



# CITY OF MILES CITY

## Finance Committee Meeting Agenda

December 04, 2025 at 6:00 PM

City Council Chambers and online at zoom.us

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Zoom ID: 4062343462 | Passcode: 59301

### CALL TO ORDER

#### 1. REQUEST OF CITIZENS AND PUBLIC COMMENT

#### 2. UNFINISHED BUSINESS

#### 3. NEW BUSINESS

A. REVIEW & RECOMMEND CONNORS STADIUM ROOF

B. RESOLUTION NO. 4655 - A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2025-2026 TO INCREASE THE BUDGETED AMOUNT IN VARIOUS FUNDS FOR VARIOUS UNBUDGETED REVENUES AND EXPENDITURES.

C. Review & Recommend Staff Report & Draft Resolution for Lot 8 Tract E Industrial Site Lease.

#### 4. 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 Committee 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

# AIA Document A310™ - 2010

## Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

Jackson Contractor Group, Inc.  
P.O. Box 967  
Missoula, MT 59806

**SURETY:**

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**OWNER:**

(Name, legal status and address)

City of Miles City  
17 South 8th, PO Box 910  
Miles City, MT 59301

**BOND AMOUNT:**

Ten Percent of the Total Amount Bid 10%

**PROJECT:**

(Name, location or address, and Project number, if any)

Connor's Stadium Baseball Field Grandstands, Miles City, Montana


The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

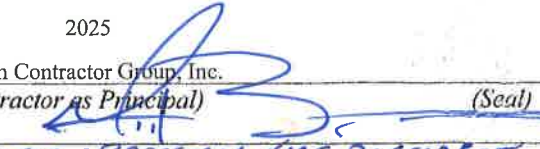
If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 29th day of October 2025

  
(Witness) Rylan Oakland

  
(Witness) Kimberly Hodson, Bond Clerical

Jackson Contractor Group, Inc.  
(Contractor as Principal)  (Seal)

(Title) MATT BROSSMAN, VICE PRESIDENT  
Liberty Mutual Insurance Company  
(Surety)  (Seal)

(Title) John D. Leaf, Attorney-In-Fact

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Section 3, Item A.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8209966-969551

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Amy Steinmetz, Blaine D. Martin, Brooke A. Garness, Casey Caywood, Chris Jermunson, Gary Paladichuk, Jamie M. Roe, Janece L. Wilhelm, Jarren Komac, John D. Leaf, Jon Tierney, Kaye U. Muzzana, Kimberly Hodson, Kristin A. Piccioni, Marsha Hattel, Nathan Oakley, Robert C. Pfennigs, Sharresa Drahos

all of the city of Great Falls state of MT each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 18th day of April, 2023.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 18th day of April, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29th day of October, 2023.



By: Renee C. Llewellyn, Assistant Secretary

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



PROPOSAL:  
MAYOR  
CITY OF MILES CITY  
17 S. 8<sup>TH</sup> STREET  
MILES CITY, MT 59301

CONNOR'S STADIUM  
BASEBALL FIELD GRANDSTANDS  
MILES CITY, MONTANA

DATE: November 10, 2025

Job #2025026

ALL:

The undersigned, having familiarized themselves with the conditions of the Work and the Contract Documents as prepared by **SDI Architects + Design**, 909 Main Street, Miles City, MT 59301, agrees to furnish all Labor, Material, Equipment and services necessary to complete the Construction Work in compliance with the Contract Documents including all Addenda.

Time of Substantial Completion for the project will be **April 30, 2026**.

BASE PROPOSAL:

The Contractor agrees to complete the Base Construction Work for the Sum of:

One Hundred Five Thousand Six Hundred Ninety-Seven DOLLARS (\$ 105,697.00 )

Bidder acknowledges receipt of the following Addenda No's. 1, dated 10/31/2025.

2, dated 11/5/2025.

dated \_\_\_\_\_.

Respectfully Submitted:

Jackson Contractor Group, Inc.  
(Legal name of Bidding Firm)

(Signature of Officer)

PO BOX 967  
(Address)

Matt Brossman, Vice President  
(Typed Name & Title of Officer)

Missoula, MT 59806  
(Address)

11/10/2025  
(Date)

50924  
(Registration Number)



NOVEMBER 10, 2025

**CONNOR'S STADIUM BASEBALL FIELD GRANDSTANDS**

MILES CITY, MONTANA

Section 3, Item A.

SUBCONTRACTORS: The attached Bid Proposal is based on using the following subcontractors and suppliers.

<b>TRADE</b>	<b>NAME</b>	<b>CITY</b>	<b>PHONE</b>	<b>ATTENDED WALK THROUGH?</b>
Demolition	Jackson Contractor Group	Miles City	406-234-5565	YES
Concrete/Grouting	Jackson Contractor Group	Miles City	406-234-5565	YES
Steel Supply/Fabrication	TK Steel	Miles City	406-951-0847	YES
Steel Erection	Jackson Contractor Group/Thor Steel	Miles City	406-234-5565	YES
Carpentry	Jackson Contractor Group	Miles City	406-234-5565	YES
Flashings	Jackson Contractor Group	Miles City	406-234-5565	YES



**RESOLUTION NO. 4655**

**A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2025-2026 TO INCREASE THE BUDGETED AMOUNT IN VARIOUS FUNDS FOR VARIOUS UNBUDGETED REVENUES AND EXPENDITURES.**

*WHEREAS*, the City of Miles City wishes to amend the budget for Fiscal Year 2025-2026 to increased appropriations as a result of several unanticipated revenues and expenditures related to the City of Miles City, as permitted by §7-6-4006 MCA;

*AND WHEREAS*, such amendment of the final budget will result in an overall increase in appropriation authority within multiple funds,

*AND WHEREAS* the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

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

The appropriations for the Final Budget for Fiscal Year 2025-2026 shall be increased in the following amounts:

<u>FUND/ACCOUNT</u>	<u>DESCRIPTION</u>	<u>REVENUE</u>
2372-311010 (101000)	Reducing Levy Tax to actual	(\$60,618)
2372-312000 (101000)	Reducing Tax Penalty to actual	(\$335)
5610-331132 (101000)	Add Hangar 10 Grant Revenue	\$310,000

**Total Revenue increased in various funds \$249,047**

<u>FUND/ACCOUNT</u>	<u>DESCRIPTION</u>	<u>EXPENSE</u>
2372-020-521000-820	Reducing Levy Transfer to actual	(\$42,473)
5210-023-521000-820	Recording loan to Building Fund	\$42,955
2310-011-460462-(111-196)	Add Mayor/Treasurer/Council	\$9,809
2991-201-431200-350	Increase to actual grant amount	\$762,336

**Total Expense increased in various funds \$772,627**

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2025-2026 on the 9<sup>th</sup> day of December, 2025, at 6:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be

published in the Miles City Star, in accordance with §7-1-4127 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025.

\_\_\_\_\_  
Brant Kassner, Council President

ATTEST:

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

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 9<sup>TH</sup> DAY OF DECEMBER, 2025.

\_\_\_\_\_  
Brant Kassner, Council President

ATTEST:

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

**Staff Report to Miles City Finance Committee  
Proposed Industrial Site Lease:  
Lot 8 of Tract “E” of the Industrial Site  
Three G Construction, LLC and Bear Buttz Septic  
Report Date: November 13, 2025**

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## I. General Information

<b>Type of Request:</b>	Proposal to lease Lot 8 of Tract “E” of the Industrial Site and enter into a new lease agreement with the City of Miles City
<b>Requestor:</b>	Jason Gergen, owner of Three G Construction, LLC and Bear Buttz Septic
<b>Date of Finance Committee meeting:</b>	Wednesday, December 3, 2025 at 5:30 p.m. at the City Hall Conference Room, 17 South 8 <sup>th</sup> Street, Miles City
<b>Date of City Council meeting:</b>	December 9, 2025

## 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 (I-94 Business Loop) 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.

James Dighans began leasing Lot 8 of Tract “E” on July 1, 2016. The initial term of the lease was stated in the lease agreement as five (5) years, but expired at midnight on June 30, 2022, which equated to 6 years. The lease agreement provided an option to renew for an additional five (5) years, which the tenant exercised at the end of the initial term, making the expiration date June 30, 2027. The stated purpose of the lease was to “Build some greenhouses, raise garden, calves and sheep”. The only improvements made by Mr. Dighans were an extension of electrical utilities

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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 8 is 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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and a water well. After Mr. Dighans considered requesting changes to the lease agreement to allow for chickens and turkeys and to add the names of additional family members to the agreement, he ultimately decided to terminate the lease early, on June 30, 2025. As such, the City advertised the available leasehold in accordance with Resolution #4100 from May 31 through June 21, 2025.

The City only received one proposal to lease Lot 8 – Jason Gergen, owner of Three G Construction, LLC and Bear Buttz Septic has proposed to lease the lot for \$1,500.00 per year, with a 5 year lease and first right of refusal for an additional 5-year term as explained in Mr. Gergen’s letter dated June 26, 2025, Attachment 1 to this report. The intended use of the leasehold would be “mainly for overflow storage of trailers and other small equipment”. The applicant has not stated any intent to improve the leasehold.

Lot 8 was advertised as having an area of approximately 34,508 square feet of vacant, unimproved land (more or less). This figure is different than approximately 35,175.89 square feet, more or less, stated in the Dighans lease agreement. For the advertisement and review of this proposal, the Lease Administrator re-calculated the area of Lot 8 based on a combination of a 1956 map of the Industrial Site that is often used for administration of the leased lots, which gives limited data on the lot’s dimensions, and a 2019 retracement Certificate of Survey that depicted the survey monuments found during the more recent survey, with limited dimensions and bearings for the areas of Lots 4 – 8, but which sufficiently allowed for the calculations.

The advertisement listed the minimum bid of \$690.16 per year or \$0.02 per square foot per year, based on the then-effective minimum base rent in Resolution No. 4124 and the dimensions of the lot calculated by the Lease Administrator. On August 12, 2025, the City Council adopted Resolution No. 4587, which increased minimum rentals of \$0.026 per square foot per year for tracts with gravel road frontage. The minimum acceptable rental amount is therefore \$897.21 per year. With the bid amount of \$1,500/year exceeding the minimum bid, the proposal complies with the minimum rental amount outlined by Resolution No. 4587, and the proposal should therefore be acceptable to the City in terms of the proposed annual rental amount.

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.

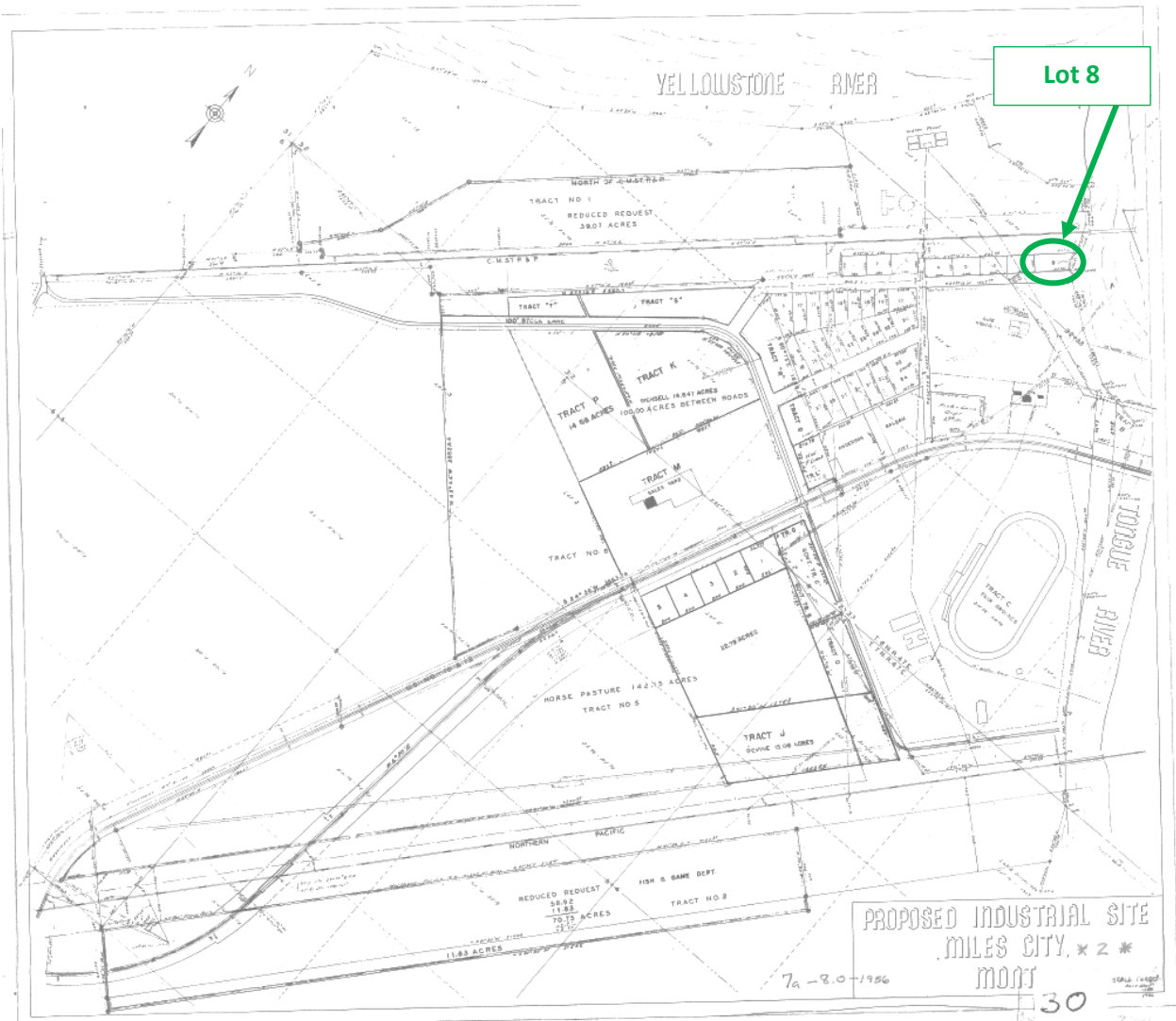
### **III. Map Series**

The following series of maps are included for reference:

**Staff Report to Miles City Finance Committee  
Proposed Industrial Site Lease:  
Lot 8 of Tract "E" of the Industrial Site  
Three G Construction, LLC and Bear Buttz Septic  
Report Date: November 13, 2025**

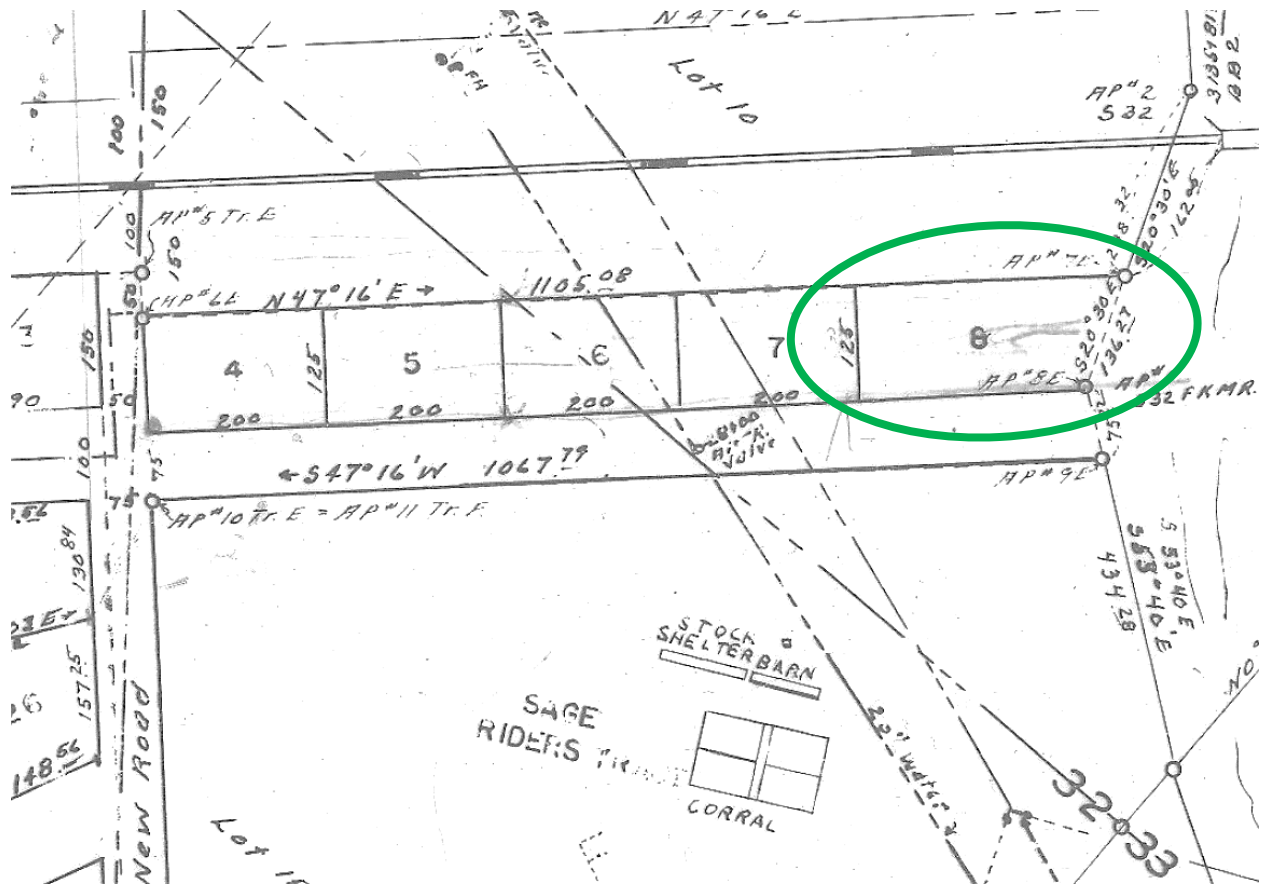
1. Map 1 (page 3) is a 1956 map of the Industrial Site that is often used for administration of the leased lots, with Lot 8 noted.
2. Map 2 (page 4) is a zoomed-in excerpt of the 1956 map to show the lot in question, being Lot 8 of Tract "E".
3. Map 3 (page 5) is July 2023 aerial imagery from Google Earth, with the approximate boundaries of the leasehold drawn by the acting Lease Administrator based on a GIS shapefile overlay, and verified to a limited extent by scaling off of features such as Water Plant Road and the railroad tracks. Please note the boundaries are very approximate.

Map 1: 1956 Map of Industrial Site, with the location of Lot 8 of Tract "E" noted:



Staff Report to Miles City Finance Committee  
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Map 2: 1956 Map of Industrial Site, zoomed in to Lot 8, which is circled:



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Map 3: Google Earth imagery with approximate boundaries of Lot 8:



#### **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 except per [Sec. 1-9](#) of City codes, 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. 4587 (a 2018 resolution establishing

**Staff Report to Miles City Finance Committee**  
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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 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.

**Staff Report to Miles City Finance Committee  
Proposed Industrial Site Lease:  
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- **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:**
    - **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.

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- d. Rates for leases of City owned property outside of the Industrial Site will be evaluated on a case by case basis.
- e. Lease may provide special considerations for lessee investment in tract cleanup, land surface improvements, or improvements to city service systems. All agricultural leases shall include the following animal husbandry clause: "TENANT shall maintain the property with good husbandry and in good farmer-like manner consistent with the prevailing standards for Custer County, Montana. TENANT will abide by all local, state and federal rules, regulations and laws respecting the use of real property, pesticides, soil erosion, hazardous materials, and chemicals and farming practices. TENANT will take all necessary steps to ensure proper weed control for all property subject to this lease. Fences and other improvements will be maintained in good condition.
- f. Governmental entities, or nonprofit corporations that are determined to be of special benefit to the greater Miles City community, may receive more favorable lease terms or lease rental rates. Any nonprofit entity seeking such benefits shall file with the Lease Administrator a copy of its IRS tax exempt determination and any determination by the IRS that such entity qualifies as a charity.
- g. Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council.
- h. If a Lessee desires to eliminate or modify these standards and the Council is agreeable, then the rental provisions may be revised upward from the minimal base rates, or other provisions for rental adjustment may be included in the lease to assure that the City is receiving fair market value for the leasehold.
- i. Lessees who own substantial permanent physical improvements which have been constructed upon the leasehold with City permission, may be granted a preferential right to renew their lease, at a rate to be determined by the City, which shall be not less than the minimum rental rate established by the City Council, as adjusted from time to time.
- o 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.

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

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

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

- **Resolution No. 4587:**

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**1. Lease Rates for City Owned Leaseholds; New and Renewed Lease Agreements.**

Industrial Site lease agreements entered into during and subsequent to FY 2025-2026 shall utilize the following minimal rentals:

- a) Tracts with Highway 10 & 12 frontage: \$0.051 per square foot per year
- b) Tracts with paved road frontage: \$0.032 per square foot per year
- c) Tracts with gravel road frontage: \$0.026 per square foot per year

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

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

**3. Escalation Clause for Long-Term Leases.**

Lease agreements entered into during and subsequent to FY 2025-2026 with combined terms of greater than five (5) years, inclusive of the initial lease term and any options to renew for additional terms, shall be subject to an "Escalation Clause". This Escalation Clause provides for such long-term lease agreements to include rental amounts that increase periodically over time, such as once every five (5) years to account for changing market conditions, including inflation and property value increases. Said increases will be determined by the City Council and its Finance Committee when lease agreements are developed and entered into.

**4. Administrative Processing Fees.**

In addition to the above, the City hereby establishes an administrative processing fee to defray the City processing costs when any lessee/tenant or prospective lessee/tenant proposes changes to a lease agreement, enter into a new lease agreement, renewals, amendments, assignments, and other lease-related actions required by the City. The process shall be \$500, to be paid in advance of the City processing the request(s).

- Lease Administrator note: Because the lease was advertised and the bid received prior to the effective date of Resolution No. 4587, a processing fee for the proposal for a new lease agreement was not required.

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:

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**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 3. The draft lease agreement is based on the standard form of lease document attached to Resolution #4100, with a requirement to provide 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. Jason Gergen, owner of Three G Construction, LLC and Bear Buttz Septic submitted the only proposal and bid to lease Lot 8 of Tract “E” of the Industrial Site for \$1,500.00 per year, with a proposed 5 year lease and first right of refusal for an additional 5-year term as explained in Mr. Gergen’s letter dated June 26, 2025, Attachment 1 to this report. The intended use of the leasehold would be “mainly for overflow storage of trailers and other small equipment”. The applicant has not stated any intent to improve the leasehold.
- 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. According to Resolution No. 4587, which sets rental/lease rates for City-owned leaseholds, Section 1, Industrial Site leases entered into during and subsequent to FY 2025-2026 shall utilize the minimum rentals listed in the resolution, which are based on the type of road they front on. Lot 8 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. For Tracts with gravel road frontage, the minimum base rate is \$0.026 per square foot per year. The lot is 34,508 square feet in size, so the annual minimal base lease rate for

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the leasehold would be \$897.21 per year. With the bid being \$1,500 per year, that is the amount provided for in the draft 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 Lot 8 that would warrant exercising the option to assess a higher rental rate above the \$1,500/year bid amount, which exceeds the 'minimal base rates'.
- E. In discussing the lease with the former tenant James Dighans, Mr. Dighans discussed the improvements he made during his occupancy, which included electrical utilities and a water well. Mr. Dighans stated his intention to remove those improvements unless the next tenant made arrangements with him to take over the improvements. The Lease Administrator has informed the applicant Mr. Gergen of this, and he indicated that he may discuss taking over the improvements with Mr. Dighans. This private arrangement is outside the scope of this review, but the Lease Administrator feels it appropriate that the Finance Committee and City Council are aware of the situation.
- F. It should also be noted that the former tenant's occupancy of the leasehold has historically encroached upon the adjacent railroad property to the northwest and the City property to the southeast. It appears the encroachments included storage of personal property and equipment, and possibly grazing and fencing. It is the Lease Administrator's understanding that the fencing and personal property has been removed. Mr. Dighans provided the Lease Administrator a copy of a letter dated April 18, 2019 from Transco Railway Products, Inc., apparently representing the landowner (Trinity Railcar Repair Inc., doing business as Transco Railcar Repair Inc., per Montana Cadastral) explaining that Mr. Jim Dighans had permission to use the land for limited purposes (see Attachment 4). The letter explains that Mr. Dighans is responsible for removing all items brought onto the railroad property when he is finished using it. If the current applicant is awarded the lease, he should understand that the leasehold of City land is limited to Lot 8 and any encroachment onto the adjacent private property is between him and that landowner. Any encroachment onto the adjacent City land to the southeast is not allowed without prior approval by the City.
- G. With the applicant's intended use of the leasehold being storage of trailers and other small equipment, and with historic and ongoing issues within the Industrial Site including unkept leaseholds with excessive keeping of equipment and junk, the applicant should also be aware that the lease agreement will require the tenant to keep the premises in

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good repair and in a clean and orderly condition, and not allow accumulations of junked or inoperable automobiles, trucks, farm equipment, or scrap upon the premises. The City will enforce the maintenance requirements of the lease agreement.

- H. Section 2(a) of Resolution No. 4123 require that the term of the lease shall be for a period between one to five years, but 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) of the resolution, although those sections do not specifically address the circumstances under which a term greater than five years will be considered; rather, they address lease rates. Renewable leases are permitted. The applicant has proposed the lease to have a term of five years with an option to renew for an additional five years, in so many words. Section 2(b) of Resolution No. 4123 requires that 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. And the termination dates for leases shall be set for June 30, to coincide with the City's fiscal year. The draft lease agreement reflects these requirements, and the draft agreement would provide for an initial term of 5 years, plus the remainder of the current fiscal year. As drafted, the start date for the lease agreement would be December 12, 2025, which would be the Friday following the regular December 9, 2025 City Council meeting. The initial, partial term of 201 days of the 365-day fiscal year would equate to  $\pm 0.55$  of one year, so the prorated amount for the remainder of FY 2025-2026 would be \$826.03, payable and due December 12, 2025. As the draft lease agreement is currently drafted, should the execution date change from the anticipated date, the prorated rental amount due and payable on the actual execution date shall be based on the amount of \$4.1096 per day, with the prorated rental amount subject to written approval by the Mayor.
- I. Section 3 of Resolution No. 4587 provides for an "escalation clause" as follows: "*Lease agreements entered into during and subsequent to FY 2025-2026 with combined terms of greater than five (5) years, inclusive of the initial lease term and any options to renew for additional terms, shall be subject to an "Escalation Clause". This Escalation Clause provides for such long-term lease agreements to include rental amounts that increase periodically over time, such as once every five (5) years to account for changing market conditions, including inflation and property value increases. Said increases will be determined by the City Council and its Finance Committee when lease agreements are developed and entered into.*" The Lease Administrator is not recommending the escalation clause being applied because the proposed annual rental rate is markedly higher than the minimal rentals of Resolution No. 4587 and what increases are likely to result from changing market conditions within the next 10 years, and should conditions

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significantly change during that time, the City could take action to address the change in conditions by modifying rental rates with another lease rates resolution.

- J. According to Section 2(b) of Resolution No. 4123, Proof of Insurance shall be provided with payment for leases. Section V.J of the draft lease agreement addresses this requirement to provide the City with proof of liability insurance prior to execution of the agreement and thereafter, each year on or before July 1, or upon demand by the Lease Administrator. 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. Other insurance provisions have been added and modified relative to the standard form of lease agreement to address the lack of improvements on the leasehold and based on the lease administrator's research of typical insurance requirements for land leases.
- K. The Lease Administrator has checked the Montana Secretary of State's business entity search to verify the registrations for Three G Construction, LLC and Bear Buttz Septic to ensure the businesses are legal entities, capable of being insured, etc. Three G Construction, LLC's registration is current as of the date of this report, but Bear Buttz Septic is shown as expired and inactive since 5/14/2023. The Lease Administrator spoke with Jason Gergen about the registration and he indicated Bear Buttz Septic is a part of Three G Construction, LLC. The Lease Administrator is recommending that prior to execution of the lease agreement, the business entities shall be demonstrated to be in good standing and registered with the Montana Secretary of State, to be verified by the Lease Administrator and City Attorney. Please see Section V.O of the draft lease agreement.
- L. 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 storage of trailers and other small equipment associated with construction businesses, the use could be considered industrial in nature. In any event, the City has previously leased land in the Industrial Site instead of allowing the land to sit idle. With only one bid proposal submitted, it appears appropriate to again allow for the use of the leasehold to be for this purpose instead of soliciting additional bid proposals or letting the land sit vacant while seeking lessees that may desire another use of the lot. It is also noteworthy that with the location of the 100-year floodplain covering most of Lot 8, the property is somewhat limited in terms of potential development, and a county floodplain permit and associated

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approvals may be necessary depending on project specifics and consultation with the Custer County Floodplain Administrator.

- M. Resolution No. 4123, Section 3: "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." 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;

With no existing or proposed improvements, it appears a site plan from the applicant is unnecessary, so the Lease Administrator will use available imagery and staff site visits to document the lease. The lease agreement will require that the tenant use the premises for the stated purpose and the stated purpose only (Section V.A). Any modification to the purpose of the leasehold or to make improvements would require submittal of the above information for consideration by the City Council.

## **VII. Finance Committee Interview with Proposed Lessee**

Section 7 of Resolution #4100 requires the Finance Committee to conduct interviews with proposed 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 acceptable?
2. Can you describe the type of equipment and other items you intend to store on the property and the number of vehicular trips per day you anticipate making?

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3. Are you prepared to provide the City with proof of insurance in the amounts in the draft lease agreement?
4. What measures will you take 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 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 and payable upon execution 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. 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 the applicant a 5-year lease plus the remainder of the current fiscal year, with a one-time 5-year automatic 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.

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**XI. List of Attachments**

Attachment 1: Jason Gergen's proposal and bid dated June 26, 2025

Attachment 2: Draft Resolution to approve a new Lease Agreement

Attachment 3: Draft Lease Agreement

Attachment 4: Letter from Transco Railway Products dated April 18, 2019 to Jim Dighans regarding permission to use railroad property on both sides of rail line

June 26, 2025

I, Jason Gergen, owner of Three G Construction, LLC and Bear Buttz Septic of Miles City, MT would like to submit my bid on the following parcel of City of Miles City property that is up for lease:

-Lot 8 of Tract "E" of what is commonly known as the Industrial Site located west of the City of Miles City, within the E 1/2 of Section 32 of Township 8 North, Range 47 East in Custer County, Montana.

-The tract contains approximately 34,508 square feet of vacant, unimproved land, northeast of Water Plant Road.

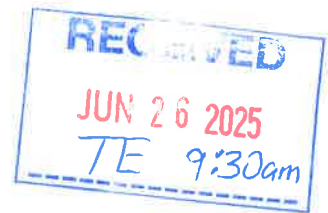
The intended use of this land would be mainly for overflow storage of trailers and small equipment.

If possible and awarded, I would like to secure the contract for a 5 year lease and first right of refusal when the 5 year term is up for bid again.

**My bid is \$1,500.00 (One Thousand Five Hundred Dollars) per year.**

Thank you for your time and consideration.

Jason Gergen, Owner  
Three G Construction, LLC  
Bear Buttz Septic  
3506 Box Elder St.  
Miles City, MT 59301  
(406) 853-6324  
(406) 853-5174  
[threegbilling@gmail.com](mailto:threegbilling@gmail.com)  
[bearbuttz14@gmail.com](mailto:bearbuttz14@gmail.com)



Jason Gergen

Date: 6/26/2005

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

**A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY, AND THREE G CONSTRUCTION, LLC AND BEAR BUTTZ SEPTIC, REPRESENTED BY OWNER OF SAID BUSINESSES, JASON GERGEN, 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: Lot 8 of Tract "E" of the Industrial Site west of Miles City, Montana, containing approximately 34,508 square feet, more or less;

*AND WHEREAS*, Three G Construction, LLC and Bear Buttz Septic (represented by owner of said businesses, Jason Gergen) was the sole bidder for said leasehold, and the City desires to enter into a lease with said bidder;

***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 Three G Construction, LLC and Bear Buttz Septic 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 \_\_\_\_\_, 2025.**

\_\_\_\_\_  
Dwayne Andrews, Mayor

ATTEST:

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

**EXHIBIT "A" TO RESOLUTION NO. \_\_\_\_\_**

**CITY PROPERTY LEASE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, 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 Three G Construction, LLC and Bear Buttz Septic (represented by owner of said businesses, Jason Gergen) of 3506 Box Elder Street, 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:

Lot 8 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 34,508 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, plus the remainder of the current fiscal year, 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 TENANT the real property located in the Industrial Site and more particularly described as follows:

Lot 8 of Tract "E" of the Industrial Site west of Miles City, Montana, in Custer County, containing approximately 34,508 square feet, more or less, hereinafter "*Leasehold*".

**II. INITIAL TERM**

The term of this Agreement shall be for a period of five (5) years, six (6) months, and twenty (20) days, or five (5) years plus 201 days of the fiscal year ending June 30, 2026, beginning on December 12, 2025 and expiring at midnight on June 30, 2031, 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 one thousand, five-hundred and 0/100 dollars (\$1,500), as follows:

Lot 8 of Tract “E” of the Industrial Site, containing 34,508 square feet for a total annual rental of one-thousand, five-hundred and 0/100 dollars (\$1,500). For the first partial year of the initial lease term commencing December 12, 2025, a prorated amount of eight-hundred, twenty-six and 3/100 dollars (\$826.03) shall be received before or upon the anticipated contract execution date of December 12, 2025. Should the execution date change from the anticipated date, the prorated rental amount due and payable on the actual execution date shall be based on the amount of \$4.1096 per day, with the prorated rental amount subject to written approval by the Mayor of the City of Miles City.

Payments in subsequent years shall be due and payable in advance of July 1 of each subsequent year of the lease term.

**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 lease term. Rental rates at each payment period shall be at the annual rental rates as described in Section III above, unless the standard minimum rental rates set by resolution adopted by City Council have increased to an amount higher than those stated in Section III. In the event the standard minimum rental rates set by resolution adopted by City Council have increased to result in an amount above the amount stated in Section III, the annual rental rates at each payment period shall be the standard minimum rental 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:

*Storage of trailers and small equipment associated with TENANTS' construction businesses.*

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 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.**

**1. TENANTS' Insurance Obligations.**

TENANTS shall, at their sole cost and expense, obtain and maintain in full force and effect throughout the term(s) of this Agreement, insurance policies issued by insurers authorized to do business in the State of Montana, providing the following coverages on the premises:

**a. Commercial General Liability Insurance:**

- Coverage for bodily injury, property damage, personal injury, and contractual liability.
- Minimum limits: **SEVEN-HUNDRED, FIFTY-THOUSAND AND NO/100THS DOLLARS (\$750,000.00) for each claim**, and **ONE MILLION, FIVE-HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,500,000.00) each occurrence**.
- Coverage shall extend to all operations on the premises by the TENANTS, including but not limited to storage, access, loading, unloading, and equipment movement.

**b. Fire Legal Liability Insurance:**

- Minimum limit: **\$100,000 per occurrence**, covering damage to any existing property (real or personal) of the CITY resulting from fire caused by the TENANTS' activities, negligence, or use of equipment.

**c. Pollution or Environmental Liability Insurance:**

- If TENANTS store fuel, lubricants, or other regulated materials, such insurance shall cover cleanup and third-party claims for bodily injury or property damage resulting from a pollution incident.
- Minimum limit: **\$1,000,000 per occurrence**.

**d. Worker's Compensation Insurance:**

- TENANTS shall carry Worker's Compensation Insurance as required by the laws of the State of Montana

**e. Property Insurance for TENANTS' Equipment:**

- TENANTS acknowledge that any equipment or materials stored on the premises are at TENANTS' sole risk.
- TENANTS may, but are not required to, maintain property insurance for its owned equipment.

**2. Additional Insured and Certificate Requirements:**

- a. The CITY of Miles City shall be named as an Additional Insured on all liability policies.
- b. 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.

- c. Insurance shall be primary and non-contributory with respect to any coverage maintained by the CITY.

**3. Waiver of Subrogation**

To the fullest extent permitted by law, TENANTS and their insurers waive all rights of recovery against the CITY of Miles City for any claims covered (or that should have been covered) by required insurance.

**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.

**O. Business Registration.**

TENANTS agree to provide documentation to the CITY that the business entities (TENANTS) are in good standing and registered with the Montana Secretary of State prior to execution of this Agreement, to be verified by the Lease Administrator and City Attorney.

## ***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 \_\_\_\_\_, 2025, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Dwayne Andrews 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:**

\_\_\_\_\_  
Three G Construction, LLC, by Jason Gergen, Owner

\_\_\_\_\_  
Bear Buttz Septic, by Jason Gergen, Owner

STATE OF MONTANA     )  
  ) ss  
COUNTY OF CUSTER     )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Jason Gergen, 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)

DRAFT



Michael Preller | Division Manager  
mpreller@transcorailway.com

April 18, 2019

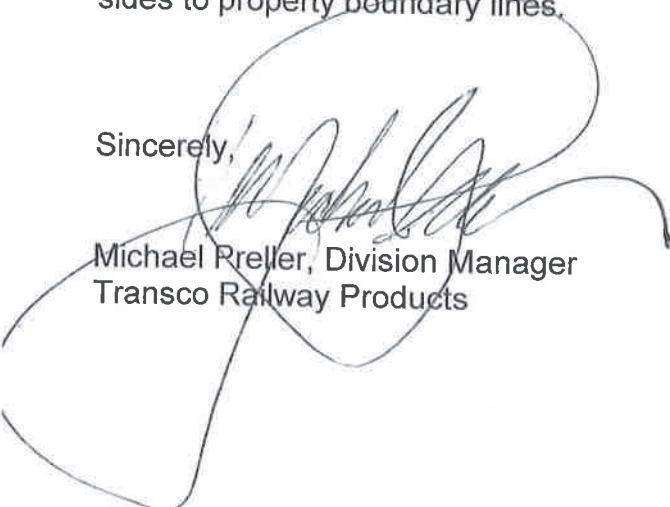
Re: Land on both sides of rail line West of the Bridge over Tongue River

To whom it may concern;

Mr. Jim Dighans has permission to graze animals and use said land to garden. Transco shall not be liable for any loss of animals, fencing and or equipment damage, loss or theft. Mr. Dighans shall be responsible to keep animals off of the tracks and bridge, to keep area neat and tidy and remove all items he has brought onto said property when he finished using property.

The said lands runs from the Tongue River Bridge to the Water Plant Road Crossing on both sides to property boundary lines.

Sincerely,



Michael Preller, Division Manager  
Transco Railway Products