Staff Report to City Council
Industrial Site Lease Renewal:
DMJ Properties L.L.C. Lease of Lots 16 and 17 of Tract "E"
Report Date: August 6, 2026

I. General Information

Type of Request:	Request for a new lease agreement (renewal) for leased land in the City-owned Industrial Site
Requestors:	Dustin Davis and John Kuntz of DMJ Properties L.L.C.
Leased Lots:	Lots 16 and 17 of Tract "E" of the Industrial Site
Date of City Council meeting:	Tuesday, August 11, 2026 at 6:00 p.m. at the City Hall Conference Room, 17 South 8th Street, Miles City

II. Introduction/History

The City of Miles City owns and administers what is known as the 'Industrial Site', which is an area of lots, some of which exist as tracts of record[1], and some of which are leased lots that have never been recorded with the Custer County Clerk & Recorder as tracts of record. The Industrial Site property was granted to the City of Miles City from the federal government in 1946 for industrial and recreational purposes and for use as a museum site (now the Range Riders Museum). The Industrial Site is located along US Highway 12 just west of downtown, outside the City limits.

Currently, various lease agreements exist between the City of Miles City and numerous tenants. Some of these lease agreements have been in place for decades. Over the years, the City has administered 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.

DMJ Properties Lease:

The current DMJ Properties L.L.C. leasehold includes Lots 16 and 17 of Tract "E" of the Industrial Site. According to lease administration records, the effective Lease Agreement was approved by Resolution No. 3010. This lease agreement was entered into on May 25, 2004 between the City of Miles City and tenant DMJ Properties, L.L.C.

The leasehold identified in the lease agreement is comprised of the two lots totaling 49,812.5 square feet, more or less, and the purpose is for "Operation of a trucking company and farm equipment repair service. Equipment sales and service." The initial 10-year term expired June 30, 2014, but the lessees exercised their two one-time options to renew for five years each term, so the lease agreement technically expired on June 30, 2024. The lessees requested renewal of the lease agreement in May 2024 prior to the

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[1] The Montana Subdivision and Platting Act defines a 'tract of record' as, *"an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office."* 76-3-103(17)(a), MCA. Note that Lots 30, 31, & 32 are among lots in the Industrial Site that have been recorded as 'tracts of record' at the clerk and recorder's office.

expiration, which the lease administrator began processing, but the renewal was placed on hold during 2024 while the City worked on revisions to the lease rates that were ultimately adopted August 12, 2025 by Resolution No. 4587.

The following statute addresses situations such as this, when a lease agreement expires and lessees continue to possess a commercial leased property and the lessor accepts rental payments:

> ***70-26-204, MCA: Renewal of lease by lessee's continued possession.*** *If a lessee of real property leased under an arrangement not governed by Title 70, chapter 24, remains in possession of the property after the expiration of the hiring and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year.*

Based on the above statute, essentially the lease continues under the same terms on a yearly basis if the lessees continue to make annual payments and the City accepts the payments, which is the case with the DMJ Properties lease.

Current Requests:

Dustin Davis and John Kuntz of DMJ Properties L.L.C. are requesting a renewed/new lease agreement for Lots 16 & 17, with the same terms as the previous lease agreement, including a 10 year term with two one-time successive options to renew for additional 5-year terms.

According to Resolution No. 4100, the City may agree to renew leases in circumstances where the City has allowed the tenant to construct "substantial permanent improvements" on the leaseholds as determined by the City Council. Resolution No. 4123 states such lessees may be granted a preferential right to renew their lease, so the lessees may be given special consideration to renew and the City need not advertise the lease for bid. According to the Montana Cadastral program, DMJ Properties LLC owns improvements on Lot 17 of the Industrial Site, primarily being a warehouse building built in 1969 (remodeled in 2003), with a total 2026 assessed building value of $207,850; therefore, it appears DMJ Properties L.L.C. qualifies for the provision of renewal based on substantial permanent improvements.

Leasehold Size:

The current lease agreement identifies a leasehold size of 49,812.5 square feet, which was likely based on Lease Administrator approximations based on historic maps. In 2019, a Retracement Certificate of Survey (COS) was completed for the City of Miles City and recorded at the Custer County Clerk & Recorder's Office in Envelope #570B. The purpose of the COS was to retrace the boundaries of existing tracts of record as evidenced by lease histories. Lots 16 & 17 are each tracts of record per that COS. The 2019 COS shows Lot 16 at 18,141 square feet and Lot 17 at 31,545 square feet, for a total leasehold size of the two lots at 49,686 square feet. Therefore, the Lease Administrator is proposing to use those lot sizes and legal descriptions in the new lease agreement, if approved.

III. Map Series

The following series of maps are included for reference:

1. Map 1 (page 4) is a 2019 Retracement COS recorded at the Custer County Clerk & Recorder's Office in Envelope #570B.
2. Map 2 (page 5) is the 2019 Retracement COS zoomed in to show Lots 30 – 34.
3. Map 3 (page 6) is July 2023 aerial imagery from Google Earth (obtained 2024), with the approximate boundaries of the leasehold drawn by the Lease Administrator, scaled off of features such as buildings, roads, and visible fence lines. Please note the boundaries are very approximate.

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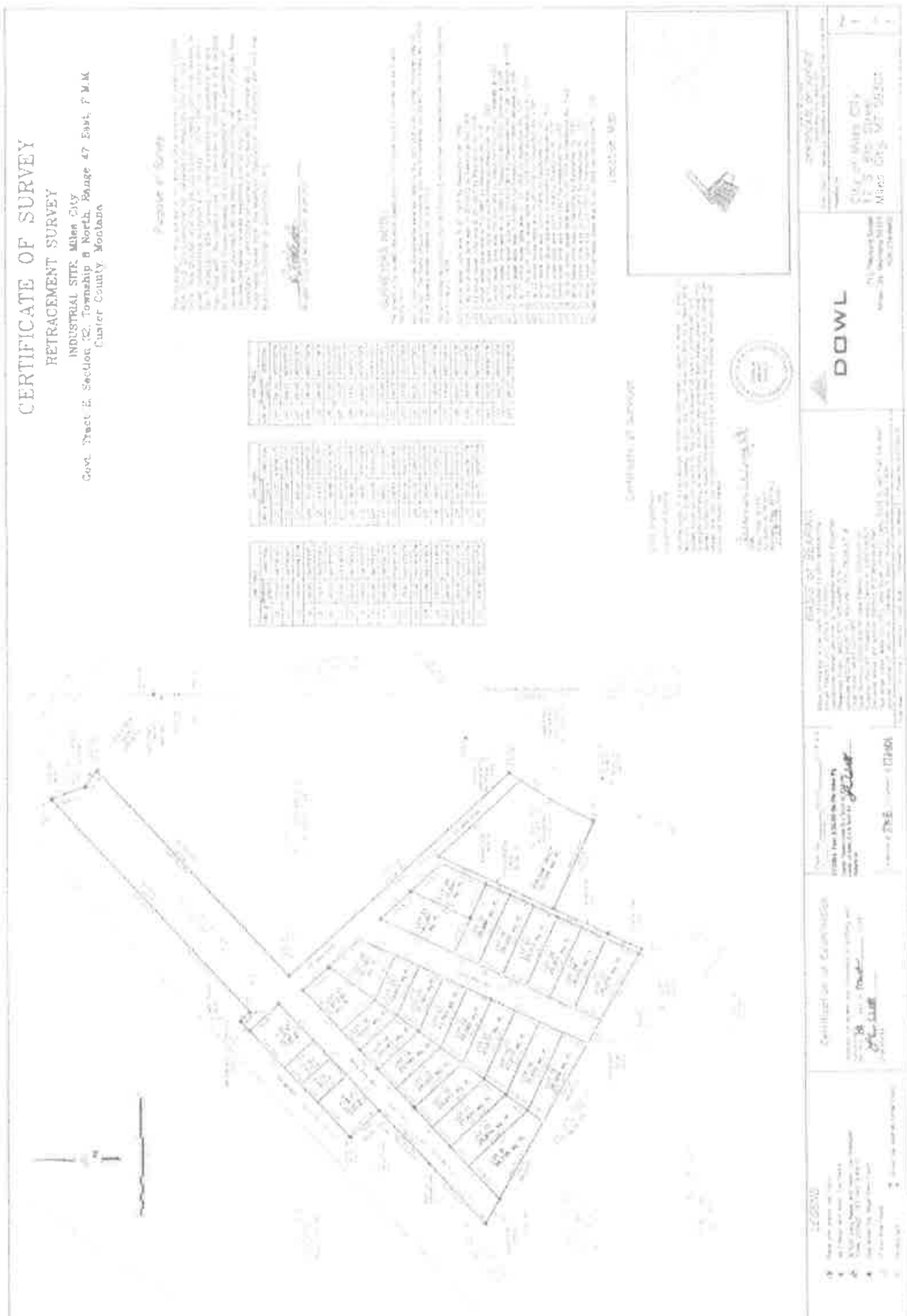
Map 1: 2019 Retracement COS



Map 2: Excerpt of 2019 Retracement COS zoomed in to show Lots 16 & 17

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

Lots 16 & 17

IV.Applicable City Policies/Regulations

Because the Industrial Site and leased lots are located entirely outside the City limits of Miles City, City ordinances generally do not apply, but adopted administrative policies of the City do apply. Specifically, the resolutions for City management of City-owned lease properties apply. The applicable resolutions are discussed below, with applicable sections included.

The current resolutions that govern the City's operation of the leased lots include Resolution #4100 (a 2017 resolution establishing procedures for the sale or lease of City lands), Resolution No. 4123 (a 2018 resolution providing for procedures to manage and monitor leases of property owned by the City of Miles City), and Resolution No. 4124 (a 2025 resolution establishing minimum base rent for Industrial Site and other City leaseholds; adding an escalation clause for long-term leases; and adding an administrative processing fee). Attached to Resolution #4100 is a "Standard Form of Lease" that is used as a template for City Property Lease Agreements.

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

- **Resolution #4100:**
    - **Section 4. Extension of Leases With Substantial Permanent Improvements.** The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate, any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.
    - **Section 10. Two-Thirds Majority Vote Required to Lease or Sell.** Except for real property described in §7-8-4201(3) MCA, all leases, sales, transfers, exchanges or donations of City real property must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the City Council.
- **Resolution No. 4123:**
    - 2. **Lease Standards.** Leases granted by the City of Miles City shall comply with the following general standards, unless expressly authorized by action of the City Council:

a. The term of the lease shall be for a period between one to five years. Renewable leases shall be permitted. Leases with terms greater than five years or with renewal options beyond five years shall be set as provided in Section 2(c) and 2(d) below.

b. The termination dates for leases shall be set for June 30, to coincide with the City's fiscal year. The first year of a lease shall require prorated rentals through June 30 of the subsequent year, due upon commencement of the lease, and subsequent rentals shall be for annual periods from July 1 to June 30, payable in advance of July 1 of each year of the lease term. Proof of Insurance shall be provided with payment.

c. The minimum base rate for Industrial Site leases shall be established from time to time by resolution of the City Council. Industrial Site leases entered into shall utilize the minimal rental rate as established by City Council.

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

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

e. Lease may provide special considerations for lessee investment in tract cleanup, land surface improvements, or improvements to city service systems. All agricultural leases shall include the following animal husbandry clause: "TENANT shall maintain the property with good husbandry and in good farmer-like manner consistent with the prevailing standards for Custer County, Montana. TENANT will abide by all local, state and federal rules, regulations and laws respecting the use of real property, pesticides, soil erosion, hazardous materials, and chemicals and farming practices. TENANT will take all necessary steps to ensure proper weed control for all property subject to this lease. Fences and other improvements will be maintained in good condition.

f. Governmental entities, or nonprofit corporations that are determined to be of special benefit to the greater Miles City community, may receive more favorable lease terms or lease rental rates. Any nonprofit entity seeking such benefits shall file with the Lease Administrator a copy of its IRS tax exempt determination and any determination by the IRS that such entity qualifies as a charity.

g. Leases shall prohibit assignment and subleasing unless prior written approval is obtained from the City Council.

h. If a Lessee desires to eliminate or modify these standards and the Council is agreeable, then the rental provisions may be revised upward from the minimal base rates, or other provisions for rental adjustment may be included in the lease to assure that the City is receiving fair market value for the leasehold.

i. Lessees who own substantial permanent physical improvements which have been constructed upon the leasehold with City permission, may be granted a preferential right to renew their lease, at a rate to be determined by the City, which shall be not less than the minimum rental rate established by the City Council, as adjusted from time to time.

- 4. **Variation from Standards.** The above standards are intended as general guidelines for the Lease Administrator and potential lessees. Nothing herein shall preclude the approval by the City Council of a lease that varies from the above standards should the Council determine that such lease is in the best interests of the City.

- **Resolution No. 4587:**

1. **Lease Rates for City Owned Leaseholds; New and Renewed Lease Agreements.**
Industrial Site leases entered into during and subsequent to FY 2025-2026 shall utilize the following minimal rentals:

a) Tracts with Highway 10 & 12 frontage: $.051 per square foot per year
b) Tracts with paved road frontage: $.032 per square foot per year
c) Tracts with gravel road frontage: $.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.

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).

V. Existing/Former Lease Agreement

As stated previously, the currently effective Lease Agreement for the DMJ Properties lease of Lots 16 and 17 was approved by Resolution No. 3010, entered into on May 25, 2004 between the City of Miles City and DMJ Properties L.L.C. The Lease Administrator does not have a copy of Resolution No. 3010 to attach to this report, but the effective lease agreement was provided to the Lease Administrator by Dustin Davis. The agreement is attached to this report as Attachment 3, for informational purposes and to compare to the draft new lease agreement.

VI.Draft Lease Agreement

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

VII. Lease Administrator Analysis

A. Sec. 2-55 of the City Codes was recently revised to eliminate the Finance Committee, which formerly considered all City lease matters, such as renewals. Therefore, this matter will go directly to the City Council for a decision.

B. The current lessee is DMJ Properties, L.L.C. The lease agreement was effective through June 30, 2024. Dustin Davis and John Kuntz of DMJ Properties L.L.C. are requesting a renewal with the same terms as the previous lease agreement, including a 10-year term with two one-time successive options to renew for additional 5-year terms. Approval of the requests would require a new lease agreement.

   Section 2(a) of Resolution No. 4123 states, "*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.*" It appears Sections 2(c) and 2(d) have little if anything to do with the durations of leases – the intent may have been to reference 2(e) and 2(f), which speak to special considerations for lessee investments and non-profits. The Lease Administrator is recommending approval of the proposed 10-year initial term (plus the remaining portion of the current fiscal year) with two options to renew for five-year terms each, primarily because the shorter the lease terms that are set, the more often the City and Lease Administrator must handle renewals and new leases. Longer lease terms are more efficient and cost effective than shorter lease terms.

   If the new lease is approved with an effective date of August 11, 2026, with a 10+ year initial term and two options to renew for five-year terms each, the lease agreement would have a series of terms totaling 20 years plus the remainder of the current fiscal year ending June 30, 2027, effective until June 30, 2047.

C. According to Resolution No. 4100, the City may agree to renew leases in circumstances where the City has allowed the tenant to construct "substantial permanent improvements" on the leaseholds as determined by the City Council. Resolution No. 4123 states such lessees may be granted a preferential right to renew their lease, so the lessees may be given special consideration to renew and the City need not advertise the lease for bid. According to the Montana Cadastral program, DMJ Properties LLC owns improvements on Lot 17 of the Industrial Site, primarily being a warehouse building built in 1969 (remodeled in 2003), with a total 2026 assessed building value of $207,850; therefore, it appears DMJ Properties L.L.C. qualifies for the provision of renewal based on substantial permanent improvements.

D. The 2019 COS shows Lot 16 at 18,141 square feet and Lot 17 at 31,545 square feet, for a total leasehold size of the two lots at 49,686 square feet. Resolution No. 4587 establishes the minimum base rent for the Industrial Site. For tracts with paved road frontage, which is the case with this leasehold, having frontage along Water Plant Road, a paved road, the minimum rental rate is $0.032 per square foot per year. Although Lot 16 fronts on Logan Drive, a gravel road, the two lots combined are considered the leasehold in gross, which the lessees benefit from by considering the entirety of the leasehold as containing substantial permanent improvements and a preferential right to renew the lease. Therefore, based on Resolution No. 4587, the annual minimal base lease rate for the leasehold would be $1,589.95.

The former Lease Agreement between the City and DMJ Properties was established in May 2004 using the lease rates resolution in place at the time. The initial term of the agreement was 10 years, with two options to renew the lease for additional five-year terms. The annual rental rates were first established using the following: 49,812.5 square feet with highway frontage @ 3 cents per square foot = $1,494.38 per year, commencing July 1, 2004 through June 30, 2009. It is unclear to the Lease Administrator why the rental rates were based on highway frontage – the rental amounts were likely based on a resolution that was effective at the time, as there have been various City resolutions in place over the years the current Lease Administrator does not have.

The agreement provided for 10% escalations of annual rent every five years as follows:

- At the five-year mark commencing July 1, 2009, annual rent increased to $1,643.82 (+10%);
- Commencing 5 years later at July 1, 2014, annual rent increased to $1,808.20 (+10%);
- Commencing 5 years later at July 1, 2019, annual rent increased to $1,989.02 (+10%);
- The agreement expired June 30, 2024.

Resolution No. 4587 establishes an escalation clause as follows, at Section 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."*

The minimum base rents established by Resolution No. 4587 for the Industrial Site were based on trends in cost of living and historic Consumer Price Index (CPI) numbers when prepared in late 2024 and then adopted in August 2025. The minimum base rental rates increased by approximately 27%, relative to those in the previous Resolution No. 4124, adopted in January 2018. Based on the Lease Administrator's limited research, many Montana municipalities assume 2.5–3.0% average annual inflation rates over the long term to establish budgets, as these figures are in line with CPI data and cost of living fluctuations.

If the City uses the minimal base rental amount of $1,589.95 per year and applies the escalation clause for a rate increase at the end of the initial five-year mark, a 2.5% increase per year at 5 years would set the new rate in five years at $1,798.88 per year. That would be a 13.14% increase over 5 years. Then at the end of the first 10-year term, an additional 2.5% increase per year at the end of the initial 10-year term would set the new rate at that time at $2,035.27 per year. If that escalation rate continues, at 15-years, it would increase again to $2,302.72 for the final 5-year term ending June 30, 2047. Because in the current economic conditions, commercial rental amounts would not be expected to be lowered with a new long-term lease agreement, the Lease Administrator is not recommending approval of the lease agreement based on these minimal rental amounts.

Alternatively, if the existing annual rental amount of $1,989.02 is applied and an escalation rate of +10% every 5 years is applied (this used to be the escalation rate in one of the former lease management resolutions), the annual rent at the end of the current fiscal year and start of the primary 10-years of the initial term would become $2,187.92. At the end of the initial 5-year mark, rent would become $2,406.71; at the end of the initial 10-year term, it would become $$2,647.39, then at the start of the final 5-year term ending June 30, 2047, the annual rent would become $2,912.12. These amounts appear reasonable to the Lease Administrator, so they are recommended as outlined in the draft lease agreement. If the City Council wishes to change the rental amounts to align with the minimal base rents in Resolution No. 4587 or other figures, the Council will need to either give the Lease Administrator additional direction and table the matter to provide for the changes, or adopt specific changes before the Mayor executes the lease agreement.

E. Resolution No. 4587 also establishes an administrative processing fee of $500 for requests for new leases, renewals, etc. The processing fee has not been assessed to date for the lessees' current request because the lease had expired and the original request had been submitted to the City well in advance of adoption of the resolution and the processing fee. The Lease Administrator notes the City Council could still assess the fee as part of entering into the new agreement, but that would need to be added to the lease agreement at the direction of City Council.

F. According to Resolution No. 4587, Section 1, *"Rates above these minimal base rates may be charged based on the cost of city services or city owned improvements provided as part of the lease..."* It is the Lease Administrator's understanding that the leasehold is served by City water, but not sewer facilities. The Lease Administrator is not aware of any other City services or City-owned improvements that are provided specific to Lots 16 & 17 that would warrant exercising this option to assess rates above the 'minimal base rates'.

G. The Lease Administrator is unaware of any compliance issues with the current tenants, and they are in good standing with the City.

H. Per the current lease agreement, the purpose of the lease is for "Operation of a trucking company and farm equipment repair service. Equipment sales and service." The requestors have not requested any changes, and have not indicated they have any plans to change the uses of the leasehold or make any additional improvements.

I. The Lease Administrator has previously discussed insurance requirements for leases with the City Attorney. Based on statutory requirements, the City requires the tenants to agree to carry minimum liability insurance in the amount of $750,000 for each claim and $1.5 million for each occurrence, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana.

VIII. City Council Action

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

A. Approval:

Approve the lease agreement by resolution, which shall become effective upon execution, with an anticipated execution date of August 11, 2026. Alternatively, the City Council may approve the lease agreement with modifications to the resolution or terms of the lease agreement as specifically directed by Council.

B. Table:

Should Council decide additional time for consideration is needed, or additional information is needed, the Council could table the matter to obtain additional information or direct the Lease Administrator, other City personnel, or applicants as to what is needed for further consideration by Council.

C. Denial:

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

IX. Lease Administrator Recommendation

Through review of leasing policies and the history of the lease agreement, the Lease Administrator recommends that the City Council adopt this staff report as findings of fact and r approve the attached resolution granting DMJ Properties L.L.C. a 10+ year lease with options to renew the lease again a maximum of two (2) additional times, for renewal periods of five (5) years each, and authorize the Mayor to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

X. List of Attachments

Attachment 1: July 7, 2026 request for renewal of the Lease by Dustin Davis and John Kuntz of DMJ Properties LLC.

Attachment 2: 2024 request for renewal of the Lease by Dustin Davis and John Kuntz of DMJ Properties LLC (from May 14, 2024 Council packet).

Attachment 3: Existing lease agreement with DMJ Properties, L.L.C.

Attachment 4: Resolution to approve a new lease agreement

Attachment 5: Draft NEW Lease Agreement