



VISION STATEMENT:
"The Magic City: A diverse,
welcoming community
where people prosper and
business succeeds."

WORK SESSION AGENDA

COUNCIL CHAMBERS

October 4, 2021

5:30 P.M.

CALL TO ORDER: Mayor Cole

- 1. COVID-19 Update by Unified Incident Command (UIC).**
(Presented by: John Felton, Yellowstone County Health Officer)
- Public Comment
- 2. Stillwater Building Purchase Agreement Review.**
(Presented by: Kevin Iffland, Assistant City Administrator and Jessica Iverson, Building Manager)
- Public Comment
- 3. Trees for Project Green Light Program - CPTED - EBURD.**
(Presented by: Zack Terakedis, Billings BIRD Director)
- Public Comment
- 4. Marijuana Regulations Update.**
(Presented by: Karen Tracy, Assistant City Attorney)
- Public Comment

COUNCIL DISCUSSION:

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)

ADJOURN:

Note:

- This meeting is an "informal" meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- In the event there is a Closed Executive Session at the end of a Work Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4)(a), MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

City Council Work Session

Date: 10/04/2021
Title: Stillwater Building Purchase Agreement Review
Presented by: Iverson Jessica
Department: City Hall Administration
Presentation: Yes

RECOMMENDATION

The purpose of this presentation is to further review the Stillwater Building purchase agreement documents presented to City Council at the September 27, 2021 regular business meeting.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

In August 2019, the City of Billings issued a Request for Proposals (RFP) for law and justice/city hall facilities to accommodate the City's current and future facility needs. Several proposals were received and the RFP committee selected the Stillwater Building located at 316 N 26th Street based on the suitability of the building to meet the City's needs for the foreseeable future (50+ years). Once the Stillwater Building was selected, the city administrator created a negotiation committee that included council members Boyette, Purinton, Joy, Shaw, Neese, as well as Iffland, Zoeller, Iverson, and architect Randy Hafer. The City entered into a negotiation and due diligence phase, ultimately resulting in negotiating the proposed buy-sell agreement for the City to purchase the entire building for \$13.5 Million.

At the September, 27, 2021 City Council meeting, Council voted to table the buy-sell agreement for two weeks to allow for further review and correction of document errors. Staff will present the revised buy-sell agreement for Council consideration at the October 11th, 2021 regular business meeting.

ALTERNATIVES

No action is needed at this time, however Council may provide further direction to staff based on the presented information.

FISCAL EFFECTS

The estimated total project cost for the Stillwater Building purchase and build-out remains at \$29,600,000. The expected edits and corrections to the purchase agreement do not affect the estimated project costs.

SUMMARY

Please review the attached purchase agreement and exhibits, which will be presented and discussed at the work session.

Attachments

- Index
- PSA
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E
- Exhibit F
- PSA Addendum
- Stillwater Purchase Power Point

Index

1. PSA

2. Exhibits to PSA

Exhibit A – Legal Description

Exhibit B – Warranty Deed

Exhibit C – Bill of Sale

Exhibit D – Assignment & Assumption of Lease Agreement

Exhibit E – Encroachment & Easement Agreement

3. Addendum to PSA

4. Exhibits to Addendum

Exhibit F – Agreement for Pedestrian Skyway

5. Proposed Motion to Approve Purchase and Closing

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (“Agreement”) is effective as of the execution date of the last party to sign this Agreement (“Effective Date”), by and between **WC Commercial, LLC**, an Alaska limited liability company, (“Seller”), and **The City of Billings, Montana** (“Buyer”) with respect to the following:

BACKGROUND

- A. Seller is the owner of certain real property located in Yellowstone County, more commonly known as the Stillwater Building.
- B. Seller desires to sell the real property, more particularly described in **Exhibit A**, of this Agreement (the “Property”) and Buyer desires to purchase the Property from Seller upon the terms and conditions contained in this Agreement.
- C. On July 13, 2021, Buyer and Seller entered into a Purchase and Sale Agreement for the Property. On July 8 and July 15, 2021, the City provided three (3) Written Notices to Seller of Buyer’s objections to title. On August 24, 2021, the City terminated the Purchase and Sale Agreement. Thereafter, Buyer and Seller engaged in further discussions and negotiations which have resulted in this new Purchase and Sale Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

AGREEMENT

1. **Purchase and Sale.** Upon all the terms and conditions of this agreement Buyer agrees to purchase the following from Seller:
 - a. **Land.** The real property, including all right, title, and interest therein, located in Yellowstone County, Montana, together with all rights, privileges, easements, and rights of way appurtenant to the Land (the “Land”);
 - b. **Improvements.** All improvements, structures, and fixtures now existing or installed on the Land;
 - c. **Personal Property.** Except for items sold by Seller prior to closing, personal property of Seller located at the Property shall transfer to Buyer via a Bill of Sale at Closing.
 - d. **Other Land Rights.** All mineral, oil and gas, and other subsurface rights, development rights, air rights, water rights, and other rights appurtenant to the land or associated with the Property.

Purchase Price; Payment. The total combined purchase price shall be Thirteen Million Five Hundred Thousand and no/100 dollars (\$13,500,000.00).

Buyer Shall pay Thirteen Million Five Hundred Thousand and no/100 dollars (\$13,500,000.00) to Seller at Closing. The Purchase Price (as adjusted to reflect any credits for prorations customary for a transaction this size and type) shall be paid by Buyer on the Closing Date.

2. **Conveyance.**

- a. **Property.** Seller shall convey the Property by Warranty Deed, free and clear of all liens and encumbrances, only subject to the standard and usual printed exceptions and exclusions found in title commitments and title policies, including the following:
- i. Liens to secure payment of general real property taxes and assessments, not yet due and payable;
 - ii. All exceptions and easements prior to July 1, 2016, and those of record. All easements for sprinklers, data cables, and the emergency telephone line for use by the adjacent sky bridge, whether or not of record and to be recorded subject to an Encroachment and Easement Agreement concurrent with the closing of this transaction; and those exceptions and easements disclosed in the Commitment (defined below) which are either approved or waived by Buyer;
 - iii. Any exceptions, easements, or restrictions as specifically agreed by the parties under this Agreement; and
 - iv. All applicable laws, ordinances, rules, and governmental regulations (including, but not limited to, those relative to building, zoning, and land use) affecting the development, use, occupancy, or enjoyment of the Property.

The warranty deed shall be given with the usual covenants expressed in § 30-11-110, Montana Code Annotated, subject to and with respect to the items specifically enumerated above.

Seller shall deliver the finished portions of the Property in broom clean condition and shall deliver all unfinished portions of the Property with all waste removed prior to Closing. For the avoidance of doubt, drywall and other personal property conveyed from Seller to Buyer under this Agreement and the bill of sale does not constitute waste under this paragraph.

3. **Title Matters.** Buyer shall obtain or order an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by an ALTA title insurance commitment – the “Commitment”). The Commitment shall be equal to the purchase price, committing to insure merchantable title to the Property in Buyer's name, free and clear of all liens and encumbrances, if any, which will be assumed by Buyer at closing. Notwithstanding the foregoing, reasonable exceptions for easements necessary for the fire system and data cables for the security system and cameras associated with the Sky Bridge shall not be an objectionable exception to Property title.

Buyer has provided a copy of the Commitment to Seller. Buyer shall pay and be solely responsible for the Standard Coverage Policy along with any additional premiums or other costs in addition to the premium for standard coverage if Buyer elects to obtain ALTA extended coverage or any title endorsements to the title insurance policy.

Buyer shall have up to and including **September 30, 2021** (the “Review Period”) to examine the Commitment, and any update to the Commitment, and to notify Seller in writing of any objections Buyer has to matters shown or referred to in the Commitment. Seller acknowledges receipt of Buyers’ three Notices of Title Objections and agrees that Buyer does not have to submit new objections to the extent that they were stated in the July 8th and July 15th Notices. Buyer acknowledges that items 4 and 5 in the July 15 Notices have been cured. Buyer shall provide written notice to Seller of any objection under the Commitment (other than any mortgage,

judgment, or liens which Seller shall satisfy at Closing) (the "Title Objections"). Seller shall proceed with reasonable diligence to cure any Title Objections and have the objections removed from the Commitment. If Seller is unable to cure or remove the Title Objections within thirty (30) days of receipt of Buyer's notice, then either party may terminate this Agreement by providing written notice of termination to the other party. If Buyer makes no objections to the Commitment within the Review Period, then Buyer shall: (a) accept the Commitment and (b) waive objection to the exceptions in the Commitment, which exceptions shall become "Permitted Exceptions".

4. **Representations and Warranties of Seller.** Seller makes the following representations and warranties to Buyer, each of which shall survive closing. In addition to any other representations or warranties contained in this Agreement, the Warranty Deed and/or in any documents delivered by Seller at Closing, Seller represents and warrants the following, all of which shall be true as of the Closing Date:

- a. Seller has full right, power, and authority to enter into and perform all of the obligations required of Seller under this Agreement, including, without limitation, transferring the Property to Buyer without obtaining any further consents or approvals from, or the taking of any other actions with respect to, any governmental agency, department, or body, or any third parties.
- b. Neither the execution, delivery, and performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Seller.
- c. Seller has good and merchantable title in fee simple to the Property. The Property has not been assigned or conveyed to any party. Seller has the right to convey the Property under the terms of this Agreement. No person (other than Buyer) has a right to acquire any interest in the Property. The Property will be transferred free of all liens or other encumbrances at the Closing, other than the Permitted Exceptions.
- d. There are no unrecorded judgments, lawsuits, or legal proceedings outstanding, pending or threatened against Seller that encumber the Property.
- e. There is one suit over a construction lien for the parking garage to be settled and the lien dismissed before closing. As of closing there will be no judgments presently outstanding and unsatisfied against Seller. Seller is not involved in any litigation at law or in equity, or any other proceeding before any court, or by or before any governmental or administrative agency, whether relating to the transaction contemplated hereby or otherwise, and no such litigation or proceeding is threatened or pending but not yet served against Seller or the Property.
- f. The subject property is known to have contained a significant quantity of Asbestos Containing Materials ("ACMs") in the existing construction materials. Seller reportedly performed abatement of the ACMs in 2016 and 2017. Seller shall provide Buyer all relevant reports and documentation demonstrating the proper removal and disposal of the ACMs from the subject property, along with detailed information regarding any remaining ACMs, including their location and quantity, encapsulated or otherwise, within two business days after execution of this Agreement.

Beside the hazardous substances described in environmental site assessments or other documents that have been disclosed to Buyer, Seller has no knowledge of any other

hazardous substances that exist on, under, or at the Property, or that have been disposed of at the Property. Seller has not received written notice that the Property is or may be in violation of any applicable federal, state, or municipal law or regulation regarding hazardous substances. Seller has no knowledge of underground fuel storage tanks on the Property, or Seller has fully disclosed the location and existence of all underground fuel storage tanks currently existing or historically located on the Property.

- g. To Seller's knowledge, except for the sky bridge, there are no encroachments upon the Property nor does any improvement on the Property encroach upon any property owned by others.
- h. To Seller's knowledge, except for easements for the sky bridge as described in this Agreement, there are no easements, rights-of-way, or claims thereof over or across the Property that are not recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.
- i. Seller has no knowledge of any fact or condition that materially and adversely affects the Property other than those facts or conditions set forth in this Agreement or in other documents, certificates, or written statements furnished to Buyer in connection with the transactions contemplated by this Agreement. Seller has no knowledge of any asbestos, lead paint, mold or pesticides remaining or being present on the Property, except for asbestos in the transformer room and above the soffits where asbestos in or around second floor cantilevers over the first-floor walls has been encapsulated. Seller and Buyer acknowledge that additional asbestos has been identified in the Building in the inspection report dated August 13, 2021 prepared by Tetra Tech and labeled "Supplemental Asbestos Inspection Report Stillwater Building".
- j. There is legal access to and from all of the parcels of the Property from a publicly dedicated right-of-way, through other parcels included in the Property and transferred under this Agreement, through easements of access between the public right-of-way and the parcel, or through easements of access that will be placed upon land retained by Seller as part of this transaction, if necessary, to provide access to the Property.
- k. All utilities (water, wastewater, electricity, and internet) are connected to the Property and are connected to the building.

5. Representations and Warranties of Buyer. In addition to any other representations or warranties contained in this Agreement or in any documents delivered by Buyer at Closing, Buyer represents and warrants the following, all of which shall be true as of the Closing Date:

- a. Buyer enters into this Agreement in full reliance upon Buyer's independent investigation and judgment, and neither Seller nor Seller's agents or attorneys make any warranties or representations to Buyer about the Property (or the associated personal property), except as specifically stated herein and in the warranty deed and related closing documents. Buyer agrees to take the property "AS IS" and in its present condition and state of repair.

6. Mutual Conditions to Closing. Each party's obligation to perform under this Agreement is contingent upon:

- a. The representations and warranties of the other party being true and correct as of the Effective Date of this Agreement and upon the Closing Date; and

- b. Each and every obligation of the Buyer and Seller being fully performed in accordance with this Agreement.
7. **Buyer's Conditions to Closing.** In addition to any other contingencies contained in this Agreement, Buyer's obligation to perform under this Agreement is contingent upon:
- a. The Property remaining in the same condition at Closing as it was on the Effective Date;
 - b. Buyer's satisfaction of the Commitment or Seller's agreement to eliminate or ameliorate any title exceptions to the satisfaction to Buyer on or before Closing, subject to the provisions of paragraph 3 above;
 - c. All mortgages, judgments, and liens encumbering the Property being discharged prior to Closing;
 - d. Final approval of the terms of the purchase must be approved by the Billings City Council during a regular business meeting prior to Closing;
 - e. No additional encumbrances, restrictions, or other adverse title conditions being attached or placed against the title to the Property after the Effective Date, other than conditions specifically entered between the Parties to this Agreement as part of this transaction.
 - f. The execution of an Assignment and Assumption Agreement, at closing, that is acceptable to the Buyer in its sole and exclusive discretion that is generally consistent with Exhibit D hereto; and
 - g. The execution and recording of an Encroachment and Easement Agreement, at closing, that is acceptable to Buyer in its sole and exclusive discretion. The Agreement will include the Skybridge connection points to the Stillwater Building and the support columns.
8. **Buyer's Review of the Property; Related Documents and Materials.** Buyer and Buyer's agents shall have the right to inspect and assess the Property and any Property conditions identified through any independent inspections of the property from qualified inspectors or advisors selected by Buyer. Buyer, in Buyer's sole judgment, may elect to terminate this Agreement following Buyer's inspection and assessment, with or without cause. If Buyer chooses to terminate this Agreement, Buyer must notify Seller in writing on or before **September 30, 2021** (the "Due Diligence Period"). Upon termination under this section, neither Buyer nor Seller shall have any further obligations to the other. These inspections include, but are not limited to:
- a. **The Buyer's Review of the Property and Related Matters.** Buyer shall be satisfied with certain aspects of the Property and its condition and suitability for Buyer's intended use thereof, including, without limitation, the condition of the soil, environmental matters, engineering matters, and the zoning of the Property. During the Due Diligence Period, Buyer, its agents, employees, contractors and subcontractors shall have the right to enter upon the Property, at reasonable times during ordinary business hours following not less than twenty-four (24) hours' prior notice to Seller, to conduct such inspections, surveys and tests as may be necessary in Buyer's reasonable discretion, including, without limitation, soils tests; environmental analysis; structural, geological, or engineering studies; and land use or related studies. If Buyer elects to conduct any tests in connection with any Phase II environmental report or any other tests which involve drilling, boring, or other similar intrusive or invasive action on or under the Property, then Buyer shall provide Seller with at least twenty-four (24) hours' notice prior to conducting any such tests. Buyer

shall use care and consideration in connection with any of its inspections or tests and Seller shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests or inspections. If Buyer chooses to terminate the Agreement, all surveys, engineering, and studies shall be passed to Seller without obligation to Seller.

- b. **Review and Approval of Documents and Materials.** Within ten (10) days of the Effective Date, Seller will deliver to Buyer the following:
- i. Copies of any lease agreements affecting the Property, together with any exhibits or amendments to the lease agreements;
 - ii. Copies of documentation in Seller's possession relating to the CAM charges under the lease agreement with Yellowstone County. Documents shall include contracts, insurance policies, budgets, prorations, budgets, financial statements, statements, expenses, etc.;
 - iii. Copies of any Phase I, Phase II or other environmental reports, engineering reports, or surveys completed for the Property, if any;
 - iv. A list documenting the operating expenses incurred by Seller associated with the Property for the previous two (2) years along with any reimbursements made by tenant(s);
 - v. Existing blueprints, site plans (which shall, among other things, show all infrastructure and easements pertaining to the Property), engineering data, grading plans, topographical maps, surveys, field notes and maintenance records, and service or maintenance contracts relating to the use, ownership or development of the Property (including identification of all utility infrastructure) that are in Seller's possession or control, if any;
 - vi. Copies of any documentation establishing that the artwork within the Property has been offered to the United States Government through the Administrator of General Services Administration, in accordance with the covenants and restrictions contained in the Quitclaim Deed dated July 31, 2013, and recorded August 2, 2013 under Document No. 3678005;
 - vii. Copies of any warranty agreements relating to the construction or remodel of the Property, if any;
 - viii. Any and all other documents in Seller's possession relating to the property including, but not limited to, Certificates of Occupancy, Easement Agreements, any notices of encroachment or eminent domain, Property Condition Reports, tenant sales reports for the most recent three years, tenant financials (if reported to Seller), zoning letter, and tax statements, as applicable; and
 - ix. Copies of all existing contracts related to the Property, including but not limited to elevator contracts, service contracts, janitorial contracts, maintenance contracts, security systems, fire suppression systems, etc.
- c. **Confirmation of Intended Use and Feasibility.** Buyer is entitled to inquire as to the feasibility of obtaining all developmental approvals for Buyer's intended use of the

Property (“Developmental Approvals”) from any governmental authority having jurisdiction over the Property.

- d. If Buyer determines that it is dissatisfied with any aspect of the Property, its condition, its suitability for Buyer’s intended use, or any of the Documents and Materials, then Buyer may terminate this Agreement, by delivering written notice to Seller and Closing Agent of Buyer’s election to terminate on or before **September 30, 2021** (expiration of the “Due Diligence Period”. Except as otherwise expressly provided in this Agreement, neither party shall have any further rights or obligations under this Agreement following a termination under this Section 8.
- e. **Sky Bridge**. The terms of this agreement do not include any transfer of ownership of the Sky Bridge, generally located on the East side of the building, crossing over N 26th Street, and connecting to the Stillwater Garage. Any utilities or infrastructure for the Sky Bridge that rely on the subject property for service shall be limited to the fire system riser, data cables for the security system, and cameras.

9. **Indemnification**. Each party shall indemnify and hold the other harmless from and against any and all liabilities, claims, actions, suits, damages, and costs (including attorney fees) arising out of any inaccuracy, misrepresentation, breach, or default of any representation, warranty, covenant, or obligation of the party under this Agreement.

10. **Default and Remedies**.

- a. If Seller accepts the offer contained in this Agreement, but fails to timely close as required by this Agreement, Buyer may:
 - i. Demand that Seller specifically perform Seller’s obligations under this Agreement;
 - ii. Demand that Seller pay monetary damages for Seller’s failure to perform the terms of this Agreement; and
 - iii. Demand any other remedy at law or in equity.
- b. If Seller accepts this Agreement and satisfactorily performs but Buyer fails to timely close as required by this Agreement, Seller may:
 - i. Demand that Buyer pay monetary damages for Buyer’s failure to perform the terms of this Agreement; and
 - ii. Demand any other remedy at law or in equity, including specific performance.

The rights and remedies provided by this Agreement and granted to Buyer and Seller under this section are cumulative and are not exclusive of any rights and remedies provided by law.

11. **Termination**. This Agreement may be terminated, upon delivery of proper notice, as follows:

- a. By the mutual agreement of the parties in writing;

- b. By either party if any condition precedent to the terminating party's obligation to perform this Agreement is not satisfied and such condition is not waived by the terminating party at or prior to the Closing;
 - c. By either party if the other party refuses, neglects or otherwise fails to perform in material breach of this Agreement; or
 - d. By any other method expressly permitted under this Agreement.
12. **Closing.** The closing of this Agreement ("Closing") shall occur on or before September 30, 2021, unless mutually extended by the parties, at the office of the Closing Agent. The parties may agree to close the transaction at any other mutually convenient time or place. The actual date of the Closing is referred to as the "Closing Date" in this Agreement. Buyer and Seller will deposit with the Closing Agent all instruments and monies or deliverables necessary to complete the purchase in accordance with this Agreement. Possession and risk of loss shall pass from Seller to Buyer on the Closing Date.
- a. **Closing Agent.** First Montana Title Company of Billings, MT at 2737 Montana Ave., Billings, MT shall act as the Closing Agent for this transaction.
 - b. **Closing Costs & Fees.** The costs and fees associated with Closing, including recording fees, will be paid by Buyer.
 - c. **Prorations.** Buyer and Seller shall prorate any real property taxes, assessments, and Property Owners Association dues for the current year as of the Closing Date.
13. **Related Agreements.**
- a. **County Lease.** Buyer's obligation to perform under this Agreement is contingent upon Buyer's approval of the lease agreements affecting the Property and execution of an Assignment and Assumption Agreement (including a release of Seller) for such leases, assigning Seller's interest in the lease(s) to Buyer. Buyer, at Buyer's option, may require that Seller provide tenant estoppel certificates or other documentation from lease tenant(s) to establish the lease terms and provisions.
 - b. **Sky Bridge Encroachment and Easement Agreement.** Buyer's obligation to perform under this Agreement is contingent upon Buyer and Seller entering an Encroachment and Easement Agreement relating to the Sky Bridge with terms and conditions acceptable to Buyer in its sole discretion. The Encroachment and Easement Agreement will include, amongst other provisions, an access easement for the City and its employees, guests and invitees for the purpose of ingress and egress to and from the Stillwater Building over and through the Sky Bridge that connects the Stillwater Building and the Stillwater Garage.
14. **Miscellaneous.**
- a. **1031 Exchange.** The parties mutually acknowledge that either or both may intend to complete a tax deferred exchange under IRC Section 1031, and each party represents that any exchange will not delay the Closing or cause additional expense to the other party. The parties' rights under this Agreement may be assigned to a Qualified Intermediary selected by them for the purpose of completing the exchange. The parties agree to cooperate with

one another and the Qualified Intermediary selected (in the manner described in this paragraph) to complete the exchange.

- b. **Captions.** The captions and the sections of this Agreement are inserted only as a matter of convenience and for reference and in no way confine, limit or describe the scope or intent of any section of this Agreement.
- c. **Assignment.** Buyer may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Seller, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may assign or otherwise transfer its respective rights under this Agreement to another entity or department of Buyer authorized to take title to the Property to be purchased under this Agreement.
- d. **Binding Effect.** This Agreement is binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto.
- e. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision of this Agreement.
- f. **Time is of the Essence.** Time is of the essence with respect to the performance of each of the covenants and conditions of this Agreement. If the date for performance of any act or expiration of time period falls on a Saturday, Sunday or legal holiday, then the time for performance or the date of expiration of time period shall be extended to the next successive day which is not a Saturday, Sunday or legal holiday.
- g. **Further Assurances.** The parties shall deliver to each other (without additional compensation) any additional documentation and shall perform any additional acts and execute and deliver any instruments, notices, receipts, and documents, to carry out and give effect to the terms and intent of this Agreement.
- h. **Severability.** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected and each term, covenant, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- i. **Entire Agreement.** This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire agreement between Buyer and Seller, and supersedes any other written or oral agreements between Buyer and Seller.
- j. **Modification.** This Agreement can be modified only in writing, signed by Buyer and Seller. No provision of this Agreement may be changed, waived, discharged, or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.
- k. **Attorney's Fees; Costs.** In the event of any dispute or litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses, including reasonable attorneys' fees, costs, and expenses.

With a copy to (but which shall not constitute notice to Seller)
Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

To Escrow Holder: First Montana Title Company
2737 Montana Ave.
Billings, MT 59101
Phone: 406-248-3000

- p. **Exhibits**. The following exhibits and schedules are attached to this Agreement and are incorporated by this reference into this Agreement:

Exhibit A. Legal Description of Property.

Exhibit B. Warranty Deed.

Exhibit C. Bill of Sale.

Exhibit D. Assignment and Assumption Agreement.

Exhibit E. Encroachment and Easement Agreement relating to the Sky Bridge.

15. **Offer Expiration**. This offer expires at 5:00 P.M. MDT on September 6, 2021. Failure by Seller to execute and give proper notice to Buyer of Seller's acceptance renders this Agreement null and void, unless extended in writing and signed by both parties.

16. **Statutory disclosures**.

- a. **MOLD DISCLOSURE**: The following disclosure is given pursuant to Montana Mold Disclosure Act, Montana Code Annotated § 70-16-703. There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or local health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Center for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller, its partners, agents and attorney cannot and do not represent or warrant the absence of mold. It is the Buyer's obligation to determine whether a mold problem is present. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease.

- b. RADON DISCLOSURE STATEMENT: The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated § 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this Agreement. If the Property has received radon mitigation treatment, the Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.
- c. SMOKE DETECTORS: Seller represents that the Property is equipped with smoke detectors.
- d. WATER RIGHT OWNERSHIP UPDATE DISCLOSURE. By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with Montana Code Annotated § 85-2-424, could result in a penalty against the transferee and rejection of the deed for recording. The parties acknowledge and agree that the Buyer shall pay the fee required to be paid in connection with the transfer of the water rights.
- e. MEGAN'S LAW. Certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If Buyer desires further information, Buyer may contact the local County Sheriff's office, the Department of Justice in Helena, Montana, and the probation officers assigned to the area.

IN WITNESS WHEREOF, Buyer and Seller hereby execute this Agreement to Purchase and Sell Real Property.

BUYER:

CITY OF BILLINGS, MONTANA

By: William A. Cole

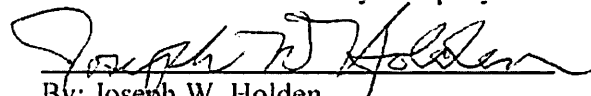
Its: Mayor

Date: _____

SELLER:

WC COMMERCIAL, LLC

An Alaska limited liability company



By: Joseph W. Holden

Its: Member

Date: 9.2.2021

EXHIBIT A – PROPERTY LEGAL DESCRIPTION

This legal description is subject to change based on the receipt of the Commitment. Based on a review of publicly available data, the Property includes the following described real property located in Yellowstone County, Montana:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

EXHIBIT B – WARRANTY DEED

[SEPARATELY ATTACHED]

Upon recording, return to:
Doug James
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

Warranty Deed

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, **WC Commercial, LLC**, an Alaska limited liability company ("**Grantor**") does hereby grant and convey unto **The City of Billings, Montana** ("**Grantee**"), all of Grantor's right, title, and interest in and to the following real property, located in Yellowstone County, Montana, more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

Together with all rights-of-way, tenements, hereditaments, privileges, and appurtenances thereto used in connection with such an undivided interest in the real property described herein, and together with all minerals and mineral interests, including, without limitation, any and all oil, gas, hydrocarbons, coal, clay, gravel, sand, scoria, and other similar minerals or mineral interests, including, without limitation, royalties, overriding royalties, leasehold interests, working interests, or similar interests, in and to the above-described real property not heretofore conveyed to or excepted or reserved by others.

TO HAVE AND TO HOLD unto Grantee, and to Grantee's heirs and assigns forever, subject to the following:

- a. Reservations and exceptions in patents from the United States and the State of Montana;
- b. Covenants, rights, restrictions, reservations, agreements, and easements prior to July 1, 2016, and those of record;

- c. All building, use, zoning, sanitary, and environmental restrictions of record;
- d. Taxes and assessments for the current year and thereafter; and
- e. All outstanding mineral, oil and gas interests, royalties, leases, reservations, and conveyances of record.

EXCEPT with reference to the items referred to in paragraphs (a) to (e) inclusive, this Deed is given with the usual covenants expressed in Section 30-11-110, MCA.

IN WITNESS WHEREOF, Grantor has executed this instrument this ____ day of October, 2021.

WC COMMERCIAL, LLC
An Alaska limited liability company

Printed Name: Joseph W. Holden
Its: Member

STATE OF Montana
COUNTY OF Yellowstone

This instrument was signed or acknowledged before me on this ____ day of October, 2021 by JOSEPH W. HOLDEN, the member of WC Commercial, LLC

Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

EXHIBIT C – BILL OF SALE

[SEPARATELY ATTACHED]

BILL OF SALE

THIS BILL OF SALE (“Bill of Sale”) is dated as of October ____, 2021, from **WC Commercial, LLC**, an Alaska limited liability company (“**Seller**”), to **The City of Billings, MT** (“**Buyer**”).

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, conveys, transfers, assigns and delivers to Buyer, and Buyer hereby accepts from Seller, all of the right, title and interest that Seller possesses and has the right to transfer in and to the personal property located within the Stillwater Building, as more particularly described in the Purchase and Sale Agreement between the parties (the “Assets”).
2. Seller warrants to Buyer that on the date hereof, Seller is the true and lawful owner of the Assets, holds good, absolute, and marketable title in and to the Assets, and has full corporate power and authority to sell and convey the Assets.
3. By accepting delivery of this Bill of Sale, Buyer acknowledges that Seller makes no additional representations or warranties with respect to the Assets being conveyed, unless specifically set forth in the Purchase and Sale Agreement, and Buyer accepts the personal property “as is.”

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed and delivered on the date first above written.

SELLER:

WC COMMERCIAL, LLC

An Alaska limited liability company

Printed Name: Joseph W. Holden

Its: Member

EXHIBIT D – ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

[SEPARATELY ATTACHED]

ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (“Assignment”), is made, entered into and effective as of _____, 2021 (“Effective Date”), by and between **WC COMMERCIAL, LLC**, an Alaska limited liability company (“Assignor”), the **CITY OF BILLINGS**, (“Assignee”) and **Yellowstone County**, (“Tenant”).

RECITALS

A. This Assignment and Assumption Agreement relates to a Lease For A Portion Of The Third Floor Of The Stillwater Building in Billings, Montana, pursuant to which Assignor is the Landlord and Yellowstone County is the Tenant, (the “Lease”). The leased premises is contained within the Stillwater Building, and the real property is more particularly described in Exhibit “A”. A true and correct copy of the foregoing Lease is attached hereto as Exhibit “B”. The Lease is dated January 23rd, 2018. Pursuant to the Lease, Yellowstone County is a Tenant in the Stillwater Building with leased premises of approximately 17,395 square feet, (the “Premises”).

B. Assignor and Assignee are parties to that Purchase and Sale Agreement dated July 13, 2021, wherein Assignor is the Seller and Assignee is the Buyer. Pursuant to the Purchase and Sale Agreement, Assignor as Seller intends to sell and convey to Assignee as Buyer all of Assignor’s right title and interest in and to all of the property known as the Stillwater Building, of which the Premises are a part.

C. This Assignment is being made for the purposes of: (1) assigning the Lease from Assignor to Assignee; (2) obtaining Yellowstone County’s consent to the assignment; and (3) having Yellowstone County release Assignor from all future obligations and duties under the Lease from and after the date of the Assignment to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Lease. Assignor hereby assigns, transfers, conveys, and delivers to Assignee all interest in and right to the Lease.
2. Assumption of Obligation. Assignee hereby expressly assumes and all of the obligations of the Landlord under the Lease from and after the Effective Date of this Assignment.
3. Consent of the Tenant. Tenant hereby expressly consents to the Assignment of the Lease from Assignor to Assignee.
4. Release of Assignor. Tenant agrees that Assignor shall be and is released from all obligations and liability under the Lease from and after the Effective Date of this Assignment. The County agrees that from and after the Effective Date of this Assignment, it shall look exclusively to Assignee as its Landlord.

5. Representations of County. The County, as Tenant, makes the following representations to the City in connection with the Lease:

A. Tenant is the tenant under the Lease. There have been no amendments, modifications or revisions to the Lease.

B. The Lease has been duly authorized and executed by Tenant and is in full force and effect. Attached hereto as Exhibit B is a true, correct, and complete copy of the Lease together with all amendments, modifications and revisions related to the Lease. No other documents govern the relationship between Landlord and Tenant other than the Lease.

C. The Lease has not been assigned, by operation of law or otherwise, by Tenant. Tenant has not received any notice of the assignment by Landlord to any party of the Landlord's interest in the Lease.

D. The Lease has a Commencement Date of May 23, 2018 and an expiration date of May 22, 2025. There is one (1) consecutive renewal term of three (3) years.

E. As of the date hereof, Rent has been paid through September 30, 2021.

F. Neither Tenant nor, to the best of Tenant's knowledge, Landlord is in default under the Lease and no event has occurred that, with the giving of notice or passage of time, or both, could result in a default under the Lease.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, and representatives of the respective parties hereto.

7. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against any other party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees and costs.

8. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Montana without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument

10. Cooperation. Assignor hereby agrees to and shall execute and deliver to Assignees any and all documents, agreements and instruments necessary to consummate the transactions contemplated by this Assignment.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

ASSIGNOR: WC COMMERCIAL, LLC

By: _____
Joseph W. Holden
Its: Member

ASSIGNEE: CITY OF BILLINGS

By: _____
William A. Cole
Its: Mayor

**TENANT: YELLOWSTONE COUNTY BY AND THROUGH
ITS BOARD OF COUNTY COMMISSIONERS**

Donald Jones, Chairman

John Ostlund, Commissioner

Denis Pitman, Commissioner

EXHIBIT A
Legal Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

EXHIBIT B
Lease

[Separately Attached]

4852-5796-4539, v. 1

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 3rd floor of the Stillwater Building (the building), located at 316 North 26th 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 7th 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 (3rd Avenue Side) to the building will afford controlled access for County personnel and that the County will provided secured access on its 3rd floor entrance, day or night. The east entrance (North 26th 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 26th 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

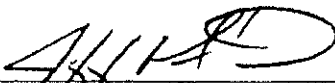
DATED this 23rd day of January, 2018.


John Ostlund, Chairman


Denis Pitman, Member

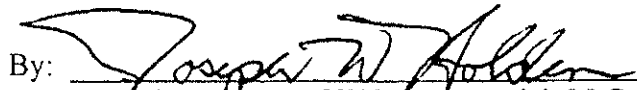

Robyn Driscoll, Member

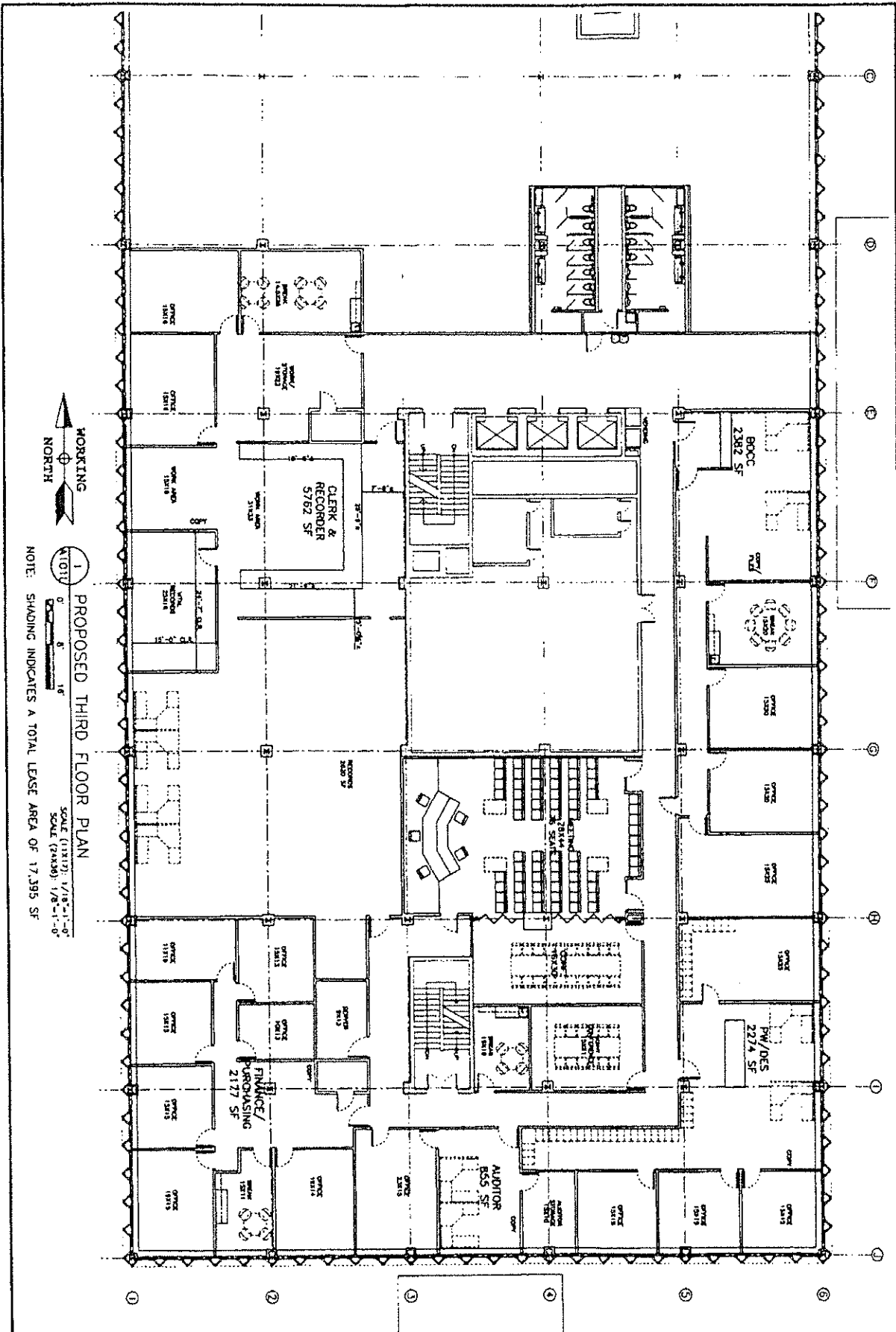
Attest:


Jeff Martin
Yellowstone County Clerk and Recorder

WC COMMERCIAL, LLC

DATED this 23rd day of January, 2018

By: 
Authorized Agent of WC Commercial, LLC



WORKING NORTH
 1
 PROPOSED THIRD FLOOR PLAN
 SCALE (1:100) 1/8"=1'-0"
 SCALE (2:250) 1/8"=1'-0"
 NOTE: SHADING INDICATES A TOTAL LEASE AREA OF 17,395 SF

Drawn By: RLB
 Checked By: RLB
 Date: XX-XX-2017
 Project #: 2017-002
 Cadd file:



EGGART ENGINEERING COMPANY
 720 LOHWEST LANE
 BILLINGS, MT 59106
 OFFICE: 406-839-9151
 FAX: 406-839-9150
 www.eecmt.com

STILLWATER BUILDING
 3rd FLOOR IMPROVEMENTS
 YELLOWSTONE COUNTY
 316 NORTH 26th STREET
 BILLINGS, MT 59101

PRELIM
 SHEET #:
A101L

EXHIBIT "A"

CAM charges Stillwater building:

Taxes. Based on DOR estimate with building lease at \$15/psf = \$302,000 divided by 129,600 leasable sq. ft. = **\$2.33 psf.**

Insurance. Quotes from Payne West with a value of \$33,00,000 is \$27,000 to \$33,000 / 129,600 leasable sq. ft. = **\$0.23 psf.**

Utilities.

Electrical \$65,754 estimated / 129,600 = \$0.50 psf.

Natural Gas \$23,000 estimated/ 129,600 = \$0.17 psf.

Water/Sewer \$4,800 estimated/ 129,600 = \$0.04 psf.

TOTAL \$0.71 psf.

Normal Maintenance (labor and materials).

Mechanical systems to include boilers, chillers, fans, and store front doors. \$45,000 / 129,600 = \$ 0.34 psf.

Elevators-materials/labor/inspections. \$21,600/129,600 = \$0.16 psf.

Store Front Doors/glass breakage and maintenance. \$22,000/129,600 = \$0.17 psf.

Security system maintenance and alarm system maintenance. \$63,500/129,600 = \$0.49 psf.

TOTAL \$1.16 psf.

Major Maintenance (labor and materials).

Roofing every ten years \$180,000/10/129,600 = \$0.14 psf.

Elevators \$70,000 every ten years/10/129,600 = \$0.05 psf.

Mechanical Systems \$60,000 every ten years /10/129,600 = \$0.04 psf.

Miscellaneous \$8,000 per year/129,600 = \$0.06 psf.

TOTAL \$0.29 psf.

Cleaning services for common areas \$50,000 per year

Snow Removal \$20,000 per year

Landscape Maintenance \$18,000 per year Total/129,600 = **\$0.68 psf.**

Property Management \$20,000 and Security Officer \$60,000 /129600 = **\$0.62 psf.**

EXHIBIT E – ENCROACHMENT AND EASEMENT AGREEMENT

[SEPARATELY ATTACHED]

Upon recording, return to:
Doug James
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

ENCROACHMENT AND EASEMENT AGREEMENT

This Encroachment and Easement Agreement (“Agreement”) is made effective the ____ day of October, 2021, between **WC COMMERCIAL, LLC**, an Alaska limited liability company, (“WC”), **CRMX-233, LLC**, a Montana limited liability company, (CRMX), and **THE CITY OF BILLINGS, MONTANA**, (“City”).

RECITALS

- A. WC is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Building”, and is more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

The foregoing parcel shall be referred to as the “Stillwater Building Parcel”.

- B. CRMX is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Garage”, and is more particularly described as follows:

LOTS 17, 18, 19, 20, 21, 22, 23, AND 24, BLOCK 42, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Stillwater Garage Parcel”.

- C. A pedestrian Skybridge connects the Stillwater Building on the Stillwater Building Parcel to the Stillwater Garage Parcel. CRMX is the Owner of the Skybridge and the Stillwater Garage Parcel. This Skybridge was approved by the City on June 18, 2018, pursuant to Resolution No. 18-10729. The Skybridge is generally defined as:

That Skybridge over the City street described as 26th Street, lying between the Stillwater Building Parcel and the Stillwater Garage Parcel. The Skybridge is approximately 98 feet long, 10 feet wide, and 10 feet tall.

- D. The City has entered into a purchase and sale agreement with WC for the purchase of the Stillwater Building Parcel.
- E. CRMX intends to transfer ownership of the Stillwater Garage Parcel and the Skybridge to WC.
- F. WC, CRMX, and the City enter into this Agreement for the purpose of defining their respective rights and duties with respect to the Skybridge.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

AGREEMENT

1. **Permanent Easement.** CRMX grants to the City and its successors and assigns forever a permanent access easement for the City and its employees, guests, and invitees to use the Skybridge for the purpose of ingress and egress to and from the Stillwater Building Parcel over and through the Skybridge that connects to the Stillwater Garage Parcel. Through this easement, CRMX grants to the City and its successors and assigns, employees, guests, and invitees, access to and from the Stillwater Garage and the Stillwater Garage Parcel through the Skybridge. This easement shall be appurtenant to the Stillwater Building Parcel. For the purposes of this easement, the Stillwater Building Parcel is the “Dominant Estate” and the Stillwater Garage Parcel is the “Servient Estate”. This easement shall not be terminated without the express written consent of the owner(s) of the Stillwater Building Parcel.
2. **Skybridge Encroachment.** The Skybridge connects the Stillwater Garage Parcel to the Stillwater Building Parcel. The Skybridge encroaches upon and is attached to the Stillwater Building. The encroachment or “Encroachment Area” refers to that portion of the Skybridge that encroaches upon and attaches to the Stillwater Building as well as the support columns under the Skybridge on the east side of the Stillwater Building. The “Encroachment Area” means the specific area where the Skybridge attaches to the Stillwater Building and includes the connecting portions of both the Skybridge and the Stillwater Building as well as the support columns. The attached Exhibit A details the location and scope of the encroachment. WC and the City consent to the encroachment as depicted on Exhibit A and further grant CRMX and its successors and assigns an easement to construct, maintain, and use the Skybridge and Encroachment Area.
3. **Skybridge Maintenance.** CRMX covenants and agrees that CRMX and its successors and assigns shall keep and maintain the Skybridge and Encroachment Area and ensure that the

Skybridge is kept in good order and repair, consistent with a first-class office building in Billings, Montana. The cost of maintaining the Skybridge and Encroachment Area shall be borne entirely by CRMX and its successors and assigns, including but not limited to WC. The City and its successors and assigns acknowledge and agree that, subject to applicable laws and regulations, CRMX and its successors and assigns shall, at all times, have exclusive control over and responsibility for all aspects involving maintenance or construction of the Skybridge; however, in no event shall such maintenance or construction increase the scope of the encroachment or easement described in this Agreement.

4. **Maintenance of Encroachment.** CRMX and WC covenant and agree to reimburse the City for any and all costs to repair damage to the Stillwater Building caused by CRMX or WC's maintenance, or lack of maintenance, of the Skybridge or the Encroachment Area. The City covenants and agrees to reimburse WC for any and all costs to repair any damage to the Skybridge caused by the City or the City's maintenance of the Stillwater Building.

Neither party shall do or permit to be done any act or thing that would tend to jeopardize the structural, cosmetic, or architectural integrity of the Stillwater Building, the Skybridge, or the Stillwater Garage, nor shall they perform any act in relation to the Encroachment Area that would cause damage to any portion of the respective portions of the Skybridge or Stillwater Building.

5. **Security and Fire Suppression.** CRMX and its successors and assigns shall be responsible for all security, alarm systems, cameras, and fire suppression systems located in the Stillwater Garage and/or the Skybridge. All systems located within the Skybridge shall be independent of and from the Stillwater Building, with the exception of the fire suppression system which shall remain connected to the Stillwater Building. Accordingly, the alarms, cameras, data cables, electrical wiring, and other shared systems in the Skybridge shall not be connected to or operated from the Stillwater Building or any of the equipment or systems located in the Stillwater Building. CRMX shall remove and eliminate all connected systems between the Skybridge and the Stillwater Building, with the exception of the fire suppression system.
6. **Cost Reimbursement.** CRMX and its successors and assigns, including but not limited to WC, shall reimburse the City for its proportionate share of all costs of using and maintaining the fire suppression system that is part of the Skybridge. The proportionate share of costs to be paid by CRMX shall be determined by multiplying the total cost by a fraction, the numerator of which shall be the square footage of the Skybridge (980 square feet) and the denominator of which shall be the leasable square footage of the Stillwater Building (129,600 square feet) plus the square footage of the Skybridge (980 square feet). The City shall bill CRMX or its successor on an annual basis. The billing invoice shall itemize all costs included in calculation and the amount paid by the City and the amount to be paid by CRMX or its successor. CRMX or its successor shall pay the invoiced amount within forty (40) days of the invoice date.
7. **Control and Access to Stillwater Building.** The City shall have the exclusive right to limit or control access to the Stillwater Building through the Skybridge. The City may, in its sole and exclusive discretion, limit or prohibit access to the Stillwater Building through the Skybridge. Provided, however, the City shall generally keep the door between the Stillwater

Building and the Skybridge open during the City's normal business hours on days when the City is open for business in the Stillwater Building. The door from the Stillwater Building to the Skybridge shall be locked during those days and hours when the City Offices in the Stillwater Building are not open to the general public, including hours after closing, Saturdays, Sundays, and holidays. The City may lock the door to the Skybridge on a short-term basis for security, maintenance, or public safety purposes. Similarly, CRMX and its successors and assigns shall keep the door from the Skybridge to the Stillwater Garage open during general business hours when City offices in the Stillwater Building are open to the general public.

8. **Destruction or Damage of the Stillwater Building; Termination of Easement.** In the event the Stillwater Building is destroyed, damaged in a way that prevents occupancy, or razed, for any reason, the covenants, agreements, obligations, duties, or property interests, including easement interests granted to CRMX by this Agreement, shall terminate.

If CRMX and its successors and assigns fail to properly maintain the Skybridge consistent with a first-class office building located in Billings, Montana, then the City may provide a notice of default to CRMX or the current owner of the Stillwater Garage Parcel the ("Maintenance Notice"). If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the maintenance default within sixty (60) days of receiving the Maintenance Notice, the City may provide an additional notice of the City's intention to terminate this Encroachment Agreement and all easements upon thirty (30) days additional notice. If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the default after receiving a second Maintenance Notice, then the City may record a Notice of Termination with the two default notices attached. Upon the recording of the Default Notice, this Encroachment Agreement and all easements shall be terminated. In the event of termination, CRMX or the current owner of the Stillwater Garage Parcel shall cause the removal of the Skybridge within sixty (60) days and shall make all repairs to the Stillwater Building necessary or prudent to restore the integrity and appearance of the building. If CRMX or the current owner of the Stillwater Garage Parcel fails to timely remove the skybridge, the City may do so at the expense of CRMX or the current owner of the Stillwater Garage Parcel. In such event, CRMX or the current owner of the Stillwater Garage Parcel shall pay to the City 110% of the City's out of pocket costs plus interest from the date invoiced until paid at the legal rate of interest in the State of Montana.

9. **Easement and Covenants to Run with the Land.** Notwithstanding the foregoing provisions, the grant of the easements and covenants described herein shall run with the land and shall be binding on and shall inure to the benefit of the parties of this Agreement, and their respective successors or assigns.
10. **Indemnity.** Each of the parties agree to indemnify and to hold the other party harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to maintenance, repair, or access undertaken by the other party during the time this Agreement is in place. Neither party shall be required to indemnify the other party for such other party's intentional or negligent acts or omissions. Notwithstanding any other provisions contained herein, WC agrees that upon conveyance of the Skybridge by CRMX to WC, WC shall indemnify and hold harmless

CRMX, its members, agents and representatives from any further liability arising under the terms of the agreement including, but not limited to, the obligations set forth herein.

11. **Insurance.** CRMX and its successors and assigns, including but not limited to WC, shall maintain commercial general liability insurance covering (i) WC's liability with respect to the Skybridge; and (ii) any construction that WC may perform in connection with the Skybridge. Such insurance shall provide limits of not less than \$1,500,000 general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian Skybridge, in compliance with City Resolution No. 18-10729. WC shall name the City as additional insured under the insurance policy and such policy shall provide thirty (30) days' advance written notice to the City of any cancellation or reduction in coverage.
12. **Negligent Acts or Omissions.** If the negligent acts or omissions of the owners, agents, or employees of CRMX, WC or the City cause damage to or destruction of the Stillwater Building, the Skybridge, or the Encroachment Area, then such negligent party shall bear the entire cost of repair or reconstruction caused by the negligent acts or omissions. If either party to this Agreement fails or refuses to pay its share, or all costs in case of any negligent act or omission, the other party may perform the required repairs or restoration and shall be entitled to seek contribution from the negligent party. The party performing the repairs shall be entitled to recover attorney's fees along with all further and additional relief afforded under the law.
13. **Notices.** Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

To the City:	City of Billings c/o City Administrator PO Box 1178 Billings, MT 59101
Email:	kukulskic@billingsmt.gov
Phone:	406-657-8433

With a copy to (but which shall not constitute notice to the City)

	City of Billings c/o City Attorney PO Box 1178 Billings, MT 59101
Email:	dahlg@billingsmt.gov
Phone:	406-657-8205

To WC: WC Commercial, LLC
c/o Joseph W. Holden
5404 Bundy Road
Worden, MT 59088
Email: joe@holden7.com
Phone: 406-690-1394

With a copy to (but which shall not constitute notice to WC)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

To CRMX: CRMX-233, LLC
c/o Max Hansen
8 South Idaho Street, Ste A.
Dillon, MT 59725
Email: maxh@accruit.com
Phone: 406-660-4206

With a copy to (but which shall not constitute notice to CRMX)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement.

14. **Binding Effect.** This Agreement, and the terms, conditions and covenants described herein, shall be binding on and shall inure to the benefit of The City of Billings', CRMX-233,LLC, and WC's successors and assigns, and any person or entity that at any time hereafter shall become the owner of the Stillwater Building Parcel, the Stillwater Garage Parcel, and/or the Skybridge, or portion thereof.
15. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.
16. **Attorney's Fees.** In the event it shall be necessary for any Party to place this Agreement in the hands of an attorney for the enforcement of any of such Party's rights hereunder or for the recovery of any monies due to any such owner hereunder, and if it is necessary for them to bring suit for the enforcement of such rights or such recovery, the prevailing Party in such suits

shall recover from the unsuccessful Party all costs of court, reasonable attorney's fees and any other relief authorized by law.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
18. **Severability.** Invalidation of any one of the provisions or covenants herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.
19. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

DATED this ____ day of October, 2021.

[Signature Pages to Follow]

CITY OF BILLINGS, MONTANA

By: William A. Cole
Its: Mayor

STATE OF MONTANA)
 ss.
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of October, 2021, by William A. Cole, Mayor of **The City of Billings.**

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

WC COMMERCIAL, LLC,
An Alaska limited liability company

By: Joseph W. Holden

Its: Member

STATE OF MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of October, 2021, by Joseph W. Holden, Member of **WC Commercial, LLC.**

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

EXHIBIT A – LOCATION AND SCOPE OF ENCROACHMENT

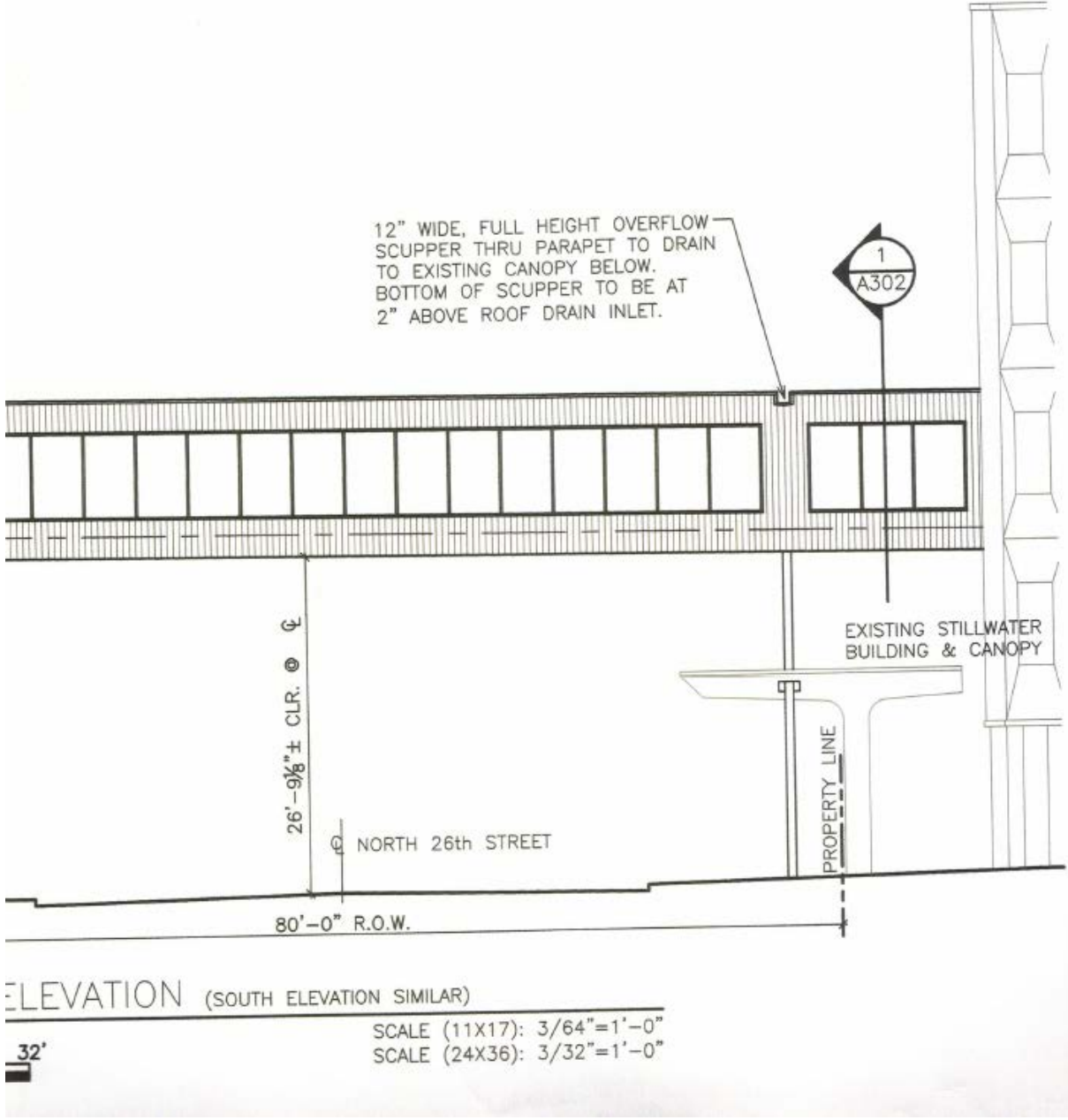


EXHIBIT B – LOCATION OF MUNICIPAL WATER HOOK-UPS FOR THE FIRE SYSTEM



4834-2522-1373, V. 1
4851-2942-9757, V. 1
4851-2942-9757, V. 1
4826-9719-2189, V. 1
4826-9719-2189, V. 1

EXHIBIT F – AGREEMENT FOR PEDESTRIAN SKYWAY

[SEPARATELY ATTACHED]

Upon recording, return to:
Doug James
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

AGREEMENT FOR PEDESTRIAN SKYWAY

This Agreement is made and entered into by and between **WC COMMERCIAL, LLC**, an Alaska limited liability company, (“**WC**”), **CRMX-233, LLC**, a Montana limited liability company, (**CRMX**), and **THE CITY OF BILLINGS, MONTANA**, (“**City**”).

RECITALS

- A. WC is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Building”, and is more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

The foregoing parcel shall be referred to as the “Stillwater Building Parcel”.

- B. CRMX is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Garage”, and is more particularly described as follows:

LOTS 17, 18, 19, 20, 21, 22, 23, AND 24, BLOCK 42, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Stillwater Garage Parcel”.

- C. CRMX applied for a permit to construct and maintain a pedestrian Skyway between the Stillwater Garage and the Stillwater Building. CRMX owns the Stillwater Garage as well as the Skyway.
- D. CRMX intends to transfer ownership of the Stillwater Garage Parcel and the Skyway to WC. Accordingly, WC shall be the successor and assignee of CRMX with respect to the Permit.
- E. The City issued a Permit for the construction and maintenance of a Skyway between the Stillwater Building and the Stillwater Garage, (the "Permit"). The Application for a Permit was approved by the Billings City Council on June 11, 2018 through Resolution No. 18-10729. CRMX was the Permittee under the Permit.
- F. The Parties enter into this Agreement in order to make the terms and conditions of the Permit applicable to WC (as the successor and assignee of CRMX, the current owner) and so that those terms and conditions will run with the land.

AGREEMENT

NOW THEREFORE, WC, CRMX, and the City agree as follows:

1. **TERM.** This Agreement shall be in force and effect from the date of the Permit (June 11, 2018) for a term of twenty (20) years and thereafter until either the removal of the pedestrian skyway or termination of the permit by the City upon sixty (60) days' written notice to the Permittee, as provided below.
2. **CONSTRUCTION AND MAINTENANCE PERMIT.** The pedestrian skyway hereafter constructed pursuant to the Permit shall be erected and maintained within the guidelines of Section 6-903 of the Billings, Montana City Code (BMCC).
3. **REVOCATION.** The Permit may be revoked by the City with good cause after the expiration of the initial term, upon sixty (60) days' written notice to Permittee, at the address shown in the application hereto attached, but the City reserves the right to revoke the Permit at any time upon failure to cure defaults listed in such sixty (60) day notice in the event Permittee breaks any of the conditions or terms set forth herein. "Good cause" means the City's proposed change in use of the right of way to a use inconsistent with existence of the skyway.
4. **BINDING COVENANT.** This Agreement and the Permit and conditions therein shall run with the land, binding the owners of the buildings connected by the pedestrian skyway, and their successors and assigns, to comply with the terms of the permit. Accordingly, this Agreement shall be recorded in the real estate records of Yellowstone County, Montana with respect to both the Stillwater Building Parcel and the Stillwater Garage Parcel.

5. **CHANGES IN STREET.** If City changes the street necessitating changes in structure or installations installed under the Permit, Permittee, or its successors and assigns, including but not limited to WC, shall make necessary changes without expense to City.
6. **CITY SAVED HARMLESS FROM CLAIMS.** The Permittee shall at all times during the continuance of the permit indemnify and hold the City harmless of and from all claims, demands, actions and liability of any kind whatsoever for damage to persons or property resulting from the construction, use or maintenance of skyway in the public right-of-way. The Permittee shall obtain prior to commencement of construction of the skyway and maintain at all times thereafter until the termination of the permit, for the mutual benefit of the Permittee and the City, general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian skyway, such insurance to afford protection to limits as prescribed by Council Resolution, and to be issued by a company or companies licensed to do business in the state. Such policies shall provide that such insurance cannot be cancelled without prior written notice to the City.
7. **PROTECTION OF TRAFFIC.** Insofar as the interests of the City and the traveling public are concerned, all work performed under the Permit shall be done under the supervision of the City Engineer of the City of Billings and his authorized representatives, and he/they shall indicate barriers to be erected, the lighting thereof at night, placing of flagmen and watchmen, manner in this traffic is to be handled, shall specify to Permittee new road surfaces to be replaced if disturbed during operations, but said supervision shall in no way operate to relieve or discharge Permittee from any of the obligations assumed by acceptance of the Permit, and especially those set forth under Section 6, hereof.
8. **STREET AND DRAINAGE.** If the work done under the Permit interferes in any way with the drainage of the City streets or alleys affected, Permittee shall, at their own expense, made such provisions as the City may direct to take care of drainage.
9. **RUBBISH AND DEBRIS.** Upon completion of work contemplated under the Permit, all rubbish and debris shall be immediately removed and the roadway and roadside left in a neat and presentable condition satisfactory to the City.
10. **WORK TO BE SUPERVISED BY THE CITY.** All work contemplated under the Permit shall be done under the supervision of, and to the satisfaction of, an authorized representative of the City, and the City hereby reserves the right to order the change of location or removal of any structure or installation authorized by the Permit at any time, said changes or removal to be made at the sole expense of the Permittee.
11. **CITY RIGHT NOT TO BE INTERFERED WITH.** All such changes, reconstruction or relocation shall be done by Permittee in such a manner as will cause the least interference with any of the City's work, and the City shall not be liable for any damage to the Permittee by reasons of any such work by the City, its agents, contractors or representatives, or by the installations or structures placed under the Permit.

12. **REMOVAL OF INSTALLATIONS OR STRUCTURES.** Unless waived by the City upon termination of the Permit, within a reasonable amount of time, not to exceed sixty (60) days, after termination, the Permittee shall remove the installations or structures contemplated by the Permit and restore the premises to the condition existing at the time of entering upon the same under the Permit, reasonable and ordinary wear and tear and damage by the elements, or by circumstances over which the Permittee has no control, excepted.
13. **MAINTENANCE AT EXPENSE OF PERMITTEE.** The pedestrian skyway shall at all times be maintained in good condition, both interior and exterior, by the Permittee, without expense to the City.
14. **CITY NOT LIABLE FOR DAMAGE TO INSTALLATIONS.** In accepting the Permit, the Permittee agrees that the City will not be held liable for any damage or injury done to said installations or structures by any City employee engaged in construction, alteration, repair, maintenance or improvement of the City street or alley.
15. **CITY TO BE REIMBURSED FOR REPAIRING ROADWAY.** Upon being billed therefore, Permittee agrees to promptly reimburse the City for any expense incurred in repairing surface of roadway due to settlement at installation, or for any damage to roadway or structure as a result of the work performed under the Permit.
16. **OTHER CONDITIONS AND/OR REMARKS.** If this encroachment involves excavation in the public right-of-way, (1) a licensed and bonded contractor must obtain a right-of-way permit from the City Engineer's Office prior to start of work; and (2) Permittee must maintain a subscription to Montana One-Call System for locating utility lines and underground facilities.
17. **ASSIGNMENT.** The City consents to CRMX, as the Permittee, assigning the Permit to WC in connection with the transfer of ownership of the Stillwater Garage Parcel and the Skyway. WC and each successive owner assume all of the duties, obligations, and responsibilities of the original Permittee (CRMX) under the Permit. Upon transfer of the real property (the Stillwater Garage Parcel), WC shall be the Permittee with respect to the Permit. If the Stillwater Garage Parcel is subsequently transferred, each successive owner shall be the Permittee under the Permit and shall thereby assume all of the duties, obligations, and responsibilities of the original Permittee hereunder. Upon such assignment, WC agrees that it shall indemnify and hold harmless CRMX, its members, agents and representatives from any further liability arising under the terms of the agreement including, but not limited to, the obligations set forth in paragraph 6 above.
18. **INSURANCE.** The Permittee (CRMX) and its successors and assigns shall obtain and maintain at all times until the termination of the Permit, for the mutual benefit of the permittees and the City, general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian skyway, with minimum limits of \$1,500,000 each occurrence, naming the City as an additional insured. The insurance shall be issued by a company or companies licensed to do business in the state.

Such policies shall provide that such insurance cannot be cancelled without prior written notice to the City.

19. NOTICES. Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

To the City: City of Billings
c/o City Administrator
PO Box 1178
Billings, MT 59101
Email: kukulskic@billingsmt.gov
Phone: 406-657-8433

With a copy to (but which shall not constitute notice to the City)

City of Billings
c/o City Attorney
PO Box 1178
Billings, MT 59101
Email: dahlg@billingsmt.gov
Phone: 406-657-8205

To WC: WC Commercial, LLC
c/o Joseph W. Holden
5404 Bundy Road
Worden, MT 59088
Email: joe@holden7.com
Phone: 406-690-1394

With a copy to (but which shall not constitute notice to WC)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

To CRMX: CRMX-233, LLC
c/o Max Hansen
8 South Idaho Street, Ste A.
Dillon, MT 59725
Email: maxh@accruit.com
Phone: 406-660-4206

With a copy to (but which shall not constitute notice to CRMX)

	Hendrickson Law Firm PC
	c/o Mark E. Noennig
	208 North Broadway, Suite 324
	Billings, MT 59101
Email:	mark@hendricksonlawmt.com
Phone:	406-245-6238

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement. In the event of any change of ownership of the Stillwater Garage Parcel and the Skyway, the Permittee, or its successor, shall provide written notice of the transfer to the City along with the name, address, e-mail address and telephone number of the successor owner.

DATED at Billings, Montana, this ____ day of October, 2021.

[SIGNATURE PAGES FOLLOW]

The undersigned, the "Permittee" mentioned in the foregoing instrument, hereby accepts this Agreement, together with all of the terms and conditions set forth therein.

CRMX-233, LLC
By: Accruit Equity Acquisitions, LLC,
Sole Member

By: _____
Max A. Hansen
Its: Executive Vice President

STATE OF MONTANA)
 : ss.
County of _____)

On this _____ day of October, 2021, before me, the undersigned, personally appeared Max Hansen, known to me to be Executive Vice President of Accruit Equity Acquisitions, LLC, sole member of CRMX-233, LLC, and acknowledged to me that he executed the within instrument on behalf of said limited liability company, having first been authorized to do so.

Notary Public for the State of Montana

The undersigned, the "Permittee" mentioned in the foregoing instrument, hereby accepts this Agreement, together with all of the terms and conditions set forth therein.

WC COMMERCIAL, LLC

By: _____
Joseph W. Holden
Its: Member

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this _____ day of October, 2021, before me, the undersigned, personally appeared Joseph W. Holden, known to me to be a Member of WC Commercial, LLC, and acknowledged to me that he executed the within instrument on behalf of said limited liability company, having first been authorized to do so.

Notary Public for the State of Montana

CITY OF BILLINGS, MONTANA

By: _____
Mayor, William A. Cole

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of October, 2021, by William A. Cole, Mayor of the City of Billings.

Notary Public for the State of Montana

ADDENDUM TO PURCHASE AND SALE AGREEMENT

This Addendum amends and supplements the Purchase and Sale Agreement (PSA) between WC Commercial, LLC as “Seller” and the City of Billings as “Buyer” with respect to the Stillwater Building. The PSA was signed and dated by the Seller on September 2, 2021.

I. Amendments.

The Purchase and Sale Agreement is amended as follows:

- A. **Sky Bridge Systems.** Section 8(e) of the Purchase and Sale Agreement is deleted and replaced with the following paragraph:

Sky Bridge. The terms of this agreement do not include any transfer of ownership of the Sky Bridge, generally located on the East side of the building, crossing over N 26th Street, and connecting to the Stillwater Garage. Any utilities or infrastructure for the Sky Bridge that rely on the subject property (the Stillwater Building) for service shall be limited to the fire suppression system and the related fire system riser. Seller shall disconnect all other systems in the Sky Bridge from the Stillwater Building, including but not limited to data cables, cameras, phones, the alarm system, security systems, and door locks.

- B. **Offer Expiration.** The date stated in paragraph 15 shall be deleted and replaced with the date of October 12, 2021.

- C. **Closing.** The Closing deadline under the Purchase and Sale Agreement (paragraph 12) is extended to and includes October 15, 2021.

- D. **Prorations.** Paragraph 12(c) is deleted and replaced with the following sentence:

Buyer and Seller shall prorate any real property taxes, assessments, rent, common area expenses, and Property Owners Association dues for the current year as of September 30, 2021. If Seller receives any rent and/or common area expense payments prior to Closing that are for any rental period after September 30, 2021, Seller shall pay those rental and common area expense payments to Buyer at Closing.

II. Additional Provisions.

The Purchase and Sale Agreement is amended to include the following additional provisions:

17. **Access Controls:** At Closing, Seller shall provide to Buyer all keys, passwords, control cards, and access codes in order for Buyer to access and operate the Building and its systems, including but not limited to the computer systems, door locks, cameras, data cables and systems, the alarm system, the elevators, the Sky Bridge, and any other portion of the Building or any Building system that is controlled by a key, password, code, or lock. Seller shall facilitate the creation of administrator profiles for City Staff and their integration contractor effective at Closing.

18. **Common Area Expenses:** All Operating Expenses shall be prorated as of September 30, 2021. Seller shall pay all operating expenses for the period prior to October 1, 2021, on or before Closing and shall provide to Buyer copies of all invoices and bills that were paid with CAM funds during 2021. Any remaining (unspent) CAM funds paid by Yellowstone County to Seller, if any, shall be transferred to Buyer at Closing, including any Common Area Expense payments for periods after September 30, 2021. Buyer shall be responsible for paying all Operating Expenses that are incurred on or after October 1, 2021.

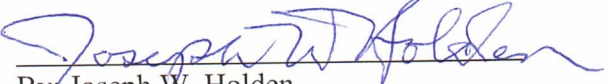
19. **Agreement for Pedestrian Skyway.** Exhibit "F", attached hereto, is added to the Purchase and Sale Agreement, and shall be signed at Closing in a form that is substantially consistent with Exhibit "F" hereto.

IN WITNESS WHEREOF, Buyer and Seller hereby execute this Addendum to Agreement to Purchase and Sell Real Property this ____ day of October, 2021.

BUYER:
CITY OF BILLINGS, MONTANA

By: William A. Cole
Its: Mayor

Date: _____

SELLER:
WC COMMERCIAL, LLC
An Alaska limited liability company

By: Joseph W. Holden
Its: Member

Date: 10, 1, 2021



Stillwater Building Purchase

Background

- August 2019 – RFP
- December 2019 – Stillwater Building Selected
- Negotiation committee:
 - CMs: Boyett, Joy, Neese, Purinton, Shaw
 - City Staff: Iffland, Iverson, Zoeller
 - Private Citizen: Randy Hafer, architect
- July 13, 2021 – Council voted to enter into contingent buy-sell agreement to purchase the entire building for \$17 Million
- Due Diligence Period
- August 16, 2021 Work Session – Inspection results. Directed staff to terminate agreement and continue negotiations
- August 23, 2021 – Purchase agreement was terminated

Why the Stillwater Building?

- **LOCATION:** The Stillwater Building is located in the Downtown Billings Core less than two blocks from the current City Hall.
- **SIZE:** The building is large enough to house all City Offices currently at City Hall and in leased spaces, provide the additional space currently needed, and allow room for future growth. The building also allows for additional space for co-location of other public entities or services.
- **INFILL OF A VACANT BUILDING:** The Stillwater Building is currently mostly vacant with only Yellowstone County as a tenant.
- **COST:** The cost to purchase and building out the existing building is substantially less than the cost of new facility. Current construction cost for a new building are estimated at \$300-325/sf
- **LACK OF AN EQUIVALENT ALTERNATIVE:** There are currently no other available properties that offer all of the above advantages, specifically location of all departments in one facility.

Stillwater Building Challenges

- **PARKING:** Limited to basement and street parking. Employee parking would primarily be offsite.
- **EXCESS SQUARE FOOTAGE:** Time and resources to manage tenants and leases.

Other Facility Options

- Other proposals submitted under the RFP did not meet all criteria as well as the Stillwater Building.
- Recently discussed properties were not submitted as part of the RFP process.
- High level review of alternative options do not have the same advantages as the Stillwater Building.
- Significant investment of time and money into the Stillwater Building purchase process. These same costs and time would be incurred in investigating a new property.

New Purchase Agreement

- Further negotiations resulted in a reduced offer of \$13.5 Million
- Committee voted to recommend approval of purchase agreement at \$13.5 Million
- Council to take action at the October 11, 2021 regular business meeting with closing on October 15, 2021

City's Due Diligence

- Start Date: 7/13/2021
- Completion Date: 8/2/2021
- Components Inspected
 - MEP – Mechanical, Electrical, Plumbing – IMEG
 - Civil – IMEG
 - Envelope and Glazing – Terracon
 - SFRM – Fire Proofing Material – Tetra Tech
 - Asbestos and Radon – Tetra Tech
 - Roof – Bradford
 - Structural – Whitten and Borges
 - Elevators – KONE

Total Recommended Repair Costs

Electrical	\$1,617,500
Mechanical	\$2,340,000
Plumbing	\$170,000
Structural	\$30,000
Envelope/Roof	\$470,000
Windows	\$500,000
Civil	\$16,000
Replace Ducts	\$425,000
Elevators	\$780,000
Roof Replacement	\$700,000
TOTAL	\$7,073,500

Minimum Viable Repairs

Red Text Indicates Deferred Repairs

Electrical	\$1,617,500
Mechanical	\$2,340,000
Boilers	-\$460,000
Basement Exhaust	-\$80,000
Plumbing	\$170,000
Structural	\$30,000
Envelope/Roof	\$470,000
Windows	\$500,000
Civil	-\$16,000
Replace Ducts	\$450,000
Elevators	-\$780,000
Roof Replacement	-\$700,000
TOTAL	\$3,541,500

Asbestos Costs

- Full Remediation of All Existing Asbestos \$1,350,140
- Construction cost premium for Asbestos Containing Building Material (ACBM) abatement
 - Dependent on scope of remodel
 - Relocation or renovation of electrical/data rooms
 - Renovations that disturb areas of ACBMs
 - Replacement of ductwork

Cost per Square Foot – Entire Building As-Is

• Building Purchase Price	\$13,500,000
• Total Building Square Footage	213,615
• Purchase Price per Square Foot	\$63.20
• Infrastructure Upgrades	\$3,500,000
• Price per Square Foot	\$79.58

Sources and Uses

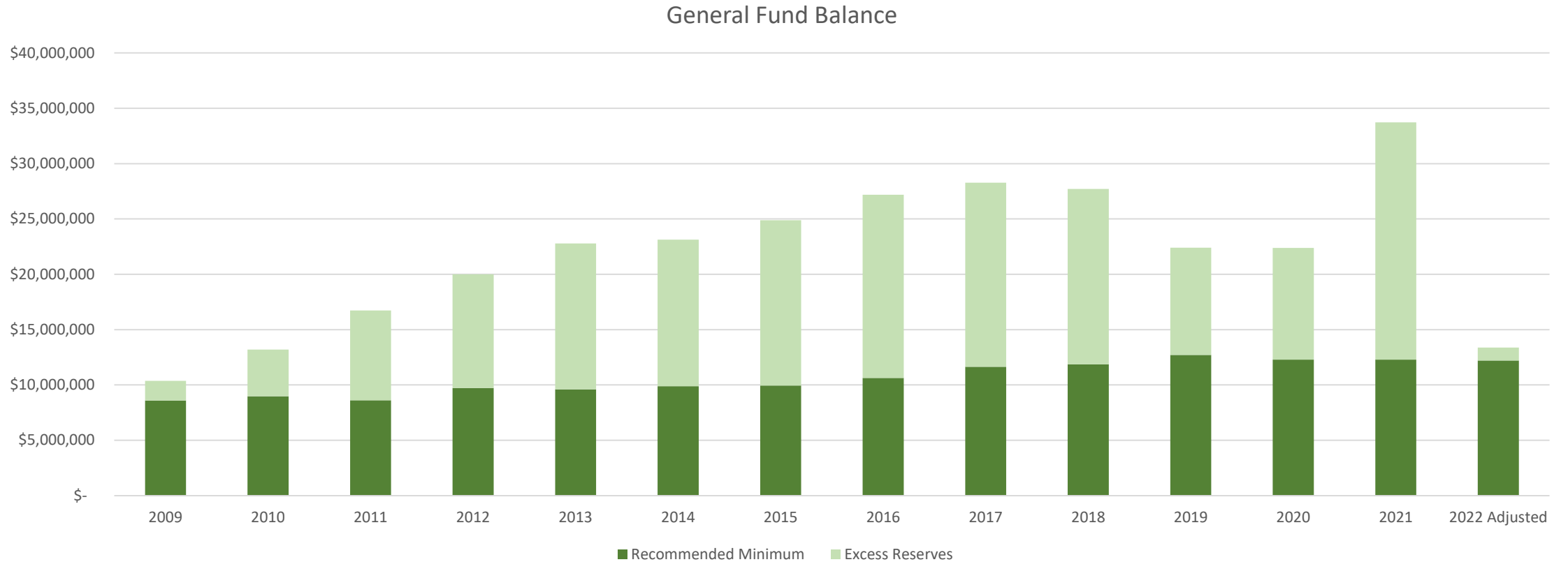
Sources

Excess General Fund Reserve	\$	20,350,560
Departmental Buildout Contribution (30%)		3,439,363
ARPA Funds for Public Safety Buildout		<u>5,810,077</u>
Total Sources	\$	29,600,000

Uses

Stillwater Purchase Price	\$	13,500,000
Infrastructure Upgrades		3,500,000
Architecture Costs		1,200,000
Estimated Buildout		10,000,000
Contingency @ 12.5%		<u>1,400,000</u>
Total Uses	\$	29,600,000

General Fund Reserve History



Rent Revenue

- Yellowstone County currently leases 17,395 sq ft
- Projected Rent (base rent plus CAM charges):

	2021	2022	2023	2024	2025	
						<u>Grand Total</u>
Total	\$94,629	\$389,868	\$401,564	\$413,611	\$177,510	\$1,477,182

- Final payment in May 2025 if the County chooses to not execute their 3 year lease renewal option.
- If the City leases an additional floor and a half of unneeded space (approximately 42,000 SF net leased area), the City could expect to collect an additional \$900,000 to \$1.1M in annual rent based on the County's lease rate.

Current Operation and Maintenance Costs

- Current expenses provided by owner:

Utilities	
Electrical	\$125,000
Gas	\$55,500
Water/Sewer	\$9,305
Phone	\$2,960
	\$192,765
Maintenance	
Mechanical	\$177,000
Elevators	\$29,000
Doors	\$1,500
Security System	\$7,600
	\$215,100

Operations	
Cleaning Common Areas	\$56,010
Snow Removal/Landscape	\$4,000
Insurance	\$41,000
Property Management	\$24,000
	\$125,010
Annual Capital Costs	
Roof (per 10 yrs)	\$18,000
Elevators (per 10 yrs)	\$20,000
Mech Systems (per 10 yrs)	\$6,000
Misc	\$1,000
	\$45,000
Total	\$577,875

- Leasable Square Footage: 129,600 NSF
- Expenses per square foot: \$4.46/SF

Facilities Charges

- **FY22 City Hall Charges:**
 - Leasable Square Footage: 42,660 NSF
 - Expenses per square foot: \$13.52
- **Miller Building:**
 - Annual Rent: \$226,596
 - Cost per square foot: \$15.77
- **Depot Building:**
 - Annual Rent: \$174,768
 - Cost per square foot: \$18.59

Line Item	1567
	CITY HALL
	6500-15670 Detail
DEPARTMENT	
MAYOR/COUNCIL	\$10,784
ADMINISTRATION	\$30,802
POLICE	\$245,085
PARKING	\$35,332
CITY ATTORNEY	\$35,990
INFORMATION TECHNOLOGY	\$56,306
TELEPHONE	\$3,219
FINANCE	\$43,460
MUNICIPAL COURT	\$90,639
HUMAN RESOURCES	\$25,066
TOTAL	\$576,683

Total Current Facility Costs

City Hall	\$577,875
Miller Building	\$226,596
Depot	\$174,768
Total	\$979,239

Projected Revenue and Expenses

- Based on current City Hall and Stillwater Building expenses, we estimate an annual O&M budget of \$1.75 - \$2 Million for a fully-occupied building

CH Department Charges	\$577,875
Current City Leases	\$401,364
County Lease	\$389,868
Sub-Total	\$1,369,107
Potential Leases	\$900,000
Total	\$2,269,107

Questions?

City Council Work Session

Date: 10/04/2021
Title: Reallocate EBURD TIF Funds for Project Green Light CPTED Program
Presented by: Wyeth Friday
Department: Planning & Community Services
Presentation: Yes

RECOMMENDATION

No formal action may be taken at this Work Session. However, the Billings Industrial Revitalization District Board (BIRD) board of directors recommends that City Council provide direction to BIRD and City staff on whether to reallocate funds from the existing East Billings Urban Renewal District (EBURD) Legacy Tree program to a new EBURD Crime Prevention Through Environmental Design (CPTED) matching grant program. If the Council provides positive direction, staff will place this action item on a future regular Council meeting agenda for action.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This new program is in response to recent criminal activity in the EBURD area that is affecting property owners, existing businesses, and future business investment. It also supports the EBURD Urban Renewal Plan goal of addressing crime prevention and public safety through a cooperative security or business watch program. The new Project Green Light program that the EBURD has been pursuing in conjunction with the Billings Police Department meets the objectives of this EBURD goal. Project Green Light is a neighborhood watch-related program that will use existing security infrastructure to curb the occurrences of crime related to property damage, theft, and graffiti in the district.

This proposed EBURD CPTED program is designed to be similar to the Downtown Urban Renewal District's CPTED Incentive Grant Program approved by the City Council November 2019. Both rely on a CPTED evaluation to be completed on property by someone certified in the CPTED evaluation process. Both programs provide a match to private investment in safety elements that are identified through the CPTED evaluation. The amount to be allocated from the Legacy Tree Program to this new program is \$23,526.53. These urban renewal funds will be used for up to \$1,000 matching grants to property/business owners in the EBURD. The grants will be provided to match investments in CPTED eligible expenses, including exterior lighting and/or security camera and video system hardware upgrades and signage.

The existing Legacy Tree program for EBURD was approved by the City Council on September 24, 2018 with a total budget of \$40,000. Four landscaping projects have utilized the program and expended \$16,473.47 to provide trees for existing or redeveloped commercial properties. The current remaining balance of \$23,526.53 would be allocated to the new CPTED program. However, landscaping and tree planting is still a critical element of EBURD revitalization and redevelopment efforts and is a goal of the EBURD Master Plan. The BIRD Board and the City intend to continue to encourage increased tree planting and added green space in EBURD, and will look to bring back the goals of the Legacy Tree program as funding in the District allows in the near future.

STAKEHOLDERS

Through a small working committee, the BIRD Board has identified this CPTED approach as one way to engage with the existing capacity of the Billings Police Department to curb crime in the district. The BIRD Board and EBURD staff has spoken with property owners, business owners, Billings Police Department and different members of the community in developing this strategy.

ALTERNATIVES

City Council may:

- Direct EBURD and City staff to reallocate funds from the existing EBURD Legacy Tree program to a new EBURD Crime Prevention Through Environmental Design (CPTED) matching grant program; or
- Not direct EBURD and City staff to reallocate funds from the existing EBURD Legacy Tree program to a new EBURD Crime Prevention Through Environmental Design (CPTED) matching grant program. If the Council does not wish to move forward with the new program at this time, the EBURD will continue to support the Legacy Tree program in the district.

FISCAL EFFECTS

The \$23,526.53 in funds that would be affected by this action currently exists as part of the East Billings Urban Renewal District TIF budget. There is no request to increase funding in the budget, but instead to reallocate the remaining Legacy Tree Program budget to this new Project Green Light CPTED Grant Program.

SUMMARY

City Council Work Session

Date: 10/04/2021
Title: Marijuana Regulations Update
Presented by: Gina Dahl
Department: Legal
Presentation: Yes

RECOMMENDATION

Staff is providing an update following the direction Council has provided in previous work sessions and no action is required of council at this time.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

As a result of the working group meetings and City Council work sessions, staff has been provided direction on zoning, separation distances, and business license regulations including label confirmation (testing) and capping the number of dispensaries. Currently, the Zoning Commission is scheduled to consider a draft amendment to the zoning regulations on October 5, conduct a public hearing, and then make a recommendation to City Council. The City Council is scheduled to consider the zoning regulation amendments at its regular meeting on October 25. That draft amendment includes the following (Draft Zoning Regulation Ordinance attached):

- Allow Marijuana Dispensary -- Medical, Adult and Combined Use in Heavy Commercial (CX), Light Industrial (I1), and Heavy Industrial (I2) districts.
- Require 1,000-foot separation between all Marijuana Dispensaries, Cultivation, and Manufacturing businesses from public or private schools, daycare centers, public recreation centers or public parks, churches, synagogues, or other place of worship, youth centers and neighborhood residential zones (Draft Map(s) to be shared by staff at this meeting).
- Allow Cultivator, Processor/Manufacturer and Transporter in Heavy Commercial (CX), Light Industrial (I1), and Heavy Industrial (I2) districts
- Allow Testing Laboratory in Downtown Support (DX), Heavy Commercial (CX), Light Industrial (I1, and Heavy Industrial (I2) districts
- Add Marijuana Dispensary, Testing Laboratory, Cultivator, Processor/Manufacturer and Transporter to the Primary Use Table in the Zoning Code (Table 27-1000/.1)
- Clarify that marijuana cultivation, processing, manufacturing, sales, transportation or testing laboratories are not "Home Occupations" (Sec. 27-1008) and cannot be "Accessory" uses to a Primary Use unless the accessory use is located in one of the districts where the use is allowed as a Primary Use.
- Clarify that outdoor cultivation is not allowed within the city limits for any licensed Marijuana Cultivation operation.
- Require sign permit applicants to provide state sign approval at the time of application. (Sec. 27-1400 -or- Sec. 27-1622 (permitting). Consider whether to adopt state sign permit requirements more carefully once the rules are finalized by DOR, but require applicants to show state approval prior to city sign permit review.
- Require 150 ft setback to arterial street frontage for all adult use marijuana dispensaries and combined use marijuana dispensaries.

Staff is in the process of drafting a proposed ordinance containing the remainder of the regulations which will be part of the business license structure. Staff expects to have a comprehensive final draft to share with Council by October 15. This proposed ordinance as well as the Zoning Commission's recommendation of any proposed amendment to the zoning regulations is expected to be presented to Council on October 25 for first reading and public hearing. The proposed business license ordinance will set forth the application process and lottery requirement if caps are imposed, license renewal process, provisions regarding label confirmation (testing), requirement of compliance with fire codes, state marijuana regulations, City water and wastewater regulations, inspections, etc. It will also include penalties and due process provisions for suspension and revocation of licenses issued by the City for any violations of City code.

ALTERNATIVES

This is an informational update and no formal action is required at this time.

FISCAL EFFECTS

The issue of local excise tax is also before the voters on November 2, 2021, so any revenue impact is uncertain at this time.

City business licensing fees to defray licensing expenses will need to be established by separate resolution and are expected to vary according to the types of regulations implemented.

SUMMARY

This is presented to update Council on the progress of staff in developing regulations. The studies provided during previous work sessions provide additional information for Council to review in order to make informed policy decisions. No action is required, and the schedule to put regulations in place before the end of the year is getting short, but staff welcomes any questions or specific direction Council would like to provide regarding any other areas Council wishes to see regulated.

Attachments

Draft Zoning Ordinance for Marijuana Regulations

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-1000 – USES AND USE STANDARDS; SECTION 27-1005 – COMMERCIAL USE STANDARDS; SECTION 27-1006 - INDUSTRIAL, WHOLESALE AND STORAGE USE STANDARDS; SECTION 27-1400 – SIGNS; SECTION 27-1008 – ACCESSORY USES; SECTION 27-1800 - DEFINITIONS - TO ADD LANGUAGE RELATED TO MEDICAL AND ADULT USE MARIJUANA BUSINESSES WITHIN THE CITY OF BILLINGS AND ADOPT THE REVISION AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC,* provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.

2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

3. ZONE AMENDMENT.

A. SECTION 27-1000 – USES AND USE STANDARDS.

Add the following uses to the Primary Use Table (Table 27-1000.1) under the COMMERCIAL Use Category – Retail Sales

- i. Marijuana Dispensary – Medical Use
- ii. Marijuana Dispensary – Adult Use
- iii. Marijuana Dispensary – Combined Use

Allow these uses as designated with a letter “PR” in the Heavy Commercial (CX), Light Industrial (I1) and Heavy Industrial (I2) zone districts

The amended table shall read as follows:

C. Table 27-1000.1 Billings Primary Use Table.

Table 27-1000.1: Permitted Primary Uses	Residential						Mixed-Use and Commercial						Indust.		EBURD				Public			Additional Standards					
	Key: P = Permitted, PL = Location Limits in Zone District, PR - Applicable Use Restrictions, SR = Special Review																										
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	
Retail Sales																											
Agricultural														P	P				P	P	P						
Commercial Greenhouse/Nursery									SR	P	P			P	P		P	P	P	P	P						
Liquor Sales									P	P	P	P	P	P	P		P	P	P	P	P						
Retail, Limited with drive-thru									SR	P	P			P				P	P	P	P						27-1009
without drive-thru									P	P	P	P	P	P			P	P	P	P	P			P	P	P	
Retail, General with drive-thru									SR	P	P			P				P	P	P	P						27-1009
without drive-thru										PR	P	P	P	P			P	P	P	P							
Retail, Large-Format											P			P				P	P	P	P						
<u>Marijuana Dispensary – Medical Use</u>														PR	PR	PR											27-1005
<u>Marijuana Dispensary – Adult Use</u>														PR	PR	PR											27-1005
<u>Marijuana Dispensary – Combined Use</u>														PR	PR	PR											27-1005

Add the following uses to the Primary Use Table (Table 27-1000.1) under the COMMERCIAL Use Category - Office

Marijuana Testing Laboratory

Allow this use as designated with a letter “P” in the Downtown Support (DX), Central Business District (CBD), Heavy Commercial (CX), Light Industrial (I1) and Heavy Industrial (I2) zone districts

The amended table shall read as follows:

Table 27-1000.1: Permitted Primary Uses	Residential						Mixed-Use and Commercial						Indust.		EBURD				Public			Additional Standards					
	Key: P = Permitted, PL = Location Limits in Zone District, PR - Applicable Use Restrictions, SR = Special Review																										
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	
Office																											
Business or Professional								P	P	P	P	P	P	P			P	P	P	P		P			P	P	P
Research and Testing Laboratories											SR	P	P	P	P	P			P			P			P	P	P
<u>Marijuana Testing Laboratory</u>												P	P	P	P	P											27-1006

Add the following uses to the Primary Use Table (Table 27-1000/.1) under the INDUSTRIAL, WHOLESALE AND STORAGE Use Category – Manufacturing, Assembly, or Processing

Marijuana Cultivation

Marijuana Processing/Manufacturing

Allow these uses as designated with a letter “PR” in the Heavy Commercial (CX), Light Industrial (I1) and Heavy Industrial (I2) zone districts

The amended table shall read as follows:

Table 27-1000.1: Permitted Primary Uses	Residential						Mixed-Use and Commercial						Indust.		EBURD				Public			Additional Standards					
	Key: P = Permitted, PL = Location Limits in Zone District, PR - Applicable Use Restrictions, SR = Special Review																										
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	
<u>Manufacturing, Assembly, or Processing</u>																											
Artisan/Craft									PL	PL	PL	P	P	P	P	P	PR PL	PR PL	PR PL	PR PL	PR PL						27-1006
Limited - Special Order												P	P	P	P	P			P	P	P						
General														P	P	P			P	P	P						
Heavy															SR	P						PR					27-1006
<u>Marijuana Cultivation (Indoor Only)</u>															PR	PR	PR										27-1006
<u>Marijuana Processing/Manufacturing</u>															PR	PR	PR										27-1006

Add the following uses to the Primary Use Table (Table 27-1000/.1) under the INDUSTRIAL, WHOLESALE AND STORAGE Use Category – Warehousing and Storage Services

Marijuana Transportation and Temporary Storage
 Allow this use as designated with a letter “P” in the Heavy Commercial (CX), Light Industrial (I1) and Heavy Industrial (I2) zone districts

The amended table shall read as follows:

Table 27-1000.1: Permitted Primary Uses	Residential				Mixed-Use and Commercial								Indust.		EBURD				Public			Additional Standards					
	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS		P1	P2	P3 Civ	P3 Ed	P3 Med
Use Table																											
Warehousing and Storage Services																											
Outdoor Storage														PR	P	P		P	P	P	P						27-1006
Personal Self-Service Storage										PR	PR	PR		P	P	P		PR	PR	PR	PR						27-1006
Trucking and Transportation Service														P	P	P			P		P						
Warehouse														P	P	P		PL	PL	PL	PL						27-1006
<u>Marijuana Transportation and Temporary Storage</u>														<u>P</u>	<u>P</u>	<u>P</u>											<u>27-1006</u>
Wholesale and Distribution (general)														P	P	P		P	P	P	P						
Agricultural Products														P	P	P		P	P	P	P						
Chemical Products															SR	P											
Petroleum Products																P											

B. Add the following section to 27-1005 - Standards for commercial uses:

R. Marijuana Dispensaries: The following standards apply to all marijuana dispensaries within the city limits.

1. Separation distances.

(a) All marijuana dispensaries shall be separated by 1,000 feet from religious institutions, primary and secondary educational facilities, public parks that contain a children's playground or playfield, day care centers, youth centers, and neighborhood residential zones ("protected use" as defined in subsection 27-1802.G) as measured from the exterior of the occupied building space of the marijuana dispensary to the property line of the protected use. A neighborhood residential zone includes any Planned Development zone district that allows residential uses.

2. Combining Marijuana Uses.

(a) A marijuana dispensary may not be combined with another marijuana use, such as a transportation, cultivation, testing laboratory or processing facility, unless the required separation distances can be met for the dispensary use.

(b) All marijuana uses are considered Primary Uses for the purposes of zoning.

3. Marijuana Businesses - The definitions contained in Titles 15, 16, and 50, MCA, shall apply to this Chapter except where the ordinance provides a different definition in Section 27-1803, or the context of this Chapter makes it clear that the statutory definition does not apply.

4. Setback from arterial street property lines.

The occupied building space for all Adult Use marijuana dispensaries and Combine Use marijuana dispensaries shall be setback from an arterial street by at least 150 feet. Medical Use marijuana dispensaries are not required to comply with this setback.

C. Add the following section to 27-1008.M.4 – Home Occupations (Accessory Uses).

M. Home occupations. The planning division recognizes that the restrictions set forth in this section do not anticipate all possible types of home occupations. Therefore, the following policies have been adopted to guide the planning division in the enforcement of this section:

.....

4. Prohibited uses. The following types of uses will not be approved as home occupations:

(a) Uses involving large or oversized goods or materials;

(b) Automobile, lawn mower, or other engine repair, welding, or machine shops unless the service is offered only at the customer's location (mobile service);

(c) Uses where other employees visit the site, such as operating/dispatch offices for contractors, offices for businesses having employees who are not occupants;

- (d) Uses involving more than household quantities of volatile liquids or materials;
or
- (e) Uses involving the grooming, breeding, or boarding of animals; ;
or
- (f) Uses involving marijuana including but not limited to the dispensaries, sales, cultivation, testing, manufacturing, transporting or temporary storage of marijuana.

D. Add the following section to Sec. 27-1006 Use Standards for INDUSTRIAL, WHOLESALE AND STORAGE

F. Marijuana Cultivation, Processing/Manufacturing & Transporters.

1. Separation distances.

(a) All marijuana cultivation, processing and manufacturing facilities shall be separated by 1,000 feet from neighborhood residential zones ("protected use" as defined in subsection 27-1802.G) as measured from the exterior of the occupied building space of the marijuana cultivation operation or marijuana processing/manufacturing to the property line of the protected use. A neighborhood residential zone includes any Planned Development zone district that allows residential uses.

2. Enclosed structure required.

(a) All marijuana cultivation shall be done inside of an enclosed structure and not outdoors. Such structure will be outfitted with the best available odor control technology.

(b) All marijuana manufacturing and processing shall be done within an enclosed structure. Such structure will be outfitted with the best available odor control technology.

3. Transporters and Storage.

(a) Marijuana transporters are allowed to store in transit shipments of marijuana for short periods of time, not to exceed 30 days. Products may be temporarily stored either in secured vehicles/trailers or within an enclosed structure or warehouse.

4. Marijuana Businesses - The definitions contained in Titles 15, 16, and 50, MCA, shall apply to this Chapter except where the ordinance provides a different definition in Section 27-1803, or the context of this Chapter makes it clear that the statutory definition does not apply.

E. Amend section 27-1402.B to add language as follows:

27-1402.B. Sign permit required.

1. New signs. A sign permit shall be required to erect, place, modify the size or shape, allow the continued placement, or convert any portion of a sign, including a conversion from temporary to permanent or from non-EMD to EMD unless otherwise provided in this article. Permits submitted for marijuana businesses shall provide proof of compliance with state sign regulations along with a completed city sign permit application.

2. Existing signs. Changes to existing signs that are made nonconforming by the 2020 zoning code update require a sign permit and are subject to section 27-

1403, Nonconformities. Changes to existing signs for marijuana businesses shall comply with state sign regulations.

3. Sign permit exemptions. The following activities shall not require a sign permit, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this zoning code or any other law or ordinance, including the city's adopted building code(s), and any related state sign regulations:

(a) Changing of the advertising copy or message on an existing approved painted or printed sign, marquee, changeable copy sign or a similar approved sign whether electrical, illuminated, electronic changing message display or non-illuminated painted message which are all specifically designed for the use of replaceable copy;

(b) Painting, repainting, cleaning or other normal maintenance and repair of a sign not involving structural changes. Replacement of or a change of a plastic sign face will be included as an exempt operation;

(c) Changes in the content of show window displays and permitted temporary signs.

F. Amend Section 27-1402.C to add the following language:

Section 27-1402.C.4

Exemptions. The following signs, items, and operations shall not require a sign permit, but shall be undertaken in conformance with this article, and all adopted building code(s):

.....

4. Public signs.

(a) Official public signs approved by a governmental body with jurisdiction over issues such as traffic safety, pedestrian safety, schools, railroads, or public notice, as well as signs required by the Manual of Uniform Traffic Controls.

(b) Signs and notices required to be displayed, maintained, or posted by law or by any court or governmental order, rule, or regulation, including any notices required for marijuana businesses.

(c) Government signs and notices provided for the convenience and safety of the community.

(d) Bench signs. Bench signs on benches located on active, fixed bus routes, controlled or authorized by the Billings MET. The benches must be located on active, fixed routes. Signs shall be removed from or prohibited on benches located in prohibited sign locations or where the bench is not associated with an active, fixed route.

G. Amend Section 27-1803.M to add the following language:

M: *M terms:* Add the following after "Manufacturing" terms and before "Marquee"

Marijuana: means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

Marijuana Cultivation: means a location where growing, harvesting and drying marijuana occurs and where marijuana is packaged and labelled in a natural or naturally dried form that has not been converted, concentrated, or compounded.

Cultivated marijuana is for sale to dispensaries but not for direct sale to consumers.

Marijuana Dispensary – Medical Use: means a location or premises from which a medical marijuana provider or marijuana products provider is approved by the state and local government to dispense marijuana or marijuana products solely to a registered cardholder.

Marijuana Dispensary – Adult Use: means a location or premises from which an adult-use provider or adult-use marijuana products provider is approved by the state and local government to dispense marijuana or marijuana products to a consumer.

Marijuana Dispensary – Combined Use: means a premises from which a medical marijuana provider or medical marijuana products provider and adult-use provider or adult-use marijuana products provider is approved by the state and local government to dispense marijuana or marijuana products to a registered cardholder or to a consumer.

Marijuana Product: means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

Marijuana Processing/Manufacturing: means the conversion or compounding of marijuana into marijuana products, marijuana concentrates, or marijuana extracts and packaging, repackaging, labeling, or relabeling marijuana products for sale to dispensaries but not for direct sale to consumers.

Marijuana Testing Laboratory: means a location that provides 1) testing of representative samples of marijuana and marijuana products and 2) provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample.

Marijuana Transportation: means the packaging, transportation and delivery of processed marijuana, or marijuana products to or from marijuana dispensaries, testing laboratories, or cultivation facilities. This definition does not include any transportation from a dispensary to its consumers or cardholders.

Y: Y Terms Add the following after “Yard sign” terms and before “Youth foster home”

Youth Center: means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, or social service teenage club facilities. Examples, of youth centers are Boys and Girls Clubs, Audubon Centers, zoos, children’s museums and similar facilities.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading _____, 2021

PASSED, ADOPTED AND APPROVED on second reading _____, 2021.

CITY OF BILLINGS:

BY: _____
William A. Cole, Mayor

ATTEST:

BY: Denise Bohlman, City Clerk
Marijuana Zoning Regulations