

## **LEASE FOR A PORTION OF THE THIRD FLOOR OF THE STILLWATER BUILDING**

### **Parties**

The parties to this lease agreement are WC Commercial, LLC (WC), lessor, and Yellowstone County (County), a political subdivision of the State of Montana, lessee.

### **Leased Property**

The property to be leased is described as 17,395 contiguous square feet on the south side of the 3<sup>rd</sup> floor of the Stillwater Building (the building), located at 316 North 26<sup>th</sup> Street in Billings, Montana.

The leased property is currently a “shell space” and it is the intent of the parties that as part of the lease cost, WC will, at its sole expense, improve the leased portion of the property to provide for a “build to suit” layout. The office space will be of at least comparable quality now found in the Yellowstone County Courthouse and WC agrees to build the leased space as agreed upon by the County. The design of the office space shall conform to the diagram attached as Exhibit “B.”

All building permits and permits of any kind that may be required to build the space to specifications by WC shall be the sole responsibility of WC.

WC further agrees that the office space shall be completed no later than May 23, 2018.

### **County Counter Space**

The parties mutually acknowledge that that the County will supply its own furniture but that WC may utilize any current counters to comply with the requirements of the County. Removal of any current counters shall be conducted after WC first obtains approval from the County of such removal. WC acknowledges and agrees that all counter space will be installed no later than May 16, 2018, affording the County the opportunity to wire the counter space for County use.

### **Additional Considerations**

The parties acknowledge and agree that County Commissioner pedestal space and sliding accordion doors in the Commission Chambers is part of the consideration being paid by the County and no additional charge shall be submitted by WC for these items.

### **Use of the Property**

The property shall be used by the County for governmental and related functions.

### **Term and Option to Renew**

This lease shall begin on May 23, 2018 and shall run for a period of seven (7) years. At the end of the 7<sup>th</sup> year, the County shall have the option to renew the lease for another three (3) years on the same terms as otherwise contained in this lease. The County can exercise this option with at least one hundred eighty (180) days written notice prior to the expiration of the lease term. Liquidated damages notwithstanding, the lease shall not begin until the leased space is reasonably ready for occupancy.

### **Rent**

The parties agree that the rental price of the leased space shall be \$15 per square foot per year and. Such rent shall annually be adjusted 3 % each year on January 1 of each year. The parties further acknowledge and agree that the County is leasing space in addition to its Request for Proposal, specifically an additional department and that this addition increases WC's costs in providing leased space. The parties agree that the County will pay WC an additional \$75,000 at the time of substantial completion, representing compensation for these increased costs.

Rent shall be paid monthly. WC shall bill the County on January 1 of each year and show the monthly charges for the year on the invoice.

### **CAM's**

The CAM shall initially be \$6.02 per square foot as shown in the attached Exhibit "A." All of the CAM's, with the exception of the costs associated with "Major Maintenance" will be adjusted as to actual costs on January 1 of each year during the term of this lease. The costs associated with "Major Maintenance" shall be adjusted annually as to actual projected costs, but in no event shall the "Major Maintenance" portion of the CAM be increased more than 3% in any given year.

The CAM's provided shall exclude janitorial services of the leased property. The County shall provide its own janitorial services for the leased space. All common area janitorial services, as well as maintenance and repair, taxes and utilities, shall be the responsibility of WC and are part of the CAM.

The square footage used to calculate the rent and CAM shall be measured from the exterior windows to the center of the internal walls dividing the lease space from other tenants or common areas in accordance with the attached drawing.

### **Option to Expand**

Should the County desire to lease additional space, so long as that space is available, it may lease additional space for the rent price otherwise provided for in this lease.

### **Time is of the Essence—Liquidated Damages**

The parties agree that time is of the essence in all provisions contained in this Agreement. Specifically, WC acknowledges that two new District Court judges will be moving into space vacated by multiple County departments on January 2, 2019. That space must be renovated before the judges can move into the Courthouse. In order that the judges' space be ready in time, the County will need to begin renovation of the vacated space no later than May 23, 2018.

Should the space provided for in this agreement not be ready by May 23, 2018, the parties agree that the delay will result in a great increase in Contractors' costs to the County for its renovation of Courthouse space to meet its January 2, 2019 deadline. Therefore, WC agrees that should its lease space not be completed for occupancy by May 23, 2018, that WC shall pay to the County, as liquidated damages and not as a penalty, the sum of \$2500 per day for each and every day that the leased space is not reasonably ready for occupancy.

WC agrees that the County may begin moving into the leased space one week prior to the commencement of this lease without further consideration from the County. Should the space become available prior to the agreed to date, the parties may agree to an earlier date, subject to a mutually agreed to price. However, the parties agree to abide by the terms listed in the section of this lease denoted as "Information Technology and Telephone Lines."

### **Information Technology and Telephone Lines**

The parties acknowledge and agree that the County, at its sole expense, will install fiber optics and telephone lines and any other communication delivery systems into the building for County's exclusive use. WC agrees to provide space in the building in space other than leasable space or common area space for the running of these communication delivery systems at no charge to the County.

Recognizing that time is of the essence in moving County departments from the Courthouse to the leased space, and that installation of fiber optic, telephone and other communication delivery systems is an integral component of the timeframe involved, WC agrees to reasonably make available to the County, at no cost to the County, various locations within the building for the installation of such systems excluding leasable or common area space. County agrees such installation will not unreasonably interfere with any other operation or construction being performed by WC and that the placement of the lines will be subject to WC approval. County further warrants that any maintenance or repair of such lines will be the sole responsibility of the County.

Upon termination of this lease, unless the County purchases a fee interest in the building, the communication delivery systems within the building shall remain or be removed by the County upon request of WC, becoming property of WC. The County will terminate the connection into its communication system and WC shall have no property interest in the lines outside the building.

### **Server Room**

As part of the leased space, the parties recognize the need for a server room to house County's hardware. The server room has to be designed as to strict climate control and air quality control standards. Any costs associated with construction and maintenance of the server room shall be the responsibility of the County. Provided, WC represents that the building air conditioning system has a redundancy which will help mitigate impacts of HVAC failure.

### **Peaceful Possession**

The parties recognize that a major portion of the building will be unoccupied at the time the County moves into the leased space. The parties further recognize that the public will be the major user of the space and such things as public hearings and important public meetings will be held in the County's leased space. WC agrees to make reasonable attempts to mitigate interference. County understands that there may be inconvenience while construction is performed during normal business hours.

### **Maintenance**

Unless otherwise provided for in this lease, the parties agree that all maintenance of the entire building, including the leased space, is included in the CAM and shall not be billed separately to the County. Any repairs to the property as a result of normal wear and tear shall be the responsibility of WC, but will be included in the CAM charges. Any damage to lease property that exceeds normal wear and tear, unless caused by WC or its agents or assigns, shall be the responsibility of the County.

The premises, including common areas open to the public, shall be thoroughly cleaned prior to the time that the County is allowed to move onto the leased space. County understands, however, that the building is under major renovation.

WC agrees to keep the building in first class operating condition during the term of this lease.

### **Janitorial Services and Grounds Maintenance**

WC agrees to provide janitorial services five (5) days per week during non-business hours. This shall be included in the CAM. The County will provide its own janitorial services for its leased space.

Maintenance of the outside of the building and of the surrounding grounds shall be the sole responsibility of WC and is included in the CAM. The grounds shall be kept free of graffiti and trash at all times.

### **Building Security**

Security cameras will be installed throughout the building in the common areas and the operating costs will be included in the CAM. It is agreed that because County fiber optics are being installed by the County, it anticipates using its own card entry system.

### **Utilities**

The parties agree that all utility costs, excluding communication and data, are part of the CAM's and shall not be billed to the County.

### **Access to the Leased Property**

The parties agree that the south entrance (3<sup>rd</sup> Avenue Side) to the building will afford controlled access for County personnel and that the County will provide secured access on its 3<sup>rd</sup> floor entrance, day or night. The east entrance (North 26<sup>th</sup> Street) will be a public entrance and will be accessible during normal business hours.

The County will provide key access into the building for its leased internal office space.

### **Liability and Casualty Insurance**

The responsibility to insure the property and operations located on the leased premises shall be the County's responsibility. All other insurance for the building and its common areas shall be the sole responsibility of WC and is included in the CAM.

### **Official Notices**

Any notices required pursuant to this lease shall be sent to the following:

- 1) County:  
Yellowstone County Board of Commissioners  
Box 35025  
Billings, MT 59107
  
- 2) WC:  
WC Commercial, LLC  
316 North 26<sup>th</sup> Street  
Billings, MT 59101  
Attn: Joseph W. Holden

### **Applicable Law**

The parties agree that the terms of this lease do not fall within the provisions of the Montana Landlord and Tenant Act. The parties agree that this is a commercial lease and not a residential lease.

### **Compliance with the Law**

WC agrees it will operate and design the building, both as to leased space and common areas, to comply with all state, federal and local laws, including but not limited to, zoning laws governing use and governing building permits and the Americans with Disabilities Act as amended.

### **Subleasing**

Subleasing is allowed with the consent of WC in writing. Consent may not be unreasonably withheld. WC will allow subleasing of the lease space only for similar use. Should the sublease not cover the entire rent due and owing by the County at the time of the sublease, the County shall be responsible for the difference in rent owed by the County and paid by the subleasing party.

### **Modifications to Leased Space**

The County may not make major modifications to the leased space except with the written consent of WC. Such consent may not be unreasonably withheld. Should the County make any permanent additions to the leased space or add any fixtures to the leased space, such additions or fixtures shall be removed by the County at the request of WC or become WC's property upon termination of the lease. Any cost of major modifications after the initial build-out will be the responsibility of the County unless otherwise agreed to by the parties.

### **Waiver**

Should either party decline to enforce any of its rights afforded to it pursuant to this lease, such will not constitute a permanent waiver of such rights without the written consent of the other party.

### **Severability**

Should any of the provisions of this lease be found to be unenforceable for any reason, it shall be stricken and the remaining provisions of the lease shall remain binding and in effect.

**Entire Agreement**

This lease agreement shall constitute the entire agreement between the parties, and any prior discussion, oral agreement or representation of any type shall not be binding on the parties. The parties specifically agree that this Agreement shall replace and rescind the Agreement signed by the parties on November 21, 2017.

**Modification**

Should the parties mutually agree to modify any provision of this lease, they may do so only with the express written consent of both parties.

**Condominium**

County understands and agrees that WC may convert the leased space to a Condominium. County agrees to execute any consent that may be required for such conversion, provided that such conversion shall not affect the terms of this lease.

**Attorney's Fees**

In the event of a breach of the terms of this lease, the party enforcing the lease terms shall be entitled to recover all costs of enforcement, including reasonable attorney's fees.

YELLOWSTONE COUNTY BY AND THROUGH  
ITS BOARD OF COUNTY COMMISSIONERS

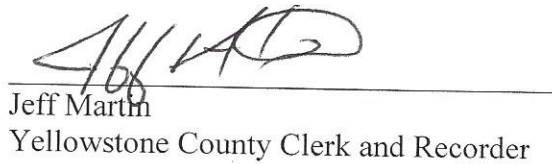
DATED this 23<sup>rd</sup> day of January, 2018.

  
\_\_\_\_\_  
John Ostlund, Chairman

  
\_\_\_\_\_  
Denis Pitman, Member

  
\_\_\_\_\_  
Robyn Driscoll, Member

Attest:

  
\_\_\_\_\_  
Jeff Martin  
Yellowstone County Clerk and Recorder

WC COMMERCIAL, LLC

DATED this 23<sup>rd</sup> day of January, 2018

By:   
\_\_\_\_\_  
Authorized Agent of WC Commercial, LLC

