

DOWNTOWN TRANSIT TRANSFER CENTER

PARKING SPACE LEASE

THIS LEASE made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

by and between the following:

CITY OF BILLINGS, MONTANA, hereinafter designated "Lessor"

And

Yellowstone County, hereinafter designated "Lessee"

W I T N E S S E T H

RECITALS

- 1) Lessor owns and operates the Downtown Transit Transfer Center (hereinafter designated the Transfer Center) situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the Transfer Center to lease to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights, uses, and interests, and
- 3) Lessee is an individual wishing to engage in certain commercial parking activities, and proposes to lease on a net basis from Lessor said parcel of land and to avail itself of the same privileges, rights, uses, and interests contemplated herein, and
- 4) Lessee has indicated a willingness and ability to properly keep and maintain said premises in accordance with standards established by Lessor.

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

**ARTICLE I**

**PREMISES AND PRIVILEGES**

A. **Description of the Premises:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain parcel of real property, together with improvements (hereinafter designated the "Premises") for its exclusive use, specifically described as follows:

Thirteen Vehicle Parking Stalls located along the North West side of the Downtown Transfer Center property..

The premises and location of the parking spaces are further depicted on attached "Exhibit A," and hereto attached and made a part hereof.

**ARTICLE II**

**TERM, POSSESSION, AND RENEWAL**

- A. **Term.** The term of this Lease shall be for two (2) years, commencing on October 1, 2012, and terminating on September 30, 2014.
- B. **Option to Extend.** Lessee shall have an option to extend the term of this Lease for one (1) additional year from September 30, 2014, provided Lessee gives Lessor written notice of its intent to exercise the option to extend, at least ninety (90) days prior to September 30, 2014. Upon receipt of said Notice by Lessor, Lessee has the option of negotiating a new rental rate, agreed upon in writing by both parties, for the extended term.

**ARTICLE III**

**LEASE RENTAL AND FEES**

A. **Rental.** For the Premises described in Article I, Paragraph A., herein, Lessee shall pay to Lessor \$50.00 per month per vehicle parking stall for a total monthly rental of \$650.00. Said rental shall be payable monthly, in advance, without billing, on the first day of each month.

B. **Interest Penalty.** Without waiving any other right or action available to the Lessor, in the event of default in the payment of Lease rentals herein, or any other rentals, fees, or charges owed Lessor, the amount due shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date such rentals, fees, or charges were due and payable, until paid in full. Said interest shall not apply with respect to items being contested in good faith by Lessee and which are resolved in Lessee's favor.

**ARTICLE IV**

**OBLIGATIONS OF LESSEE**

A. **Condition of Premises.** It shall be the sole responsibility of the Lessee to keep, maintain, and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. This Lease in every sense shall be without cost or expense to the Lessor. Lessee accepts the Premises in its present condition, will repair and maintain any installations thereon, and will remove or cause to be removed any debris to the extent required for its continuing use thereof.

Damages to the Premises caused by Lessee, sub lessees, Lessee's

employees, agents, or contractors, shall be the sole responsibility of Lessee. Said damage shall be immediately reported to Lessor and repaired at Lessee's expense. Should Lessor identify damage at the Premises, Lessor will give written notice to Lessee to repair said damage, and Lessee shall make the repairs to identified damage within fifteen (15) days of receiving the written notice. If damage is found and Lessor is required to make the repairs, for whatever reason, all costs and charges associated with the repairs will be billed to Lessee and will be payable within fifteen (15) days of receipt.

**B. Maintenance.** Lessee shall, at their sole cost and expense, maintain the Premises, improvements, and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice.

**C. Specific Use.** The use of the Premises shall be for the sole purpose of parking automotive vehicles. Lessee shall not allow the Premises to be used for the storage of anything other than automotive vehicles. Specifically excluded is storage of such items as boats, trailers, campers or recreational vehicles, disabled vehicles, storage canisters, dumpsters, pallets, or other containers.

**D. Trash, Garbage, and Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage, and other refuse occurring as a result of Lessee's occupancy of the Premises. Any cost associated with the handling and disposal of any trash, garbage, and other refuse shall be the sole responsibility of the Lessee. Lessee shall provide and use Lessor approved receptacles for all garbage, trash, and other refuse, and shall place them on the Premises in a location acceptable to the Lessor for their removal. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or

about the Premises, is forbidden.

**E. Signs.** Lessee shall not maintain on the Premises any billboards or advertising signs; provided however, that Lessee may maintain on the premises information signs or signs that identify the Lessee and to designate the Lessee's parking requirements. The size, location, number, and design of which shall be subject to prior written approval of Lessor.

**F. Federal, State, and Local Regulations.** Lessee acknowledges that the right to use said Premises in common with others authorized to do so, shall be exercised subject to and in accordance with the laws, rules, regulations, and ordinances of the United States of America, the State of Montana, and the City of Billings, now in force or hereafter prescribed or promulgated by authority or by law and shall be closely observed during the full term of this Lease.

**G. Roadways, Alleys, and Vehicle Right-of-Ways.** Lessee shall ensure that Lessee's and/or sub lessees' vehicles, or other equipment do not block the public use roadways, alleys or other designated vehicle right-of-ways adjacent to the leased Premises.

**H. Hazardous Substances.** Lessee assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used, consumed or stored on the Premises. "Hazardous Substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee

shall hold Lessor harmless from and indemnify Lessor against and from any damage, loss, expenses, or liability resulting from any breach of these representations and warranty, including all attorneys' fees and litigation costs and expenses incurred as a result thereof.

## **ARTICLE V**

### **INSURANCE AND INDEMNIFICATION OF LESSOR BY LESSEE**

**A. Indemnification.** Lessee hereby agrees to indemnify, defend and hold the Lessor harmless at all times from and against all liabilities, actions, claims, demands, judgments and all costs, expenses and fees, including litigation costs and attorney's fees, incurred by the Lessor, arising from the use, occupancy or non-use of the Premises by the Lessee, or arising from Lessee's failure to comply with any Article of this Lease. Such indemnification shall include but not be limited to carelessness, negligence, improper conduct or breach of this Lease by Lessee or its agents, employees, subcontractors, customers, suppliers or licensees.

**B. Insurance.** During the term of this Lease, Lessee shall procure and maintain in effect a commercial general liability insurance policy (occurrence form only) providing coverage for bodily/personal injury, death and property damage, in the minimum amount of \$750,000 per claim and \$1,500,000 per occurrence. This insurance policy shall be endorsed to name the Lessor as a primary additional insured, and that any insurance maintained by the Lessor will be endorsed on Lessee's policy as excess and non-contributory. At the time of execution of the Lease, Lessee shall furnish a Certificate of Insurance showing the required insurance is in effect. The insurer(s) of the policy or policies shall provide thirty (30) days advance written notification to Lessor of any reductions in policy coverage, any cancellation or

other adverse amendments to the policy or policies affecting the covered risks. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the Lessor. Lessee shall cause a current Certificate of Insurance to be on file with Lessor at all times throughout the term of the Lease.

If the Lessor determines that the minimum amounts of insurance have become inadequate during the term of this Lease, Lessee agrees that it will increase the minimum limits by reasonable amounts upon the request of Lessor.

## **ARTICLE VI**

### **TERMINATION OF LEASE, CANCELLATION, AND TRANSFER**

**A. Termination.** This Lease shall terminate at the end of the full term, However, this lease may be terminated at the sole discretion of the Lessee by the Lessee giving the Lessor ninety (90) days written notice of the Lessee's intent to terminate the lease. A holding over by the Lessee, its assignees or sub lessees beyond the expiration of the term of the lease shall not be permitted without the written consent of the Director of Aviation and Transit and then only on a month-to-month basis.

Upon termination, Lessee, its assignees or sub lessees shall have the right to remove all moveable fixtures, equipment and all other personal property installed by them on the Premises, and all expenses connected with such removal shall be borne by the Lessee; said property to be removed within ten (10) days after termination of the Lease.

In the event the Lessee, its assignees or sub lessees elect not to remove from the Premises, personal property, automotive vehicles, or any other item upon termination of the

Lease, the disposition of the personal property, automotive vehicles, or any other item will be left to the sole discretion of the Lessor. If Lessor elects to remove said personal property, automotive vehicles, or any other item because of failure of Lessee to do so, the cost of removal, and other related actions shall be solely at Lessee's expense.

**B. Cancellation by Lessee.** In addition to the rights of termination granted to the lessee in Section VI, Paragraph A of this Lease, this Lease shall be subject to cancellation by Lessee after happening of one or more of the following events:

- 1) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Premises, and the remaining in force of such injunction for a period of at least ninety (90) days.
- 2) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or written notice to remedy same.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods of time and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event which results in said termination. Upon termination under the provisions of the Paragraph, Lessee shall have the same rights as described in Article VI, Paragraph A. herein.

**C. Cancellation by Lessor.**

- 1) This Lease shall be subject to cancellation by Lessor after the happening of one or more of the following events

- a) Lessee is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of fifteen (15) days after payment is due.
  - b) Lessee files a voluntary petition of bankruptcy.
  - c) Lessee makes a general assignment for the benefit of creditors.
  - d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.
- 2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the Premises and remove Lessee's effects, without being deemed guilty of trespassing. Upon said entry, this Lease shall immediately terminate.
- 3) It is agreed that failure of Lessor to declare this Lease terminated or to reenter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

**D. Subleasing, Assigning and Transferring.** The Lessee shall have the right to sublease, assign or transfer all or any part of Lessee's leasehold interest in the Premises for the same purpose established in Article IV, Paragraph D., provided that prior written approval of the Lessor is obtained. As a condition of said approval, Lessor reserves the right to alter this Lease in any manner deemed necessary by Lessor. Any sublease, assignment, or transfer shall be subject to

the conditions, obligations, terms set forth herein, and as may be subsequently amended. Lessee shall be responsible for the observance by its tenants and sub lessees for the terms and covenants of this Lease and any subsequent lease amendments.

Transfers or Assignments shall be in the form of a written Assignment and Transfer, to be agreed upon and signed by the Lessor, the Lessee and the Assignee

## **ARTICLE VII**

### **GENERAL PROVISIONS**

**A. Attorney Fees.** Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Lease, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

**B. Taxes.** Lessee shall pay any taxes or assessments, which may be lawfully levied against Lessee's occupancy or use of the Premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee reserves the right to contest the levy of any tax or assessment, which it feels is unjust.

**C. Nondiscrimination.** Lessee for itself, its personal representatives, successors in interest, and assignees, as a part of the consideration hereof, does hereby covenant and agree:

- 1) That no person, on the grounds of race, color, creed, political ideas,

sex, age, or physical or mental disability, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, or the exercise of its rights and privileges under this Lease.

2) That, in the construction, alteration, expansion or maintenance of any improvements to the Premises on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability.

3) That Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**D. Modifications and Amendments.** Changes or modifications to this Lease will be done in the form of a written lease amendment to be agreed upon and signed by both Lessee and Lessor.

**E. Paragraph Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

**F. Dispute Resolution.** Prior to either party initiating litigation, disputes that cannot be resolved between the Lessee and Lessor concerning the terms of this Lease shall be

referred for determination to the Director of Aviation and Transit for the City of Billings. Venue for all litigation shall be in the District Court of the Thirteenth Judicial District, Yellowstone County, Montana, and this Lease shall be governed by the laws of the State of Montana.

**G. Notices.** Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ATTN: Transit Manager  
City of Billings MET Transit  
1705 Monad Road  
Billings, MT 59101

and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

Yellowstone County Board of Commissioners  
P.O. Box 35000  
Billings, MT 59107

or to such other addresses as the parties may designate to each other in writing from time to time.

**H. Successors and Assignees.** All of the terms, covenants and agreements herein contained, or subsequently amended from time to time, shall be binding upon and shall inure to the benefit of successors, assignees and sub lessees of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

ATTEST:

CITY OF BILLINGS

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

BY \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM

BY \_\_\_\_\_  
CITY ATTORNEY

BY \_\_\_\_\_

\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

ATTEST: \_\_\_\_\_  
Clerk & Recorder