcox, and Dwayne Andrews. Council Members Roxanna Brush and Chris Grenz were not present.

Also present were City Attorney Dan Rice, Fire Chief Branden Stevens, Public Utilities Director Tom Speelmon, Dispatch Supervisor Lyne Anderson, and City Clerk/Minute Recorder Mary Rowe.

**PLEDGE OF ALLEGIANCE**

Mayor Hollowell led the Council in the Pledge of Allegiance.

**APPROVAL OF COUNCIL & COMMITTEE MINUTES**

A. Regular City Council Meeting 04/25/2023

\*\* *Councilperson Regan moved to approve the minutes of the Regular City Council Meeting of April 25, 2023, subject to any changes, and seconded by Councilperson Gardner. The motion passed by unanimous consent, 6-0.*

**SCHEDULE MEETINGS**

Public Service Committee Meeting 5/11/23 @ 5:00pm  
Finance Committee Meeting 5/10/23 @ 5:00pm

**REQUEST OF CITIZENS & PUBLIC COMMENT**

Walleyes Unlimited representatives, Tyler Trogden, Quade Jessen, and Ramon Dyba, requested approval to develop a plan to install a boat ramp into the river by the water plant parking area. They explained that there are several sources of funding available to assist with the cost, but they need to have a project plan in place to apply. The location was chosen based on the depth of the river in that area. They will have engineers draw up the plan upon approval.

Director Speelmon stated that the only area that could be an issue is the new intake placement, but that was something they could work on together.

Chief Stevens said that he would be willing to write a letter of support for the installation of the boat ramp because it would be a direct benefit to Miles City Fire and Rescue also.

Attorney Rice suggested that the property be deeded over with restrictions to eliminate the City being involved.

Council added the request from Walleyes Unlimited to the next Council Agenda.

Clerk Rowe played a video created by DOXO to introduce council to them and what they can do as far as online point of sale service.

Director Speelmon explained that the new software that was recently purchased for utilities has all of the same capabilities at no additional cost to the customer or the City.

### **APPOINTMENTS**

Police Commissioner

\*\* *Councilperson Huber moved to re-appoint Blayne Watts, seconded by Councilperson Regan and passed unanimously, 6-0.*

### **PROCLAMATIONS**

Mayor Hollowell declared May 20<sup>th</sup>, 2023 as Kids to Parks Day

### **STAFF REPORTS**

Staff Reports were reviewed.

### **CITY COUNCIL COMMENTS**

Councilperson Regan stated that he had attended the South Eastern Montana Development Corporation (SEMDC) meeting on the 27<sup>th</sup> where the growth policy and the capital improvement plan were discussed. There needs to be a planning board meeting set to review.

Councilperson Gardner explained that he has been receiving complaints about trucks using jake brakes when coming down the 7<sup>th</sup> street bridge. He also had been receiving complaints about the north side garbage (showed a picture) and asked how to address this issue. Mayor Hollowell told him the first step is to report it to dispatch to get the ball rolling.

Councilperson Andrews requested Mayor Hollowell write a letter on behalf of the city to address repairing the railroad crossing on Montana street.

Councilperson Huber asked about changing the days of the City Council meetings as they collide with the School District meetings schedule.

**MAYOR COMMENTS**

None

**COMMITTEE RECOMMENDATIONS**

None

**BID OPENINGS**

None

**BID AWARDS**

None

**PUBLIC HEARINGS**

- A. **ORDINANCE NO. 1369 (*Second Reading*) – AN ORDINANCE REVISING SECTION 11-77 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, SO AS TO ADOPT THE 2021 INTERNATIONAL FIRE CODE.**

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

**UNFINISHED BUSINESS**

- A. **ORDINANCE NO. 1369 (*Second Reading*) – AN ORDINANCE REVISING SECTION 11-77 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, SO AS TO ADOPT THE 2021 INTERNATIONAL FIRE CODE.**

\*\* *Councilperson Wilcox moved to approve the Ordinance, read by title only, seconded by Councilperson Bovee.*

Chief Stevens stated that the new book is in the Clerk's office.

\*\* *On a roll call vote the motion passed 6-0. Ordinance No. 1369 passed.*

**NEW BUSINESS**

- A. **Approve Mark Ahner's 4th of July Requests for City to Supply:**  
-Event Insurance  
-Road Closure & Signs  
-Park Use Permit  
-Police Escort

**\*\*** *Councilperson Gardner moved to approve the requests, seconded by Councilperson Andrews and passed unanimously, 6-0.*

**B. RESOLUTION NO. 4507 - A RESOLUTION OF THE CITY OF MILES CITY APPROVING A TASK ORDER WITH INTERSTATE ENGINEERING PERTAINING TO CERTAIN PROJECTS AS SET FORTH IN THE MILES CITY LONG RANGE TRANSPORTATION PLAN.**

**\*\*** *Councilperson Bovee moved to approve the Resolution, read by title only and seconded by Councilperson Regan. On roll call vote, the motion passed unanimously, 6-0.*

**C. RESOLUTION NO. 4508 - A RESOLUTION APPROVING TASK ORDER 2023-1 FOR ENGINEERING SERVICES BETWEEN THE CITY OF MILES CITY AND BROZ ENGINEERING, INC. RELATED TO THE NORTH HAYNES AVE. SANITARY SEWER RAHABILITATION PROJECT.**

**\*\*** *Councilperson Huber moved to approve the Resolution, read by title only, seconded by Councilperson Gardner. On roll call vote, the motion passed unanimously, 6-0.*

**ADJOURNMENT**

**\*\*** *Councilperson Huber moved to adjourn the meeting, seconded by Councilperson Regan and passed 6-0.*

The meeting was adjourned at 7:10 p.m.

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**John Hollowell, Mayor**

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**Mary Rowe, City Clerk**

**Human Resources Committee**  
**April 6, 2023**

The **Human Resources Committee** met Thursday, April 6, 2023 at 5:00 p.m. at City Hall Conference Room. Present were Committee Members Kathy Wilcox, Dwayne Andrews, Pam Bovee and Rick Huber. Also present were: Councilperson Mathew Regan, Fire Lieutenant Casey Miller, Dispatch Supervisor Lyne Anderson, Police Chief Doug Colombik, Fire Chief Branden Stevens. Firefighter Brad Davis and Human Resources Officer/Recorder Linda Wilkins.

Chairperson Wilcox called the meeting to order.

1. Request of Citizens  
None

2. Staff Comments  
Chief Colombik requested that the draft Dispatch Policies and Procedures be reviewed at the next Human Resources Committee Meeting.

3. Committee Member Comments  
None

4. Revise, recommend to Finance Committee

- a. Non-union staff COLA for FY 2023-24

*\*\*Committee Member Andrews moved to recommend to the Finance Committee a 3-4% COLA for non-union staff, seconded by Committee Member Bovee. The motions passed unanimously 4-0.*

- b. Non-union staff Wage Matrix Step Increase for FY 2023-24

*\*\*Committee Member Bovee moved to recommend to the Finance Committee a step for non-union staff, seconded by Committee Member Andrews. The motions passed unanimously 4-0.*

5. Schedule next meeting – Feb 9, 2023; 5 pm

Meeting was scheduled for April 20 @ 5:00 p.m.

6. Adjournment

*\*\*Committee Member Huber moved to adjourn, seconded by Committee Member Andrew. The motion passed unanimously 4-0.*

The meeting was adjourned at 5:24 p.m.

Respectfully submitted,

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Chairperson Kathy Wilcox

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Recorder Linda Wilkins



## Finance Committee Meeting

May 10, 2023

The Finance Committee met Tuesday, May 10, 2023 at 5:00 p.m. in the Miles City, City Hall Conference Room and online at zoom.us. Present were Committee Chair Roxanna Brush, and Committee Members Pamela Bovee, Rick Huber, and Kathy Wilcox.

Also present were Contracted Planner/Lease Administrator Joel Nelson and City Clerk/Recorder Mary Rowe.

Committee Chair Brush called the meeting to order.

### 1. Request of Citizens and Public Comment

None

### 2. Review and Recommend Industrial Site Leases

Contractor Nelson explained that there are four leases to review.

#### A. Neiffer Lease:

He explained that the Neiffer lease was a new lease that had gone out to bid, but only had one bidder. He also noted that the lease reflects the updates rates

**\*\*** *Committee Member Wilcox moved to recommend approving the Neiffer lease, seconded by Committee Member Bovee and passed unanimously, 4-0.*

#### B. Larsen/Center Ag Supply Lease:

He noted that this one is a correction of the legal description rather than an expired term.

**\*\*** *Committee Member Wilcox moved to recommend approving the Center Ag Supply lease, seconded by Committee Member Bovee and passed unanimously, 4-0.*

#### C. Hugo Muggli Inc. Lease:

Committee Member Huber stated that the property is still not cleaned up and would like “personal storage” taken out of the lease agreement as a use of property.

Chris Grenz, 506 Mississippi, suggested changing the language in the lease agreement to include a more specific description of items that could be stored as “personal”, in case it goes to court.

Contractor Nelson explained that there were some compliance issues and they are still actively being worked on.

**\*\*** *Committee Member Brush moved to recommend approving the Hugo Muggli Inc. lease, seconded by Committee Member Bovee and **passed 3-1, with Committee Member Huber voting no.***

D. Jerrel Lease:

Contractor Nelson explained that there was a name change to this lease agreement, with legal documentation showing ownership and they have also provided proof of substantial improvements on the property.

**\*\*** *Committee Member Wilcox moved to recommend approving the Jerrel lease, seconded by Committee Member Bovee and **passed unanimously, 4-0.***

### **3. Adjournment**

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

The meeting was adjourned at 5:45p.m.

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**Roxanna Brush, Chairperson**

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**Mary Rowe, Clerk/Recorder**

**PUBLIC SERVICE COMMITTEE MEETING**  
**May 11th, 2023**

The Public Service Committee met May 11th in the City Hall Conference Room, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Present were Committee Members, Dwayne Andrews, Matthew Regan, and Ken Gardner, and Chris Grenz.

Also present were Councilperson Rick Huber, and Deputy City Clerk/ Recorder Jody Kinsey.

Chairperson Andrews opened the meeting

**1.Request of Citizens**

**-None-**

**2. Committee Member Comments**

**-None-**

**3. Discuss and Recommend Permanent Parking on 6<sup>th</sup> Street by 519 Building**

Eric Hogan 414 Kircher Creek Road spoke as one of the owners of the 519 building. He would like to see dedicated parking for clients of the building on 6<sup>th</sup> street. He is wanting to make improvements to the building and increase tenants but people are hesitant because of the parking. Councilperson Regan questioned if the street was wide enough for angle parking on both sides of the street. Councilperson Gardner suggested he ask surrounding businesses if they support the idea. He also thought it would set a precedence that all downtown businesses would request the same. Councilperson Grenz suggested a petition to see if surrounding business owners support his plan.

**\*\*** *Committee Member Grenz moved to table the discussion, seconded by Committee Member Andrews. The motion **passed** by unanimous consent, **4-0**.*

**4. Adjournment**

**\*\*** *Committee Member Grenz moved to adjourn the meeting, seconded by Committee Member Andrews. Motion **passed**, **4-0**.*

*The meeting was adjourned at 5:19pm*

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Duane Andrews, Committee Member

\_\_\_\_\_  
Jody Kinsey, Recorder

# Staff Reports

## Mary Rowe

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**From:** Dan Rice <drice@milescity-mt.org> on behalf of Dan Rice  
**Sent:** Monday, May 15, 2023 12:35 PM  
**To:** Mary Rowe  
**Subject:** Staff Report

Hi Mary,

Just a brief note for Council.

I have been working with Joel at Geoplant on the lease renewals, as well as some clarifications as to mobile vs. modular vs. manufactured housing as it relates to zoning.

Otherwise, the projects I have been working on have appeared in the recent Council packets.

Regards,

Daniel Z. Rice  
City Attorney, Miles City, MT  
P.O. Box 728, 513 Main St.  
Miles City, MT 59301  
(406)232-4070  
(406)232-4093 (Fax)

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# Staff Report for Public Works & Parks Departments

1. Primary focus of current work underway throughout the city and challenges related to it. Pot hole patching, storm drainage, street sweeping, tree trimming, signage, and equipment maintenance is taking place. Mechanics are repairing equipment and servicing trucks, police and fire equipment

The City on behalf of the Parks Department received a check for \$3,500 from Stockman Bank for the Splash Pad fencing. MCI2 has also donated \$4,000. Overall \$7,520 was donated to the splash pad fence. The fence work was installed by Martin Fencing. Punch list items for the splash pad will be addressed in May before the opening the first of June. The Oasis will also open the first week of June.

Road Improvements, curbing and new sidewalk work is being completed on Horizon Parkway by Diamond J Construction.

2. Status of all contracted work underway throughout the city and challenges related to it. 59 North Project in 2024. Tongue River Slough project anticipation date is likely 2024-2025 with preliminary design anticipated being complete late summer or fall of 2023.

3. Status of projects in the planning phase. Highway 59 North is in the engineering and design phase with Interstate Engineering and MDOT. The Tongue River Slough project is with KLJ and in the design and engineering stage. The Montana TA grant application was submitted on April 12<sup>th</sup>.

4. Information about State, County and utilities projects throughout the city. MDU will start year #2 of its gas line repairs in the spring focusing on the downtown area.

5. Budget variations exceeding current budgeted ceilings, including overtime expenditures. No budget variations at this time and the Streets and Parks are under 50% budget for overtime expenditures at this time.

6. Major equipment purchases anticipated in the next 6 months. Tandem dump truck that went out to bid a year ago, was budgeted for and approved by Finance and Council. The tandem dump truck has been on back order for a year has been delivered as of April 11<sup>th</sup>.

7. Performance improvement measures primarily selected by the officer but including the # of overtime hours paid the last calendar month preceding the date of the report. Our departments goal is to be safe and efficient operators and perform the task that arise. The # of hours for overtime the month of May is 6 hours so far before BHS weekend.

**Public Utilities Staff Report**  
**April 11, 2023**

**Current work:**

Utilities Crew – Performed 136 Locates. Cleaned Oasis pump wet well and infill tubes. Performed all weekly and monthly sewer inspections. Finished deck replacement on gooseneck trailer. Replaced 6 curb stops and responded to 7 sewer calls.

Water Treatment Plant – Finished repairs to #1 clarifier basin in addition to the normal operation and maintenance tasks. Attended training at Ft. Keogh on new Lead and Copper rule. New employee training is progressing well.

WWTP – Normal operations and maintenance at the plant and lift stations.

Water Office – Normal duties. Working with Black Mountain and CUSI on setting up new billing software.

**Contract Work:**

None at this time

**Current Projects:**

N 7<sup>th</sup> Street – Our portion of design complete with the exception of changes required to adjust to MDOT requirements as they finish their design. Bid fall of 2023, construction summer of 2024.

N. Haynes Sewer – Contractor finished cleaning and videoing line. Major work will begin probably in August when hopefully ground water levels are lower.

WWTP Generator Replacement – No bids were received, project was advertised again with a May 23<sup>rd</sup> closing date.

Fill Station – Nothing new to report.

Southgate Storage Tank-KLJ will be here May 11<sup>th</sup> to inspect tank and determine scope of project.

**Projects (2-5 yrs) Preliminary Planning Phase:**

Darling Addition Phase IV and V – Will take place after the N 7<sup>th</sup> project if funding available.

North Montana Sewer Line – Working with SEMDC for funding through EDA

Tongue River Force Main – Was part of previous project. Will most likely get split out and become a project on its own in order to reduce the size of the proposed EDA project.

Storage Tank Painting – The Southgate and Riverside Park Storage Tanks will require inspection and painting. No issues with the Riverside Park Tank.

Soil Stabilization/Erosion repair on east side of Southgate Tank Hill – Tentatively planning to discuss task on site with contractors this summer to determine best way to proceed.

WTP Intake replacement – PER complete. Looking for funding. This will be approximately 5-6 million dollar project.

**Major Equipment Purchases Next 6 months:**

New sewer Jetter Truck that went out to bid last year should be delivered in May or June.

New Dump Truck has been delivered.

**Overtime Hours:**

February – WWTP/WTP 58.7 hrs

Utilities 40.25 hrs

The overtime hrs at the plants is due one employee out for injury, staff training and lift station call outs.  
The Utilities crew overtime is from after hours sewer call outs.



**Staff Report to Miles City Finance Committee  
Proposed Industrial Site Lease:  
Lots 6 and 7 of Tract "E" of the Industrial Site  
Todd and Elizabeth Neiffer  
Report Date: May 2, 2023**

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## **I. General Information**

**Type of Request:** Proposal to lease Lots 6 and 7 of Tract "E" of the Industrial Site and enter into a new lease agreement with the City of Miles City

**Requestor:** Todd and Elizabeth Neiffer

**Date of Finance Committee meeting:** Wednesday, May 10, 2023 at 5:00 p.m. at the City Hall Conference Room, 17 South 8<sup>th</sup> Street, Miles City

**Date of City Council meeting:** To be determined

## **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 record<sup>1</sup>, 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 from the federal government 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.

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. 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.

Todd Neiffer and Elizabeth Neiffer began leasing Lots 6 & 7 of Tract "E" in 2012. The two 25,000 square foot lots total 50,000 square feet in size, and the purpose is for "the pasturing of stock". Resolution No. 3506 was passed and adopted by City Council on June 26, 2012, to authorize the lease, and a lease agreement was entered into on July 12, 2012. The initial lease term was five years, with a one-time option to renew for an additional five years. After the lease was renewed in 2017 for five years, the lease agreement was to expire on July 30, 2022; however, the City Council granted two six-month extensions: (1) on June 28, 2022 to bring the expiration date to December 31, 2022, and (2) on December 27, 2022 to bring the expiration date to June 30, 2023 to coincide with the City's fiscal year.

The City's rules for lease management require that, except for renewals of leases of lots with "substantial permanent improvements", the City must offer the lots for bid by written proposal. The lots in question do not contain substantial permanent improvements; therefore, the City solicited written proposals to lease the lots. The notices of intent to lease Lots 6 & 7 of Tract "E" were published in the Miles City Star

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<sup>1</sup> 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 Lots 6 & 7 are among lots in the Industrial Site that have never been recorded as 'tracts of record' at the clerk and recorder's office.

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on December 19 & 26, 2022 and January 2 & 9, 2023, and the current lessees, Todd and Elizabeth Neiffer were sent a letter notifying them of the intent and encouraging them to submit a proposal to lease the lots again.

The City only received one proposal to lease Lots 6 & 7 – Elizabeth and Todd Neiffer have proposed another 5 or 10 year lease as explained in their letter dated December 27, 2022, Attachment 1 to this report.

The applicants are also proposing improvements that are part of the City's consideration of their lease proposal. The applicants would like to build an addition to an existing shed to cover a water pump, bring power to the building, and finish an incomplete fence. Attachment 2 is the applicant's further explanation, with a drawing of proposed improvements. Photographs have also been submitted in support of the applicants' proposal to add these improvements, which appear later in this report.

The process for the City considering the proposal to lease the lots is to first transmit the written proposals to the Finance Committee, then the Finance Committee is to meet, review the proposals, conduct interviews of potential lessees, and then pass on the Committee's recommendation to the City Council for action as it deems in the best interests of the City.

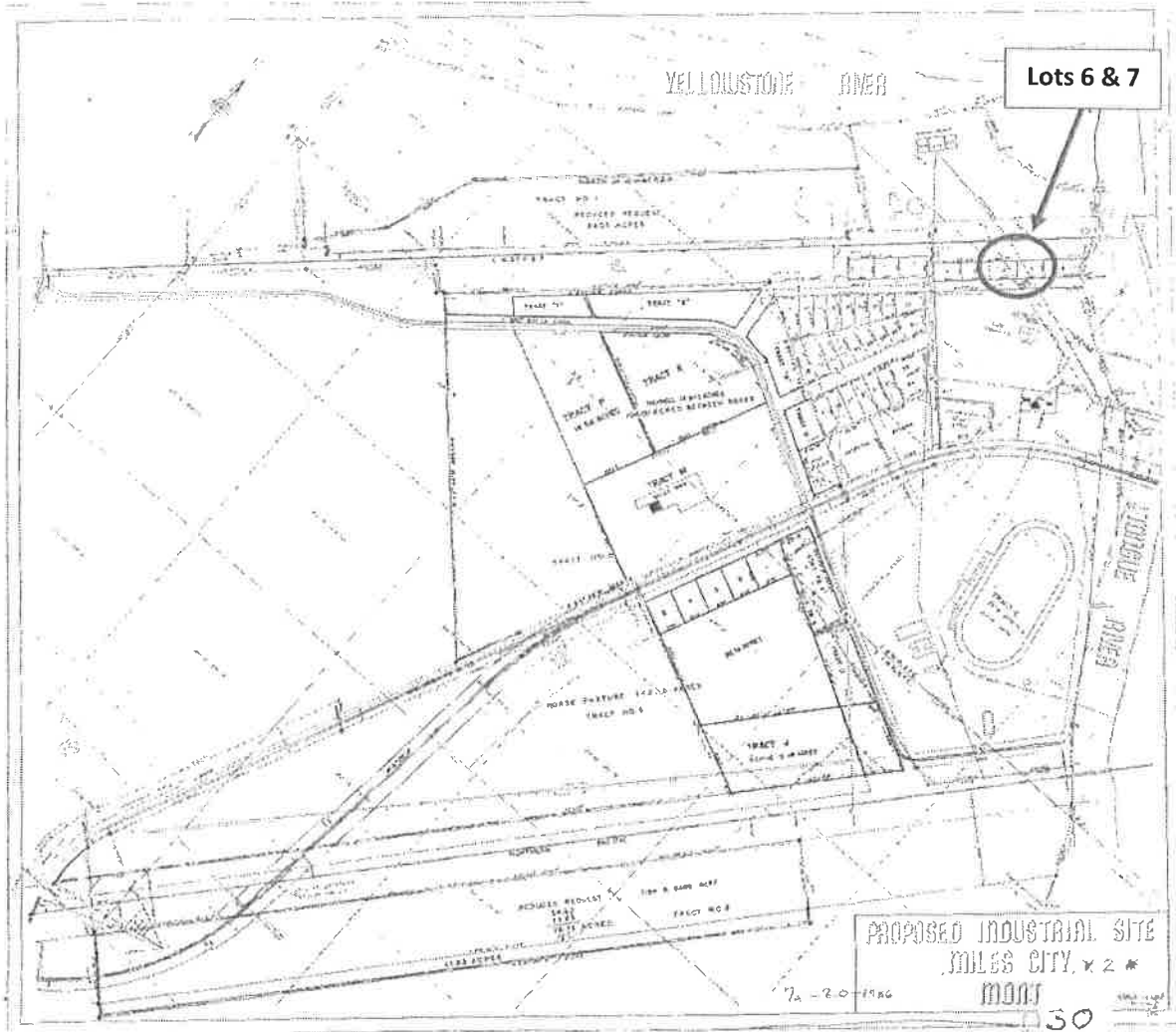
### **III. Map Series**

The following series of maps are included for reference:

1. Map 1 (page 3) is a 1956 map of the Industrial Site that is often used for administration of the leased lots.
2. Map 2 (page 4) is a zoomed-in excerpt of the 1956 map to show the lots in question, being Lots 6 & 7 of Tract "E".
3. Map 3 (page 5) is August 2022 aerial imagery from Google Earth, with the approximate boundaries of the leasehold drawn by the acting Lease Administrator, scaled off of features such as Water Plant Road and the railroad tracks. Please note the boundaries are very approximate.

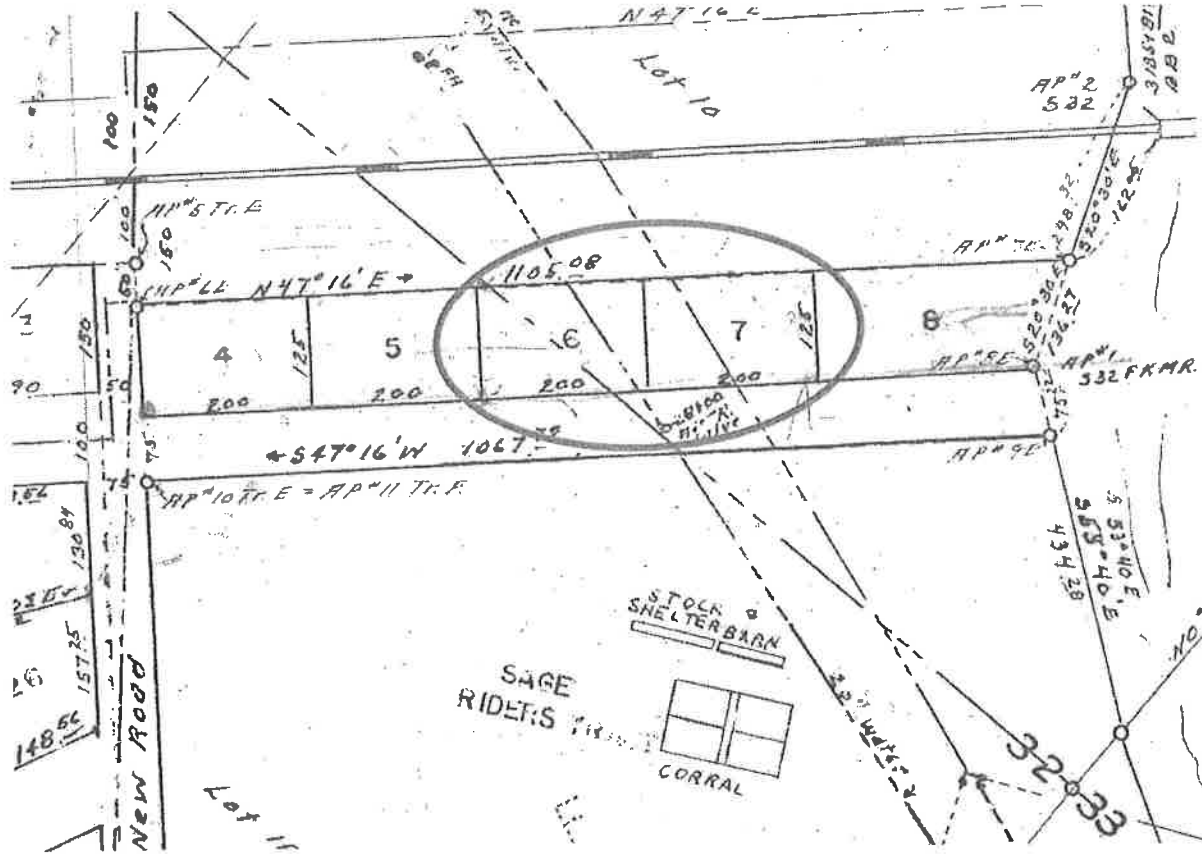
Staff Report to Miles City Finance Committee  
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Todd and Elizabeth Neiffer  
Report Date: May 2, 2023

Map 1: 1956 Map of Industrial Site, with the location of Lots 6 & 7 of Tract "E" noted:



**Staff Report to Miles City Finance Committee**  
**Proposed Industrial Site Lease:**  
**Lots 6 and 7 of Tract "E" of the Industrial Site**  
**Todd and Elizabeth Neiffer**  
**Report Date: May 2, 2023**

Map 2: 1956 Map of Industrial Site, zoomed in to Lots 6 & 7, which are circled:



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Map 3: Google Earth imagery with approximate boundaries of the leasehold:



#### **IV. Applicable City Policies/Regulations**

Because the Industrial Site and 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. The applicable resolutions are discussed below, with applicable sections included.

The current resolutions that govern the City's operation of the leased lots include Resolution #4100 (a 2017 resolution establishing procedures for the sale or lease of city lands), Resolution No. 4123 (a 2018 resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City), and Resolution No. 4124 (a 2018 resolution establishing minimum base rent for Industrial Site and other city leaseholds). Attached to Resolution #4100 is a "Standard Form of Lease" that is used as a template for City Property Lease Agreements.

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

**Staff Report to Miles City Finance Committee  
Proposed Industrial Site Lease:  
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Todd and Elizabeth Neiffer  
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- **Resolution #4100:**
  - **Section 1. Notice of Intent To Lease City Real Property.** Except as set forth in Section 4, the City shall give notice of its intent to lease City real property by publication in a newspaper of general circulation in the county, once each week, for four (4) consecutive weeks, with at least five (5) days between each publication. The notice shall solicit written proposals for the lease of such property and give a date and time by which all such proposals must be deposited with the City Lease Administrator. The notice shall give the legal description of any tract of real property offered for lease, a description of any improvements included within such lease, and the amount of current annual rental rates for such real property. If the property is offered for lease under a standard form of lease, the notice shall state that the standard form of lease is available for review at the City Lease Administrator's office, setting forth the name, telephone number and business address of the City Lease Administrator.
  - **Section 4. Extension of Leases With Substantial Permanent Improvements.** The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate, any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.
  - **Section 6. Transmittal of Offers to Finance Committee.** Following the date and time specified in the published notice for submission of written proposals, the City Lease Administrator shall transmit a copy of all written proposals timely received, to the chair of the Finance Committee of the City Council.
  - **Section 7. Review and Recommendation of Finance Committee.** The Finance Committee shall then meet, review all such proposals, conduct such interviews of proposed lessees or purchasers as it deems necessary, and shall pass on to the City Council all such proposals, with the Committee's recommendations for action thereon.

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- **Section 8. Council Consideration.** Upon receipt of the recommendation of the Finance Committee, the City Council shall take such action upon such proposed lease or purchase as it deems in the best interests of the City. Nothing herein shall be construed as requiring the Finance Committee or the City Council to accept any written proposal for lease or purchase.
  
  - **Section 10. Two-Thirds Majority Vote Required to Lease or Sell.** Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.
- **Resolution No. 4123:**
    - **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.

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**Lots 6 and 7 of Tract "E" of the Industrial Site**  
**Todd and Elizabeth Neiffer**  
**Report Date: May 2, 2023**

---

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.



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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.
- **Resolution No. 4124:**
    - **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:

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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.

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.

## **V. Draft Lease Agreement**

A draft lease agreement, prepared by the Lease Administrator and reviewed by the City Attorney, is attached to this report as Attachment 6. The draft lease agreement is based on the standard form of lease document attached to Resolution #4100, with the following additions:

- o The animal husbandry language from Section 2.e of Resolution No. 4123 for agricultural leases has been added along with other maintenance language of the same section. See Section V.B and V.D of the draft agreement.
- o To require proof of liability insurance in the amount of \$750,000.00 per claim and \$1,500,000.00 per occurrence.

## **VI. Lease Administrator Analysis**

- A. Todd and Elizabeth Neiffer have leased Lots 6 & 7 since 2012, so for over 10 years. It is the Lease Administrator's understanding that during this time, the lease has remained in good standing with the exception of a late payment in 2021, which was resolved. The lease payments are current through June 30, 2023.

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- B. 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.
- C. The applicants' submittal does not include a "bid" amount; however, 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 are based on the type of road they front on. Lots 6 & 7 do not technically front on a "road", but the leasehold is accessed by a gravel road that extends from Water Plant Road through Lot 4 and the railroad property along the northwest side of Lots 4 – 8. Therefore, the minimum rate for the lots should be based upon them having gravel road frontage. For Tracts with gravel road frontage, the minimum base rate is \$0.020 per square foot per year. Each lot is 25,000 square feet in size, for a total of 50,000 square feet for the leasehold. The annual minimal base lease rate for the leasehold should be set at \$1,000 per year. This is the amount provided for in the draft resolution and lease agreement.
- D. 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 Lots 6 & 7 that would warrant exercising this option to assess rates above the 'minimal base rates'.
- E. According to Section 2.b of Resolution No. 4123, Proof of Insurance shall be provided with payment for leases. Section J of the draft lease agreement addresses this requirement to provide the City with proof of liability insurance for the coming fiscal year before June 30. The Lease Administrator has discussed insurance requirements for leases with the City Attorney. Based on statutory requirements, the City requires the tenant to agree to carry minimum liability insurance in the amount of \$750,000 for each claim and \$1.5 million for each occurrence, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana. This will require a change in insurance policy prior to the new lease term.
- F. As stated in the introduction to this report, the Industrial Site property was granted to the City from the federal government for industrial and recreational purposes and for use as a museum site. With the purpose of the proposed lease being for the pasturing of stock, the use does not fall within the industrial or museum purposes, but could be considered a recreational use, with the lessees using the leasehold for horse pasturing. In any event, the City has previously chosen to lease Lots 6 & 7 to the Neiffers instead of allowing the land to sit idle. With only one bid proposal

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submitted, it appears appropriate to again allow for the use of the leasehold to be for pasturing stock instead of soliciting additional bid proposals or letting the land sit vacant while seeking lessees that may desire another use of the lots. It is also noteworthy that with the location of the 100-year floodplain covering most of Lot 7 and portions of Lot 6, the property is somewhat limited in terms of potential industrial development, and a county floodplain permit and associated approvals may be necessary depending on project specifics, verification of the precise location of the floodplain, and consultation with the Custer County Floodplain Administrator.

- G. The Lease Administrator spoke to Elizabeth Neiffer on January 31, when she expressed the desire to purchase the lots. At that time, the Lease Administrator advised Mrs. Neiffer that it likely would not be beneficial to the City to sell the lots due to it being cost prohibitive and because the lots are not tracts of record that could be sold like other lots in the Industrial Site without the City first dividing them from the rest of Tract "E". However, since the Lease Administrator cannot speak for the City Council, the Lease Administrator suggested the Neiffers submit a letter outlining their wishes to purchase the lots. On February 10, 2023, the City received the attached letter from the applicants stating they would like the chance to purchase the leased lots (Attachment 3). The letter also cited a 2018 memo (and attached a copy of page 1 of the memo) from Land Solutions, LLC, planning consultants for the City of Miles City, who were working on a real estate feasibility study of various options related to the future of the Industrial Park, which had been commissioned by City Planner Dawn Colton at that time. It should be noted that the memo was intended to request leaseholders participate in a questionnaire that would inform an investigation into options for future City management of the Industrial Park, including but not limited to continuation of the current long-term leases, to partial or full disposal (sale) of the land in the Industrial Site. The memo was not intended to suggest the City had plans to sell any specific lots. It should also be noted the feasibility study was never completed; after research and performing cost/benefit analyses, it was determined that the costs associated with preparing lots for sale, possibly extending infrastructure, and the "reversionary" clauses in the federal patents would exceed the potential proceeds.
- H. The Lease Administrator has recently discussed the applicant's desires to purchase the lots with Mayor Hollowell and City Attorney Dan Rice. While the three cannot speak for the full City Council, the conclusion of the discussion was that the various costs to prepare Lots 6 & 7 for sale (administrative costs, costs of dividing the lots, and the appraisal and closing costs), along with the reversionary clause in the patents, would make the sale of Lots 6 & 7 very cost prohibitive. The City would also need to find a way to divide Lots 6 & 7 from Tract "E", have the lots appraised, put them out to bid for sale and if the City did decide to sell them, receive the appraised value from the selected offeror, and then send 100% of the proceeds to the federal government, who

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in turn is to return 10% to the City. The 10% return probably makes it not worth the trouble for the City.

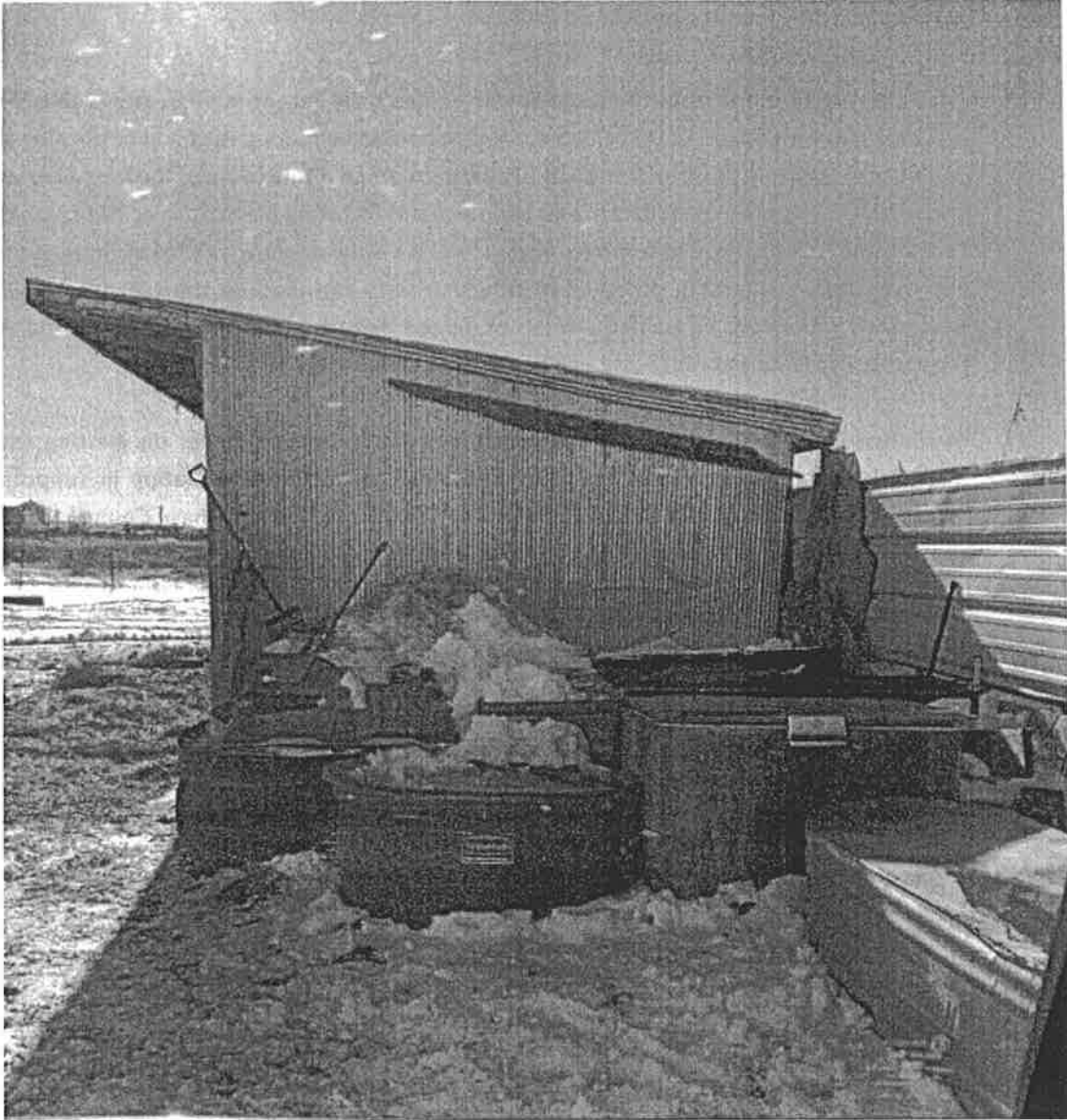
- I. The February 10 letter from the Neiffers also explains the recent improvements they've made, and their plans for future improvements. They've graded the access road and performed cleanup, and plan to continue to do so if the City allows them to continue to lease the lots. They also plan on building additional outbuildings and add-ons, and installing electricity. At the request of the Lease Administrator, the Neiffers have also provided a drawing showing the existing and proposed improvements. Regarding potential improvements to the road, in the Lease Administrator's discussions with Elizabeth Neiffer, she has explained that they only intend to grade and maintain the access road and not make any significant improvements to it.
  
- J. Resolution No. 4123, Section 3: "...requests to modify improvements on existing leases, or requests to change the use of existing leases must submit documentation in support of the proposal." and "All requests for change of use for existing leases must have Council approval." In addition, 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;

The Lease Administrator will use the drawing and photos provided to the applicant, as well as imagery and site visits to document the improvements that are made, as contemplated in this report.

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**Photograph 1:** the side of the existing shed the applicants propose to build an addition to



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**Photograph 2:** the existing shed the applicants propose to build an addition to, which would extend the roof to the right side of the photo



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**Photograph 3:** the fence applicants propose to complete to separate the horses from pasture



- K. According to Resolution No. 4123, Section 2.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."* One question that should be asked of the applicants is whether they have reviewed the draft Lease Agreement, and if so, whether they find the terms and lease costs acceptable. If the applicants wish to modify terms that are based on the lease standards in Section 2 of Resolution No. 4123, the Finance Committee recommendation may address whether deviations from the standards should result in a rental adjustment upward from minimal rates.

## VII. Finance Committee Interview with Proposed Lessees

Section 7 of Resolution #4100 requires the Finance Committee to conduct interviews with proposed



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lessees. Said Resolution does not outline what questions are to be asked of the potential lessees, so the Lease Administrator has prepared the following questions for consideration by the Finance Committee:

1. Have you reviewed the draft Lease Agreement, and if so, do you find the terms and lease costs acceptable?
  - a. Note: If the applicants wish to modify terms of the lease agreement based on their desire to eliminate or modify the standards in the draft lease agreement that are based on the standards found in Resolution No. 4123, any pertinent follow-up questions should be asked. Then when the recommendation of the Finance Committee is reviewed by City Council, 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. *(Resolution No. 4123, Section 2.h)*
2. Are you prepared to provide the City with proof of liability insurance in the updated amounts in the draft lease agreement for the coming fiscal year before June 30?
3. Have you had any conflicts with adjacent landowners or lessees?
4. What measures have you taken to manage noxious weeds on the site?
5. Do you have any questions for the City?

In addition to the questions above that the Finance Committee may ask, the members of the Committee should ask any additional questions as they deem appropriate.

### **VIII. Finance Committee Action**

The Finance Committee is asked to review the applicant's proposal, the proposed lease rates, the draft lease agreement, and this staff report, as well as consider the applicant's responses to interview questions, and make a recommendation to the City Council. Potential City Council actions are found in Section IX of this staff report, and the staff recommendation from the Lease Administrator is found in Section X.

### **IX. City Council Action**

The City Council could approve, deny or table the proposed lease agreement. The following are the potential actions that the City Council could take to approve or deny:

**A. Approval:**

Approve the lease agreement by resolution, which shall become effective July 1, 2023 and payable by June 30, 2023.

**B. Denial:**

Should Council decide not to approve the lease agreement, the City Council may deny the proposed

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lease, or take other action to outline what additional information is needed. If the proposal is denied, the Lease Administrator could then initiate the process to put the leased lots out to bid and accept new applications for the leasehold, if directed to do so by City Council.

## **X. Lease Administrator Recommendation**

Through review of leasing policies and considering the potential of this project, the Lease Administrator recommends that the Finance Committee adopt this staff report as findings of fact and recommend the City Council approve the attached draft resolution granting Todd and Elizabeth Neiffer a 5-year lease with a one-time 5-year renewal option, and authorize the Mayor to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

## **XI. List of Attachments**

Attachment 1: Todd and Elizabeth Neiffer's written proposal dated December 27, 2022

Attachment 2: Todd and Elizabeth Neiffer's further explanation of the proposal, with a drawing of proposed improvements, dated April 25, 2023

Attachment 3: Todd and Elizabeth Neiffer's letter stating they would like the chance to purchase the leased lots, dated February 10, 2023

Attachment 4: Insurance certificate for 7/13/2022 through 7/13/2023

Attachment 5: Draft Resolution to approve a new lease agreement

Attachment 6: Draft NEW Lease Agreement

## Attachment 1

Dec.27<sup>th</sup>. 2022

I Elizabeth and Todd Neiffer:

Want to Put in for another 5 year or 10 year Lease on the Lots 6 and 7 of Tract E of the Industrial Site:

As we went by all the Contract Rules and Regulations as on our Contract had Stipulated.

We kept it clear of Debris and Broken down Vehicles and Broken down Farm Equipment also.

We have made some Improvements also; And plan on continuing to do more this next year too.

We would Very Much Appreciate if you would Consider us to Lease it again for the same amount of time.

And if you are Thinking about ever selling it,we would Love to Purchase it.

Thanks for Allowing us to Lease the Property,

Sincerely Elizabeth and Todd Neiffer

Attachment 2

April 25, 23.

I Elizabeth Neiffer + Todd Neiffer  
Plan on doing a few Projects on the  
Tracts we were Leasing from  
the City for 10 years.

We will do them if we  
get to Lease them again Only.  
For 5 to 10 years as we  
Did Last time.

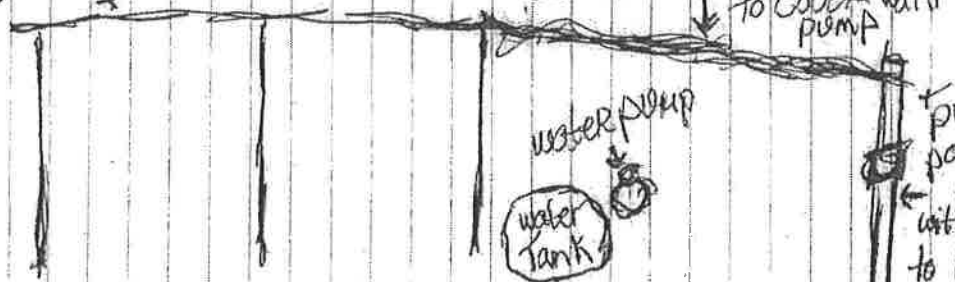
We feel we kept the  
Land free from Extra  
~~Debt~~ Garbage, + did not put  
it full of our other Personal  
Vehicle's or other Equipment.  
As stated in our Lease.

So we would appreciate the  
Chance to be able to lease it again  
Sincerely yours  
Elizabeth Neiffer

April 25th 23

# Plan we want to do.

Build off  
The Big Horse Shelter



Finish  
our fence to  
grow grass  
too.

put a  
power pole  
up  
with a box  
to have  
Electricity



## Attachment 3

February 10, 2023

Attention Joel Nelson

I Elizabeth L. Neiffer and Todd V. Neiffer:

Have Leased the Lot 6 & 7 Of Tract E of The Industrial Site West of Miles City, MT. In Custer County.

We just got done with our 10yr. Lease, Started in 2012. Ended last Yr. June 2022.

We have done some Minor Improvements. And plan on doing more, if we get to Lease it again.

Last Yr. We did purchase a Tractor, which we have cleaned up the place, and also Grated the Road into it some to. And will Continue to do so more, if we get to Continue to Lease it.

We also plan on Building some more out buildings; and add on's too.

Plus we are going to put an Electric Pole with a box, which will have outlets to plug in.

As our Letter we Received in 2018; You guys Stated That we could possibly even have the Rights to Purchase it;

Which We would like to, Have the Chance to Purchase It...As We have Leased it for 10yrs.

Sincerely Elizabeth Neiffer.

**MEMORANDUM**

**Date:** June 14, 2018

**To:** Miles City Industrial Park Leaseholders

**From:** Joel Nelson, Community Planner, Land Solutions, LLC (planning consultants for the City of Miles City)

**Copy:** Dawn Colton, City Planner

**RE:** Leaseholder questionnaire for Miles City Industrial Park Real Estate Feasibility Study

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As you know, the City of Miles City owns and manages the Miles City Industrial Park west of downtown. The City leases lots to a number of lessees, who use the land for a variety of purposes. Miles City officials have commissioned a real estate feasibility study of various options related to the future of the Industrial Park. Land Solutions is leading this effort. Currently, Land Solutions is researching a range of options for future management of the Industrial Park, including but not limited to continuation of the current long-term leases, to partial or full disposal (sale) of the land, which, if implemented, could include providing a first option to purchase to current lessees.

The purpose of this memo is to inform current lessees of the study and to solicit the opinions and input from existing leaseholders to determine their preferences for lease or purchase, plans for potential property improvements and job creation, and other items to be considered in the study. It is critical we understand your preferences as a leaseholder for future ownership, management and maintenance of the Industrial Park, so we are asking for your input.

Please fill out the attached questionnaire and return it to the City of Miles City, or visit [https://docs.google.com/forms/d/e/1FAIpQLSfhJcGoxLpqJWGGUOj9GGEvUuF6nIGi6E8NxBEmf\\_f6Dx1JXA/viewform?c=0&w=1](https://docs.google.com/forms/d/e/1FAIpQLSfhJcGoxLpqJWGGUOj9GGEvUuF6nIGi6E8NxBEmf_f6Dx1JXA/viewform?c=0&w=1) to take the questionnaire online. Your input is extremely valuable, so thank you in advance for your participation. So that your input is most clearly understood, if you have any questions or concerns please contact Joel Nelson, Community Planner for Land Solutions, or Dawn Colton, Miles City Planner.

Contact information is as follows:

# Attachment 4

State Farm

State Farm Fire and Casualty Company

PO Box 2361  
Bloomington IL 61702-2361

L-16-1312-FAB7 M F

NEIFFER, TODD & ELIZABETH  
16 N PRAIRIE AVE  
MILES CITY MT 59301-3618

## RENEWAL CERTIFICATE

POLICY NUMBER	95-BA-W366-5
Premises/ Personal Liability Policy JUL 13 2022 to JUL 13 2023	
BILLED THROUGH SFPP	

### Section FL - Farm Liability

L Farm Liability (Each Occurrence)	\$1,000,000
Damage to Property of Others	500
M Medical Payments to Others (Each Person)	5,000

SFPP No: 1137142715

Add Ins-FL: CITY OF MILES CITY

### Forms, Options, and Endorsements

Premises/Personal Liability	FP-8110.1
Amendatory Endorsement	FE-8635
Amendatory Endorsement-Pollute	FE-8652
Insuring Agreement Amendatory	FE-5905
Mandatory Reporting Endorsement	FE-5801

Annual Premium

\$125.00

### Location of Premises - FL - Farm Liability

LOT 6, INDUSTRIAL TRACTS, 25000 SQ FT (1 ACRE) MILES CITY MT	LOT 7, INDUSTRIAL TRACTS, 25000 SQ FT (1 ACRE) MILES CITY MT
--	--

15 IPFD

01

95-BA-W366-5

138-3076 F.S. 10-11-2010 (01/0085m)

*Thanks for letting us serve you...*

Agent FREDDIE WAMBOLT IV  
Telephone (406) 234-1972

Moving? See your State Farm agent.  
See reverse for Important Information.  
MAY 12 2022

REP



**Forms, Options, and Endorsements**  
Additional Insured  
Chemical Drift Liability

FE-8600.1  
FE-8645

**NOTICE TO POLICYHOLDER:**

For a comprehensive description of coverages and forms, please refer to your policy.

Policy changes requested before the "Date Prepared", which appear on this notice, are effective on the Renewal Date of this policy unless otherwise indicated by a separate endorsement, binder, or amended declarations. Any coverage forms attached to this notice are also effective on the Renewal Date of this policy.

Policy changes requested after the "Date Prepared" will be sent to you as an amended declarations or as an endorsement to your policy. Billing for any additional premium for such changes will be mailed at a later date.

If, during the past year, you've acquired any valuable property items, made any improvements to insured property, or have any questions about your insurance coverage, contact your State Farm agent.

Please keep this with your policy.

# Attachment 5

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND TODD NEIFFER AND ELIZABETH NEIFFER, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City has advertised and solicited bids in accordance with City policy and State law, for the lease of the following City owned real property located in Custer County, Montana, to wit:

Legal Description: Lots 6 and 7 of Tract "E" of the Industrial Site west of Miles City, Montana, containing approximately 50,000 square feet, more or less;

*AND WHEREAS*, Todd Neiffer and Elizabeth Neiffer were the sole bidders for said leasehold, and the City desires to enter into a lease with said bidders;

***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 Todd Neiffer and Elizabeth Neiffer attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

# Attachment 6

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 Todd Neiffer and Elizabeth Neiffer, as joint tenants with rights of survivorship, of 16 N. Prairie Avenue, Miles City, Montana, 59301, hereinafter referred to as "**TENANTS**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lots 6 & 7 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 25,000 square feet each lot, for a total of 50,000 square feet, more or less;

**AND WHEREAS** it is the desire of TENANTS to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 TENANTS, does hereby demise, lease, and let unto TENANTS the real property located in the Industrial Site and more particularly described as follows:

Lots 6 & 7 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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:

Lots 6 & 7 of Tract "E" of the Industrial Site, containing 50,000 square feet @ \$0.020 per square foot per year, for a total rental of one thousand and 0/100 dollars (\$1,000) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the "INITIAL TERM", this agreement shall automatically renew for a period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANTS give to the other party written notice of cancellation of said agreement 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 TENANTS***

TENANTS hereby acknowledge, covenant and agree as follows:

##### **A. Purpose.**

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

The pasturing of livestock, primarily horses.

TENANTS agree to use the premises for the stated purpose and the stated purpose only, and covenant that TENANTS 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.**

TENANTS shall 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.

**C. Independent Investigation.**

TENANTS acknowledge that they have carefully examined and inspected the premises and improvements and 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, 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. TENANTS shall not create any condition which would be considered a public nuisance as defined in Chapter 15 of the Miles City Code of Ordinances. TENANTS 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.

TENANTS shall maintain the property with good husbandry and in good farmer-like manner consistent with the prevailing standards for Custer County, Montana. TENANTS 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.

CITY may require that TENANTS screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**E. Improvements to Remain.**

Within sixty (60) days immediately following the expiration of this lease, the TENANTS shall remove any improvements located on the leasehold and shall restore, at TENANTS' 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 TENANTS with a reasonable time, not to exceed an additional sixty (60) days in which to remove the improvements and restore the leasehold. If TENANTS 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 TENANTS or (2) may retain all such improvements as property of CITY without compensation to TENANTS.

Provided, however, that upon termination of the Lease, TENANTS, 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 TENANTS 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 TENANTS comply with the terms of this Agreement.

**G. Utilities.**

TENANTS agree 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.**

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, its agents, employees or customers, and TENANTS hereby agree 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.**

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. T TENANT further agrees

to carry minimum liability insurance in the amount of SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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. TENANTS 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.**

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. The obligations hereunder shall survive the termination of this lease.

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

**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 will 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***

TENANTS 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 TENANTS from its obligations under this Lease.

## ***VII. 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 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 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 re-let 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. 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 TENANTS commence and diligently pursue a cure of such default promptly within the initial thirty (30) day cure period, then TENANTS 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 TENANTS 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 TENANTS 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_

**CITY CLERK**

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER     )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John Hollowell in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation, who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

**TENANTS:**

\_\_\_\_\_  
Elizabeth Neiffer

\_\_\_\_\_  
Todd Neiffer

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER     )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Elizabeth Neiffer and Todd Neiffer, who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana

My Commission expires: \_\_\_\_ / \_\_\_\_ /

(NOTARIAL SEAL)

DRAFT



**Staff Report to Miles City Finance Committee**  
**Industrial Site Lease:**  
**Larsen/Center Ag Supply Lease of Lot 3 and the East ½ of Lot 2 of Tract “E”**  
**Report Date: May 2, 2023**

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## **I. General Information**

<b>Type of Request:</b>	1) To correct the legal description of documents associated with a lease of City-owned land in the Industrial Site; 2) To exercise the first option for a five-year lease renewal; and 3) To create a new lease agreement with the tenant name of Center Ag Supply, LLC, which currently holds a lease assignment.
<b>Requestor:</b>	Jeremy Kueffler, Managing Member of Center Ag Supply, LLC
<b>Leased Lots:</b>	Lot 3 and the East ½ of Lot 2 of Tract “E” of the Industrial Site (corrected legal description)
<b>Date of Finance Committee meeting:</b>	Wednesday, May 10, 2023 at 5:00 p.m. at the City Hall Conference Room, 17 South 8 <sup>th</sup> Street, Miles City
<b>Date of City Council meeting:</b>	To be determined

## **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 record<sup>1</sup>, 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 from the federal government 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.

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. 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.

In December 2017, the City Council approved Resolution No. 4118, approving an extension of a lease held by Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford (tenant) for Lot 2 and the East ½ of Lot 3 of Tract “E”. At that time, the Council also approved Resolution No. 4119, authorizing the assignment of the lease to Center Ag Supply, LLC. The previous lease agreements for the Larsen leasehold were for Lot 3 and the East ½ of Lot 2, and the 2017 resolutions, lease agreement and assignment used the wrong legal descriptions of the lots, creating an overlap in the stated lot descriptions between the adjacent Muggli lease and what is now the Center Ag Supply lease, and also leaving the West ½ of Lot 3 unassigned. So the City is working to correct the discrepancies associated with the Center Ag

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<sup>1</sup> 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 Lot 3 and the East ½ of Lot 2 are each among lots in the Industrial Site that have been recorded as ‘tracts of record’ at the clerk and recorder’s office.

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**Industrial Site Lease:**  
**Larsen/Center Ag Supply Lease of Lot 3 and the East ½ of Lot 2 of Tract "E"**  
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Supply lease.

In addition to correcting the legal description, because the initial 5-year lease term is up for renewal on June 30, 2023, the lessee intends to exercise the first option for a five-year lease renewal and has requested the City create a new lease agreement with the tenant name of Center Ag Supply, LLC.

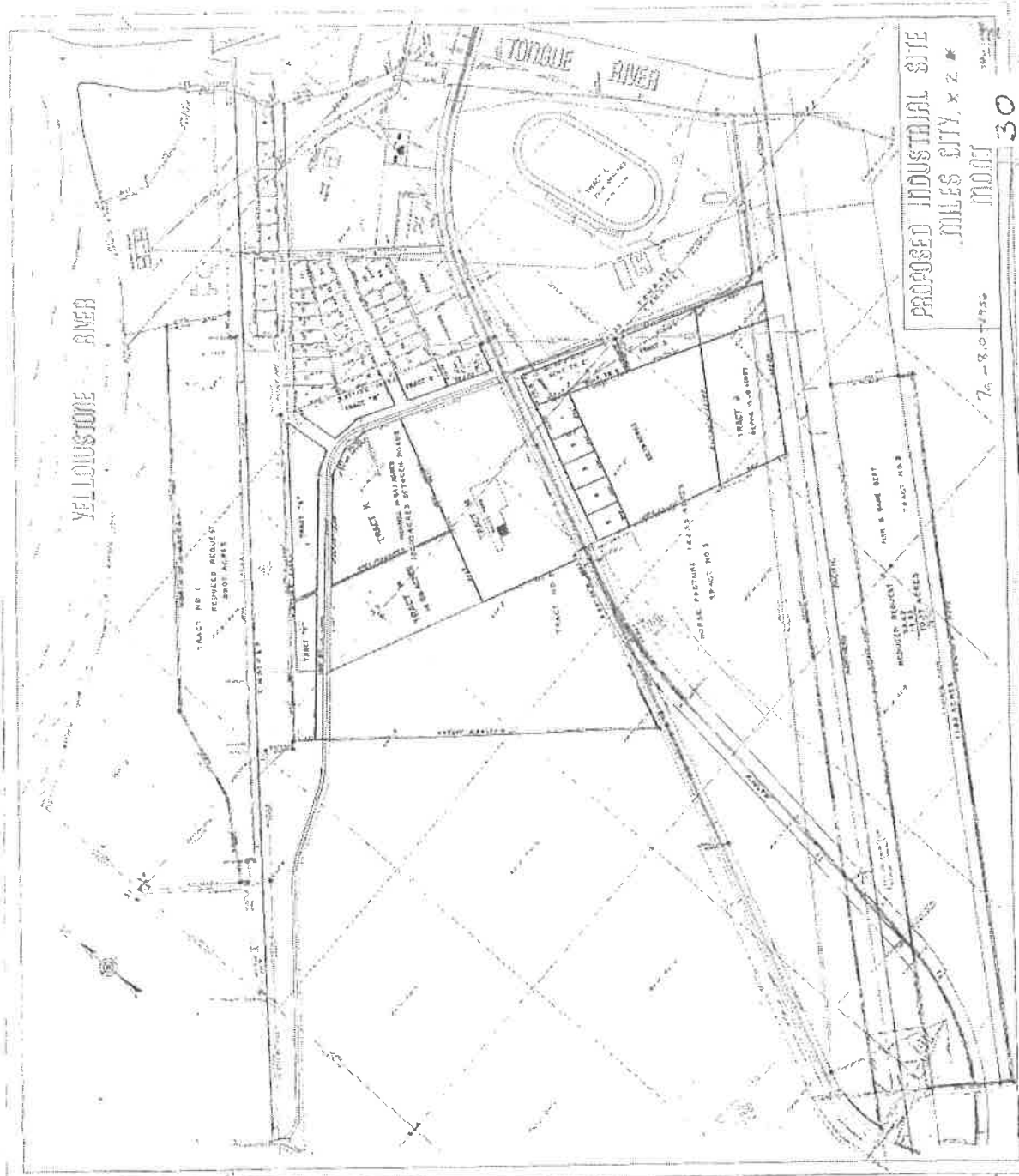
### **III. Map Series**

The following series of maps are included for reference:

1. Map 1 (page 3) is a 1956 map of the Industrial Site that is often used for administration of the leased lots.
2. Map 2 (page 4) is the 2019 Retracement COS recorded at the Custer County Clerk & Recorder's Office in Envelope #570B.
3. Map 3 (page 5) is the 2019 Retracement COS zoomed in to show Lots 1 – 3, the subject leasehold and adjacent Muggli leasehold.
4. Map 4 (page 6) is August 2022 aerial imagery from Google Earth, with the approximate boundaries of the leasehold drawn by the Lease Administrator, scaled off of features such as buildings, roads, and visible fence lines. Please note the boundaries are very approximate.

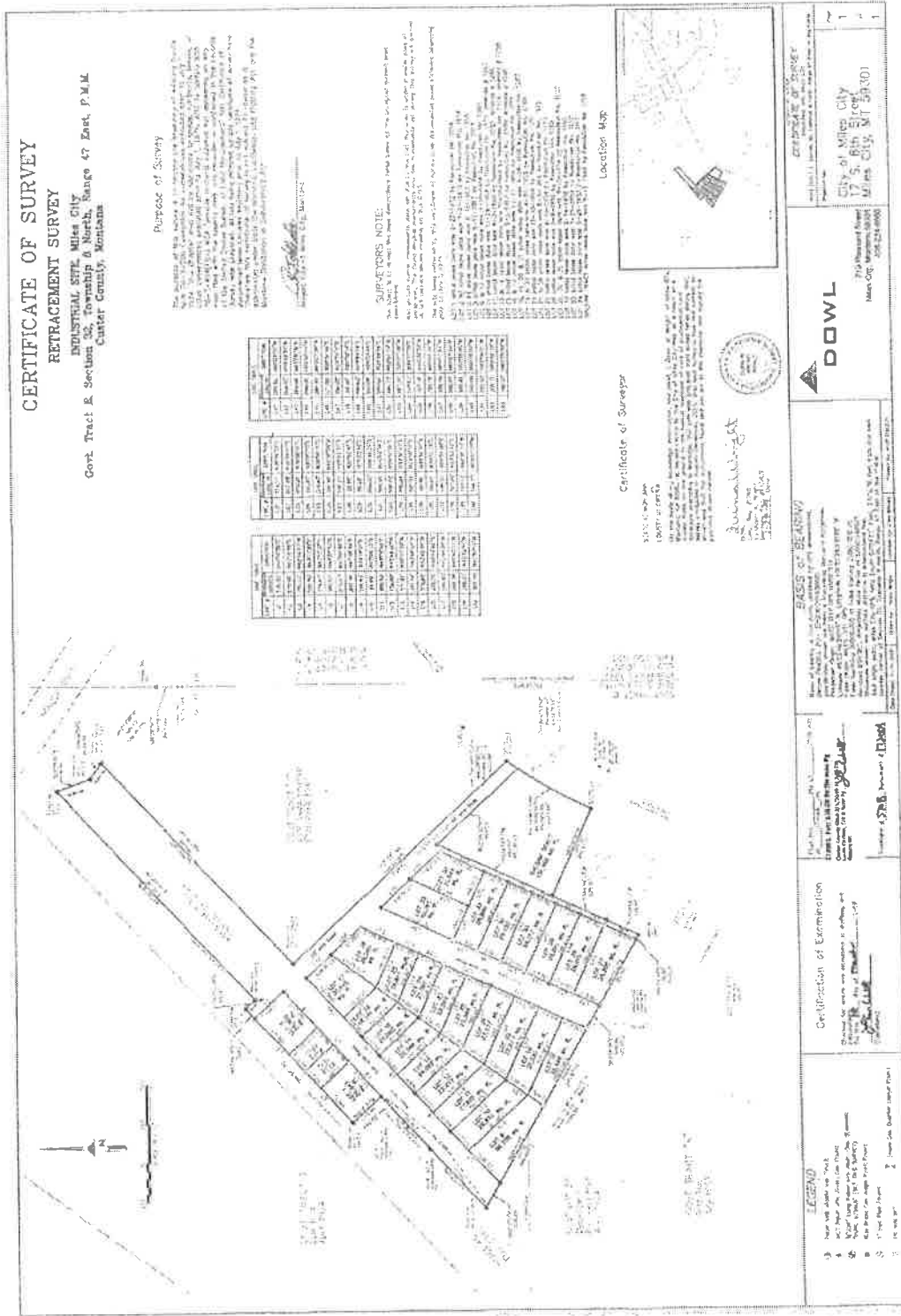
Staff Report to Miles City Finance Committee  
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Map 1: 1956 Map of Industrial Site:



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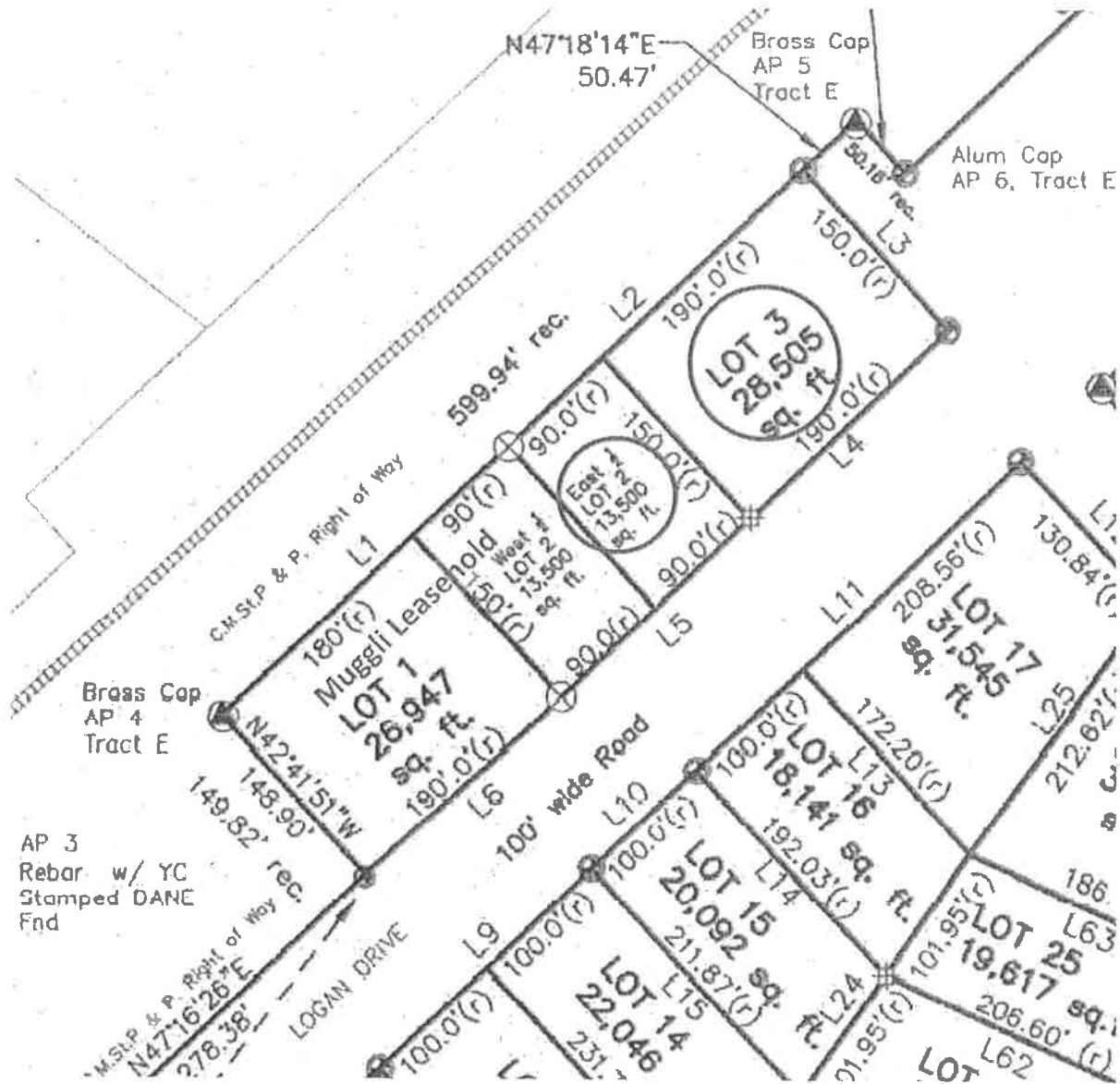
Map 2: 2019 Retracement COS:





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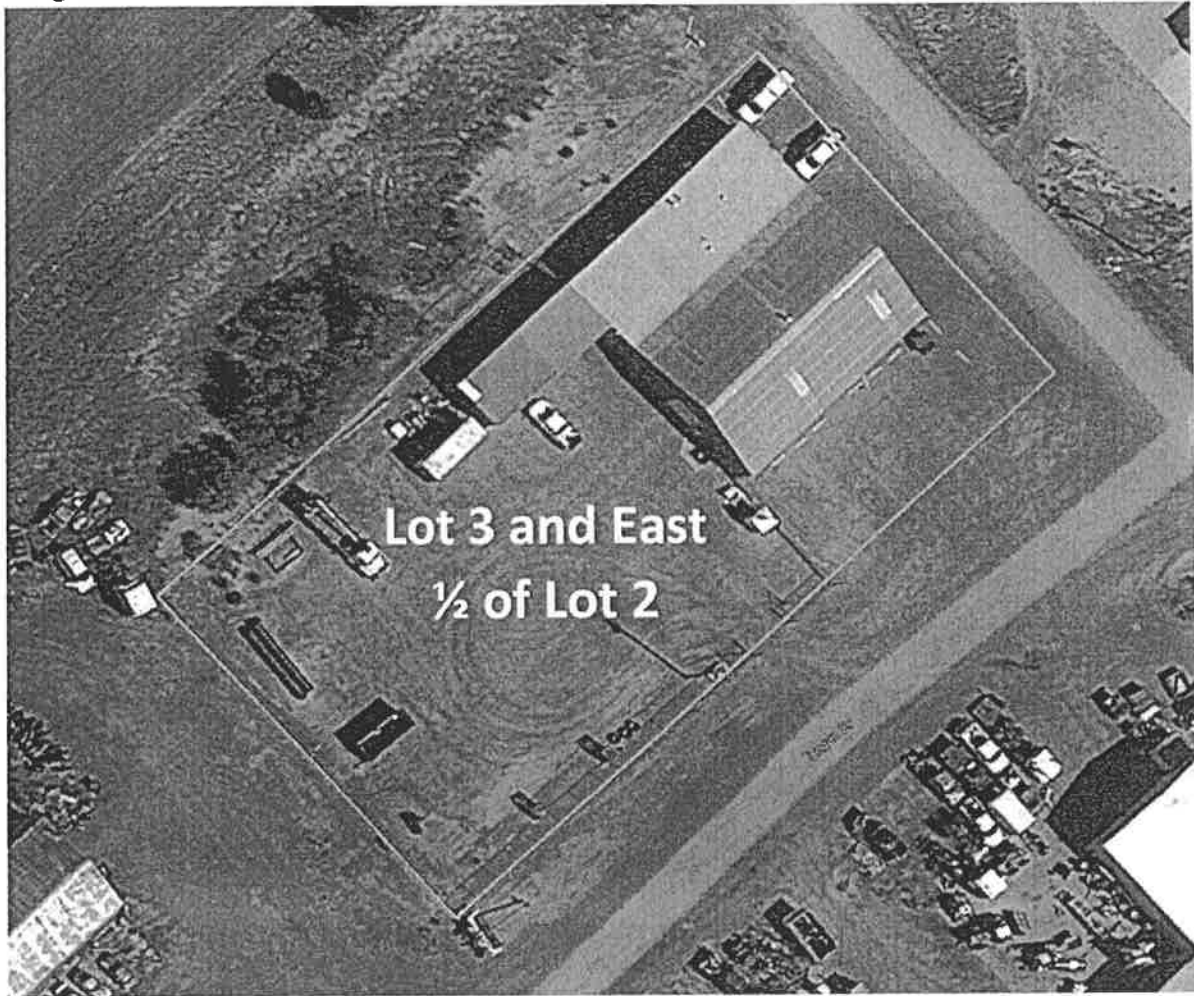
Map 3: Excerpt of 2019 Retracement COS zoomed in to show Lots 1 – 3, with the subject Lot 3 and the East ½ of Lot 2 noted with circles:



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Map 4: Google Earth imagery with approximate boundaries of the Center Ag Supply, LLC assignment:



#### **IV. Applicable City Policies/Regulations**

Because the Industrial Site and 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. The applicable resolutions are discussed below, with applicable sections included.

The current resolutions that govern the City's operation of the leased lots include [Resolution #4100](#) (a 2017 resolution establishing procedures for the sale or lease of City lands), [Resolution No. 4123](#) (a 2018 resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City), and [Resolution No. 4124](#) (a 2018 resolution establishing minimum base rent for Industrial Site and

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other City leaseholds). Attached to Resolution #4100 is a "Standard Form of Lease" that is used as a template for City Property Lease Agreements.

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

- **Resolution #4100:**
  - **Section 10. Two-Thirds Majority Vote Required to Lease or Sell.** Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.
  
- **Resolution No. 4123:**
  - **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

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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.

- 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.

- **Resolution No. 4124:**

- 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

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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.

## **V. Applicable Lease Agreement**

As stated previously, the currently effective Lease Agreement is the "CITY PROPERTY LEASE AGREEMENT" attached to Resolution No. 4118. The lease assignment to Center Ag Supply, LLC is attached to Resolution No. 4119 as Exhibit "A". The resolutions, lease agreement, and assignment is attached to this report as Attachments 3 and 4, for informational purposes and to compare to the draft new lease agreement.

## **VI. Draft Lease Agreement**

A draft lease agreement, prepared by the Lease Administrator and reviewed by the City Attorney, is attached to this report as Attachment 6. The draft lease agreement is based on the standard form of lease document attached to Resolution #4100, with minor modifications to reflect language in Resolution No. 4123 and to require proof of liability insurance in the amount of \$750,000.00 per claim and \$1,500,000.00 per occurrence.

## **VII. Lease Administrator Analysis**

- A. 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. With a new lease agreement with modified terms and adjusted lease rates, the Lease Administrator determined this matter should be subject to review by the Finance Committee before the City Council acts.
- B. The assigned lessee is Center Ag Supply, LLC. The lease agreement requires corrections to the lease agreement and associated resolutions and lease assignment. However, with everything

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involved in the corrections, and per Center Ag Supply’s request to place the lease agreement in that business’s name, the most appropriate resolution is for the City and Center Ag Supply, LLC to enter into a new lease agreement.

- C. The actual, correct leasehold includes Lot 3 and the East ½ of Lot 2 of Tract “E” of the Industrial Site. The effective Lease Agreement is the “CITY PROPERTY LEASE AGREEMENT” attached to Resolution No. 4118. This lease agreement was entered into on December 26, 2017 between the City of Miles City and lessee Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford. The lease was simultaneously assigned to Center Ag Supply, LLC by an “ASSIGNMENT OF LEASE AGREEMENT” attached to Resolution No. 4119 as Exhibit “A” as authorized by the City Council on December 26, 2017. The assignment was contingent upon the Assignee (Center Ag Supply, LLC) purchasing the improvements on the leasehold. According to the Montana Cadastral program (see Attachment 2), Center Ag Supply LLC owns the warehouse building on Lot 3 of the Industrial Site, so the property follows that contingency.
- D. The general purposes of the lease as outlined by the applicable lease agreement are to “*SUBLET PROPERTY TO COMMERCIAL ENTITIES AND/OR SMALL BUSINESS ENTERPRISES*”. The property is currently subleased to BNSF Railway Company. Jeremy Kueffler of Center Ag Supply, LLC has explained to the Lease Administrator that when he originally purchased the building, he intended to move the Center Ag Supply operation to the leasehold, but BNSF approached him to renew the lease on the building. BNSF had been leasing it for ±20 years. Regarding the purpose of the lease, Mr. Kueffler has stated the purpose of the lease is still be correct at this time. He also suggested that if the City could add "or operate any legal business" to the purpose would be sufficient to protect him in the case of BNSF leaving before the whole term is up.

Typically, lease agreements are more specific than the stated purpose of this lease. The current lease and “standard form of lease” attached to Resolution #4100 state, “*TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that it [TENANT] 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.*” In addition, Section 2.g of Resolution No. 4123 includes the following lease standard: “*Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council.*” So another assignment or sublease to another entity would require prior City Council approval.

For these reasons, the Lease Administrator is recommending the purpose of the lease be updated to allow the continued sublease to the BNSF Railway Company (a more specific purpose, but the current use) but also allow Center Ag Supply, LLC to occupy the building in the event BNSF vacates the premises. According to Mr. Kueffler, Center Ag Supply is a business that sells and services liquid cattle feed and other ranch products. The following is the purpose statement in Section V.A of the draft new lease agreement:

“TENANT desires to lease the premises described above for the following general purposes:

**Staff Report to Miles City Finance Committee**  
**Industrial Site Lease:**  
**Larsen/Center Ag Supply Lease of Lot 3 and the East ½ of Lot 2 of Tract "E"**  
**Report Date: May 2, 2023**

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- 1) *Sublet property to BNSF Railway Company, a commercial entity; OR*
- 2) *To be used by Tenant's small business enterprise, being sales and services of liquid livestock feed and other ranch and farm products.*

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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."

The above purpose statement is subject to recommendations by the Finance Committee and approval by City Council. The City should consider input from the lessee regarding the purpose of the lease.

- E. The current leasehold is stated to be comprised of the two lots that total 40,500 square feet, apparently based on adding the size of Lot 2 (180' by 150' = 27,000 square feet) to half of the size of Lot 2 (90' by 150' = 13,500 square feet). However, with the correct legal description being Lot 3 and the East ½ of Lot 2, the total should have been calculated at approximately 42,000 square feet, with Lot 3 being 190' by 150', or 28,500 square feet, and the East ½ of Lot 2 being 90' by 150', or 13,500 square feet.

However, in 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder's Office in Envelope #570B. The purpose of the COS was to retrace the boundaries of existing tracts of record as evidenced by lease histories. Lot 3 and the East ½ of Lot 2 are each tracts of record per that COS. On this most recent survey, Lot 3 is depicted at 28,505 square feet and the East ½ of Lot 2 still at 13,500 square feet, for a total of 42,005 square feet; therefore, the Lease Administrator is proposing to use those sizes and legal descriptions in the new lease agreement, if approved.

Resolution No. 4124 establishes the minimum base rent for the Industrial Site. For tracts with paved road frontage, which is the case with this leasehold, having frontage along Water Plant Road, a paved road, the minimum rental rate is \$0.025 per square foot per year. The annual minimal base lease rate for the leasehold should be set at \$1,050.13.

- F. 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...*" It is the Lease Administrator's understanding that the building on the leasehold is served by City water, which could warrant exercising this option to assess rates above the 'minimal base rates'. The Finance Committee should discuss and consider whether to increase the annual lease rate based on the provision of City water, but also considering this is a renewal using a new lease

**Staff Report to Miles City Finance Committee**  
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**Report Date: May 2, 2023**

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agreement – it is not a new lease proposal that is changing or adding to provisions of City services.

- G. The Lease Administrator is unaware of any compliance issues with the current tenant, and the leasehold is in good standing with the City.
- H. Based on the current development and use of the leasehold, which is proposed to continue with no stated plans for further improvements to the site, the aerial imagery depicted in Map 4 of this report is sufficient for a site plan to keep in the lease file for lease administration.
- I. The Lease Administrator has discussed insurance requirements for leases with the City Attorney. Based on statutory requirements, the City requires the tenant to agree to carry minimum liability insurance in the amount of \$750,000 for each claim and \$1.5 million for each occurrence, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana.

### **VIII. Finance Committee Action**

The Finance Committee is asked to review the applicant's proposal, the proposed lease rates, the draft lease agreement, and this staff report, as well as consider the applicant's responses to any questions the Finance Committee may have of him at the committee meeting, and make a recommendation to the City Council. Potential City Council actions are found in Section IX of this staff report, and the staff recommendation from the Lease Administrator is found in Section X.

### **IX. City Council Action**

The City Council could approve, deny or table the proposal to enter into a new lease agreement with Center Ag Supply, LLC per the draft resolution (Attachment 5) and new lease agreement (Attachment 6) prepared by the Lease Administrator and reviewed by the City Attorney. The following are the potential actions that the City Council could take to approve or deny:

#### **A. Approval:**

Approve the lease agreement by resolution, which shall become effective July 1, 2023 and payable by June 30, 2023. Alternatively, the City Council may approve the lease agreement with modifications to the resolution or terms of the lease agreement.

#### **B. Denial:**

Should Council decide not to approve the lease agreement, the City Council may deny the proposed lease, or take other action to outline what additional information is needed.

### **X. Lease Administrator Recommendation**

Through review of leasing policies and considering the potential of this project, the Lease Administrator recommends that the Finance Committee adopt this staff report as findings of fact and recommend the City Council approve the attached draft resolution granting Center Ag Supply, LLC a 5-year lease with three



**Staff Report to Miles City Finance Committee**  
**Industrial Site Lease:**  
**Larsen/Center Ag Supply Lease of Lot 3 and the East ½ of Lot 2 of Tract "E"**  
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remaining 5-year renewal options, and authorize the Mayor to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

## **XI. List of Attachments**

Attachment 1: Written requests by Jeremy Kueffler of Center Ag Supply, LLC to exercise a renewal option, place the lease into Center Ag Supply, LLC's name, and correct the legal description (received by the Lease Administrator on April 19, 2023)

Attachment 2: Property Record Card from the Montana Cadastral Mapping Program

Attachment 3: Resolution No. 4118 and lease agreement with Larsen

Attachment 4: Resolution No. 4119 and lease assignment to Center Ag Supply, LLC

Attachment 5: Draft Resolution to approve a new lease agreement between the City and Center Ag Supply, LLC

Attachment 6: Draft NEW Lease Agreement

# Attachment 1

**From:** [jkueffler@midrivers.com](mailto:jkueffler@midrivers.com)  
**To:** [joel@geopland.com](mailto:joel@geopland.com)  
**Subject:** Industrial site lease  
**Date:** Wednesday, April 19, 2023 2:00:32 PM

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4/19/2023  
City of Miles City  
City Planning and Community Services  
Joel Nelson, Geopland LLC

To whom it may concern

As the owner of Center Ag Supply LLC and a leaseholder in the industrial sites, I would like to address several issues brought to my attention by a letter dated March 7, 2023 by Mr. Nelson.

The first issue being for this letter to state my intent to renew my lease for another 5 year period, starting July 1, 2023.

The second issue is that I would prefer that the lease agreement is made with Center Ag Supply LLC as the leaseholder, rather than just an assignee from the original lease with the Lydia Stratford Trust.

The third issue is the legal description discrepancy. The lease reads "Lot 2 and the east half of Lot 3" when it should read "Lot 3 and the east half of Lot 2" Please correct this error in the new agreement.

Thank You  
Jeremy Kueffler  
Owner- Center Ag Supply LLC

# Attachment 2

## Property Record Card

### Summary

#### Primary Information

Property Category: RP	Subcategory: Commercial Property
Geocode: 14-1740-32-4-01-08-4001	Assessment Code: 000RSD3670
Primary Owner: CENTER AG SUPPLY LLC PO BOX 1094 MILES CITY, MT 59301-1094	PropertyAddress: WATER PLANT RD MILES CITY, MT 59301 COS Parcel:

*NOTE: See the Owner tab for all owner information*

#### Certificate of Survey:

Subdivision: INDUSTRIAL SITES

#### Legal Description:

INDUSTRIAL SITES, S32, T08 N, R47 E, Lot 003, IMPS ONLY

Last Modified: 4/1/2023 7:57:25 AM

#### General Property Information

Neighborhood: 214.303.C	Property Type: IMP_R - Improved Property - Rural
Living Units: 0	Levy District: 14-1172-1R
Zoning:	Ownership %: 100
Linked Property:	

No linked properties exist for this property

#### Exemptions:

No exemptions exist for this property

#### Condo Ownership:

General: 0	Limited: 0
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#### Property Factors

Topography:	Fronting:
Utilities:	Parking Type:
Access:	Parking Quantity:
Location:	Parking Proximity:

#### Land Summary

<u>Land Type</u>	<u>Acres</u>	<u>Value</u>
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00
ROW	0.000	00.00
NonQual Land	0.000	00.00
Total Ag Land	0.000	00.00
Total Forest Land	0.000	00.00
Total Market Land	0.000	00.00

#### Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type

2/8/2016		2/18/2016	165142	Personal Representative or Executor's Deed of Distribution
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**Owners**

Party #1

**Default Information:** CENTER AG SUPPLY LLC  
 PO BOX 1094  
**Ownership %:** 100  
**Primary Owner:** "Yes"  
**Interest Type:** Fee Simple  
**Last Modified:** 11/1/2018 10:08:42 AM

Other Names Other Addresses

	Name	Type	
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**Appraisals**

**Appraisal History**

Tax Year	Land Value	Building Value	Total Value	Method
2022	0	135010	135010	COST
2021	0	135010	135010	COST
2020	0	126570	126570	COST

**Market Land**

**Market Land Info**  
 No market land info exists for this parcel

**Dwellings**

**Existing Dwellings**  
 No dwellings exist for this parcel

**Other Buildings/Improvements**

Outbuilding/Yard Improvement #1

<b>Type:</b> Commercial	<b>Description:</b> CPA1 - Paving, asphalt	
<b>Quantity:</b> 1	<b>Year Built:</b> 1968	<b>Grade:</b> A
<b>Condition:</b>	<b>Functional:</b> 2-Fair	<b>Class Code:</b> 3307
Dimensions		
<b>Width/Diameter:</b>	<b>Length:</b>	<b>Size/Area:</b> 5325
<b>Height:</b>	<b>Bushels:</b>	<b>Circumference:</b>

Outbuilding/Yard Improvement #2

<b>Type:</b> Commercial	<b>Description:</b> CRF1 - Fence, chain link (commercial)	
<b>Quantity:</b> 1	<b>Year Built:</b> 1968	<b>Grade:</b> A
<b>Condition:</b>	<b>Functional:</b> 3-Normal	<b>Class Code:</b> 3307
Dimensions		
<b>Width/Diameter:</b>	<b>Length:</b> 221	<b>Size/Area:</b>
<b>Height:</b> 6	<b>Bushels:</b>	<b>Circumference:</b>

**Commercial**

Existing Commercial Buildings

Building Number	Building Name	Structure Type	Units/Bldg	YearBuilt	
1		398 - Warehouse	1	1968	<a href="#">View</a>

General Building Information

**Building Number:** 1      **Building Name:**      **Structure Type:** 398 - Warehouse  
**Units/Building:** 1      **Identical Units:** 1  
**Grade:** A      **Year Built:** 1968      **Year Remodeled:** 0  
**Class Code:** 3307      **Effective Year:** 0      **Percent Complete:** 0

Interior/Exterior Data Section #1

**Level From:** 01      **Level To:** 01      **Use Type:** 045 - Warehouse

Dimensions

**Area:** 4,920      **Use SK Area:** 0  
**Perimeter:** 344      **Wall Height:** 14

Features

**Exterior Wall Desc:** 07 - Metal, light      **Construction:** 4-Pre-engineered Steel      **Economic Life:** 40  
**% Interior Finished:** 0      **Partitions:** 0-None      **Heat Type:** 3-Unit or Space Heaters  
**AC Type:** 0-None      **Plumbing:** 0-None  
**Physical Condition:** 2-Fair      **Functional Utility:** 2-Fair

Building Other Features

Description	Qty	Width	Length	Height	Area	Calculated Value	Unadjusted Value
RS1 - Utility Building, frame	1	01	893	0	00	0	0
BI1 - Built-ins	2	00	00	0	00	0	0

Interior/Exterior Data Section #2

**Level From:** 01      **Level To:** 01      **Use Type:** 045 - Warehouse

Dimensions

**Area:** 2,460      **Use SK Area:** 0  
**Perimeter:** 142      **Wall Height:** 10

Features

**Exterior Wall Desc:** 07 - Metal, light      **Construction:** 4-Pre-engineered Steel      **Economic Life:** 40  
**% Interior Finished:** 100      **Partitions:** 2-Normal      **Heat Type:** 1-Hot Air  
**AC Type:** 0-None      **Plumbing:** 2-Normal  
**Physical Condition:** 2-Fair      **Functional Utility:** 2-Fair

Building Other Features

No other features exist for this interior/exterior detail

Elevators and Escalators

No elevators or escalators exist for this building

**Ag/Forest Land**

Ag/Forest Land

No ag/forest land exists for this parcel

# Attachment 3

## RESOLUTION NO. 4118

### A RESOLUTION APPROVING THE EXTENSION OF THE LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND LINDA L. LARSEN FOR THE LEASE OF CERTAIN INDUSTRIAL SITE PROPERTY.

*WHEREAS*, the City of Miles City owns certain real property located in the Industrial Site, which it currently leases to Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford (tenants) pursuant to a certain Lease Agreement dated June 6, 1967 and approved by Resolution No. 1618; extended by Resolution No. 4063, said property described as: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

*AND WHEREAS*, the City has revised its lease policies to allow the City and a Tenant to negotiate the long term renewal of certain leaseholds upon which the Tenant has constructed permanent substantial improvements, which is the case with Tenant's leasehold;


*AND WHEREAS*, the City, to promote the best use of this Leasehold, finds it in the best interest of the City to renew Tenant's lease at the current lease rate, for the reasons set forth in a certain Staff Report which has been prepared by the Office of the City Planner;


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

1. The Staff Report of Dawn Colton, attached hereto as Exhibit "A," is hereby adopted as Findings of Fact to support the renewal of the lease between the City of Miles City, and Linda L. Larsen; individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford
2. The City of Miles City approves the Lease Agreement between the City of Miles City and Linda L. Larson individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford for the lease of certain real property described below, for a period of five (5) years, with four (4) subsequent renewal terms of five (5) years each, at Tenant's option: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less, attached hereto as Exhibit "B."

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A 2/3 VOTE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 26<sup>TH</sup> DAY OF DECEMBER, 2017.**

ATTEST:

  
Lorrie Pearce, City Clerk

  
John Hollowell, Mayor

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

**THIS AGREEMENT**, made and entered into this 26 day of December 2017, 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 Linda L. Larsen, individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford of 2001 Plaza Dr., Billings, MT 59102, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the City of Miles City, Custer County, Montana, more particularly described as follows:

**Legal Description:** Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 40,500 square feet, more or less;

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

**AND WHEREAS** CITY is agreeable to providing such five (5) year term lease, together with the option to renew for additional five year terms, 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 the Miles City Industrial Site and more particularly described as follows:

Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 40,500 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 July 1, 2018 and expiring at midnight on June 30, 2023, 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 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana, containing 40,500 sq. ft. @ \$0.025 per sq. ft.) for a total rental of One Thousand Twelve and 50/100 Dollars (\$1,012.50) for each year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution

date. Payments in subsequent years shall be due and payable in advance of July 1st of each subsequent year of the lease term, commencing July 1, 2018 through June 30, 2023.

#### ***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:

SUBLET PROPERTY TO COMMERCIAL ENTITIES AND/OR SMALL BUSINESS ENTERPRISES

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.



**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' 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


  
CITY CLERK

By:   
CITY'S MAYOR

TENANT:  
LINDA L. LARSON   
E

By:   
Linda L. Larsen, Individual

TENANT:  
LINDA L. LARSON   
E

By:   
Linda L. Larsen,  
Trustee of the Lydia Stratford Trust FBO Diana Stratford

# Attachment 4

## RESOLUTION NO. 4119

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF A CERTAIN LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND LINDA L. LARSEN, INDIVIDUALLY AND AS TRUSTEE OF THE LYDIA STRATFORD TRUST FBO DIANA STRATFORD, TO CENTER AG SUPPLY, LLC FOR THE LEASE OF CERTAIN INDUSTRIAL SITE PROPERTY.**

**WHEREAS**, the CITY currently leases certain property within the Industrial Site west of Miles City, to Linda L. Larsen, individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford as approved by Resolution No. 4118, described as: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

**AND WHEREAS**, Linda L. Larsen, individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford intends to sell certain improvements upon said leasehold to Center Ag Supply, LLC ("Purchaser"), and the parties desire that the CITY approve the assignment of said lease to Purchaser;

**AND WHEREAS**, an "Assignment of Lease Agreement" between the parties has been prepared and presented to the City Council for approval.


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

That the "Assignment of Lease Agreement" attached hereto as Exhibit "A," and made a part hereof, is hereby approved by the City Council of the City of Miles City.

**PASSED AND ADOPTED BY A 2/3 VOTE** of the City Council this 26<sup>th</sup> day of December, 2017.

By:   
John Hollowell, Mayor

Attest:

  
Lorrie Pearce, City Clerk

**ASSIGNMENT OF LEASE AGREEMENT**

This ASSIGNMENT, made and entered into this 26<sup>th</sup> day of December 2017, by and between the City of Miles City, Montana, a Montana municipal corporation, of 17 S. 8<sup>th</sup> Street, Miles City, Montana 59301, hereinafter "CITY," Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford, of 2001 Plaza Drive, Billings, Montana, hereinafter "ASSIGNOR," and Center Ag Supply, LLC, of P.O. Box 1094, Miles City, Montana, hereinafter "ASSIGNEE,"

**WHEREAS**, the CITY currently leases certain property within the Industrial Site to ASSIGNOR for use as a agricultural supply business pursuant to a certain Lease Agreement approved by Resolution No. 4118, for the following real property: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

**AND WHEREAS**, ASSIGNOR intends to sell certain improvements upon said leasehold to ASSIGNEE, and ASSIGNOR desires to assign her interest in said Lease Agreement with CITY to ASSIGNEE, which requires approval of CITY;

**AND WHEREAS**, ASSIGNEE has agreed to comply with all conditions of said Lease Agreement;


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

**ASSIGNMENT**

The ASSIGNOR hereby assigns, and the CITY hereby approves, the Lease Agreement between CITY and Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford dated December 26, 2017, as approved by Resolution No. 4118, to ASSIGNEE, contingent upon ASSIGNEE purchasing the improvements which are situated upon the leasehold from ASSIGNOR. ASSIGNEE agrees to be bound by all conditions of said Lease Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this ASSIGNMENT OF LEASE AGREEMENT the date and year first hereinabove written.

**CITY OF MILES CITY:**

By:   
John Hollowell, Mayor

Attest:


  
Lorrie Pearce, City Clerk

Exhibit "A"

**ASSIGNOR:**

Linda L. Larsen, Lessee  
Linda L. Larsen, Lessee

AND

**ASSIGNOR:**

Linda L. Larsen, Trustee  
Lydia Stratford Trust FBO Diana Stratford  
By Linda L. Larsen, Trustee

**ASSIGNEE:**

**Center Ag Supply, LLC**

Jeremy Hill  
By: member

## Attachment 5

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION TO CORRECT LEGAL DESCRIPTIONS IN RESOLUTION NO. 4118 AND RESOLUTION NO. 4119, TO AGREE TO RENEW A LEASE AGREEMENT WITH THE ASSIGNED TENANT IN THE ASSIGNED TENANT'S NAME, AND TO APPROVE A NEW LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND CENTER AG SUPPLY, LLC, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City approved a lease agreement as an extension of a previous lease agreement between the City of Miles City and Linda L. Larsen by Resolution No. 4118 in December 2017, which included an erroneous legal description of the leasehold;

*AND WHEREAS*, the City of Miles City approved an assignment of the Linda L. Larsen leasehold to Center Ag Supply, LLC by Resolution No. 4119 in December 2017, which also included an erroneous legal description of the leasehold;

*AND WHEREAS*, the erroneous legal descriptions in Resolution No. 4118 and Resolution No. 4119, and associated lease agreement and assignment created an overlap in the stated lot descriptions between another lease and what is now the Center Ag Supply, LLC lease, and also left portions of the Center Ag Supply, LLC lease unassigned per the legal descriptions;

*AND WHEREAS*, the City of Miles City is correcting the legal description for the Center Ag Supply, LLC leasehold and associated City resolutions;

*AND WHEREAS*, the correct legal description of the Center Ag Supply, LLC leasehold is as follows:

Legal Description: Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana;

*AND WHEREAS*, the applicable lease agreement's initial 5-year lease term is set to expire on June 30, 2023, and Center Ag Supply, LLC has provided notice to the City of the intent to exercise the option to renew the lease the first of a maximum four times, for a five-year period;

*AND WHEREAS*, Center Ag Supply, LLC has requested a new lease agreement between the City and Center Ag Supply, LLC instead of between the City and Linda L. Larsen because the lease was assigned to Center Ag Supply, LLC, which owns the improvements on the leasehold;

*AND WHEREAS*, to correct the legal description for said leasehold and approve of Center Ag Supply's above-stated requests, the City Council for Miles City has agreed to approve a new lease agreement by resolution;

*AND WHEREAS*, in 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001, and said COS provides more recent sizes of the leasehold than



previous information used for City lease administration, and the new lease rates shall be based on the size of the leasehold stated on that COS, in accordance with Resolution No. 4124.

***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 conditions of the Lease Agreement between the City of Miles City and Center Ag Supply, LLC, attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

# Attachment 6

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 **CENTER AG SUPPLY, LLC**, PO Box 1094, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana, containing approximately 42,005 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to renew the above-described Leasehold for a term of five (5) years, subject to the options to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with options to renew this lease again a maximum of three (3) additional times, for renewal periods of (5) years each, 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 the Industrial Site and more particularly described as follows:

Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana, containing approximately 42,005 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, containing approximately 42,005 square feet, more or less, @ \$0.025 per square foot per year, for a total rental of one-thousand, fifty and 13/100 dollars (\$1,050.13) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

FOLLOWING the "INITIAL LEASE TERM", TENANT shall have options to renew this lease again a maximum of three (3) additional 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 hereby acknowledges, covenants and agrees as follows:

#### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

- 1) *Sublet property to BNSF Railway Company, a commercial entity; OR*
- 2) *To be used by Tenant's small business enterprise, being sales and services of liquid livestock feed and other ranch and farm products.*

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

*Optional term, if applicable (remove if not adopted): 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 will 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 fails 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.



**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

STATE OF MONTANA    )  
  ) ss  
COUNTY OF CUSTER    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John Hollowell in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation, who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

**TENANT:**

\_\_\_\_\_  
Center Ag Supply, LLC by Jeremy Kueffler,  
Managing Member

STATE OF MONTANA    )  
  ) ss  
COUNTY OF CUSTER    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Jeremy Kueffler, who executed the within instrument and acknowledged to me that he executed the same on behalf of Center Ag Supply, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

DRAFT

**Staff Report to Miles City Finance Committee  
Industrial Site Lease:  
Jerrel Lease of Lots 13, 22, and 23 of Tract "E"  
Report Date: May 2, 2023**

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## **I. General Information**

<b>Type of Request:</b>	Request for a new lease agreement for leased land in the City-owned Industrial Site and transfer the lease to a new tenant name.
<b>Requestor:</b>	David P. Jerrel, survivor of Ray (Raymond) Jerrel and Peg (Peggy) Jerrel, both deceased
<b>Leased Lots:</b>	Lots 13, 22, and 23 of Tract "E" of the Industrial Site
<b>Date of Finance Committee meeting:</b>	Wednesday, May 10, 2023 at 5:00 p.m. at the City Hall Conference Room, 17 South 8 <sup>th</sup> Street, Miles City
<b>Date of City Council meeting:</b>	To be determined

## **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 record<sup>1</sup>, 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 from the federal government 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.

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. 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 Jerrel leasehold includes Lots 13, 22, and 23 of Tract "E" of the Industrial Site. The effective Lease Agreement is Exhibit "A" attached to Resolution No. 3497. This lease agreement was entered into on June 14, 2012 between the City of Miles City and lessees Ray and Peg Jerrel.

The Jerrel leasehold is comprised of three lots ranging in size from 23,634.07 to 25,618.4 square feet, totaling 73,416.47 square feet, and the purpose is for "operation of a trucking and truck repair and feed supply company". The initial ±five-year term expired June 30, 2017, but the lessees exercised their one-time option to renew, which was set to expire on June 30, 2022. However, the City Council granted two six-month extensions: (1) on June 28, 2022 to bring the expiration date to December 31, 2022, and (2) on December 27, 2022 to bring the expiration date to June 30, 2023 to coincide with the City's fiscal year.

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<sup>1</sup> 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 Lots 13, 22, & 23 are among lots in the Industrial Site that have been recorded as 'tracts of record' at the clerk and recorder's office.

**Staff Report to Miles City Finance Committee**  
**Industrial Site Lease:**  
**Jerrel Lease of Lots 13, 22, and 23 of Tract "E"**  
**Report Date: May 2, 2023**

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In December 2022, David Jerrel, personal representative of Peggy Jerrel, deceased, and Ray Jerrel submitted a request to transfer the lease to David P. Jerrel and renew the lease at the expiration date of June 3, 2023. Ray Jerrel since passed away in January, and David Jerrel has provided the Lease Administrator with District Court documents showing that David P. Jerrel has been appointed personal representative of the last will and testament of Raymond M. Jerrel. David also provided court documents showing he filed an application for informal probate and appointment of him as personal representative of Peggy E. Jerrel's probate.

According to Resolution No. 4100, the City may agree to renew leases in circumstances where the City has allowed the tenant to construct "substantial permanent improvements" on the leaseholds as determined by the City Council. Resolution No. 4123 states such lessees may be granted a preferential right to renew their lease, so the lessees may be given special consideration to renew and the City need not advertise the lease for bid. According to the Montana Cadastral program (see Attachment 2), Ray Jerrel Inc. owns improvements on Lot 23 of the Industrial Site, being two warehouse buildings built in 1960, with a total 2022 assessed building value of \$101,980; therefore, along with David P. Jerrel's status as personal representative of Ray Jerrel's estate, it appears David P. Jerrel qualifies for the provision of renewal based on substantial permanent improvements.

In 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder's Office in Envelope #570B. The purpose of the COS was to retrace the boundaries of existing tracts of record as evidenced by lease histories. Lots 13, 22, and 23 are each tracts of record per that COS. On this most recent survey, Lot 13 is depicted at 24,003 square feet, Lot 22 at 25,588 square feet, and Lot 23 at 23,593 square feet, for a total of 73,184 square feet; therefore, the Lease Administrator is proposing to use those sizes and legal descriptions in the new lease agreement, if approved.

### **III. Map Series**

The following series of maps are included for reference:

1. Map 1 (page 3) is a 1956 map of the Industrial Site that is often used for administration of the leased lots.
2. Map 2 (page 4) is the 2019 Retracement COS recorded at the Custer County Clerk & Recorder's Office in Envelope #570B.
3. Map 3 (page 5) is the 2019 Retracement COS zoomed in to show Lots 13, 22, & 23.
4. Map 4 (page 6) is August 2022 aerial imagery from Google Earth, with the approximate boundaries of the leasehold drawn by the Lease Administrator, scaled off of features such as buildings, roads, and visible fence lines. Please note the boundaries are very approximate.

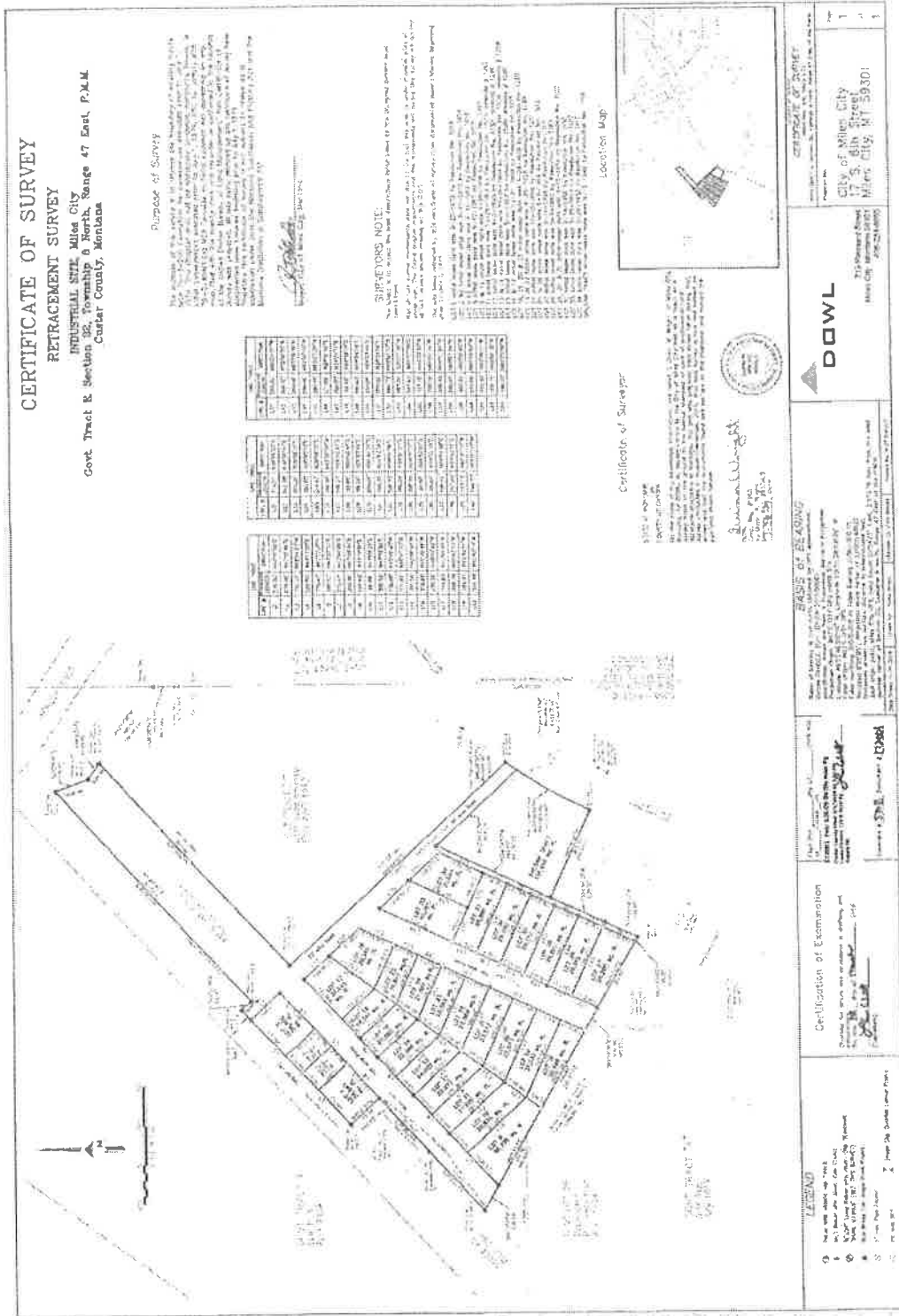
Staff Report to Miles City Finance Committee  
Industrial Site Lease:  
Jerrel Lease of Lots 13, 22, and 23 of Tract "E"  
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Map 1: 1956 Map of Industrial Site



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Map 2: 2019 Retracement COS



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Map 3: Excerpt of 2019 Retracement COS zoomed in to show Lots 13, 22, & 23



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Map 4: Google Earth imagery with approximate boundaries of the Jerrel leasehold:



#### **IV. Applicable City Policies/Regulations**

Because the Industrial Site and 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. The applicable resolutions are discussed below, with applicable sections included.

The current resolutions that govern the City's operation of the leased lots include [Resolution #4100](#) (a 2017 resolution establishing procedures for the sale or lease of City lands), [Resolution No. 4123](#) (a 2018 resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City), and [Resolution No. 4124](#) (a 2018 resolution establishing minimum base rent for Industrial Site and other City leaseholds). Attached to Resolution #4100 is a "Standard Form of Lease" that is used as a template for City Property Lease Agreements.



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

- **Resolution #4100:**
  - **Section 4. Extension of Leases With Substantial Permanent Improvements.** The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate, any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.
  - **Section 6. Transmittal of Offers to Finance Committee.** Following the date and time specified in the published notice for submission of written proposals, the City Lease Administrator shall transmit a copy of all written proposals timely received, to the chair of the Finance Committee of the City Council.
  - **Section 7. Review and Recommendation of Finance Committee.** The Finance Committee shall then meet, review all such proposals, conduct such interviews of proposed lessees or purchasers as it deems necessary, and shall pass on to the City Council all such proposals, with the Committee's recommendations for action thereon.
  - **Section 8. Council Consideration.** Upon receipt of the recommendation of the Finance Committee, the City Council shall take such action upon such proposed lease or purchase as it deems in the best interests of the City. Nothing herein shall be construed as requiring the Finance Committee or the City Council to accept any written proposal for lease or purchase.
  - **Section 10. Two-Thirds Majority Vote Required to Lease or Sell.** Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.
  
- **Resolution No. 4123:**

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- 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.

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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.

- o **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.

- **Resolution No. 4124:**

- o **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.

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

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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.

## **V. Applicable Lease Agreement**

As stated previously, the currently effective Lease Agreement is Exhibit "A" attached to Resolution No. 3497, entered into on June 14, 2012 between the City of Miles City and lessees Ray and Peg Jerrel. The resolution/agreement is attached to this report as Attachment 3, for informational purposes and to compare to the draft new lease agreement.

## **VI. Draft Lease Agreement**

A draft lease agreement, prepared by the Lease Administrator and reviewed by the City Attorney, is attached to this report as Attachment 5. The draft lease agreement is based on the standard form of lease document attached to Resolution #4100, with minor modifications to reflect language in Resolution No. 4123 and to require proof of liability insurance in the amount of \$750,000.00 per claim and \$1,500,000.00 per occurrence.

## **VI. Lease Administrator Analysis**

- A. 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.
- B. The current lessees are Ray and Peg Jerrel (both deceased). The lease agreement is currently under an administrative extension by the City Council, with the extension to the lease agreement set to expire on June 30, 2023. David P. Jerrel, personal representative of the wills of Raymond and Peggy Jerrel, is requesting a new lease agreement and to transfer the lease to his name.
- C. According to Resolution No. 4100, the City may agree to renew leases in circumstances where the City has allowed the tenant to construct "substantial permanent improvements" on the leaseholds as determined by the City Council. Resolution No. 4123 states such lessees may be granted a preferential right to renew their lease, so the lessees may be given special consideration to renew and the City need not advertise the lease for bid. According to the Montana Cadastral program (see Attachment 2), Ray Jerrel Inc. owns improvements on Lot 23 of the Industrial Site, being two warehouse buildings built in 1960, with a total 2022 assessed building value of \$101,980. With the proposed new lessee being David P. Jerrel, and the owner of the building being Ray Jerrel Inc., the deceased tenant's business entity that David P. Jerrel presumably has the ability to represent, it appears the David P. Jerrel should be deemed to qualify for the provision of renewal under his name based on the substantial permanent improvements that have been constructed by the prior lessees.

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- D. The 2019 Retracement COS depicts Lot 13 at 24,003 square feet, Lot 22 at 25,588 square feet, and Lot 23 at 23,593 square feet, so the total leased area is now 73,184 square feet. Resolution No. 4124 establishes the minimum base rent for the Industrial Site. For tracts with gravel road frontage, which is the case with this leasehold, having frontage along Peggy Lane, a gravel road, the minimum rental rate is \$0.020 per square foot per year. The annual minimal base lease rate for the leasehold should be set at \$1,463.68.
- E. 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...*" It is the Lease Administrator's understanding that the leasehold is not served by City water or wastewater treatment facilities. Past City research indicated at least one of the buildings has been served by an on-site well with potable water and a water right, and a 1978 county-approved wastewater treatment system also serves the lots. The Lease Administrator is not aware of City services or City-owned improvements that are provided specific to Lots 13, 22, & 23 that would warrant exercising this option to assess rates above the 'minimal base rates'.
- F. The Lease Administrator is unaware of any compliance issues with the current tenants, and the leasehold is in good standing with the City.
- G. David Jerrel has stated the operation will remain the same as it has always been: truck repair, trucking and feed sales. He has no new plans of making any changes or improvements. Therefore, the aerial imagery is sufficient for a site plan to keep in the lease file for lease administration.
- H. The Lease Administrator has discussed insurance requirements for leases with the City Attorney. Based on statutory requirements, the City requires the tenant to agree to carry minimum liability insurance in the amount of \$750,000 for each claim and \$1.5 million for each occurrence, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana.

## **VII. Finance Committee Action**

The Finance Committee is asked to review the applicant's proposal, the proposed lease rates, the draft lease agreement, and this staff report, as well as consider the applicant's responses to any questions the Finance Committee may have of him at the committee meeting, and make a recommendation to the City Council. Potential City Council actions are found in Section VIII of this staff report, and the staff recommendation from the Lease Administrator is found in Section IX.

## **VIII. City Council Action**

The City Council could approve, deny or table the proposal to enter into a new lease agreement with David P. Jerrel per the draft resolution (Attachment 4) and new lease agreement (Attachment 5) prepared by the Lease Administrator and reviewed by the City Attorney. The following are the potential actions that

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the City Council could take to approve or deny:

**A. Approval:**

Approve the lease agreement by resolution, which shall become effective July 1, 2023 and payable by June 30, 2023. Alternatively, the City Council may approve the lease agreement with modifications to the resolution or terms of the lease agreement.

**B. Denial:**

Should Council decide not to approve the lease agreement, the City Council may deny the proposed lease, or take other action to outline what additional information is needed.

**IX. Lease Administrator Recommendation**

Through review of leasing policies and considering the potential of this project, the Lease Administrator recommends that the Finance Committee adopt this staff report as findings of fact and recommend the City Council approve the attached draft resolution granting David P. Jerrel a 5-year lease with a one-time 5-year renewal option, and authorize the Mayor to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

**X. List of Attachments**

Attachment 1: Written request to renew and transfer the lease to David P. Jerrel (received by the Lease Administrator on December 15, 2022).

Attachment 2: Property Record Card from the Montana Cadastral Mapping Program

Attachment 3: Resolution No. 3497 and existing lease agreement

Attachment 4: Draft Resolution to approve a new lease agreement

Attachment 5: Draft NEW Lease Agreement



- Home
- Inbox
- Outbox
- Sent
- Deleted
- Spam
- Trash
- Compose
- Address Book
- Calendar
- Contacts

lease transfer of lease

Message 1 of 231

From: wbrans@midrivers.com  
 To: jerreltrane@gmail.com  
 Date: Today 2:53 pm

I am requesting the transfer of the leases held by Ray N Jerrel and Peggy E Jerrel in the industrial site west. They are lots 11, 22, 23. To David P Jerrel at the time of renewal.

1. The term of the new lease will be a 5 year lease with the option of a renewal lease of another 5 years. The terms of the lease are in the attachment.

2. The operation of the property will remain the same as it has always been. Truck repair, trucking and feed sales. I have no new plans at this time of making any new changes or improvements. Thank you for your time on this matter.

Ray Jerrel

Peggy Jerrel decease

*Peggy E Jerrel By David Jerrel P.R.*

David P Jerrel

*David P Jerrel*  
*By [Signature]*

# Attachment 2

## Property Record Card

### Summary

#### Primary Information

**Property Category:** RP **Subcategory:** Commercial Property  
**Geocode:** 14-1740-32-4-01-24-4001 **Assessment Code:** 000RSD1784  
**Primary Owner:** **PropertyAddress:** PEGGY LN  
 JERREL INC RAY MILES CITY, MT 59301  
 507 MISSISSIPPI AVE **COS Parcel:**  
 MILES CITY, MT 59301-4137

*NOTE: See the Owner tab for all owner information*

#### Certificate of Survey:

**Subdivision:** INDUSTRIAL SITES

#### Legal Description:

INDUSTRIAL SITES, S32, T08 N, R47 E, Lot 023, IMPS ONLY

**Last Modified:** 4/1/2023 7:57:25 AM

#### General Property Information

**Neighborhood:** 214.303.C **Property Type:** IMP\_R - Improved Property - Rural  
**Living Units:** 0 **Levy District:** 14-1172-1R  
**Zoning:** **Ownership %:** 100  
**Linked Property:**

No linked properties exist for this property

#### Exemptions:

No exemptions exist for this property

#### Condo Ownership:

**General:** 0 **Limited:** 0

#### Property Factors

**Topography:** **Fronting:**  
**Utilities:** **Parking Type:**  
**Access:** **Parking Quantity:**  
**Location:** **Parking Proximity:**

#### Land Summary

<u>Land Type</u>	<u>Acres</u>	<u>Value</u>
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00
ROW	0.000	00.00
NonQual Land	0.000	00.00
Total Ag Land	0.000	00.00
Total Forest Land	0.000	00.00
Total Market Land	0.000	00.00

#### Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type
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### Owners



Party #1

Default Information: JERREL INC RAY  
507 MISSISSIPPI AVE

Ownership %: 100

Primary Owner: "Yes"

Interest Type: Conversion

Last Modified: 12/9/2007 1:23:23 PM

Other Names

Other Addresses

Name

Type

## Appraisals

### Appraisal History

Tax Year	Land Value	Building Value	Total Value	Method
2022	0	101980	101980	COST
2021	0	101980	101980	COST
2020	0	98710	98710	COST

## Market Land

### Market Land Info

No market land info exists for this parcel

## Dwellings

### Existing Dwellings

No dwellings exist for this parcel

## Other Buildings/Improvements

### Outbuilding/Yard Improvement #1

Type: Commercial

Description: CPA2 - Paving, concrete, 4"

Quantity: 1

Year Built: 1960

Grade: A

Condition:

Functional: 3-Normal

Class Code: 3307

Dimensions

Width/Diameter:

Length:

Size/Area: 3800

Height:

Bushels:

Circumference:

## Commercial

### Existing Commercial Buildings

Building Number	Building Name	Structure Type	Units/Bldg	YearBuilt	
1		398 - Warehouse	1	1960	<a href="#">View</a>
2		398 - Warehouse	1	1960	<a href="#">View</a>

### General Building Information

Building Number: 1

Building Name:

Structure Type: 398 - Warehouse

Units/Building: 1

Identical Units: 1

Grade: F

Year Built: 1960

Year Remodeled: 1968

Class Code: 3307

Effective Year: 1965

Percent Complete: 0

### Interior/Exterior Data Section #1

Level From: 01

Level To: 01

Use Type: 045 - Warehouse

Dimensions

Area: 4,260  
Perimeter: 262

Use SK Area: 0  
Wall Height: 14

Features

Exterior Wall Desc: 07 - Metal, light

Construction: 1-Wood Frame/Joist/Beam

Economic Life: 40

% Interior Finished: 100

Partitions: 1-Below Normal

Heat Type: 3-Unit or Space Heaters

AC Type: 0-None

Plumbing: 0-None

Physical Condition: 2-Fair

Functional Utility: 2-Fair

Building Other Features

No other features exist for this interior/exterior detail

Interior/Exterior Data Section #2

Level From: 01

Level To: 01

Use Type: 082 - Multi-Use Office

Dimensions

Area: 420

Use SK Area: 0

Perimeter: 58

Wall Height: 8

Features

Exterior Wall Desc: 07 - Metal, light

Construction: 1-Wood Frame/Joist/Beam

Economic Life: 40

% Interior Finished: 100

Partitions: 2-Normal

Heat Type: 3-Unit or Space Heaters

AC Type: 0-None

Plumbing: 2-Normal

Physical Condition: 2-Fair

Functional Utility: 2-Fair

Building Other Features

No other features exist for this interior/exterior detail

Interior/Exterior Data Section #3

Level From: 01

Level To: 01

Use Type: 045 - Warehouse

Dimensions

Area: 2,400

Use SK Area: 0

Perimeter: 220

Wall Height: 10

Features

Exterior Wall Desc: 07 - Metal, light Construction: 1-Wood Frame/Joist/Beam Economic Life: 40

% Interior Finished: 100

Partitions: 0-None

Heat Type: 0-None

AC Type: 0-None

Plumbing: 0-None

Physical Condition: 2-Fair

Functional Utility: 3-Normal

Building Other Features

Description	Qty	Width	Length	Height	Area	Calculated Value	Unadjusted Value
LD1 - Loading Dock, steel or concrete	1	08	20	0	00	0	0

Elevators and Escalators

No elevators or escalators exist for this building

### Ag/Forest Land

Ag/Forest Land

No ag/forest land exists for this parcel

Attachment 3

RESOLUTION NO. 3497

**A RESOLUTION AUTHORIZING THE LEASING TO RAYMOND JERREL AND PEGGY JERREL OF MILES CITY, OF LOTS 13, 22 AND 23 OF TRACT E OF THE INDUSTRIAL SITE OWNED BY THE CITY OF MILES CITY, MONTANA;**

*WHEREAS*, Raymond Jerrel and Peggy Jerrel, husband and wife, of 507 Mississippi, Miles City, Montana 59301 have hereunto made application for lease of the following described real property located in Custer County, Montana:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site

*AND WHEREAS* the City Council finds that the area applied for by Raymond Jerrel and Peggy Jerrel is reasonably necessary for the use of the Lessees as a site for the purpose described in the Lease Agreement, attached hereto as Exhibit "A" and made a part hereof, the terms and conditions of such lease are in the best interests of the City of Miles City, and the application of said Lessees should be granted;

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

1. It does hereby authorize the leasing to Raymond Jerrel and Peggy Jerrel, husband and wife, of 507 Mississippi, Miles City, Montana 59301, as joint tenants with full rights of survivorship, 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 as Exhibit "A" and made a part hereof.

***PASSED AND ADOPTED BY AT LEAST A TWO-THIRDS AFFIRMATIVE VOTE OF ALL MEMBERS OF THE MILES CITY COUNCIL THIS 12TH DAY OF JUNE, 2012.***

  
\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

  
\_\_\_\_\_  
Rebecca Stanton, City Clerk



Exhibit "A"

LEASE AGREEMENT

THIS AGREEMENT, made entered into this 14 day of <sup>June</sup> ~~July~~, 2012, 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 Ray and Peg Jerrel, as joint tenants with right of survivorship, of 507 Mississippi, Miles City 59301, hereinafter referred to as "TENANT".

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" West of the City of Miles City, Montana, more particularly described as follows:

Lot 22 and 23 of Tract "E" of the Industrial Site west of Miles City, Montana in Custer County containing approximately 25,618.4 and 23,634.07 square feet respectively.

**AND WHEREAS** it is the desire of TENANT to lease the above described Leasehold for a term of five (5) years, together with a one-time option to renew for an additional five (5) year term.

**AND WHEREAS** the CITY owns certain real property located in the "Industrial Site" West of the City of Miles City, Montana, more particularly described as follows:

Lot 13 of Tract "E" of the Industrial Site west of Miles City, Montana in Custer County containing approximately 24,164 square feet.

**AND WHEREAS** Lot 13 is currently leased to Ray Jerrel, individually pursuant to resolution No. 2991 and as amended by Resolution No. 3017.

**AND WHEREAS** Ray Jerrel, individually, is willing to release his leasehold interests in Lot 13, conditional upon combining the lease of Lots 13, 22, and 23 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 the Industrial Site and more particularly described as follows:

Lot 13, Lot 22 and 23 of Tract "E" of the Industrial Site west of Miles City, Montana in Custer County containing approximately 24,164 , 25,618.4 and 23,634.07 square feet respectively, hereinafter "*Leasehold*".

## **II. INITIAL TERM**

The term of this Agreement shall be for a period 15 months and five (5) years, beginning on June 14 2012 and expiring at midnight on June 30, 2017, hereinafter, "the initial lease term", subject to the option in TENANT to renew this lease as provided for in Article IV of this lease.

## **III. RENTAL**

The initial annual rental for the initial lease term shall be the following:

Lot 13 containing 24,164.06 square feet with gravel road frontage @ 1.5 cents per sq. ft., Lot 22 containing 25,618.4 square feet with gravel road frontage @ 1.5 cents per sq. ft. and Lot 23 containing 22,634.07 square feet with gravel road frontage @ 1.5 cents per sq. ft. for a total rental of One Thousand One Hundred One dollars and 25/100 Dollars (\$1,101.25) per year. Payments for the first year of this agreement shall be paid upon contract execution date. Payments in subsequent years shall be due and payable in advance on July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2013 through July 1, 2016. The payment due at execution shall be \$1,101.25 for the lease year July 1, 2012 through June 30, 2013 plus the prorated rental for the period from date of execution to July 1, 2012, computed at \$3.02 per day.

## **IV. OPTION TO RENEW**

TENANT shall have the one-time option to renew this lease for a single additional five (5) year term, from July 1, 2017 through June 30, 2022. Such option is available only during the initial term of the lease and is not further available upon exercise of the option to renew. To exercise this option, at least sixty (60) days prior to the date of expiration of the initial lease term, TENANT, shall notify CITY, in writing, as to TENANT'S exercise of this option to renew this lease for one additional term of five (5) years from and after the date of expiration of the initial lease term. Such renewal shall be under the same terms and conditions as for the initial term with the exception that the annual rental shall be the sum of One Thousand Two Hundred Eleven and 37/100 Dollars (\$1,211.37) per year;

If TENANT fails to serve upon CITY its written exercise of TENANT'S right to renew prior to such sixty (60) day period, then this Lease shall terminate upon its original termination date and all rights and obligations of TENANT hereunder shall forever cease, other than TENANT'S indemnity obligations under Sections V (I) and (K), which shall survive the termination of this lease.

## **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:

Operation of a trucking and truck repair and feed supply company.

TENANTS agree to use the premises for the stated purpose and the stated purpose only, unless a change of use is approved by the City Council. TENANTS covenant that they 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 on account of 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 agrees neither to permit nor cause any waste on the property, or with respect to any improvements thereon. 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. 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 written notice and during normal business hours, in order to inspect and determine whether TENANT is in compliance 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 special form property insurance coverage covering the improvements on the leasehold premises in an amount equal to 100% of the replacement 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 premises liability insurance in the amount of at least ONE MILLION AND NO/100THS DOLLARS (\$1,000,000.00) personal injury and property damage per occurrence and in aggregate, with the CITY named as an additional insured on all such policies of insurance. TENANT shall 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 Miles City City Council and, thereafter, upon demand of the lease administrator of the CITY. All such policies of insurance shall carry an endorsement requiring ten (10) days prior written notice to the CITY by the insurer prior to their cancellation, termination or non-renewal

**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.

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 relet 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 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 30 calender days of the annual due date shall be subject to a late fee at a rate of 10% per annum.

### ***VIII. 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. 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 it's 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 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 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.

CITY OF MILES CITY

By:

  
ITS MAYOR

ATTEST:

  
CITY CLERK

TENANT:

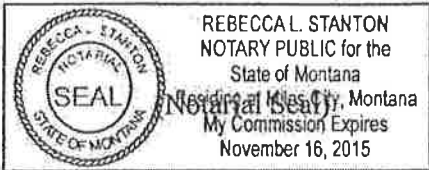
RAY AND PEG JERREL

By: Ray Jerrel  
JOINT TENANTS with Right of Survivorship

STATE OF MONTANA )  
: SS.  
COUNTY OF CUSTER )

This instrument was acknowledged before me on the \_\_\_ day of July, 2012 by C.A. Grenz in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation.

Rebecca Stanton

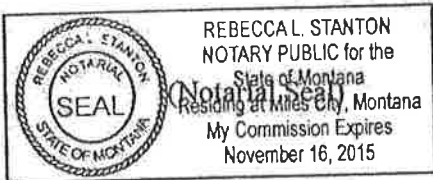


(Printed name of notary)  
~~Notary Public for the State of Montana  
Residing at Miles City, Montana  
My Commission expires: \_\_\_/\_\_\_/\_\_\_~~

STATE OF MONTANA )  
: SS.  
COUNTY OF CUSTER )

This instrument was acknowledged before me on the 14<sup>th</sup> day of June, 2012 by XXXXXX Ray and Peg Jerrel.

Rebecca Stanton



(Printed name of notary)  
~~Notary Public for the State of Montana  
Residing at Miles City, Montana~~

Attachment 4

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND DAVID P. JERREL, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City currently leases to Ray (Raymond) and Peg (Peggy) Jerrel certain real property located in Custer County, Montanan, to wit:

Legal Description: Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County. The leasehold contains approximately 73,184 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

*AND WHEREAS*, Raymond and Peggy Jerrel are deceased, and David P. Jerrel has been named personal representative of the estates of the deceased;

*AND WHEREAS*, David P. Jerrel, personal representative of the estates of Raymond and Peggy Jerrel, is requesting a new lease agreement for the leasehold and to transfer the lease to his name;

*AND WHEREAS*, the estate(s) (through David P. Jerrel, as personal representative and estate beneficiary) represents that the tenant owns substantial permanent improvements upon said leasehold, including a 2,400 square foot warehouse building and a 4,260 square foot warehouse building used for operation of a trucking and truck repair and feed supply company, and David P. Jerrel desires to lease 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 conditions of the Lease Agreement between the City of Miles City and David P. Jerrel attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

## Attachment 5

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 **David P. Jerrel**, PO Box 429, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

#### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 73,184 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 the Industrial Site and more particularly described as follows:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 73,184 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site, containing approximately 73,184 square feet @ \$0.020 per square foot per year, for a total rental of one-thousand, four-hundred and sixty-three and 68/100 dollars (\$1,463.68) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the "INITIAL TERM", this agreement shall automatically renew for a one-time period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANT give to the other party written notice of cancellation of said agreement 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 hereby acknowledges, covenants and agrees as follows:

#### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

Operation of a trucking and truck repair and feed supply company.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

*Optional term, if applicable (remove if not adopted): 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 will 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 fails 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**





**Staff Report to Miles City Finance Committee  
Industrial Site Lease Renewal:  
Hugo Muggli Inc. of Tract "E" Lot 1 and West ½ of Lot 2  
Report Date: May 2, 2023**

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## **I. General Information**

<b>Type of Request:</b>	Request to renew a lease agreement for leased land in the City-owned Industrial Site and confirm the tenant name.
<b>Requestor:</b>	Dustin Muggli, Hugo Muggli Inc.
<b>Leased Lots:</b>	Lot 1 & West ½ of Lot 2 of Tract "E" of the Industrial Site
<b>Date of Finance Committee meeting:</b>	Wednesday, May 10, 2023 at 5:00 p.m. at the City Hall Conference Room, 17 South 8 <sup>th</sup> Street, Miles City
<b>Date of City Council meeting:</b>	To be determined

## **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 record<sup>1</sup>, 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 from the federal government 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.

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. 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 Muggli leasehold includes Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site. According to information from the Muggli lease file, there have been several City resolutions and associated lease agreements for the Muggli lease dating back to 1990, with Jerome H. Muggli the lessee. There is an unsigned lease agreement from 2010 that would make the lessee Hugo Muggli, Inc. There are also letters in the file from John Marks, Lease Administrator at the time between 2009 and 2010. A June 22, 2009 letter states the lease had expired and allowed to continue under the terms of the existing lease, and that the City had agreed to amend the lease to transfer it from Jerome Muggli to Hugo Muggli Inc. A June 1, 2010 letter stated the City had completed a new lease, and referred to an attached lease that Mr. Marks requested Ray Muggli of Hugo Muggli Inc. to sign. It is presumed the unsigned lease agreement dated 2010 was the attachment to the letter. There is no reference to a City approval of the Muggli lease agreement or associated City resolution within the City Council minutes during that period of time. The City has operated as though the 2010 lease agreement is valid, and the lessees have occupied the premises continuously. Therefore the City continues to treat it as valid.

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<sup>1</sup> 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 Lot 1 & W ½ of Lot 2 are among lots 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 Renewal:**  
**Hugo Muggli Inc. of Tract "E" Lot 1 and West ½ of Lot 2**  
**Report Date: May 2, 2023**

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The Muggli leasehold is comprised of Lot 1, being 27,000 square feet (per past lease agreements – see further discussion below) and the West ½ of Lot 2, being 13,500 square feet, for a total of 40,500 square feet. The purpose is for “operation of a welding and repair shop” per the unsigned agreement (previous, signed agreements stated the purpose was to “operate a welding shop” and to “occupy the premises as a welding and repair shop and related business”). The operating lease agreement was set to expire on June 30, 2022. However, the City Council granted two six-month extensions: (1) on June 28, 2022 to bring the expiration date to December 31, 2022, and (2) on December 27, 2022 to bring the expiration date to June 30, 2023 to coincide with the City’s fiscal year.

According to Resolution No. 4100, the City may agree to renew leases in circumstances where the City has allowed the tenant to construct “substantial permanent improvements” on the leaseholds as determined by the City Council. Resolution No. 4123 states such lessees may be granted a preferential right to renew their lease, so the lessees may be given special consideration to renew and the City need not advertise the lease for bid. According to the Montana Cadastral program (see Attachment 2), Hugo Muggli Inc. owns improvements on Lot 1 of the Industrial Site, being a warehouse building built in 1972, with a total 2022 assessed building value of \$101,910; therefore, it appears the lessee qualifies for the provision of renewal based on substantial permanent improvements.

The Lease Administrator’s review of the City resolutions and lease agreements in the Industrial Site revealed a discrepancy that pertains to the Muggli lease, which should be corrected in conjunction with processing the lease renewal. As stated previously, the Muggli lease is for Lot 1 and the West ½ of Lot 2 of Tract “E”. However, in December 2017, the City Council approved Resolution No. 4118, approving an extension of a lease held by Linda L. Larsen individually and as Trustee of the Lydia Stratford Trust FBO Diana Stratford (tenant) for Lot 2 and the East ½ of Lot 3 of Tract “E”. At that time, the Council also approved Resolution No. 4119, authorizing the assignment of the lease to Center Ag Supply, LLC. The discrepancy is that the previous lease agreements were for Lot 3 and the East ½ of Lot 2, and the 2017 resolutions, lease agreement and assignment used the wrong legal descriptions of the lots, creating an overlap in the stated lot descriptions between the Muggli lease and what is now the Center Ag Supply lease, and also leaving the West ½ of Lot 3 unassigned. So the Lease Administrator and Center Ag Supply are also proposing the City correct the discrepancy with the Center Ag Supply lease. The Center Ag Supply leasehold correction is being addressed through a separate report, resolution, and lease agreement.

In 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder’s Office in Envelope #570B. The purpose of the COS was to retrace the boundaries of existing tracts of record as evidenced by lease histories. Lot 1 is a tract of record per that COS, as is the West ½ of Lot 2. Lot 1 is depicted at 26,947 square feet on this most recent COS; therefore, the Lease Administrator is proposing to use that size and legal description in the new lease agreement, if approved.

### **III. Map Series**

The following series of maps are included for reference:

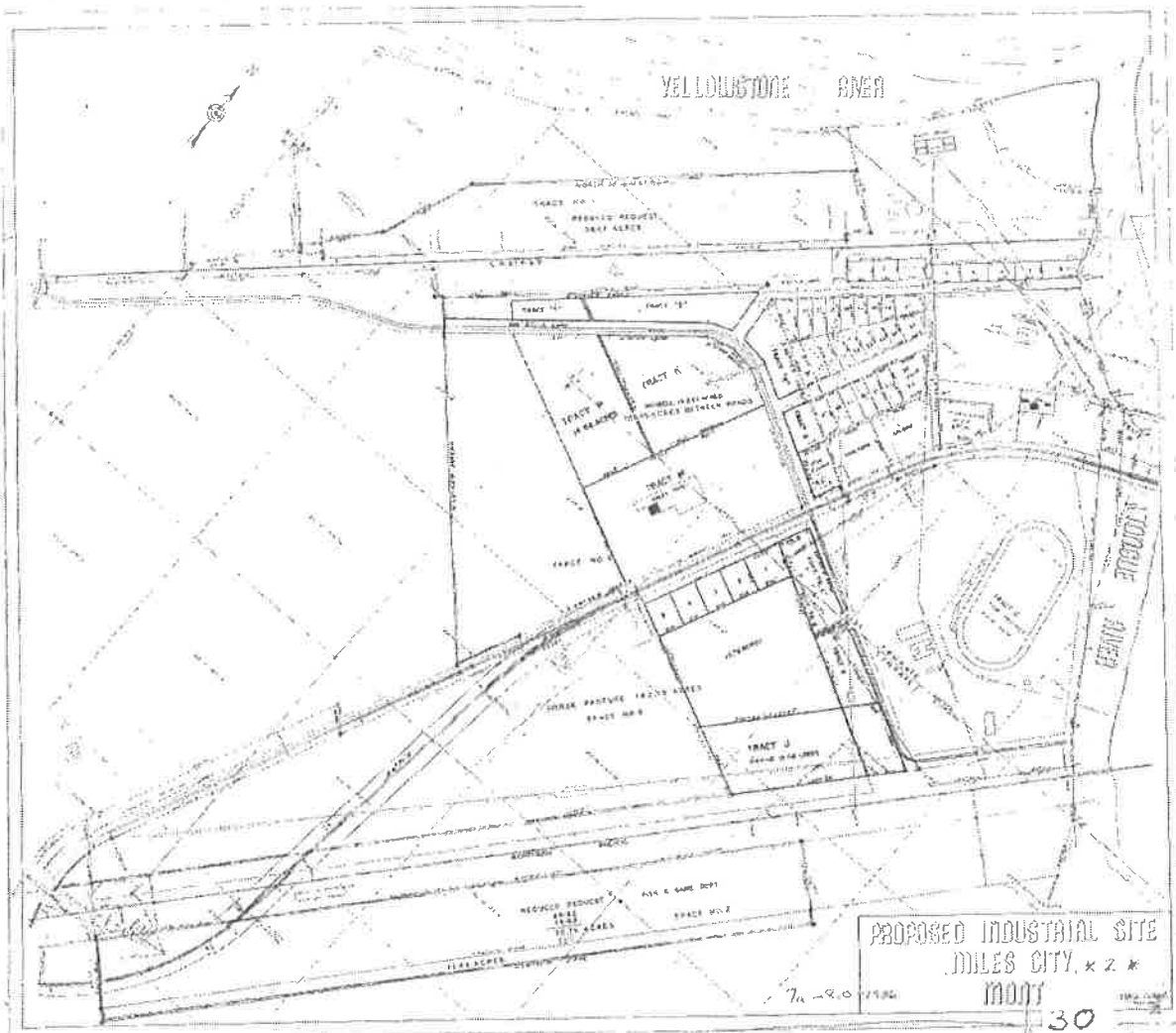


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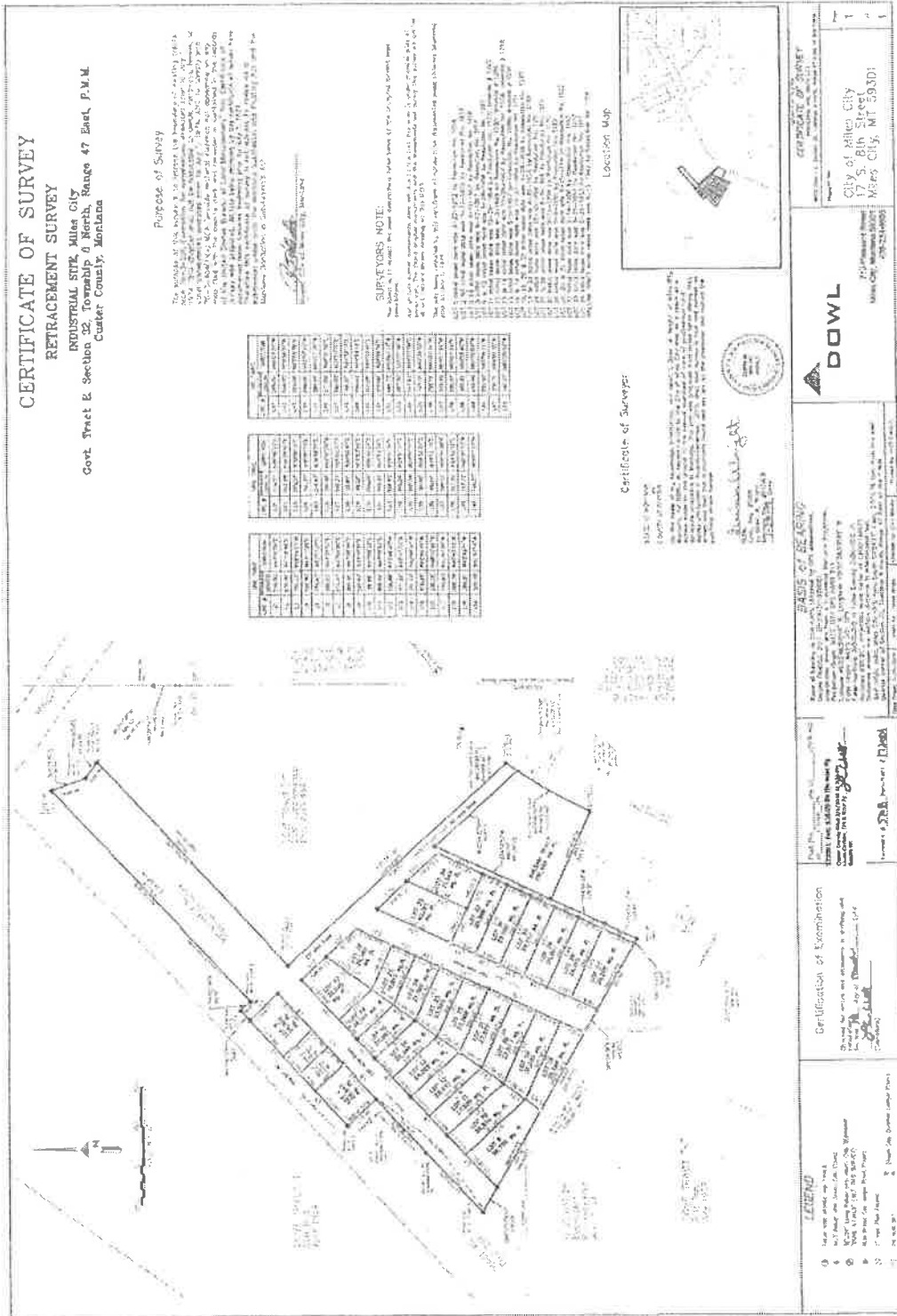
1. Map 1 (page 3) is a 1956 map of the Industrial Site that is often used for administration of the leased lots.
2. Map 2 (page 4) is the 2019 Retracement COS recorded at the Custer County Clerk & Recorder's Office in Envelope #570B.
3. Map 3 (page 5) is the 2019 Retracement COS zoomed in to show Lots 1 – 3.
4. Map 4 (page 6) is August 2022 aerial imagery from Google Earth, with the approximate boundaries of the leasehold drawn by the Lease Administrator, scaled off of features such as Logan Drive and visible fence lines. Please note the boundaries are very approximate.

Map 1: 1956 Map of Industrial Site



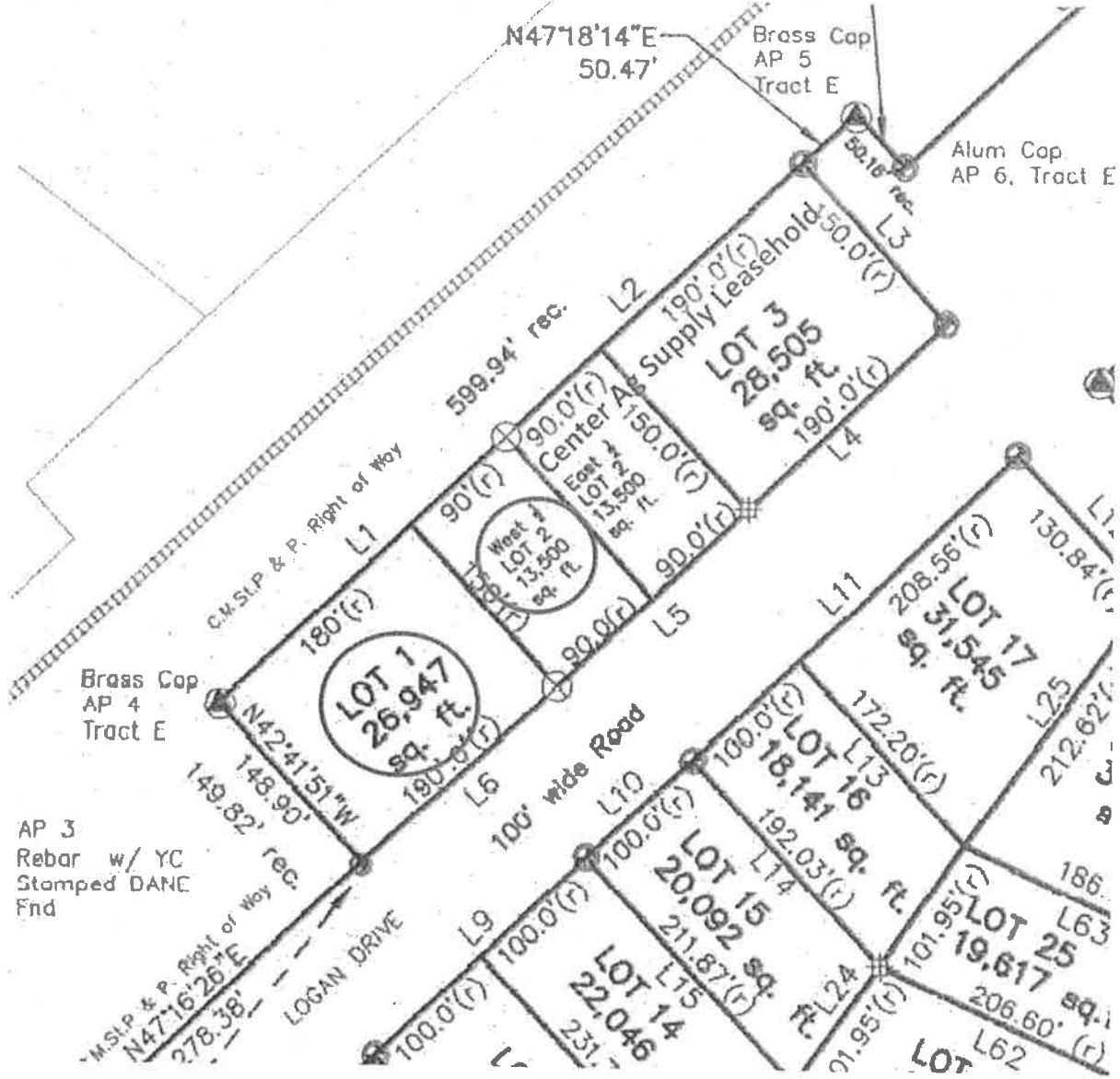
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Map 2: 2019 Retracement COS



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Map 3: excerpt of 2019 Retracement COS zoomed in to show Lots 1 – 3



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Map 4: Google Earth imagery with approximate boundaries of the Muggli leasehold:



#### **IV. Applicable City Policies/Regulations**

Because the Industrial Site and 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. The applicable resolutions are discussed below, with applicable sections included.

The current resolutions that govern the City's operation of the leased lots include [Resolution #4100](#) (a 2017 resolution establishing procedures for the sale or lease of city lands), [Resolution No. 4123](#) (a 2018 resolution providing for procedures to manage and monitor leases of property owned by the City of Miles

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City), and Resolution No. 4124 (a 2018 resolution establishing minimum base rent for Industrial Site and other city leaseholds). Attached to Resolution #4100 is a "Standard Form of Lease" that is used as a template for City Property Lease Agreements.

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

- **Resolution #4100:**
  - **Section 4. Extension of Leases With Substantial Permanent Improvements.** The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate, any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.
  - **Section 6. Transmittal of Offers to Finance Committee.** Following the date and time specified in the published notice for submission of written proposals, the City Lease Administrator shall transmit a copy of all written proposals timely received, to the chair of the Finance Committee of the City Council.
  - **Section 7. Review and Recommendation of Finance Committee.** The Finance Committee shall then meet, review all such proposals, conduct such interviews of proposed lessees or purchasers as it deems necessary, and shall pass on to the City Council all such proposals, with the Committee's recommendations for action thereon.
  - **Section 8. Council Consideration.** Upon receipt of the recommendation of the Finance Committee, the City Council shall take such action upon such proposed lease or purchase as it deems in the best interests of the City. Nothing herein shall be construed as requiring the Finance Committee or the City Council to accept any written proposal for lease or purchase.
  - **Section 10. Two-Thirds Majority Vote Required to Lease or Sell.** Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.

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- **Resolution No. 4123:**

- **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

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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.

- 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.

- **Resolution No. 4124:**

- 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.

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.

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**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.

## **V. Applicable Lease Agreement**

As stated previously, the operating lease agreement is an unsigned lease agreement from 2010 with lessee Hugo Muggli, Inc. The lease agreement is attached to this report as Attachment 4, for informational purposes and to compare to the draft new lease agreement.

## **VI. Draft Lease Agreement**

A draft lease agreement, prepared by the Lease Administrator and reviewed by the City Attorney, is attached to this report as Attachment 6. The draft lease agreement is based on the standard form of lease document attached to Resolution #4100, with minor modifications to reflect language in Resolution No. 4123 and to require proof of liability insurance in the amount of \$750,000.00 per claim and \$1,500,000.00 per occurrence.

## **VI. Lease Administrator Analysis**

- A. 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.
- B. The 2019 Retracement COS gives Lot 1's size as 26,947 square feet, and the West ½ of Lot 2 as 13,500 square feet. So the total leased area is now 40,447 square feet. Resolution No. 4124 establishes the minimum base rent for the Industrial Site. For tracts with gravel road frontage, which is the case with this leasehold, having frontage only along Logan Drive, a gravel road, the minimum rental rate is \$0.020 per square foot per year. The annual minimal base lease rate for the leasehold should be set at \$808.94.
- C. 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...*" It is the Lease Administrator's understanding that the leasehold is served by City water, which could warrant exercising this option to assess rates above the 'minimal base rates'. The Finance Committee should discuss and consider whether to increase the annual lease rate based on the provision of City water.
- D. In June 2021, the Lease Administrator at the time visited the leasehold and noted the tenant was in violation of the operating lease agreement. The Lease Administrator sent the tenant a letter



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noting the violations, requiring the tenant to bring the use of the leasehold into compliance with the agreement. The letter pointed out that the use of the leasehold looked to be to store recreational vehicles, old cars in various stages of disrepair, scrap metal, barrels, old air conditioner units, chemical storage containers, old appliances and numerous other miscellaneous scrap items. A lean-to roof had started to collapse and sidewall had started to shift and was leaning on storage materials to keep from total collapse. The undated letter, which is thought to have been sent on approximately June 23, 2021, gave the tenant 30 days from the postmarked date of the letter to cure the defaults noted above, but also stated the following: *"If the nature of the default cannot reasonably be cured within the thirty (30) day period, so long as the Tenant commences and diligently pursues a cure of such default promptly within the initial 30 day cure period, the 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. If the default is not cured in that time, it is 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."*

On September 30, 2021, the Lease Administrator at the time was leaving the position, and sent the current Lease Administrator information regarding the Muggli lease and above-described violations. In December 2021, the acting Lease Administrator requested City staff visit the site and take photographs. At that time, the tenant had performed some cleanup of the leasehold, but it was a work in progress. In April 2022, the acting Lease Administrator contacted tenant Dustin Muggli about the status of the lease and cleanup efforts. Cleanup was still a work in progress. In July 2022, the acting Lease Administrator visited the site along Logan Drive and noted the leasehold was still in violation of lease agreement, with junk vehicles, old barrels, and other scraps still on the site and spilling into the adjacent Logan Drive right-of-way and railroad property. The lean-to on the north side of the building had been removed.

Please see the following photographs of the leasehold from July 19, 2022:

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**Photograph 1:** the southern portion of the leasehold from Logan Drive



**Photograph 2:** the north side of the leasehold from Logan Drive



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The Lease Administrator contacted Dustin Muggli in March 2023 about the status of the cleanup, and Mr. Muggli replied on March 14<sup>th</sup> as follows: "There has been a little progress weather has been a problem and our shop on the farm burnt down in November and been trying to get that stuff for insurance so that has been another problem also." The Lease Administrator intends to work with Mr. Muggli to obtain compliance along with the lease renewal, or enforcement actions may need to be taken.

- E. Based on the previous Lease Administrator's correspondence with the current Lease Administrator, the purpose of the leasehold has expanded from the past purpose being "Operation of a welding and repair shop", and is now also used for "personal farm equipment repair and personal auto repair and storage". The draft new lease agreement reflects these additional uses.
- F. The Lease Administrator has discussed insurance requirements for leases with the City Attorney. Based on statutory requirements, the City requires the tenant to agree to carry minimum liability insurance in the amount of \$750,000 for each claim and \$1.5 million for each occurrence, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana. The current insurance is sufficient to meet City requirements, if renewed and provided to the City in accordance with the lease agreement.

## **VII. Finance Committee Action**

The Finance Committee is asked to review the applicant's proposal, the proposed lease rates, the draft lease agreement, and this staff report, as well as consider the applicant's responses to any questions the Finance Committee may have of him at the committee meeting, and make a recommendation to the City Council. Potential City Council actions are found in Section VIII of this staff report, and the staff recommendation from the Lease Administrator is found in Section IX.

## **VIII. City Council Action**

The City Council could approve, deny or table the proposal to enter into a new lease agreement with Hugo Muggli Inc. per the draft resolution (Attachment 5) and new lease agreement (Attachment 6) prepared by the Lease Administrator and reviewed by the City Attorney. The following are the potential actions that the City Council could take to approve or deny:

### **A. Approval:**

Approve the lease agreement by resolution, which shall become effective July 1, 2023 and payable by June 30, 2023. Alternatively, the City Council may approve the lease agreement with modifications to the resolution or terms of the lease agreement.

### **B. Denial:**

Should Council decide not to approve the lease agreement, the City Council may deny the proposed

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lease, or take other action to outline what additional information is needed.

### **IX. Lease Administrator Recommendation**

Through review of leasing policies and considering the potential of this project, the Lease Administrator recommends that the Finance Committee adopt this staff report as findings of fact and recommend the City Council approve the attached draft resolution granting Hugo Muggli Inc. a 5-year lease with a one-time 5-year renewal option, and authorize the Mayor to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

### **X. List of Attachments**

Attachment 1: Dustin Muggli of Hugo Muggli Inc.'s written request to extend the lease, dated May 25, 2022

Attachment 2: Property Record Card from the Montana Cadastral Mapping Program

Attachment 3: Insurance certificate for 6/29/2022 through 6/29/2023

Attachment 4: Current, unsigned 2010 lease agreement with Hugo Muggli, Inc.

Attachment 5: Draft Resolution to approve a new lease agreement

Attachment 6: Draft NEW Lease Agreement

# Attachment 1

May 25, 2022

City of Miles City  
17 S. 8th St.  
Miles City, MT 59301

To Whom It May Concern:

This letter is written requesting, from the City of Miles City, an extension to the lease of the shop (Lot 1 and Lot 2 of the Industrial Site) owned by Hugo Muggli Inc.. The shop has been utilized for welding and repairs and if able to extend the lease it will continue to be utilized in the same manner. The current lease has been kept in good standing. As per the request of The City of Miles City, there has been a lot of cleanup needed around the shop building and a significant portion has been completed. Cleanup is still being done and will continue until fully completed.

I have verified the insurance requirements for this site and all required needs are met. Please see a copy of the insurance plan enclosed.

Please reach out to me if there are any concerns or questions.

Sincerely,

Dustin Muggli  
Hugo Muggli, Inc.  
406-232-2058

Enclosure

## Attachment 2

### Property Record Card

#### Summary

##### Primary Information

<b>Property Category:</b> RP	<b>Subcategory:</b> Commercial Property
<b>Geocode:</b> 14-1740-32-4-01-05-4001	<b>Assessment Code:</b> 000RSD0102
<b>Primary Owner:</b> MUGGLI HUGO INC MAIL TO: MUGGLI DUSTIN MILES CITY, MT 59301	<b>PropertyAddress:</b> LOGAN DR MILES CITY, MT 59301
	<b>COS Parcel:</b>

*NOTE: See the Owner tab for all owner information*

##### Certificate of Survey:

**Subdivision:** INDUSTRIAL SITES

##### Legal Description:

INDUSTRIAL SITES, S32, T08 N, R47 E, Lot 001, IMPS ONLY

**Last Modified:** 4/26/2023 10:24:29 PM

##### General Property Information

<b>Neighborhood:</b> 214.303.C	<b>Property Type:</b> IMP_R - Improved Property - Rural
<b>Living Units:</b> 0	<b>Levy District:</b> 14-1172-1R
<b>Zoning:</b>	<b>Ownership %:</b> 100
<b>Linked Property:</b>	

No linked properties exist for this property

##### Exemptions:

No exemptions exist for this property

##### Condo Ownership:

<b>General:</b> 0	<b>Limited:</b> 0
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##### Property Factors

<b>Topography:</b>	<b>Fronting:</b>
<b>Utilities:</b>	<b>Parking Type:</b>
<b>Access:</b>	<b>Parking Quantity:</b>
<b>Location:</b>	<b>Parking Proximity:</b>

##### Land Summary

<u>Land Type</u>	<u>Acres</u>	<u>Value</u>
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00
ROW	0.000	00.00
NonQual Land	0.000	00.00
Total Ag Land	0.000	00.00
Total Forest Land	0.000	00.00
Total Market Land	0.000	00.00

##### Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type
6/30/1998	M95	423			
1/20/1998	M92	819-1			
4/9/1997	M88	671			

8/16/1996	M85	3		
11/9/1990	M55	1064		

**Owners**

Party #1  
**Default Information:** MUGGLI HUGO INC  
MAIL TO: MUGGLI DUSTIN  
**Ownership %:** 100  
**Primary Owner:** "Yes"  
**Interest Type:** Conversion  
**Last Modified:** 11/25/2015 5:10:47 PM

Other Names Other Addresses

<b>Name</b>	<b>Type</b>	
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**Appraisals**

**Appraisal History**

Tax Year	Land Value	Building Value	Total Value	Method
2022	0	101910	101910	COST
2021	0	101910	101910	COST
2020	0	95060	95060	COST

**Market Land**

**Market Land Info**

No market land info exists for this parcel

**Dwellings**

**Existing Dwellings**

No dwellings exist for this parcel

**Other Buildings/Improvements**

**Outbuilding/Yard Improvements**

No other buildings or yard improvements exist for this parcel

**Commercial**

**Existing Commercial Buildings**

Building Number	Building Name	Structure Type	Units/Bldg	YearBuilt	
1		398 - Warehouse	1	1972	<a href="#">View</a>

**General Building Information**

<b>Building Number:</b> 1	<b>Building Name:</b>	<b>Structure Type:</b> 398 - Warehouse
<b>Units/Building:</b> 1	<b>Identical Units:</b> 1	
<b>Grade:</b> F	<b>Year Built:</b> 1972	<b>Year Remodeled:</b> 0
<b>Class Code:</b> 3307	<b>Effective Year:</b> 1975	<b>Percent Complete:</b> 0

**Interior/Exterior Data Section #1**

<b>Level From:</b> 01	<b>Level To:</b> 01	<b>Use Type:</b> 045 - Warehouse
<b>Dimensions</b>		
<b>Area:</b> 4,800	<b>Use SK Area:</b> 1	
<b>Perimeter:</b> 292	<b>Wall Height:</b> 14	
<b>Features</b>		

**Exterior Wall Desc:** 07 - Metal, light  
**Construction:** 4-Pre-engineered Steel  
**Economic Life:** 40  
**% Interior Finished:** 100  
**Partitions:** 0-None  
**Heat Type:** 3-Unit or Space Heaters  
**AC Type:** 0-None  
**Plumbing:** 1-Below Normal  
**Physical Condition:** 3-Normal  
**Functional Utility:** 3-Normal

Building Other Features

No other features exist for this interior/exterior detail

Interior/Exterior Data Section #2

**Level From:** 01      **Level To:** 01      **Use Type:** 045 - Warehouse

Dimensions

**Area:** 480      **Use SK Area:** 1  
**Perimeter:** 64      **Wall Height:** 8

Features

**Exterior Wall Desc:** 07 - Metal, light  
**Construction:** 4-Pre-engineered Steel  
**Economic Life:** 40  
**% Interior Finished:** 100  
**Partitions:** 0-None  
**Heat Type:** 0-None  
**AC Type:** 0-None  
**Plumbing:** 0-None  
**Physical Condition:** 2-Fair  
**Functional Utility:** 3-Normal

Building Other Features

No other features exist for this interior/exterior detail

Elevators and Escalators

No elevators or escalators exist for this building

## **Ag/Forest Land**

Ag/Forest Land

No ag/forest land exists for this parcel





# Attachment 3 EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
05/23/2022

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

<p><b>AGENCY</b> FRED WACKER AGENCY INC. 1413 MAIN, P.O. BOX 70  MILES CITY MT 59301</p> <p>FAX (A/C No): 406-232-4754      E-MAIL ADDRESS: WACKERINS2@MIDRIVERS.COM</p> <p>PHONE (A/C, No, Ext): 406-232-1111</p> <p>CODE: 8415096      SUB CODE:</p> <p>AGENCY CUSTOMER ID #: 100072</p> <p><b>INSURED</b> HUGO MUGGLI, INC. ETAL 558 Tongue River Rd  MILES CITY MT 59301</p>	<p><b>COMPANY</b> Ohio Security Ins Co  24001 E MISSION AVE, SUITE 100 LIBERTY LAKE WA 99019</p> <p>LOAN NUMBER:      POLICY NUMBER: FMS59963441</p> <p>EFFECTIVE DATE: 06/29/2022      EXPIRATION DATE: 06/29/2023</p> <p><input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED</p> <p>THIS REPLACES PRIOR EVIDENCE DATED:</p>
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**PROPERTY INFORMATION**

LOCATION/DESCRIPTION  
  
INDUSTRIAL PARK THREE MILES WEST OF MILES CITY, MT 59301

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	
COVERAGE / PERILS / FORMS					
1975 SHOP (SPECIAL FORM/ REPLACEMENT COST)					AMOUNT OF INSURANCE
MISC TOOLS AND SUPPLIES					DEDUCTIBLE
LIABILITY EACH OCCURENCE					81,131
GENERAL AGGREGATE					50,000
FIRE LEGAL LIABILITY					1,000
MEDICAL PAYMENTS					1,000
PERSONAL AND ADVERTISING INJURY					2,000,000
					100,000
					5,000
					1,000,000

**REMARKS (Including Special Conditions)**

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

<p>NAME AND ADDRESS  CITY OF MILES CITY P.O. BOX 910  MILES MT 59301</p>	<input checked="" type="checkbox"/>	ADDITIONAL INSURED	<input type="checkbox"/>	LENDER'S LOSS PAYABLE
	<input type="checkbox"/>	MORTGAGEE	<input checked="" type="checkbox"/>	LOSS PAYEE
	LOAN #			
	AUTHORIZED REPRESENTATIVE <i>Rebeca...</i>			

# Attachment 4

## LEASE AGREEMENT

**THIS AGREEMENT**, made entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 **HUGO MUGGLI, INC.**, a Montana company, of HC 332 PO Box 4121, Miles City, Montana 59301, hereinafter referred to as "**TENANT**".

### RECITALS:

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" West of the City of Miles City, which it desires to lease to an appropriate tenant;

**AND WHEREAS** Tenant desires to lease property in order to operate his business;

**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 Industrial Site and more particularly described as follows:

Lot 1 and W ½ of Lot 2, all of Tract "E" of the Industrial Site west of Miles City, Montana, containing approximately 40,500 square feet, more or less, hereinafter "**Leasehold**".

### **II. INITIAL TERM**

The term of this Agreement shall be for a period of ten years, beginning on July 1, 2010 and expiring at midnight on June 30, 2020.

### **III. RENTAL**

The annual rental for the lease term shall be \$0.015 per square foot per year. The total annual rental shall be SIX HUNDRED SEVEN AND 50/100THS DOLLARS (\$607.50).

#### ***IV. 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 purposes of: Operation of a welding and repair shop. 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 on account of 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 agrees neither to permit nor cause any waste on the property, or with respect to any improvements thereon. 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. 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 written notice and during normal business hours, in order to inspect and determine whether TENANT is in compliance 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 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 Miles City City Council and, thereafter, 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.

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.

***V. 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.

## ***VI. 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 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 30 calender days of the annual due date shall be subject to a late fee at a rate of 10% per annum.

## ***VII. 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. 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 it's 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 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 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 herein above written.

CITY OF MILES CITY

By: \_\_\_\_\_  
ITS MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

TENANT: HUGO MUGGLI, INC.

By: \_\_\_\_\_

(STATE OF MONTANA)  
: SS.  
(COUNTY OF CUSTER)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010 by **Joe R. Whalen** in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation.

\_\_\_\_\_  
\_\_\_\_\_  
(Notarial Seal)  
(STATE OF MONTANA)  
: SS.  
(COUNTY OF CUSTER)

(Printed name of notary)  
Notary Public for the State of Montana  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_ in his capacity as Representative of Hugo Muggli, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
(Notarial Seal)

(Printed name of notary)  
Notary Public for the State of Montana  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_



# Attachment 5

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND HUGO MUGGLI INC., FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City leases certain real property to Hugo Muggli Inc., a Montana company, hereinafter referred to as "Tenant", said property located in Custer County, Montanan, to wit:

Legal Description: Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

*AND WHEREAS*, Tenant owns substantial permanent improvements upon said leasehold, including a 4,800 square foot warehouse building used as a welding and repair shop, 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 conditions of the Lease Agreement between the City of Miles City and Hugo Muggli Inc. attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

## Attachment 6

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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 **Hugo Muggli Inc.**, a Montana company, of 558 Tongue River Road, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

#### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 the Industrial Site and more particularly described as follows:

Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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 1 and the West ½ of Lot 2 of Tract “E” of the Industrial Site, containing approximately 40,447 square feet @ \$0.020 per square foot per year, for a total rental of eight hundred and eight and 94/100 dollars (\$808.94) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the “INITIAL TERM”, this agreement shall automatically renew for a one-time period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANT give to the other party written notice of cancellation of said agreement 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 hereby acknowledges, covenants and agrees as follows:

##### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

Operation of a welding and repair shop, personal farm equipment repair, and personal auto repair and storage.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-

THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

*Optional term, if applicable (remove if not adopted): 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 will 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 fails 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**



**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John Hollowell in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation, who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

**TENANT:**

\_\_\_\_\_  
Dustin Muggli, (title), Hugo Muggli Inc.

\_\_\_\_\_  
Leonard Muggli (title), Hugo Muggli Inc.

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Dustin Muggli and Leonard Muggli, who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana

My Commission expires: \_\_\_\_ / \_\_\_\_ /

(NOTARIAL SEAL)

DRAFT



# CITY OF MILES CITY

## *PLANNING & COMMUNITY SERVICES*

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17 S. 8<sup>th</sup> Street, PO Box 910  
Miles City, MT 59301-0910

Telephone: 406-234-3493  
Fax: 406-234-6392

**Date:** May 16, 2023

**To:** City Council

**From:** Joel Nelson, Contract Planner and Lease Administrator

**Re:** Leases for City Council consideration on May 23, 2023

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On May 11, 2023, the Finance Committee met to review and make recommendations on four different lease matters in the Industrial Site. The Finance Committee recommended approval of the leases to the City Council as recommended in the staff reports. The City Council will review the recommendations and draft resolutions and lease agreements for the four leases, and potentially make decisions on the leases at the May 23, 2023 6pm Council meeting.

The Finance Committee made no changes to reports, draft resolutions, and draft lease agreements. Because no changes were made, and to minimize paperwork reproduction, the same documents as presented to the Finance Committee are being presented to City Council for consideration at the May 23, 2023 meeting. Members of the Finance Committee are asked to utilize the previous Finance Committee packets. Members of Council not on the Finance Committee are being provided the packets, attached to this memo. The only changes to the packets being sent to City Council members not on the Finance Committee are the additions of resolution numbers to the draft resolutions.

The draft lease agreements are subject to modification by Council and include language that will need to be changed or eliminated by the actions by Council.

Also, please note Jeremy Kueffler of Center Ag Supply has sent the attached email requesting changes to the purpose of that lease. Mr. Kueffler did not have the opportunity to attend the Finance Committee meeting to discuss that aspect of the Center Ag Supply draft lease agreement, and would like the opportunity to work out changes to the purpose of the lease with the Council. The recommended language regarding the lease purpose (Page 2, Section V.A of Attachment 6 to the Larsen/Center Ag Supply report) is to ensure that only the uses contemplated at this time when establishing the agreement are allowed by the lease agreement, which is a typical requirement for City leases. However, the terms of the lease agreement are subject to approval by City Council, who may modify the terms of the draft agreement.

**From:** [jkuessler@midrivers.com](mailto:jkuessler@midrivers.com)  
**To:** [joel@geopland.com](mailto:joel@geopland.com)  
**Subject:** Industrial site lease  
**Date:** Monday, May 15, 2023 11:06:00 AM

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5/15/2023  
City of Miles City  
City Council  
Joel Nelson, Geopland LLC

To Whom it may concern

I am writing this letter in reference to a resolution passed by the Planning and Community Services Committee to write a new lease between The City of Miles City and Center Ag Supply LLC, of which I am the owner and operator.

In a letter dated March 7, 2023 and a later phone conversation, I was asked by Mr. Nelson to request that a new lease be written to replace a lease assigned to Center Ag Supply by Linda Larsen on Dec. 26, 2017. The main purpose of the new lease would be to correct a misprint regarding the legal description. I wrote a letter to Mr. Nelson dated April 19, 2023 requesting a new lease with the correct legal description.

I have received a copy of the draft lease document, and I have one problem with it. On the December 26, 2023 lease which was assigned to me, the stated purpose of the lease reads "Sublet property to Commercial Entities or Small Business Enterprises" At that time the Council knew of my plans to move to the building when the lease between Mrs Larsen and BNSF expired. No discussion of changing the stated purpose of the lease was requested.

In the new draft lease, the stated purpose reads, " 1. Sublet property to BNSF Railway Corporation, a commercial entity; or 2. To be used by Tenant's small business enterprise, being sales and service of liquid livestock feed and other farm and ranch products." Although the building is currently sublet to BNSF and I don't foresee a change in that use, I feel that the new language limits my use of the building in the event that BNSF moves out. Since the lease already assigned to me states the purpose as "Sublet property to commercial entities or small business enterprises" I request that the purpose on the new lease reads, "1. Sublet property to commercial entities or small business enterprises or 2. To be used by the Tenant's own small business enterprise."

Thank You  
Jeremy Kueffler  
Owner-Center Ag Supply LLC

# New Business

**RESOLUTION NO. 4509**

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND TODD NEIFFER AND ELIZABETH NEIFFER, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City has advertised and solicited bids in accordance with City policy and State law, for the lease of the following City owned real property located in Custer County, Montana, to wit:

Legal Description: Lots 6 and 7 of Tract "E" of the Industrial Site west of Miles City, Montana, containing approximately 50,000 square feet, more or less;

*AND WHEREAS*, Todd Neiffer and Elizabeth Neiffer were the sole bidders for said leasehold, and the City desires to enter into a lease with said bidders;

***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 Todd Neiffer and Elizabeth Neiffer attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23<sup>RD</sup> DAY OF MAY, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

## **CITY PROPERTY LEASE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 Todd Neiffer and Elizabeth Neiffer, as joint tenants with rights of survivorship, of 16 N. Prairie Avenue, Miles City, Montana, 59301, hereinafter referred to as "**TENANTS**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lots 6 & 7 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 25,000 square feet each lot, for a total of 50,000 square feet, more or less;

**AND WHEREAS** it is the desire of TENANTS to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 TENANTS, does hereby demise, lease, and let unto TENANTS the real property located in the Industrial Site and more particularly described as follows:

Lots 6 & 7 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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:

Lots 6 & 7 of Tract "E" of the Industrial Site, containing 50,000 square feet @ \$0.020 per square foot per year, for a total rental of one thousand and 0/100 dollars (\$1,000) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the "INITIAL TERM", this agreement shall automatically renew for a period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANTS give to the other party written notice of cancellation of said agreement 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 TENANTS***

TENANTS hereby acknowledge, covenant and agree as follows:

#### **A. Purpose.**

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

The pasturing of livestock, primarily horses.

TENANTS agree to use the premises for the stated purpose and the stated purpose only, and covenant that TENANTS 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.**

TENANTS shall 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.

**C. Independent Investigation.**

TENANTS acknowledge that they have carefully examined and inspected the premises and improvements and 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, 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. TENANTS shall not create any condition which would be considered a public nuisance as defined in Chapter 15 of the Miles City Code of Ordinances. TENANTS 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.

TENANTS shall maintain the property with good husbandry and in good farmer-like manner consistent with the prevailing standards for Custer County, Montana. TENANTS 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.

CITY may require that TENANTS screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**E. Improvements to Remain.**

Within sixty (60) days immediately following the expiration of this lease, the TENANTS shall remove any improvements located on the leasehold and shall restore, at TENANTS' 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 TENANTS with a reasonable time, not to exceed an additional sixty (60) days in which to remove the improvements and restore the leasehold. If TENANTS 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 TENANTS or (2) may retain all such improvements as property of CITY without compensation to TENANTS. Provided, however, that upon termination of the Lease, TENANTS, 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 TENANTS 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 TENANTS comply with the terms of this Agreement.

**G. Utilities.**

TENANTS agree 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.**

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, its agents, employees or customers, and TENANTS hereby agree 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.**

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. T TENANT further agrees to carry minimum liability insurance in the amount of SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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. TENANTS 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.**

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. The obligations hereunder shall survive the termination of this lease.

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

**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 will 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***

TENANTS 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 TENANTS from its obligations under this Lease.

## ***VII. 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 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 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 re-let 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. 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 TENANTS commence and diligently pursue a cure of such default promptly within the initial thirty (30) day cure period, then TENANTS 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 TENANTS 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 TENANTS 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER     )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John Hollowell in his capacity as Mayor of the City of Miles City, Montana, a Montana municipal corporation, who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

**TENANTS:**

\_\_\_\_\_  
Elizabeth Neiffer

\_\_\_\_\_  
Todd Neiffer

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER     )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Elizabeth Neiffer and Todd Neiffer, who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

DRAFT

**RESOLUTION NO. 4510**

**A RESOLUTION TO CORRECT LEGAL DESCRIPTIONS IN RESOLUTION NO. 4118 AND RESOLUTION NO. 4119, TO AGREE TO RENEW A LEASE AGREEMENT WITH THE ASSIGNED TENANT IN THE ASSIGNED TENANT'S NAME, AND TO APPROVE A NEW LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND CENTER AG SUPPLY, LLC, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City approved a lease agreement as an extension of a previous lease agreement between the City of Miles City and Linda L. Larsen by Resolution No. 4118 in December 2017, which included an erroneous legal description of the leasehold;

*AND WHEREAS*, the City of Miles City approved an assignment of the Linda L. Larsen leasehold to Center Ag Supply, LLC by Resolution No. 4119 in December 2017, which also included an erroneous legal description of the leasehold;

*AND WHEREAS*, the erroneous legal descriptions in Resolution No. 4118 and Resolution No. 4119, and associated lease agreement and assignment created an overlap in the stated lot descriptions between another lease and what is now the Center Ag Supply, LLC lease, and also left portions of the Center Ag Supply, LLC lease unassigned per the legal descriptions;

*AND WHEREAS*, the City of Miles City is correcting the legal description for the Center Ag Supply, LLC leasehold and associated City resolutions;

*AND WHEREAS*, the correct legal description of the Center Ag Supply, LLC leasehold is as follows:

Legal Description: Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana;

*AND WHEREAS*, the applicable lease agreement's initial 5-year lease term is set to expire on June 30, 2023, and Center Ag Supply, LLC has provided notice to the City of the intent to exercise the option to renew the lease the first of a maximum four times, for a five-year period;

*AND WHEREAS*, Center Ag Supply, LLC has requested a new lease agreement between the City and Center Ag Supply, LLC instead of between the City and Linda L. Larsen because the lease was assigned to Center Ag Supply, LLC, which owns the improvements on the leasehold;

*AND WHEREAS*, to correct the legal description for said leasehold and approve of Center Ag Supply's above-stated requests, the City Council for Miles City has agreed to approve a new lease agreement by resolution;

*AND WHEREAS*, in 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001, and said COS provides more recent sizes of the leasehold than



previous information used for City lease administration, and the new lease rates shall be based on the size of the leasehold stated on that COS, in accordance with Resolution No. 4124.

***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 conditions of the Lease Agreement between the City of Miles City and Center Ag Supply, LLC, attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23<sup>RD</sup> DAY OF MAY, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

## **CITY PROPERTY LEASE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 **CENTER AG SUPPLY, LLC**, PO Box 1094, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana, containing approximately 42,005 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to renew the above-described Leasehold for a term of five (5) years, subject to the options to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with options to renew this lease again a maximum of three (3) additional times, for renewal periods of (5) years each, 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 the Industrial Site and more particularly described as follows:

Lot 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City in Custer County, Montana, containing approximately 42,005 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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 3 and the East ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, containing approximately 42,005 square feet, more or less, @ \$0.025 per square foot per year, for a total rental of one-thousand, fifty and 13/100 dollars (\$1,050.13) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

FOLLOWING the "INITIAL LEASE TERM", TENANT shall have options to renew this lease again a maximum of three (3) additional 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 hereby acknowledges, covenants and agrees as follows:

#### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

- 1) *Sublet property to BNSF Railway Company, a commercial entity; OR*
- 2) *To be used by Tenant's small business enterprise, being sales and services of liquid livestock feed and other ranch and farm products.*

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

*Optional term, if applicable (remove if not adopted): 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 will 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 fails 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.





\_\_\_\_\_  
Signature of Notary Public  
Residing at Miles City, Montana  
My Commission expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

(NOTARIAL SEAL)

DRAFT

**RESOLUTION NO. 4511**

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND DAVID P. JERREL, FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City currently leases to Ray (Raymond) and Peg (Peggy) Jerrel certain real property located in Custer County, Montanan, to wit:

Legal Description: Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County. The leasehold contains approximately 73,184 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

*AND WHEREAS*, Raymond and Peggy Jerrel are deceased, and David P. Jerrel has been named personal representative of the estates of the deceased;

*AND WHEREAS*, David P. Jerrel, personal representative of the estates of Raymond and Peggy Jerrel, is requesting a new lease agreement for the leasehold and to transfer the lease to his name;

*AND WHEREAS*, the estate(s) (through David P. Jerrel, as personal representative and estate beneficiary) represents that the tenant owns substantial permanent improvements upon said leasehold, including a 2,400 square foot warehouse building and a 4,260 square foot warehouse building used for operation of a trucking and truck repair and feed supply company, and David P. Jerrel desires to lease 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 conditions of the Lease Agreement between the City of Miles City and David P. Jerrel attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23<sup>RD</sup> DAY OF MAY, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 **David P. Jerrel**, PO Box 429, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 73,184 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 the Industrial Site and more particularly described as follows:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 73,184 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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:

Lots 13, 22, and 23 of Tract "E" of the Industrial Site, containing approximately 73,184 square feet @ \$0.020 per square foot per year, for a total rental of one-thousand, four-hundred and sixty-three and 68/100 dollars (\$1,463.68) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the "INITIAL TERM", this agreement shall automatically renew for a one-time period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANT give to the other party written notice of cancellation of said agreement 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 hereby acknowledges, covenants and agrees as follows:

#### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

Operation of a trucking and truck repair and feed supply company.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

*Optional term, if applicable (remove if not adopted): 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 will 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 fails 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**



**RESOLUTION NO. 4512**

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND HUGO MUGGLI INC., FOR CERTAIN REAL PROPERTY OWNED BY MILES CITY, MONTANA.**

*WHEREAS*, the City of Miles City leases certain real property to Hugo Muggli Inc., a Montana company, hereinafter referred to as "Tenant", said property located in Custer County, Montanan, to wit:

Legal Description: Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

*AND WHEREAS*, Tenant owns substantial permanent improvements upon said leasehold, including a 4,800 square foot warehouse building used as a welding and repair shop, 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 conditions of the Lease Agreement between the City of Miles City and Hugo Muggli Inc. attached hereto as Exhibit "A", 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.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23<sup>RD</sup> DAY OF MAY, 2023.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

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

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 **Hugo Muggli Inc.**, a Montana company, of 558 Tongue River Road, Miles City, Montana, 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" west of the City of Miles City, Custer County, Montana, more particularly described as follows:

Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 square feet, more or less, as evidenced by a Certificate of Survey recorded at the Custer County Clerk & Recorder's Office in Envelope #570B, Document #172001;

**AND WHEREAS** it is the desire of TENANT to lease the above-described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided;

**AND WHEREAS** the CITY is agreeable to providing such five-year term lease, together with the option to renew for an additional five-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 the Industrial Site and more particularly described as follows:

Lot 1 and the West ½ of Lot 2 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 40,447 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 July 1, 2023 and expiring at midnight on June 30, 2028, 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 1 and the West ½ of Lot 2 of Tract “E” of the Industrial Site, containing approximately 40,447 square feet @ \$0.020 per square foot per year, for a total rental of eight hundred and eight and 94/100 dollars (\$808.94) for the first year of the initial lease term. Payment for the first year of this agreement shall be paid upon contract execution date.

Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council. Payments in subsequent years shall be due and payable in advance of July 1<sup>st</sup> of each subsequent year of the lease term, commencing July 1, 2024 through June 30, 2028.

***THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL (this sentence to be removed after approval):***

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

Following the “INITIAL TERM”, this agreement shall automatically renew for a one-time period not to exceed five (5) years upon the same terms and conditions herein unless the CITY or TENANT give to the other party written notice of cancellation of said agreement 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 hereby acknowledges, covenants and agrees as follows:

##### **A. Purpose.**

TENANT desires to lease the premises described above for the following general purposes:

Operation of a welding and repair shop, personal farm equipment repair, and personal auto repair and storage.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that TENANT 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 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.

**C. Independent Investigation.**

TENANT acknowledges that the TENANT has carefully examined and inspected the premises and improvements and is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that TENANT 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.

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.

CITY may require that TENANT screen any condition which the CITY determines, in the CITY'S absolute and sole discretion, constitutes a public nuisance or unsightly condition, using fencing or other method as may be approved by the CITY.

**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' written notice and during normal business hours, in order to inspect and determine whether TENANT comply 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 SEVEN-HUNDRED, FIFTY-



THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim and ONE MILLION, FIVE-HUNDRED THOUSAND 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, TENANT'S 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.

***Optional term, if applicable (remove if not adopted):** 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 will 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 fails 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.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
**MAYOR**



My Commission expires:      /      /

(NOTARIAL SEAL)

DRAFT

# Claims

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15:03:53

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/23

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Report ID: AP100

\* Over spent expenditure

Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
137098	-99393C	2166 CIVICPLUS	500.00					
1	257043 05/31/23	Municode Full Service Code Onl	500.00		31328	1000 3 410500	380	101000
137105	86607S	2910 TONGUE RIVER ELECTRIC	617.80					
1	04/25/23	Southgate Lighting	525.00			2450 51 430263	341	101000
2	03/23/23	Government Hill	47.68			2850 105 420140	341	101000
3	03/23/23	Mildred Tower Radio	45.12			2850 105 420140	341	101000
137106	-99401C	4019 WEX BANK	11,357.50					
1	04/30/23	FUEL	437.66		19482	1000 13 460433	231	101000
3	04/30/23	FUEL	2,285.22		19482	2510 107 430220	231	101000
4	04/30/23	FUEL	571.30		19482	2520 108 430220	231	101000
6	04/30/23	FUEL	86.60		18863	5210 22 430530	231	101000
7	04/30/23	FUEL	86.60		18863	5210 80 430540	231	101000
8	04/30/23	FUEL	59.67		18863	5310 33 430640	231	101000
9	04/30/23	FUEL	115.25		18863	5310 32 430690	231	101000
10	04/30/23	FUEL	1,300.91		18748	1000 7 420460	231	101000
11	04/30/23	FUEL	1,249.63		18749	5510 10 420730	231	101000
12	04/30/23	FUEL	3,100.77*		19348	1000 5 420140	231	101000
13	04/30/23	FUEL	159.28*		19348	1000 21 440600	231	101000
15	04/30/23	FUEL	595.00		19033	5210 23 430550	231	101000
16	04/30/23	FUEL	594.99		19033	5310 31 430630	231	101000
17	04/30/23	FUEL	714.62*		112	5610 87 430300	231	101000
137107	86608S	1535 LUCAS & TONN PC	100.00					
1	04/28/23	Westlaw ~ Professional Service	100.00		022017	1000 4 411100	350	101000
137108	86609S	2914 TOURISM BUSINESS IMPROVEMENT	9,754.00					
1	04/30/23	TBID ~ Monthly April	9,754.00			7370 212500		101000
137109	86597S	394 BOSS INC	505.48					
2	540289 04/10/23	Finance	121.00		31332	5210 25 430510	220	101000
3	540289 04/10/23		120.99		31332	5310 29 430610	220	101000
5	538163 03/29/23	Police	21.99*		32539	1000 5 420140	220	101000
6	541010 04/11/23		128.75*		32551	1000 5 420140	220	101000
7	531246 02/27/23	Dispatch	64.78*		32176	1000 5 420160	210	101000
8	531026 02/27/23		47.97*		32176	1000 5 420160	210	101000
137110	86591S	2830 STAR PRINTING & SUPPLY	1,227.90					
5	04/05/23	MCFIRE	190.53			1000 7 420460	210	101000
6	04/05/23		190.53*			5510 10 420730	210	101000
9	03/31/23	RSVP	774.80*		32302	2985 15 450340	210	101004
12	301493 02/10/23	Noble	60.59*		27446	1000 4 411100	210	101000
13	301493 02/10/23		11.45*		27446	1000 4 411100	210	101000

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CITY OF MILES CITY  
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\* Over spent expenditure

Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
137111	86594S	572 VERIZON WIRELESS	568.90					
1	9931891371 04/07/23	Cell Phone Fees	248.82*		32554	1000 5 420140	220	101000
2	9931891371 04/07/23	MDT Fees	320.08		32554	2850 105 420140	345	101000
137112	-99397C	1921 MONTANA MUNICIPAL INTERLOCAL	261.46					
1	04/05/23	April Retiree Premiums	261.46			1000 362022		101000
137115	-99400E	373 MASTERCARD	25,993.07					
1	04/20/23		130.62*			1000 3 410500	220	101000
2	04/20/23		1,624.90*			1000 5 420140	220	101000
3	04/20/23		54.90			1000 5 420140	227	101000
4	04/20/23		186.00*			1000 5 420140	350	101000
5	04/20/23		61.00			1000 5 420140	311	101000
6	04/20/23		77.52*			1000 5 420140	345	101000
7	04/20/23		1,364.91*			1000 5 420140	366	101000
8	04/20/23		471.11			1000 5 420140	370	101000
9	04/20/23		210.00			1000 5 420140	380	101000
10	04/20/23		541.51*			1000 5 420160	210	101000
13	04/20/23		16.59			1000 7 420460	210	101000
14	04/20/23		200.71			1000 7 420460	214	101000
15	04/20/23		444.36			1000 7 420460	220	101000
16	04/20/23		1,435.91			1000 7 420460	223	101000
17	04/20/23		236.82			1000 7 420460	364	101000
18	04/20/23		474.30			1000 7 420460	370	101000
19	04/20/23		33.16			1000 7 420460	380	101000
20	04/20/23		15.88			1000 8 411230	214	101000
21	04/20/23		533.63			1000 13 460433	214	101000
22	04/20/23		99.98			1000 13 460433	230	101000
23	04/21/23		85.96			1000 13 460433	231	101000
24	04/20/23		453.58			1000 13 460433	363	101000
25	04/20/23		150.93			1000 21 440600	220	101000
26	04/20/23		25.53*			1000 21 440600	311	101000
27	04/20/23		23.06			1000 201 431200	210	101000
28	04/20/23		142.26*			1000 201 431200	311	101000
30	04/20/23		175.00			1000 201 431200	334	101000
31	04/20/23		128.86			2220 16 460100	311	101000
34	04/20/23		32.99*			2220 16 460100	330	101000
36	04/20/23		410.91			2220 16 460100	382	101032
37	04/20/23		23.07			2394 18 420531	210	101000
38	04/20/23		206.00*			2394 18 420531	320	101000
39	04/20/23		18.46			2510 107 430220	210	101000
40	04/20/23		329.49			2510 107 430220	214	101000
41	04/20/23		585.22			2510 107 430220	230	101000
42	04/20/23		7.88			2510 107 430220	311	101000



\* ... Over spent expenditure

Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
43	04/20/23		84.16*			2510 107 430220	334	101000
44	04/20/23		467.05			2510 107 430220	363	101000
46	04/20/23		300.00			2510 107 430233	230	101000
47	04/20/23		4.59			2520 108 430220	210	101000
48	04/20/23		82.37			2520 108 430220	214	101000
49	04/20/23		146.29			2520 108 430220	230	101000
50	04/20/23		1.97			2520 108 430220	311	101000
51	04/20/23		21.04*			2520 108 430220	334	101000
52	04/20/23		144.10			2520 108 430220	363	101000
53	04/20/23		75.00			2520 108 430233	230	101000
54	04/20/23		163.02			2985 15 450351	220	101008
55	04/20/23		1,623.02			5210 22 430530	214	101000
56	04/20/23		39.98			5210 22 430530	220	101000
57	04/20/23		272.02			5210 22 430530	230	101000
58	04/20/23		56.00			5210 22 430530	334	101000
60	04/20/23		47.04			5210 23 430550	210	101000
61	04/20/23		214.86			5210 23 430550	214	101000
62	04/20/23		24.14			5210 23 430550	220	101000
63	04/20/23		119.98*			5210 23 430550	226	101000
64	04/20/23		184.58			5210 23 430550	230	101000
65	04/20/23		750.62*			5210 23 430550	235	102270
66	04/20/23		325.51*			5210 23 430550	363	101000
67	04/20/23		90.72			5210 25 430510	220	101000
68	04/20/23		1,732.38			5210 80 430540	214	101000
69	04/20/23		39.98			5210 80 430540	220	101000
70	04/20/23		121.74			5210 80 430540	222	101000
71	04/20/23		660.85			5210 80 430540	230	101000
74	04/20/23		56.00			5210 80 430540	334	101000
75	04/20/23		90.71			5310 29 430610	220	101000
76	04/20/23		47.03			5310 31 430630	210	101000
77	04/20/23		150.27			5310 31 430630	214	101000
78	04/20/23		62.25			5310 31 430630	220	101000
79	04/20/23		90.00			5310 31 430630	226	101000
80	04/20/23		184.57			5310 31 430630	230	101000
81	04/20/23		325.48*			5310 31 430630	363	101000
82	04/20/23		56.00			5310 32 430690	220	101000
83	04/20/23		665.95			5310 33 430640	222	101000
86	04/20/23		578.00			5310 33 430640	230	101000
87	04/20/23		56.00			5310 33 430640	334	101000
88	04/20/23		189.72			5510 10 420730	222	101000
89	04/20/23		105.59*			5510 10 420730	370	101000
90	04/20/23		128.06*			5610 87 430300	210	101000
91	04/20/23		788.90*			5610 87 430300	230	101000
92	04/20/23		559.45*			5610 87 430300	230	101000
93	04/20/23		1,447.63*			5610 87 430300	230	101000

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Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
94	04/20/23		131.82*			5610 87 430300	230	101000
95	04/20/23		763.60			5610 87 430300	239	101000
96	04/20/23		428.63*			5610 87 430300	319	101000
97	04/20/23		118.07			5610 87 430300	345	101000
98	04/20/23		111.34*			5610 87 430300	370	101000
99	04/20/23		51.98			6040 910 430220	214	101000
137116	-99404C 4187 MOFI		1,162.96					
1	04/05/23 Fire Training Center Payment48		572.15			1000 7 490500	654	101000
2	04/05/23		590.81			1000 7 490500	655	101000
137117	86592S 4076 EXPRESS LAUNDRY, LLC COMMERCIAL		160.00					
1	56829 03/21/23 City Hall Rugs		34.50*		32262	1000 8 411230	360	101000
2	56503 03/07/23 City Hall Rugs		34.50*		32449	1000 8 411230	360	101000
3	56899 03/24/23		20.50*		32269	1000 8 411230	360	101000
5	56756 03/17/23 WWTP		15.00		31294	5310 33 430640	360	101000
6	56703 03/15/23 WWTP		19.50		31294	5210 80 430540	360	101000
7	56522 03/07/23 PD		18.00		32526	1000 5 420140	360	101000
8	56847 03/21/23		18.00		32532	1000 5 420140	360	101000
137118	-99399E 1970 MONTANA DAKOTA UTILITIES		43,788.93					
1	GAS/ELECTRIC ~ FD		325.92			1000 7 420460	341	101000
2	GAS/ELECTRIC ~ FD		537.68*			1000 7 420460	344	101000
3	GAS/ELECTRIC ~ City Hall		290.38			1000 8 411230	341	101000
4	GAS/ELECTRIC ~ City Hall		414.46*			1000 8 411230	344	101000
5	GAS/ELECTRIC ~ Parks		526.67*			1000 13 460433	341	101000
6	GAS/ELECTRIC ~ Parks		431.80*			1000 13 460433	344	101000
7	GAS/ELECTRIC ~ Bath House		102.19			1000 14 460445	341	101000
8	GAS/ELECTRIC ~ Animal Shelter		43.21*			1000 21 440600	341	101000
9	GAS/ELECTRIC ~ Animal Shelter		78.72*			1000 21 440600	344	101000
10	GAS/ELECTRIC ~ Library		450.81			2220 16 460100	341	101000
11	GAS/ELECTRIC ~ Library		276.85			2220 16 460100	344	101000
14	GAS/ELECTRIC ~ District 165		3,969.03			2400 46 430263	341	101000
15	GAS/ELECTRIC ~ Rental Fee		8,836.60			2400 46 430263	533	101000
16	GAS/ELECTRIC ~ District 167		560.02			2420 48 430263	341	101000
17	GAS/ELECTRIC ~ Rental Fee		1,054.80			2420 48 430263	533	101000
18	GAS/ELECTRIC ~ District 171		164.91			2430 49 430263	341	101000
19	GAS/ELECTRIC ~ District 172		1,125.51			2440 50 430263	341	101000
20	GAS/ELECTRIC ~ District 202		116.18			2470 72 430263	341	101000
21	GAS/ELECTRIC ~ Rental Fee		325.90			2470 72 430263	533	101000
22	GAS/ELECTRIC ~ District 173		31.89			2480 47 430263	341	101000
23	GAS/ELECTRIC ~ Sewer Lift		103.90			2510 107 430220	341	101000
28	GAS/ELECTRIC ~ Water Plant		5,090.21			5210 22 430530	341	101000
30	GAS/ELECTRIC ~ Water Plant		1,427.54			5210 22 430530	344	101000
31	GAS/ELECTRIC ~ Fish & Game		24.47			5210 23 430550	341	101000

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32	GAS/ELECTRIC ~ Fish & Game		43.34			5210 23 430550	344	101000
33	GAS/ELECTRIC ~ Fish & Game		24.47			5310 31 430630	341	101000
34	GAS/ELECTRIC ~ Fish & Game		43.34			5310 31 430630	344	101000
35	GAS/ELECTRIC ~ Sewer Lift		1,927.69			5310 32 430690	341	101000
36	GAS/ELECTRIC ~ Sewer Lift		175.31			5310 32 430690	344	101000
38	GAS/ELECTRIC ~ Ambulance		146.43			5510 10 420730	341	101000
39	GAS/ELECTRIC ~ Ambulance		241.56			5510 10 420730	344	101000
42	GAS/ELECTRIC ~ Shop		723.52			6040 910 430220	341	101000
43	GAS/ELECTRIC ~ Shop		547.34*			6040 910 430220	344	101000
44	FISH & GAME ~ ELECTRIC		39.16			2510 107 430220	341	101000
45	FISH & GAME ~ ELECTRIC		69.35			2510 107 430220	344	101000
46	FISH & GAME ~ ELECTRIC		9.79			2520 108 430220	341	101000
47	FISH & GAME ~ ELECTRIC		17.34			2520 108 430220	344	101000
50	Airport Electric		1,089.13			5610 87 430300	341	101000
51	Airport Gas		1,710.24*			5610 87 430300	344	101000
54	N Daly Sewer Treatment Plant		9,619.88			5310 33 430640	341	101000
55	419 N 7th PD		123.79			1000 5 420140	344	101000
56	419 N 7th PD		188.48			1000 5 420140	341	101000
57	419 N 7th PD		125.57			1000 5 420140	341	101000
58	419 N 7th PD		566.98			1000 5 420140	344	101000
59	Spotted Eagle Walleyes		21.23*			1000 13 460433	341	101000
60	Splash Pad		25.34*			1000 13 460433	341	101000
137119	86610S 700 CUSTER COUNTY WATER & SEWER		19,470.13					
1	04/30/23 CCWSD Water/Sewer Collections		19,470.13			7980 211020		101000
137120	86593S 371 GENERAL DISTRIBUTING CO.		184.39					
1	1227907 03/29/23 O2 on Account # 47473		62.99		32055	5510 10 420730	222	101000
2	1230589 03/31/23 Nitrous		121.40		32055	5510 10 420730	222	101000
137121	86611S 4186 BUCKY JOHNSON		37.70					
1	04/21/23 Cell Phone Reimbursement		18.85		32702	5210 23 430550	345	101000
2	04/21/23		18.85		32702	5310 31 430630	345	101000
137122	86612S 721 DALES CLEANING SERVICE		700.00					
1	04/25/23 City Hall ~ April Cleaning		700.00*		32295	1000 8 411230	360	101000
137123	86613S 4013 SOLESTONE REIMB SERVICES		5,779.88					
1	12948 04/04/23 March Billing		3,739.47		32063	5510 10 420730	350	101000
2	12976 05/03/23 April Billing		2,040.41		32081	5510 10 420730	350	101000

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137124	86614S	4008 PITNEY BOWES	267.18					
1	04/16/23	Postage Quarterly Lease	89.06*			1000 3 410500	220	101000
2			89.06			5210 25 430510	220	101000
3			89.06			5310 29 430610	220	101000
137125	86615S	3292 MONTANA AIR CARTAGE	386.10					
1	YNZ33123 04/01/23	Partners Program crate deliv	386.10		32203	2880 39 460100	311	101020
137126	86589S	1721 MID RIVERS TELEPHONE CORP	4,218.50					
1		CITY COURT	143.00			1000 6 410300	345	101000
3		LIBRARY	102.78			2220 16 460100	345	101000
4			25.00			2220 16 460100	347	101000
6		911 EMERGENCY	475.18			2850 105 420140	341	101000
7		911 EMERGENCY	356.56			2850 105 420140	345	101000
8		RSVP	125.44*			2985 15 450340	345	101000
9		AIRPORT	51.95			5610 87 430300	345	101000
10			162.95*			5610 87 430300	319	101000
11			20.57*			5610 87 430300	347	101000
12		MAYOR	73.49			1000 1 410200	345	101000
13		FINANCE	99.66			1000 3 410500	345	101000
14			8.70			1000 3 410500	347	101000
15		ATTORNEY	108.03			1000 4 411100	345	101000
16		POLICE	330.16*			1000 5 420140	345	101000
17			57.86*			1000 5 420140	347	101000
18		PD/DISPATCH	192.14*			1000 5 420160	345	101000
19		FIRE	225.19			1000 7 420460	345	101000
20			50.69			1000 7 420460	347	101000
21		TREASURER	54.89*			1000 9 410540	345	101000
22		PARK DEPT	72.98*			1000 13 460433	345	101000
23			26.82			1000 13 460433	347	101000
24		ANIMAL CONTROL	72.34*			1000 21 440600	345	101000
25			44.95			1000 21 440600	347	101000
26		PLANNING	39.93			1000 36 411020	345	101000
27		Flood	51.10			1000 201 431200	345	101000
28		BUILDING INSPECTION	77.15*			2394 18 420531	345	101000
29		MMD #204	134.07*			2510 107 430220	345	101000
30		MMD #205	76.19*			2520 108 430220	345	101000
31		WATER PLANT	84.43			5210 22 430530	345	101000
32			22.82			5210 22 430530	347	101000
33		WATER LINES	131.86			5210 23 430550	345	101000
34			11.83			5210 23 430550	347	101000
35		WATER ADMIN	59.48			5210 25 430510	345	101000
36			1.04			5210 25 430510	347	101000
37		WASTE WATER ADMIN	59.47			5310 29 430610	345	101000

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38			1.04			5310 29 430610	347	101000
39	SEWER LINES		131.87			5310 31 430630	345	101000
40			11.83			5310 31 430630	347	101000
41	WWTP		71.47			5310 33 430640	345	101000
42			44.95			5310 33 430640	347	101000
43	AMBULANCE		129.98			5510 10 420730	345	101000
44			24.96			5510 10 420730	347	101000
45	CITY SHOP		104.83*			6040 910 430220	345	101000
46			26.92			6040 910 430220	347	101000
48	HISTORICAL PRESERVATION		0.03			2935 11 460461	347	101000
49	URBAN RENEWAL		39.43			2310 11 460462	345	101000
50			0.49			2310 11 460462	347	101000
137127	86616S 316 DATA IMAGING SYSTEMS, INC		9,158.00					
1	Finance General		171.98			1000 3 410500	360	101000
2	Finance & Administration Water		107.61			5210 25 430510	360	101000
3	Finance & Administration Sewer		107.63			5310 29 430610	360	101000
4	Mayor		57.33*			1000 1 410200	360	101000
5	Planning & Community Services		57.33			1000 36 411020	360	101000
6	Public Utilities Water		123.83			5210 23 430550	360	101000
7	Public Utilites Sewer		123.83			5310 31 430630	360	101000
8	Public Works Maint 204		81.40			2510 107 430220	360	101000
9	Public Works Maint 205		43.57			2520 108 430220	360	101000
10	Treasurer		57.33			1000 9 410540	360	101000
11	TIF		57.33			2310 11 460462	360	101000
12	Building Inspector		123.83			2394 18 420531	360	101000
13	04/24/23 Gentac MDT's (4) final payment		8,045.00		32188	2850 105 420140	940	101000
137129	-99403C 523 CITY SERVICE, INC.		1,226.73					
#20								
1	04/01/23 5000 Gallon Truck Principle		1,030.81		1337	5610 87 490500	650	101000
2	04/01/23 5000 Gallon Truck Interest		195.92		1337	5610 87 490500	651	101000
137130	-99394E 4360 ALLEGIANCE BENEFIT PLAN MGMT		82.50					
1	FSA/HSA Admin Fees		4.29			1000 13 460433	143	101000
2			0.25			1000 36 411020	143	101000
3			0.33			1000 201 431200	143	101000
4			6.27			2510 107 430220	143	101000
5			1.73			2520 108 430220	143	101000
6			0.08			2540 109 430220	143	101000
7			3.47			5210 23 430550	143	101000
8			3.38			5310 31 430630	143	101000
9			5.36			5210 22 430530	143	101000
10			2.23			5310 33 430640	143	101000
11			1.40			5310 32 430690	143	101000

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12			1.82			6040 910 430220	143	101000
13			0.74			5310 29 430610	143	101000
14			0.74			5210 25 430510	143	101000
15			16.09			1000 5 420140	143	101000
16			6.02			1000 5 420160	143	101000
17			1.07			1000 21 440600	143	101000
18			9.24			1000 7 420460	143	101000
19			4.54			5510 10 420730	143	101000
20			4.62			2220 16 460100	143	101000
21			2.72			1000 3 410500	143	101000
22			1.40			1000 6 410300	143	101000
23			1.16			1000 4 411100	143	101000
24			2.31			5610 87 430300	143	101000
25			1.16			2985 15 450340	143	101000
26			0.08			2935 11 460461	143	101000
137131	86617S 4401 DEBRA L. RIPPEL		1,000.00					
1	052683 04/27/23 Library Cleaning Contract Apr		1,000.00*		32205	2220 16 460100	360	101000
137132	86618S 4386 KIMBERLY MEES		750.00					
1	04/26/23 PD Cleaning April 23		750.00*		32560	1000 5 420140	350	101000
137133	86588S 4127 I-STATE TRUCK CENTER		171,800.00					
1	V251005954 04/04/23 2023 Freightliner Dumptruc		42,950.00		32147	5210 23 430550	940	101000
2	V251005954 04/04/23		42,950.00		32147	5310 31 430630	940	101000
3	V251005954 04/04/23		68,720.00*		32147	2510 107 430220	940	101000
4	V251005954 04/04/23		17,180.00*		32147	2520 108 430220	940	101000
137134	-99402C 523 CITY SERVICE, INC.		15,327.16					
1	0651396 04/10/23 3352 Gallons Av Gas 100LL		15,327.16		1581	5610 87 430300	237	101000
137135	86590S 2322 OLNESS & ASSOCIATES PC CPA'S		30,750.00					
1	101809 03/25/23 FY 22 Audit Final		500.00		31330	1000 3 410500	350	101000
2	101788 02/10/23 FY 22 & GASB's		30,250.00		31300	1000 3 410500	350	101000
137136	-99398C 1407 KLJ ENGINEERING LLC		2,158.66					
1	10186368 03/22/23 GIS Data Maintenance		2,158.66*		32181	2850 105 420140	350	101000
137137	-99396C 1407 KLJ ENGINEERING LLC		21,000.00					
1	101186244 04/03/23 Pavement Maint Design 3/11/		21,000.00*		1575	5610 87 430320	930 9	101000

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137138	-99395C 1407 KLJ ENGINEERING LLC		17,494.34					
1	10186244 04/03/23 Hangar 10 Project 3/11/23		17,494.34*		1576	5610 87 430320	930	7 101000
137139	86619S 999999 LEIF DAVIS		811.26					
1	03/13/23 Travel to Great Falls Reimburs		811.26			1000 5 420140	370	101000
137140	86620S 4189 L.N. CURTIS AND SONS		4,442.80					
1	689320 03/03/23 Compressor Service		2,012.80		32056	1000 7 420460	360	101000
2	689342 03/03/23 Flow Test		2,430.00		32056	1000 7 420460	360	101000
137141	86621S 4217 CENTRAL SQUARE TECHNOLOGIES		3,315.00					
1	379498 04/06/23 PS Pro 20 eCitations		3,315.00		32187	2850 105 420140	941	101000
137142	86622S 870 EAST MAIN ANIMAL CLINIC		858.68					
1	10195 04/02/23 Animal Vet Services		377.85*		32549	1000 21 440600	350	101000
2	10333 04/30/23 Vet Service Fees		480.83*		32568	1000 21 440600	350	101000
137143	86623S 4216 BIG SKY GUTTERS & DOORS		1,907.76					
1	9027 03/27/23 Doors		1,163.73		32057	1000 7 420460	400	101000
2	9027 03/27/23 Doors		744.03		32057	5510 10 420730	400	101000
137144	86624S 2240 NOLLEYS WELDING & MACHINE INC		5,475.00					
1	35562 04/07/23 Modify Blue Snowplow		2,800.00*		1579	5610 87 430300	230	101000
2	25585 04/07/23 Quick Attach on Yellow Snowplo		2,675.00*		1579	5610 87 430300	230	101000
137145	86625S 4130 IBS, Inc.		1,054.16					
1	811742 03/31/23 Shop Supplies		421.66		32283	2510 107 430220	363	101000
2	811742 04/06/23		105.42		32283	2520 108 430220	363	101000
3	809782 04/06/23		263.54*		32283	5210 23 430550	363	101000
4	811742 03/31/23		263.54*		32283	5310 31 430630	363	101000
137146	86626S 4424 WARNE CHEMICAL & EQUIPMENT		3,008.42					
1	468802 03/23/23 Weed Sprayer for Low Profile T		2,406.74		32261	2510 107 430220	214	101000
2	468802 03/23/23		601.68		32261	2520 108 430220	214	101000
137147	86627S 4425 CUSTOM EQUIPMENT LLC		1,667.32					
1	14246 04/06/23 Couplers, Fittings, and Hoses		666.90		32289	2510 107 430220	363	101000
2	14246 04/06/23		166.73		32289	2520 108 430220	363	101000
3	14246 04/06/23		416.83*		32289	5210 23 430550	363	101000
4	14246 04/06/23		416.86*		32289	5310 31 430630	363	101000

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137148	-99392C	4010 FELT MARTIN P.C.	1,487.50					
1	04/14/23	Hiring & Local 600 Negotiation	262.50*			1000 3 411101	350	101000
2	04/14/23	Grievance Review Additional Pa	1,225.00*			1000 3 411101	350	101000
137149	86628S	4180 INTELLICORP RECORDS, INC.	40.00					
1	04/14/23	Montly Svc Fee Background Chec	20.00			1000 3 410500	350	101000
2	1376712	04/30/23 Monthly Svc Fee Background Ch	20.00			1000 3 410500	350	101000
137150	86629S	1859 MLEA	281.00					
1	21523	04/11/23 Equivalency Course	125.00		32552	1000 5 420140	380	101000
2	21523	04/11/23 Lodging & Meals	156.00		32552	1000 5 420140	370	101000
137151	86630S	4021 LUCI'S OFFICE, INC	42.34					
1	3375	03/01/23 Domain Renewal Website	42.34*		32553	1000 5 420140	350	101000
137152	-99391C	501 CHEM SEARCH	649.85					
1	8194295	04/14/23 Gloves	259.94		32291	2510 107 430220	230	101000
2	8194295	04/14/23	64.98		32291	2520 108 430220	230	101000
3	8194295	04/14/23	162.47		32291	5210 23 430550	230	101000
4	8194295	04/14/23	162.46		32291	5310 31 430630	230	101000
137153	86595S	2471 POSTMASTER	1,040.60					
1	1	04/20/23 Postage Flood Awareness	1,040.60*		31211	1000 201 431200	311	101000
137154	86631S	979 FIREMANS COMPANY	1,177.30					
1	15448	04/11/23 Troubleshooting Fire Alarm	295.00*		32290	1000 8 411230	360	101000
2	15433	04/20/23 2023 Annual Fire Extinguisher	882.30*		1585	5610 87 430300	230	101000
137155	86632S	975 FIREMANS FUND	2,175.00					
1	04/10/23	4th Quarter	2,175.00		32062	1000 7 420460	211	101000
137156	86633S	2537 RDO EQUIPMENT CO	576.46					
1	1037912	04/11/23 Cutting ED Unit 46	162.62		32287	2510 107 430220	363	101000
2	1037912	04/11/23	40.66		32287	2520 108 430220	363	101000
3	1037912	04/11/23	101.64*		32287	5210 23 430550	363	101000
4	1037912	04/11/23	101.64*		32287	5310 31 430630	363	101000
5	1041112	04/11/23 Unit 39	67.96		32287	2510 107 430220	363	101000
6	1041112	04/11/23	16.99		32287	2520 108 430220	363	101000
7	1041112	04/11/23	42.48*		32287	5210 23 430550	363	101000
8	1041112	04/11/23	42.47*		32287	5310 31 430630	363	101000



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137157	86634S 1637	MARTIN FENCE, LLC	20,591.22					
1	1034 04/03/23	Wibaux Park Splash Pad Fencing	9,613.72*		32288	4000 501 460433	350	101000
2	1081 04/03/23	Materials & Labor to Prep & Po	4,320.00		32285	1000 13 460433	350	101000
3	1040 04/27/23	Splash Pad Wibaux Park	6,657.50*		32300	4000 501 460433	350	101000
137158	86635S 291	ECOLAB PEST ELIMINATION DIVISION	107.12					
1	9292321 04/06/23	Pest Control	107.12		32059	1000 7 420460	220	101000
137159	86636S 1825	MILES COMMUNITY COLLEGE	200.00					
1	125 04/06/23	Rent Room 401 Dec 6-7, Feb 24-	200.00		32060	5510 10 420730	220	101000
137160	86637S 1571	TWO RIVERS FORD	33.23					
1	700952 04/03/23	Seal	33.23		32061	5510 10 420730	364	101000
137161	86638S 4420	TMG SERVICES	1,833.98					
1	0049802 03/31/23	Vacuum Regulator	1,833.98		32351	5310 33 430640	230	101000
137162	86639S 4340	BILLING DOCUMENT SPECIALISTS	4,872.48					
1	87556 03/31/23	Water Postage ~ March	1,216.29		32148	5210 25 430510	320	101000
2	87556 03/31/23		1,216.28		32148	5310 29 430610	320	101000
3	88145 04/30/23	Water Postage ~ April	1,219.96		32707	5210 25 430510	320	101000
4	88145 04/30/23		1,219.95		32707	5310 29 430610	320	101000
137163	86640S 999999	TINA SCHMIDT	40.85					
1	04/06/23	Meal Reimbursement	40.85			1000 13 460433	370	101000
137164	86641S 2903	TIRE-RAMA	2,378.76					
1	1060028790 04/07/23	Unit 36	951.50		32284	2510 107 430220	363	101000
2	1060028790 04/07/23		237.88		32284	2520 108 430220	363	101000
3	1060028790 04/07/23		1,189.38		32284	1000 13 460433	363	101000
137165	86642S 999999	BRANDEN STEVENS	151.00					
1	04/14/23	Reimbursement for Travel	151.00		32064	1000 7 420460	220	101000
137166	86643S 4384	BROSZ ENGINEERING INC	26,697.50					
1	B32561U 04/11/25	N Haynes Sanitary Sewer	10,505.00		32149	5310 31 430630	940	101000
2	B32674C 04/27/23	N Haynes Sanitary Sewer Rehab	16,192.50		32704	5310 31 430630	940	101000
137167	86644S 4303	PARKER, HEITZ, & COSGROVE, PLLC	112.50					
1	20231413 03/31/23	City vs. Eckart	112.50		31331	1000 2 410100	350	101000

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137168	86645S 999999	MILES CITY PPA	425.00					
1	484F224600 04/19/23	Field Training Officer	425.00		32556	1000 5 420140	380	101000
137169	86646S 4169	EMERGENCY APPARATUS MAINT., INC.	219.82					
1	127360 04/07/23	Parts	92.03		32066	1000 7 420460	364	101000
2	125947 11/23/22	Pneumatic Cylinder E9	127.79		32069	1000 7 420460	364	101000
137170	86647S 2580	REYNOLDS WAREHOUSE GROCERY	141.92					
1	04/14/23	Cleaning Supplies	86.57		32067	1000 7 420460	220	101000
2	04/14/23		55.35		32067	5510 10 420730	220	101000
137171	86648S 2151	Morrison-Maierle System	4,876.00					
1	230641 04/13/23	Professional Services	1,008.00*		32065	2991 7 420460	350 8	101000
2	44669 05/01/23	PBX Phone System	333.00*		32569	1000 5 420140	345	101000
3	44673 03/03/23	45 Licenses Netmotion	3,535.00*		32195	2850 105 420140	350	101000
137172	86649S 1937	MONTANA AERONAUTICS DIVISION	553.20					
1	04/17/23	T-10 Bulbs	553.20*		1584	5610 87 430300	230	101000
137173	86650S 869	EAST MONT COMMUNICATIONS	1,115.00					
1	29567 04/20/23	Antenna, Hand Held ICOM Mobile	873.00*		1583	5610 87 430300	230	101000
2	29577 04/25/23	Kenwood KMC-72W Microphones	242.00*		32562	1000 5 420140	220	101000
137174	86651S 4256	ARMSTRONG	3,000.00					
1	2323696801 02/28/23	Hangar 10 Project AIP-023	1,500.00*		1582	5610 87 430320	930 7	101000
2	2323696801 02/28/23	Project AIP-024-2023 Pavem	1,500.00*		1582	5610 87 430320	930	101000
137175	86652S 504	Cintas	117.57					
1	5154887028 04/20/23	Medicine Cabinet Refill	117.57*		32558	1000 5 420140	220	101000
137176	86653S 397	AUTOBODY SOLUTIONS	1,832.66					
1	10159 04/13/23	Repair Damage to a car	1,832.66		32150	5210 23 430550	360	101000
137177	86654S 999999	WINDMILL VENTURES, LLC	342.00					
1	230442 04/20/23	Decking Lumber for gooseneck t	85.50		32701	5210 23 430550	230	101000
2	230442 04/20/23		85.50		32701	5310 31 430630	230	101000
3	230442 04/20/23		136.80		32701	2510 107 430220	363	101000
4	230442 04/20/23		34.20		32701	2520 108 430220	363	101000

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137178	86655S 4192 YELLOWSTONE ENVIROMENTAL		119.63					
1	16464 04/18/23 vavle box w/lid		119.63		32293	1000 13 460433	214	101000
137180	86656S 268 MILES CITY SANITATION INC.		1,339.00					
1	205313 04/20/23 Garbage Bins 4/23-3/24		1,309.00		1586	5610 87 430300	220	101000
2	3410094 04/01/23 Garbage Services		30.00*		32550	1000 5 420140	220	101000
137181	86596S 1737 MC AREA SOLID WASTE DISTRICT		563.45					
1	10212A 04/10/23 Quarterly Charge		65.62*			6040 910 430220	346	101000
2	10212A 04/10/23		71.12			5210 22 430530	346	101000
3	10212A 04/10/23		47.41			1000 7 420460	346	101000
4	10212A 04/10/23		47.41			5510 10 420730	346	101000
5	10212A 04/10/23		47.41			1000 8 411230	346	101000
6	10212A 04/10/23		237.06*			1000 13 460433	346	101000
7	10212A 04/10/23		47.42			5310 33 430640	346	101000
137182	86657S 999999 WILSON STREET CAFE		1,092.00					
1	9843 04/21/23 Pasta Bar for Volunteer Lunche		1,056.00*		32308	2985 15 450340	220	101000
2	9843 04/21/23		36.00		32308	2985 15 450351	220	101008
137183	86658S 652 CUSTER COUNTY SHERIFF		320.00					
1	03/08/23 CCSO Security for City Prisone		320.00*		32559	1000 5 420140	220	101000
137184	86659S 1426 KIWI PETES TREE SERVICE		11,850.00					
1	840528 04/24/23 Trees Cut Down		7,000.00		32294	2510 107 430220	350	101000
2	840530 04/24/23		1,850.00		32294	2510 107 430220	350	101000
3	840531 04/26/23 Tree Taken Down		3,000.00		32297	2510 107 430220	350	101000
137185	86660S 313 FASTENAL		117.26					
1	04/21/23 Paper Towel Vending		46.90		32296	2510 107 430220	230	101000
2	04/21/23		11.73		32296	2520 108 430220	230	101000
3	04/21/23		29.32		32296	5210 23 430550	230	101000
4	04/21/23		29.31		32296	5310 31 430630	230	101000
137186	-99390C 523 CITY SERVICE, INC.		32,776.85					
1	0655243 04/26/23 10,009 Gallons AV Jet-A		32,776.85		1588	5610 87 430300	237	101000
137187	86661S 4069 AGRI INDUSTRIES		26.04					
1	014254 04/17/23 Part to Replace Vac Hose at Wa		26.04		32703	5310 31 430630	220	101000

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137188	86598S 4426 APG YELLOWSTONE NEWS		947.00					
1	350067 03/22/23 Adevertisement Pavement Projec		504.00		1578	5610 87 430300	930 9	101000
2	343700 04/19/23 Notice for Public Comment		71.50		31212	1000 201 431200	331	101000
3	343029 04/19/23 Legal Notice		144.00		31212	1000 201 431200	331	101000
4	351990 04/19/23 Notice for Public Comment		78.00		31212	1000 201 431200	331	101000
5	352009 04/19/23 Notice for Public Comment		71.50		31212	1000 201 431200	331	101000
6	352035 04/19/23 Notice for Public Comment		78.00		31212	1000 201 431200	331	101000
137189	86599S 1407 KLJ ENGINEERING LLC		5,896.00					
1	10187253 04/19/23 Tongue River Slough Design		5,896.00		31213	1000 201 431200	350	101000
137190	86600S 1407 KLJ ENGINEERING LLC		16,074.98					
1	10187371 04/27/23 Hangar 10 Project thru 4/8/2		6,893.43*		1589	5610 87 430320	930 7	101000
2	10187372 04/27/23 Pavement Maintenance 4/8/23		8,500.00*		1589	5610 87 430320	930 9	101000
3	10187369 04/27/23 Pavement Maintenance 4/8/23		681.55*		1589	5610 87 430320	930 9	101000
137191	86662S 4417 GEOPLAND		4,416.00					
1	04/27/23 Planning Services April		4,416.00		32299	1000 36 411020	350	101000
137192	86663S 999999 TONI HAYWORTH C/O JAMES T FLIN		150.00					
1	04/28/23 Refund Water Deposit		150.00			5210 214010		101000
137193	86664S 999999 BETTY BRATLIE		200.00					
1	04/28/23 Refund Water Deposit		200.00			5210 214010		101000
137194	86602S 999999 DAN DECKER		162.00					
1	04/28/23 Travel for used Ambulance		162.00		32077	5510 10 420730	220	101000
137195	86603S 999999 STEVE STANHOPE		162.00					
1	04/28/23 Travel for used Ambulance		162.00			5510 10 420730	220	101000
137196	86601S 999999 CHI-TOWN MOTORS		37,000.00					
1	04/28/23 Used Ambulance		37,000.00			4050 10 420730	940	101000
137197	86665S 999999 JENDIA KNIGHT		91.54					
1	04/28/23 Refund Water Deposit		91.54			5210 214010		101000
137198	86666S 999999 CYNTHIA MERCOGLIANO		150.00					
1	04/28/23 Refund Water Deposits		150.00			5210 214010		101000

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137199	86604S	763 DIAMOND J CONSTRUCTION	69,314.00					
1	2074 05/05/23	Sidewalk	7,644.00		32759	2510 107 430233	230	101000
2	2074 05/05/23	Curb	15,720.00*		32759	2510 107 430234	350	101000
3	2074 05/05/23	Paving	36,500.00		32759	2510 107 430233	230	101000
4	2074 05/05/23	Sidewalk Drainage	650.00		32759	2510 107 430233	230	101000
5	2074 05/05/23	Laydowns Approaches	8,800.00		32759	2510 107 430233	230	101000
137200	86667S	1720 MIDLAND IMPLEMENT	345.80					
1	190726001 05/02/23	Irrigation Valve	345.80		32758	1000 13 460433	230	101000
137201	86668S	4280 BEAR BUTTZ SEPTIC	314.80					
1	2246 05/01/23	Portable Toilet Rental	314.80		32757	1000 13 460433	350	101000
137203	86669S 999999	OAKLAND IMPROVEMENTS	19,982.42					
1	317 05/02/23	Hangar 7 Siding	19,982.42*		1590	5610 87 430300	230	101000
137204	86670S	800 DOEDEN CONSTRUCTION	2,552.23					
1	04/28/23	8 Loads 3/4 CTS, 7 Loads 3/4 C	2,041.78		32753	2510 107 430220	230	101000
2	04/28/23		510.45		32753	2520 108 430220	230	101000
137205	86671S	1361 INTERSTATE ENGINEERING	8,765.23					
1	50633 04/25/23	March 12-Apr 8 2023	7,012.18		32751	2510 107 430220	350	101000
2	50633 04/25/23		1,753.05		32751	2520 108 430220	350	101000
137206	86672S	2510 QUAD K SUPPLY	300.99					
1	66391 05/01/23	Can Liners	32.93		32080	1000 7 420460	220	101000
2	66391 05/01/23		21.06		32080	5510 10 420730	220	101000
3	66361 04/26/23	Supplies	150.67		32075	1000 7 420460	220	101000
4	66361 04/26/23		96.33		32075	5510 10 420730	220	101000
137207	86673S	371 GENERAL DISTRIBUTING CO.	117.48					
1	1241197 04/30/23	Nitrous	117.48		32079	5510 10 420730	222	101000
137208	86674S	4230 KRUGER WINDOWS & GLASS	1,885.00					
1	6363 05/02/23	Cracked Window In Childrens De	1,885.00*		32209	2220 16 460100	360	101000
137209	86675S	4346 MOUNTAIN ALARM	42.00					
1	3531172 05/01/23	Monthly Monitoring	42.00*		32565	1000 5 420140	220	101000

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137210	86676S	1330 SCL Health - Sisters of Charity	725.10					
1	03/02/23	DUI Blood Draw	241.70*		32567	1000 5 420140	350	101000
2	03/26/23		241.70*		32567	1000 5 420140	350	101000
3	03/18/23		241.70*		32567	1000 5 420140	350	101000
137211	86677S	273 BALCO UNIFORM CO.	1,696.50					
1	74034 04/28/23	Razor Armor Level 2	660.00*		32566	1000 5 420140	220	101000
2	74034 04/28/23	Razor Armor Level 2	660.00*		32566	1000 5 420140	220	101000
3	74034 04/28/23	Revloution Double Back Plate P	240.00*		32566	1000 5 420140	220	101000
4	74034 04/28/23	Soft Trauma 5X8 (2)	88.00*		32566	1000 5 420140	220	101000
5	74034 04/28/23	Shipping	48.50*		32566	1000 5 420140	220	101000
137212	86678S	288 MILES CITY AREA CHAMBER OF	1,375.00					
1	7123779 04/17/23	Volunteer App. Chamber Bucks	1,325.00*		32311	2985 15 450340	220	101000
2	7123779 04/17/23		50.00		32311	2985 15 450351	220	101008
137213	86679S	999999 SCOTT DENSON	68.31					
1	05/01/23	DAV Meals Mar/Apr 2023	68.31		32312	2985 15 450330	379	101004
137214	86680S	2868 TAB ELECTRONICS INC	313.60					
1	59053 04/26/23	Mildred Tower, Check Generator	313.60		32191	2850 105 420140	220	101000
137215	86681S	4357 MCCONE ELECTRIC CO-OP INC	146.43					
1	02/28/23	Sheep Mountain Radio Tower	146.43		32189	2850 105 420140	341	101000
137216	86682S	4427 ZIGS AUTO SERVICE	1,999.45					
1	153087 04/25/23	Chevy Express Compressor	1,999.45		32074	5510 10 420730	364	101000
137217	86605S	999999 GLENDIVE RECREATION DEPARTMENT	1,200.00					
1	05/08/23	2022 Lifeguard Training	1,200.00			1000 14 460445	380	101000
137218	86683S	4410 PHOTO CARD SPECIALISTS, INC	28.00					
1	128504 04/20/23	Passport Name Tags	28.00		32073	1000 7 420460	220	101000
137219	86684S	4358 TNT WATER AND SEWER LLC	170.00					
1	47 04/25/23	Drainage Pipe Exploration	170.00*		32206	2220 16 460100	360	101000
137220	86685S	999999 JOSHUA HAYDEN	41.74					
1	04/30/23	Refund Water Deposit	41.74			5210 214010		101000

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137221	86686S 4312 VALERI RUSSELL, PA-C		500.00					
1	2 04/30/23 Q&I April		500.00*		32070	5510 10 420460	350	101000
137222	86687S 1050 FRANKS BODY SHOP		1,057.00					
1	53906 04/15/23 Wrecker Service		757.00*		32071	5510 10 420460	364	101000
2	53906 04/15/23 A26		300.00*		32071	5510 10 420460	364	101000
137223	86688S 999999 GAIL KREZELAK		323.52					
1	04/17/23 MJC & MCCA Spring Conf		323.52*		31481	1000 6 410300	380	101000
137224	86689S 999999 KEN STEIN		323.52					
1	04/24/23 Judge 2023 Spring Conf		323.52*		31483	1000 6 410300	380	101000
137225	86690S 4218 CUSTER COUNTY TRANSIT		45.00					
1	50123 05/05/23 Volunteer Rides		45.00		32315	2985 15 450330	379	101004
137226	86691S 771 DEPT OF REVENUE		1,039.05					
1	05/08/23 Diamond J Pay App #1 1% Gross		1,039.05		32709	5310 31 430630	940	101000
137227	86692S 361 BILLS TRUCK SERVICE		577.00					
1	10939 04/11/23 Truck 8 Service		577.00		32082	1000 7 420460	364	101000
137228	86693S 999999 JODY KINSEY		431.63					
1	05/08/23 Travel Reimbursement Bozeman		431.63			1000 3 410500	370	101000
137229	86694S 999999 MARY ROWE		599.51					
1	05/08/23 Travel Reimbursement Bozeman		599.51			1000 3 410500	370	101000
137230	86695S 763 DIAMOND J CONSTRUCTION		102,865.77					
1	04/29/23 N Haynes Sewer Rehab		102,865.77		32708	5310 31 430630	940	101000
137231	86696S 4211 MJC & MCCA		120.00					
1	05/08/23 Membership Dues July 23-Jun 24		120.00*		31485	1000 6 410300	334	101000
137232	86697S 2152 MONTANA MAGISTRATES ASSO		300.00					
1	07/01/23 MMA Membership July 23-Jun24		300.00*		31484	1000 6 410300	334	101000
137233	86606S 1120 C & J ELECTRIC		5,563.98					
1	2819 04/04/23 Changed Out 5 Fixtures to LED		360.00		32760	2430 49 430263	360	101000
2	2818 04/04/23 LED Street Light Fixtures		2,690.00		32760	2430 49 430263	230	101000
3	2823 04/13/23 Street Light Pole		2,422.00*		32760	2440 50 430263	230	101000
4	1985 04/13/23 2 Big Blue Wingnuts + Electric		91.98*		32760	1000 14 430263	363	101000
# of Claims			125	Total:	836,025.34			
Total Electronic Claims			175,267.51	Total Non-Electronic Claims	660757.83			