

**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:

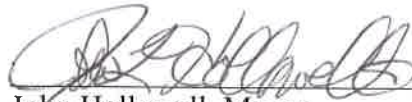
Legal Description: Lots 6 and 7 of Tract "E" of the Industrial Site west of Miles City, Montana, containing approximately 50,000 square feet, more or less;

*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 13<sup>TH</sup> DAY OF JUNE, 2023.**



John Hollowell, Mayor

ATTEST:



Mary Rowe, City Clerk

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

**THIS AGREEMENT**, made and entered into this 13<sup>th</sup> day of June, 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;

**AND WHEREAS** the CITY is not agreeable to providing a five-year term lease for various reasons; however, the CITY is agreeable to providing a three-year term lease, without the option to renew. Therefore, the CITY agrees to this lease agreement 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. LEASE TERM***

The term of this Agreement shall be for a period of three (3) years, beginning on July 1, 2023 and expiring at midnight on June 30, 2026, hereinafter, "*the lease term*".

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

The rental for the 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 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, 2026. Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council.

#### ***IV. NO OPTION TO RENEW.***

Following the "LEASE TERM", this agreement shall expire.

#### ***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 10<sup>th</sup> day of July, 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



