

## COMMISSIONER MEETINGS

All meetings take place in the Commissioners Conference Room (3107)  
located in the Stillwater Building @ 316 North 26th Street (3rd Floor)  
and are open to the public unless otherwise noted

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MONDAY - APRIL 29, 2024

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**8:15 Calendar**

**8:30 Department Meetings**

1. **Human Resources**
  2. **Finance**
  3. **Legal/Litigation**
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**2:00 COMMISSIONERS DISCUSSION**

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**PLEDGE**

**DEPARTMENTS**

1. **City of Billings** - Stillwater Building Construction and Operations Update
2. **Kody Christensen** - Downtown Billings & MAAP Program Update
3. **Elections** -
  - a. Election Judge Appointments for June, 2024
  - b. Ballot Tabulation Policy
  - c. Election Record Maintenance and Disposal
  - d. Short Term Lease at Wells Fargo Building
4. **Finance - James Matteson** - Purchasing Update on Courthouse Parking Lot; Metra Arena Internal Sewer Lines, Cedar Hall Water Line
5. **Public Works** -
  - a. Junction City Memorial Park (Custer) - Delivered Sand Donation Request
  - b. Abandonment of a portion of 56th St W
  - c. Abandonment of a portion of Rosebud Lane

**COMMISSIONERS**

1. Proclamation - National Therapy Animal Day
2. Commissioner Board Reports

**PUBLIC COMMENTS ON COUNTY BUSINESS**

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**TUESDAY – April 30, 2024**

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**9:15 Agenda Setting**

**9:30 COMMISSIONERS BOARD MEETING**

B.O.C.C Monday Discussion

1.

Meeting Date: 04/29/2024

Title: City of Billings - Stillwater Building Construction and Operations Update

Submitted By: Erika Guy

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TOPIC:

**City of Billings** - Stillwater Building Construction and Operations Update

BACKGROUND:

NA

RECOMMENDED ACTION:

Discuss

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Attachments

City of Billings

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# NEW CITY HALL RENOVATION

MAY 2024 UPDATE



PHOTO BY PAUL WHITING



# CONSTRUCTION SCHEDULE UPDATE

Construction activities for the month of May 2024 entail the following:

- **MEP**
  - Air handler install on 1<sup>st</sup>
  - Chiller replacement
  - Generator install
- **Finishes**
  - ACT on 2<sup>nd</sup> and 1<sup>st</sup>
  - Carpet install on 2<sup>nd</sup>
  - Courtroom ceilings
  - Tile flooring in toilet rooms on 1<sup>st</sup>
- **County Impacts**
  - No electrical shut-downs scheduled

B.O.C.C Monday Discussion

2.

Meeting Date: 04/29/2024

Title: Kody Christensen - Downtown Billings & MAAP Program Update

Submitted By: Erika Guy

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TOPIC:

**Kody Christensen** - Downtown Billings & MAAP Program Update

BACKGROUND:

NA

RECOMMENDED ACTION:

Discuss

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B.O.C.C Monday Discussion

3. a.

Meeting Date: 04/29/2024

Title: Election Judge Appointments

Submitted For: Katherine Aldrich, Election Administrator

Submitted By: Katherine Aldrich, Election Administrator

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**TOPIC:**

Election Judge Appointments for June, 2024

**BACKGROUND:**

Section 13-4-101, MCA, provides that the Board of County Commissioners is required to appoint election judges at least 30 days before the primary election in even-numbered years.

**RECOMMENDED ACTION:**

Discuss

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**Attachments**

Resolution Appointing Election Judges

Election Judge Attachment 1

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**YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS**

Resolution No. 24- (NUMBER)

**A RESOLUTION APPOINTING ELECTION JUDGES**

WHEREAS, 13-4-101, MCA, provides that the Board of County Commissioners is required to appoint election judges at least 30 days before the primary election in even-numbered years and each of Yellowstone County’s 59 precincts requires at least three election judges; and

WHEREAS, each election judge must be a qualified registered elector of the county and must attend a training class;

WHEREAS, each of the electors designated for appointment has attended a training class conducted by the Election Administrator and has otherwise met the prerequisites for being appointed as an election judge in Yellowstone County;

WHEREAS, Yellowstone County requires a sufficient number of election judges to serve in various capacities required by Title 13 of the Montana Code Annotated and as determined by the Election Administrator and also to form a reserve pool of election judges who are ready to serve if a vacancy occurs;

THEREFORE, BE IT RESOLVED, by the Yellowstone County Board of County Commissioners that the individuals provided for in Attachment 1 are hereby appointed as election judges for Yellowstone County and they shall further continue to serve as provided in 13-4-103, MCA;

BE IT FURTHER RESOLVED, that the Yellowstone County Election Administrator is directed to organize the appointed election judges into election boards and positions required by Title 13 of the Montana Code Annotated necessary for the conduct of elections on or after June 1, 2024, and as further determined by the Election Administrator and into a reserve pool of election judges. The Election Administrator shall ensure, to the extent feasible, representation by individuals of at least two different party affiliations on any election board and shall take into account such other considerations as appropriate, such as experience, availability for upcoming elections, home precincts, familiarity with particular polling places, travel distance to designated polling places, and individual assignment preferences. The Election Administrator may augment the list of election judges with further appointments as provided in 13-4-102(4), MCA.

Passed and Adopted on the 30th day of April, 2024.

BOARD OF COUNTY COMMISSIONERS  
YELLOWSTONE COUNTY, MONTANA

\_\_\_\_\_  
John Ostlund, Chair

\_\_\_\_\_  
Mark Morse, Member

\_\_\_\_\_  
Donald W. Jones, Member

ATTEST:

\_\_\_\_\_  
Jeff Martin, Clerk and Recorder

**Attachment**

Attachment 1 – List of Election Judge Appointees

ATTACHMENT 1

Adamson, Rodney  
Allen, George  
Allen, Laurie  
Allison, Ellis  
Anderson, Cheri  
Anderson, Christine  
Anderson, LaVonne  
Andre, John  
Andre, Vicki  
Armstrong, Gary  
Armstrong, Rosemary  
Armstrong, Melvin  
Ascheman, Diane  
Atherton, Parris  
Awner, Adela  
Ayre, Bonnie  
Babovich, Laura  
Baeten, Rita  
Baeten, William  
Bankston, Terry  
Barndt, Angie  
Barnea, Lizbeth  
Barta, Sandra  
Baumann, Frederick (Bill)  
Baune, Corrine  
Beeter, Nancy  
Bensing, Beverly  
Benson, Rod  
Berens, Joseph  
Berens, Laura  
Berg, Lynda  
Bierschwale, David  
Bissell, Gary  
Blatz, Laura  
Blee, Juanita  
Bodden, Stephanie  
Bodden, Steven  
Bode, Heidi  
Bomgardner, Leah  
Bowling, Tammy  
Bradley, Colleen  
Bredehoft, William  
Brockie, Michael  
Brown, Amanda  
Brown, Bernadette  
Brown, Nancy

Brown, Sheila  
Buckman, Lisa  
Burroughs, Karen  
Butler, William  
Caddell, Carlee  
Callen, Carol  
Campbell, Bonnie  
Carter, David  
Celix, Juanita  
Choriki, Danny  
Christensen, Tracy  
Clancy, Ann  
Clarín, Donald  
Clark, Claudia  
Clawson, Linda  
Cluff, Peggy  
Connaghan, Beth  
Countway, Thomas  
Cox, Gareld  
Cox, Phillip  
Crabtree, Jonathan  
Craig, Morgan  
Crouse, James  
Crowley, Rose  
Curtis, Dan  
Damm, Carol  
Daniel, Kendra  
Daubert, Bev  
Davis, Christopher  
Davis, Donna  
Deans, William  
Decker, Kristie  
Dedmore, Rosalie  
Demetriades, Larry  
Deschner, Jane  
Dibble, Edith  
Dibble, Gregory  
Donges, Kathy  
Doornek, Erica  
Downing, Michael  
Downing, Nancy  
Dunning, Sandra  
Dutcher, William  
Dwyer, Renee  
Egan, Carrie  
Egge, Shelly

Eiker, Joseph  
Eiker, Susan  
Eldredge, Bonnie  
Elliott, Joyce  
Elrod, Larry  
Emett, Michael  
Engebretson, Bob  
Ereth, Kenneth  
Evans, Deanna  
Evans, Steven  
Everard, Carolyn  
Ewalt, Kent (Roland)  
Fannon, Robert  
Farrand, Grace  
Felten, John  
Fenner, Sherry  
Fitch, Cindie  
Fitzgerald, Catherine  
Flynn, Joan  
Forrette, Candace  
Frank, Douglas  
Franson, Linda  
Fraser, Scott  
Fulgham, Judy  
Fulgham, Scott  
Gallagher, Margaret  
Garrett, Bonnie Rae  
Gatzemeier, Gwen  
Geigle, Georgia  
Genger, Connie  
Gentrup, Elizabeth  
Gergen, Brent  
Goerig, George  
Gordon, Joann  
Granot Jr, Daniel, Lee  
Grav, Bethany  
Grav, Jamie  
Gray, Kathleen  
Gray, Steve  
Green, Karen  
Green, Rick  
Grinde, Wanda  
Grismer, Helen  
Gunn, Barbara  
Gutierrez, Lucais  
Hall, Ann



ATTACHMENT 1

Halverson, Elizabeth	Keller, Marvin	Marek, Mary
Hannah, Karen	Kelly, Corrine	Martinson, Patricia
Hansen, Jay	Kelly, James	Marsh, Gary
Hanson, John "Jack"	Kessler, Gerald	Marsh, Tami
Harley, Dwight	Kim, Justin	Martin, Cheryl
Harn, Patricia	Kimmerle, Lauri	Marullo, Joseph
Harper, Simon	Klanke, Jim	Mateel, Susan
Harrington, Lynn	Klatt, David	Maurer, Marlene
Harris, Mary Anne	Krank, Mary	McCave, Dennis
Hastings, Brenda	Kreiman, Edward	McCracken, Joan
Hawk, Janet	Kreiman, Sue	McMullin, Robert
Hayter, Charles	Krum, Marlene	McNally, Mary
Hayter, Debra	Kudrna, Bev	McNew, Tamara
Hedrick, Deborah	Kuhrbb, Kari	McRae, Murdo
Henderson, Forrest	Lambert, Janet	Mick, Carol
Hennen, Mary Beth	Lance, Calvin	Miller, Paula
Hernandez, Maria	Lannen, Terri	Miller, Sharon
Herr, Kathleen	LaPerle, Kim	Miller, Vickie
Heupel, Myron	Latimore, Jerry	Modrow, Marie "Leslie"
Hines, Marian	Leach, Carmen	Moffet, Louis
Holeman, Patricia	Leon, Elias	Moody, Logan
Holland, Diana	Leon, Monica	Moots, Michael
Honaker, Marcia	Larson, Melody	Montiero, Dom
Hopper, Karen	Laughlin, Susan	Moran, Jane
Hostettler, James	Left Hand, Leslie	Moran, Michael
Hughes, Curtis	Lewis, Phillip	Morgenstern, Maryann
Hughes, Margi	Lien, Linda	Morrell, Dianne
Hurlburt, Marcia	Linger, Scott	Munson, Deborah
Huszti, Paul	Llewellyn, Elaine	Murdock, Merita
Hutchinson, Connie	Loff, Linda	Murphy, Janet
Ibarra, Jr. Blas	Lohof, Arle	Murphy, Linda
Icenoggle, Luz	Lohof, Armand	Murray, Mardelyn
Idstrom, Leslie	Loken, Patricia	Muth, Mary Jane
Isern, Jennifer	Lombardy, Barbara	Neva, Erik
Ivie, Jeff	Lowe, Russ	Newell, Dean
Jacobsen, James	Lowe, Shilloy	Newstrom, Darlene
Janecek, Claudia	Mackenzie-Sanders, Amy	Nicholson, Vonda
Johnson, Douglas	Mackey, Steve	Nicholson, William
Johnson, Eleanor	Macki, Michael	Norwood, Ann
Johnson, Kristie (Kristen)	Macki, Rosemary	O'Connor, William
Johnson, Richard	Maddock, Susan	O'Donnell, Elaine
Jones, Linda	Mahon, Mike	Oblander, Joanna
Jorgenson, Sheila	Maier, Dennis	Oedekoven, Melinda
Judisch, Barbara	Maier, Susan	Olson, Faith
Katolas, Grace	Maine, Henry	Olson, Harold
Keeney, Sean	Malnaa, DeAnne	Olson, Nikki
Kegel, Clinton	Malnaa, Monte	Osik, Warren

ATTACHMENT 1

Ottman, Sandy	Romine, Thomas	Stocker, Maurinda
Ottolino, David	Rose, Todd	Stockman, Nancy
Overturf, Terry	Roth, Rene	Stookey, Juliette
Moore, Ruth	Rowe, Martha	Struckman, Daniel
Morse, Jeanne	Rowen, Teresa	Struckman, Penny
Mothershead, Kristine	Rowen, Valerie	Sunderland, Paul
Painschab, Sheila	Ruff, Della	Swanson, Jacquelynn
Pals, David	Ruff, Dennis	Swords, Lloyd
Pals, Karen	Ryan, Lori	Templeman, Carol
Paulson, Steve	Scally, Katherine	Theisen, Gary
Paxinos, Thomas	Scheidler, Amanda	Thomas, Diana
Pence, Nancy	Scheidler, Roger	Thompson, Donald
Penrod, Wendy	Scheie, Holly	Tizono, Sherry
Peter, Jay	Schey, Joan	Toavs, Jeffrey
Peterson, Linda	Schroeder, Lourdes	Tripp, John
Peterson, Norma	Scott, Boni	Tucker, Renee
Pickens, Francis	Scott, Parker	Turnquist, William
Pickens, Linda	Scovell, Karon	Ullman, Elizabeth
Pierce, Herbert	Sears, Allison	VanDyk, Jane
Pope, Sonya	Sears, Genelle	Vender, Carl
Popelka, Pam	Seibert, Herman	Vickery, Bonita
Prine, Mark	Selby, Tami	Vogel, Denise
Propp, Patty	Shaffer, Laura	Vogel, Michael
Pugh, Ingeborg	Sheehy, Eileen	Walker, Wanda
Purinton, Pamela	Shelton, Pamela	Walton, Susan
Pyburn, Dennis	Siegel, Malinda	Waples, Ross
Pyburn, Evelyn	Simon, Scott	Ward, Stephen
Raines, Virginia	Sinclair, Dayle	Weinberg, Susan
Ramage, Kathy	Sire, Don	Welhaven, Diane
Ramirez, Lori	Sire, Richard	Wenrich, Kelly
Rankin, Sam	Sivertson, Theresa	Wessell, Anna
Ray, Terence (Terry)	Smillie, John	West, Dana
Redman, Alan	Smith, Beth	Whalen, Robert
Redman, Dee Ann	Smith, Scott	Wiley, Robert
Reichert, Carrie	Smith, T.J.	Wilnau, Christine
Reynolds, Mary	Smith, William	Wood, Douglas
Richardson, Kristen	Sorenson, Vonda	Woodard, Steven
"Kelli"	Spotted Elk, Lane	Woodworth, Jayda
Rickard, Colleen	Stabio, Becky	Worn-Wilkerson,
Roat, Brian	Stanhope, Lizabeth	Friederike
Roberts, Cynthia	Starkweather, Lorraine	Wright, Melissa
Roberts, John	Steilen, Sherri	Wulfekuhle, Carol
Robison, Levi	Stene, Bill	Zable, Lillie
Rochon, Kerrie	Stene, Samuel	Zapata, Diego
Rockhold, Tamara	Steuber, John	Zink, Ed
Rogers, Jessie	Stimpson, Karen	

B.O.C.C Monday Discussion

3. b.

Meeting Date: 04/29/2024

Title: Tabulation Policy

Submitted For: Katherine Aldrich, Election Administrator

Submitted By: Katherine Aldrich, Election Administrator

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**TOPIC:**

Ballot Tabulation Policy

**BACKGROUND:**

This policy reflects the county's choice to use machine tabulators and provides the requirements for what occurs when a ballot cannot be read by machine tabulation or an elector otherwise requests hand tabulation.

**RECOMMENDED ACTION:**

Discuss

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**Attachments**

Tabulation Policy

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# YELLOWSTONE COUNTY ELECTION OFFICE

## TABULATION POLICY

Pursuant to § 13-15-206, MCA, a county must count its ballots in a uniform manner. A county may choose to either conduct a manual hand count of ballots in their entirety or use a machine tabulator to count the ballots in their entirety. Once automated tabulation is chosen as the method of counting, then “if a vote is recognized and counted by the system, it is a valid vote[.]” and “if a vote is not recognized and counted by the system, it is not a valid vote.” A ballot that is not able to be run through the tabulator must be transcribed to “...a new ballot that can be processed by the voting system.”

Yellowstone County tabulates election ballots by machine. Therefore, except as provided by 13-15-209, MCA, Yellowstone County shall count all ballots using machine tabulation. In accordance with § 13-15-206, MCA, Yellowstone County shall transcribe a ballot that is unable to be processed by the voting system to a new ballot that is able to be processed by the voting system.

Passed and adopted this 30<sup>th</sup> day of April, 2024.

BOARD OF COUNTY COMMISSIONERS  
YELLOWSTONE COUNTY, MONTANA

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John Ostlund, Chair

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Donald W. Jones, Member

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Mark Morse, Member

B.O.C.C Monday Discussion

3. c.

Meeting Date: 04/29/2024

Title: Election Record Maintenance and Disposal

Submitted For: Katherine Aldrich, Election Administrator

Submitted By: Katherine Aldrich, Election Administrator

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**TOPIC:**

Election Record Maintenance and Disposal

**BACKGROUND:**

Certain election records are ripe for disposal.

**RECOMMENDED ACTION:**

Discuss

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**Attachments**

Election Record Maintenance and Disposal

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**RECORDS DESTRUCTION DOCUMENT (RM88)**

NO.

PAGE 1 OF 2 PAGES

**1. AGENCY NAME AND DIVISION/PROGRAM:**

Yellowstone County Elections

**2. AGENCY CONTACT:**

NAME: KV Aldrich

PHONE #: (406)256-2740

EMAIL: elections@yellowstonecountymt.gov

**3. NOTICE OF INTENTION:** The schedule records listed in Item 5 are to be disposed of in the manner checked below (specify only one). Delete Incinerate Shred as Classified Toss without Restriction Other: Explain**4. SUBMITTED BY:** I hereby certify that the records to be disposed of are correctly represented below, that any audit requirements or **Offer to the State Historical Society Archives** has been fully justified, and that further retention is not required for any litigation pending or imminent.

SIGNATURE: /s/ K.V. Aldrich

NAME AND TITLE: K.V. Aldrich

DATE: 04/23/2024 (for destruction after 5/2/24)

**5. LIST OF RECORD SERIES****NOTE: Attach any inventories or Excel spreadsheets to this form to help validate records destroyed.**

a. Retention Schedule Number	b. Item number listed on Retention Schedule	c. Record Series Title	d. Retention in months/years	e. Inclusive Dates	f. Volume in Cubic Feet	g. Disposition Action and Date completed after Authorization
2	23	Campaign Finance Candidate Filing Documents C-1, 1A, 2, 3, 4, 5, 6, 7, 118, 118E C-2, 4, 6, 7, 7E, 3X, D-1	Term of Office	1996-2010	11.3	
3	20	Statewide Candidate Petition non-presidential 2022	1 year	2022	1.2	
3	21	Recall Petition (local) 2021	2 years	2021	.1	
3	18	Undeliverable ballots, resolution ballots	22 months	4/2022	1	
3	5	Audit Sheets	1 year	4/2022	1.3	
3	14	Seal logs	22 months	11/2018	.43	
2	23	Candidate forms C2 / C6 / C7	Term of office	2012	1	
3	20	Petition certification	2 YEARS	2016	2	

**6. DISPOSAL AUTHORIZATION:** Disposal for the above listed records is authorized. Any deletions or modifications are indicated.

Custodian/Records Manager

Name: John Ostlund, Chair Date:

Signature:

**7. DISPOSAL CERTIFICATE:** The above listed records have been disposed of in the manner and on the date shown in column g.

Name and Title:

Signature:



B.O.C.C Monday Discussion

3. d.

Meeting Date: 04/29/2024

Title: Wells Fargo Short-term Lease

Submitted For: Katherine Aldrich, Election Administrator

Submitted By: Katherine Aldrich, Election Administrator

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**TOPIC:**

Short Term Lease at Wells Fargo Building

**BACKGROUND:**

Short term lease at Wells Fargo Building

**RECOMMENDED ACTION:**

Discuss

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**Attachments**

Lease

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**MULTI-TENANT OFFICE  
LEASE AGREEMENT**

**WFC I, LLC,**

**as Landlord**

**and**

**The County of Yellowstone,  
as Tenant**

Wells Fargo Center Billings, MT

## OFFICE LEASE AGREEMENT

This Office Lease Agreement is made and entered into as of the Effective Date by and between WCF I, LLC, a Montana limited liability company, as Landlord, and The County of Yellowstone, a county of the State of Montana, as Tenant.

### DEFINITIONS

Capitalized terms used in this Lease have the meanings ascribed to them on the attached **EXHIBIT "A"**

### BASIC TERMS

The following Basic Terms are applied under and governed by the particular sections(s) in this Lease pertaining to the following information:

1. **Premises:** Suite 903, consisting of approximately 3,994 rentable square feet and located on the 9th floor of the Building. The land on which the Premises are located is described on **EXHIBIT "B"**. (See Section 1.1).
2. **Lease Term:** Commencing on the Commencement Date and terminating on November 30, 2024 (See Section 1.2)
3. **Delivery Date:** April 22, 2024.
4. **Commencement Date** April 22, 2024
5. **Basic Rent:**

<u>MONTHS</u>	<u>ANNUAL BASIC RENT PER RENTABLE SQUARE FOOT OF THE PREMISES</u>	<u>MONTHLY INSTALLMENTS</u>
Entire Term	N/A	\$4,071.00



(See Section 2.1).

**No renewal term**

6. **Improvement allowance:** \$0.00 per rentable square foot of the Premises.

7. **Property Manager/Rent Payment Address**

**The Management Group, Inc**  
**PO Box 1942**  
**Billings, MT 59103**

Attn: Aaron Sparboe

Telephone: 406-651-0603

Facsimile: 406-651-0604

8. **Address of Landlord for Notices:**

WFC I, LLC  
PO Box 1942  
Billings MT 59103

Attn: Aaron Sparboe

Telephone: 406-651-0603

Facsimile: 406-651-0604

9. **Tenant(s):**

The County of Yellowstone  
175 North 27th Street Suite 903  
Billings, MT 59101  
Attn: Yellowstone  
County Election Office  
Telephone:  
406-256-2740

**ARTICLE 1  
LEASE OF PREMISES  
AND LEASE TERM**

**1.1 Premises.** In consideration of the mutual covenants this Lease describes and other good and valuable consideration, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, upon and subject to the terms, covenants, and conditions set forth in this Lease. The rentable area of the Premises is the rentable area specified in the Basic Terms. Landlord determined the rentable area of the Premises substantially in accordance with BOMA Standards. If Landlord or Tenant (to Landlord's reasonable satisfaction) determines, in accordance with BOMA Standards, that the rentable area of the Premises differs from the rentable area specified in the Basic Terms, Landlord and Tenant will amend this Lease accordingly; provided, however, that any such amendment will operate prospectively only. Landlord and Tenant will not make any retroactive adjustments to Rent payments on account of any difference between the rentable area of the Premises specified in the Basic Terms and the rentable area of the Premises as may be determined after the date of this Lease.

**1.2 Term, Delivery and Commencement**

**1.2.1 Commencement and Expiration of Term.** The Term of this Lease is the period stated in the Basic Terms. The Term Commences on the Commencement Date and expires on November 30, 2024.

**1.2.2 Tender of Possession.** Landlord will use commercially reasonable efforts to tender possession of the Premises to Tenant on or before the Delivery Date, subject to Force Majeure and Tenant Delay. If Landlord is unable to tender possession of the Premises to Tenant on or before the Delivery Date for any reason beyond its reasonable control, this Lease will remain in full force and effect and Landlord is not liable to Tenant for any resulting loss or damage; provided, however, that unless the delay is caused by Tenant Delay, Landlord will appropriately adjust the Commencement Date and Rent Commencement Date.

**1.2.3 Commencement Date Memorandum.** Within a reasonable time after the Commencement Date, Landlord will deliver to Tenant the Commencement Date Memorandum with all blanks relating to dates completed with dates Landlord derives in accordance with this Lease. Tenant, within 10 days after receipt from Landlord, will execute and deliver to Landlord the Commencement Date Memorandum. Tenant's failure to execute and deliver to Landlord the Commencement Date Memorandum does not affect any obligation of Tenant under this Lease. If Tenant does not timely execute and deliver to Landlord the Commencement Date Memorandum, Landlord and any prospective purchaser or encumbrancer may conclusively rely on the information contained in the unexecuted Commencement Date Memorandum Landlord delivered to Tenant.

**1.2.4 Early Occupancy.** Tenant will not occupy the Premises before Substantial Completion without Landlord's prior written consent, which consent Landlord may grant, withhold, or condition in its sole and absolute discretion. If Landlord consents, Tenant, during the early occupancy period, may only install Tenant's furniture, fixtures and equipment in the Premises and must comply with and observe all terms and conditions of this Lease other than Tenant's obligation to pay Basic Rent.

1.3 [Intentionally Omitted]

**ARTICLE 2  
RENTAL AND OTHER PAYMENTS**

**2.1 Basic Rent.** Tenant will pay Basic Rent in monthly installments to Landlord, in advance without offset or deduction, commencing on the Rent Commencement Date and continuing on the first day of each and every calendar month after the Rent Commencement Date during the Term. Tenant will make all Basic Rent payments to Property Manager at the address specified in the Basic Terms or at such other place or in such other manner as Landlord may from time to time designate in writing. Tenant will make all Basic Rent payments without Landlord's previous demand, invoice, or notice for payment. Landlord and Tenant will prorate, on a per diem basis, Basic Rent for any partial month within the Term.

**2.2 Additional Charges.** Tenant shall pay for parking spots in the parking garage adjacent to the Building. Landlord has a bulk parking lease from the City of Billings and will direct bill Tenant for an agreed upon number of spaces. The initial rates for parking spots are \$35.00 per month per parking spot on the roof and \$65.00 per covered parking spot and are subject to change by the City of Billings.

**2.3 Delinquent Rental Payments.** If Tenant does not pay any installment of Basic Rent or the Basic Rent increased as provided for herein within three (3) Business Days after the date the payment is due, Tenant will pay Landlord an additional amount equal to the greater of (a) interest on the delinquent payment calculated at the Maximum Rate from the date when the payment was due through the date the payment is made, or (b) a late payment charge equal to 5% of the amount of the delinquent payment. Landlord's right to such compensation for the delinquency is in addition to all of Landlord's rights and remedies under this Lease, at law or in equity.

**2.4 Independent Obligations.** Notwithstanding any contrary term or provision of this Lease, Tenant's covenant and obligation to pay Rent is independent from any of Landlord's covenants, obligations, warranties, or representations in this Lease. Tenant will pay Rent without any right of offset or deduction.

**ARTICLE 3  
PERSONAL PROPERTY TAXES OF TENANT**

**3.1 Personal Property Taxes.** Tenant, prior to delinquency, will pay all taxes charged against Tenant's trade fixtures and other personal property. Tenant will use all reasonable efforts to have such trade fixtures and other personal property taxed separately from the Property. If any of Tenant's trade fixtures and other personal property are taxed with the Property, Tenant will pay the taxes attributable to Tenant's trade fixtures and other personal property to Landlord as a sum to be added to the Basic Rent.

**ARTICLE 4  
USE**

**4.1 Permitted Use.** Tenant will occupy and operate the Premises at all times during the Term and

will not vacate the Premises prior to the expiration of the Term without Landlord's prior written consent, which consent Landlord may grant or withhold in its sole and absolute discretion. Tenant will not use the Premises for any purpose other than general office purposes. Tenant will not use the Property or knowingly permit the Premises to be used in violation of any Laws or in any manner that would (a) violate any certificate of occupancy affecting the Property; (b) make void or voidable any insurance now or after the Effective Date in force with respect to the Property; (c) cause injury or damage to the Property or to the person or property of any other tenant on the Property; (d) Cause substantial diminution in the value or usefulness of all or any part of the Property (reasonable wear and tear excepted); or (e) constitute a public or private nuisance or waste. Tenant will obtain and maintain, at Tenant's sole cost and expense, all permits and approvals required under the Laws for Tenant's use of the Premises.

**4.2 Acceptance of Premises.** Tenant acknowledges that neither Landlord nor any agent, contractor, or employee of Landlord has made any representation or warranty of any kind with respect to the Premises, the Building, or the Property, specifically including, but not limited to, any representation or warranty of suitability or fitness of the Premises, Building, or the Property for any particular purpose. Tenant accepts the Premises, the Building and the Property in an "AS IS-WHERE IS" condition.

**4.3 Increased Insurance.** Tenant will not do on the Property or permit to be done on the Premises anything that will (a) increase the premium of any insurance policy Landlord carries covering the Premises or the Property; (b) cause a cancellation of or be in conflict with any such insurance policy; (c) result in any insurance company's refusal to issue or continue any such insurance in amounts satisfactory to Landlord; or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason of Tenant's operations in the Premises or use of the Property. Tenant, at Tenant's sole cost and expenses, will comply with all rules, orders, regulations, and requirements of insurers and of the American Insurance Association or any other organization performing a similar function. Tenant will reimburse Landlord, by increasing the Basic Rent with respect to any additional premium charges for such policy or policies resulting from Tenant's failure to comply with the provisions of this section.

**4.4 Laws/building Rules.** This Lease is subject and subordinate to all Laws. A copy of the current Building Rules is attached to this Lease as **EXHIBIT "E."** Landlord may amend the Building Rules from time to time in Landlord's sole and absolute discretion.

**4.5 Common Area.** Landlord grants Tenant the non-exclusive right, together with all other occupants of the Building and their agents, employees and invitees, to use the Common Area during the Term, subject to all Laws. Landlord, at Landlord's sole and exclusive discretion, may make changes to the Common Area. Landlord's rights regarding the Common Area include, but are not limited to, the right to (a) restrain unauthorized persons from using the Common Area; (b) place permanent or temporary kiosks, displays, carts or stands in the Common Area and lease the same to tenants and others; (c) temporarily close any portion of the Common Area (i) for repairs, improvements or Alterations, (ii) to discourage unauthorized use, (iii) to prevent dedication or prescriptive rights, or (iv) for any other reason Landlord deems sufficient in Landlord's judgment; (d) change the shape and size of the Common Area; (e) add, eliminate or change the location of any improvements located in the Common Area and construct buildings or other structures in the Common Area; and (f) impose and revise Building Rules concerning use of the Common Area.

**4.6 Signs.** Tenant shall have the right to place signage on its door, elevator lobby area and on the main floor directory at its own expense. Landlord must approve signage and shall organize signage installation for Tenant. The signs will conform to Landlord's sign criteria. Tenant will not install or permit to be installed in the Premises any other sign, decoration or advertising material of any kind that is visible from the interior or exterior of the Premises. Landlord may immediately remove, at Tenant's sole cost and expense, any sign, decoration or advertising material that violates this section.

## **ARTICLE 5 HAZARDOUS MATERIALS.**

**5.1 Compliance with Hazardous Materials Laws.** Tenant will not cause any Hazardous Material to be brought upon, kept, or used on the Property in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, or about the Property required for Tenant's use of the Premises and will notify Landlord of any and all Hazardous Materials Tenant brings upon, keeps, or uses on the Property (other than small quantities of office cleaning or other office supplies as are customarily used by Tenant in the ordinary course in a general office facility). On or before the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, will completely remove from the Property (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Tenant causes to be present in, on, under, or about the Property, Tenant will not take any remedial action in response to the presence of any Hazardous Materials in on, under, or about the Property, not enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Property, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene, and otherwise assert and protect Landlord's interest in the Property.

**5.2 Notice of Action.** Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Property that result from or in any way relate to Tenant's use of the Property immediately after receiving notice of the same: (a) any enforcement, clean-up, removal, or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claim made or threatened by any person relating to damage, contribution, liability, cost recover, compensation, loss, or injury resulting from or claimed to result from any Hazardous Material, and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings, or asserted violations, Tenant will also deliver to Landlord, as promptly as possible and in any event within five (5) Business Days after Tenant first receives or sends the same, copies of all Claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Premises or Tenants use of the Premises. Upon Landlord's written request, Tenant will promptly deliver to Landlord documentation acceptable to Landlord reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises. All such documentation will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord or Property Manager.

**5.3 Disclosure and Warning Obligations.** Tenant acknowledges and agrees that all reporting and



warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant's use of the Premises or Property are Tenant's sole responsibility, regardless of whether the Hazardous Materials Laws permit or require Landlord to report or warn.

**5.4 Indemnification.** Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord), protect, and hold harmless the Landlord Parties from and against any and all claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release, or management of Hazardous Materials in, on, under, upon, or from the Property (including water tables and atmosphere) resulting from or in any way related to Tenant's use of the Premises or Property. Tenant's obligations under this section include, without limitation and whether foreseeable or unforeseeable, (a) the costs of any required or necessary repair, clean-up, detoxification, or decontamination of the Property; (b) the costs of implementing any closure, remediation, or other required action in connection therewith as stated above; (c) the value of any loss of use and any diminution in value of the Property; and (d) consultants' fees, experts' fees, and response costs. The obligations of Tenant under this section survive the expiration or earlier termination of this Lease.

## **ARTICLE 6 SERVICES**

**6.1 Landlord's Obligations.** Landlord will provide the following services:

**6.1.1 Janitorial Service.** Janitorial services are the responsibility of Tenant. Janitorial as well as other Landlord cleaning services are not permitted in the Premises during the term of this Lease unless invited into the Premises by the County Election Administrator or its agents/representatives.

**6.1.2 Electrical Energy.** Electrical energy to the Premises for lighting and for operating office machines for general office use. Electrical energy will be sufficient for Tenant to operate personal computers and other equipment of similar low electrical consumption, but will not be sufficient for lighting in excess of 2 watts per square foot installed or for electrical convenience outlets in excess of 4 watts per square foot installed. Tenant will not use any equipment requiring electrical energy in excess of the above standards without receiving Landlord's prior written consent, which consent Landlord will not unreasonably withhold, but Landlord may condition its consent on Tenant paying all costs of installing the equipment and facilities necessary to furnish such excess energy and an amount equal to the average cost per unit of electricity for the Building applied to the excess use as reasonably determined either by an engineer selected by Landlord or submeter installed at Tenant's expense. Landlord will replace all lighting bulbs, tubes, ballasts and starters within the Premises at Tenant's sole cost and expense. Landlord will add such costs to the Basic Rent as incurred and Tenant will pay such costs as added to the Rent.

**6.1.3 Heating, Ventilation and Air Conditioning.** During Business Hours heating, ventilation, and air conditioning to the Premises sufficient to maintain, in Landlord's reasonable judgment, comfortable temperatures in the Premises. During other times,

Landlord will provide heat and air conditioning upon Tenant's reasonable advance notice (not less than 24 hours). Tenant will pay Landlord, as Additional Rent, for such extended service on an hourly basis at the prevailing rates Landlord reasonably establishes. If extended service is not a continuation of the service Landlord furnished during Business Hours, Landlord may require Tenant to pay of a minimum of 4 hours of such service, Landlord will provide air conditioning to the Premises based on standard lighting and general office use only.

**6.1.4 Water.** Hot and cold water from standard building outlets for lavatory, restroom, and drinking purposes.

**6.1.5 Elevator Service.** Elevator service to be used by Tenant in common with other tenants. Landlord may restrict Tenant's use of elevators for freight purposes to the freight elevator and to hours Landlord reasonably determines. Landlord may limit the number of elevators in operation at times other than Business Hours.

**6.2 Tenant's Obligations.** Tenant is solely responsible for paying directly to the applicable utility companies, prior to delinquency, all separately metered or separately charged utilities, if any, to the Premises or to Tenant. Except as provided in Section 6.1.2, Tenant will also obtain and pay for all other utilities and services Tenant requires with respect to the Premises (including, but not limited to, hook-up and connection charges).

**6.3 Other Provisions Relating Services.** No interruption in, or temporary stoppage of, any of the services this Article 6 describes is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any interruption or stoppage relieve Tenant from any obligation this Lease describes, render Landlord for damages, or entitle Tenant to any Rent abatement. Landlord is not required to provide any heat, air conditioning, electricity, or other service in excess of that permitted by voluntary or involuntary governmental guidelines or other Laws. Landlord has the exclusive right and discretion to select the provider of any utility or service to the Property and to determine whether the Premises or any other portion of the Property may or will be separately metered or separately supplied. Landlord reserves the right, from time to time, to make reasonable and non-discriminatory modifications to the above standards for utilities and services.

**6.4 Tenant Devices.** Tenant will not, without Landlord's prior written consent, use any apparatus or device in or about the Premises that causes substantial noise, odor, or vibration, Tenant will not connect any apparatus or device to electrical current or water except through the electrical and water outlets Landlord installs in the Premises.

## **ARTICLE 7 MAINTENANCE AND REPAIR**

**7.1 Landlord's Obligations** Except as otherwise provided in this Lease, Landlord will repair and maintain the following in good order, condition and repair; (a) the foundations, exterior walls and roof of the Building; and (b) the electrical, mechanical, plumbing, heating and air conditioning systems, facilities, and components located in the Building and used in common by all tenants of the Building. Landlord will also maintain and repair the Common Area (subject to all other terms and conditions of this Lease relating to Common Area) and the windows, doors, plate glass and the

exterior surfaces of walls that are adjacent to Common Area. Basic Rent will not be reduced, nor will Landlord be liable, for loss or injury to or interference with Tenant's property, profits or business arising from or in connection with Landlord's performance of its obligations under this section.

## **7.2 Tenant's Obligations.**

**7.2.1 Maintenance of Premises.** Except as otherwise specifically provided in this Lease, Landlord is not required to furnish any services or facilities, or to make any repairs or Alterations, in, about or to the Premises or the Property. Except as specifically described in Section 7.1, Tenant assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises. Except as specifically described in Section 7.1, Tenant, at Tenant's sole cost and expense, will keep and maintain the Premises (including, but not limited to, all nonstructural interior portions, systems and equipment; interior surfaces of exterior walls; interior moldings, partitions and ceilings; and interior electrical, lighting and plumbing fixtures) in good order, condition and repair, reasonable wear and tear and damage from insured casualties excepted. Tenant will keep the Premises in a neat and sanitary condition and will not commit any nuisance or waste in, on or about the Premises or the Property. If Tenant damages or injures the Common Area or any part of the Property other than the Premises, Landlord will repair the damage and Tenant will pay Landlord for all uninsured costs and expenses of Landlord in connection with the repair as a sum to be added to Rent. Tenant is solely responsible for and, to the fullest extent allowable under the Laws, will release, indemnify, protect and defend Landlord against (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from, the cost of repairing, and any Claims resulting from, any penetrations or perforations of the roof or exterior walls of the Building Tenant causes. Tenant will maintain the Premises in a first-class and fully operative condition. Tenant's repairs will be at least equal in quality and workmanship to the original work and Tenant will make the repairs in accordance with all laws.

**7.2.2 Alterations Required by Laws.** If any governmental authority requires any Alteration to the Building or the Premises as a result of Tenant's particular use of the Premises or as a result of any Alteration to the Premises made by or on behalf of Tenant, or if Tenant's particular use of the Premises subjects Landlord or the Property to any obligation under any Laws, Tenant will pay the cost of all such Alterations or the cost of compliance, as the case may be. If any such Alterations are Structural Alterations, Landlord will make the Structural Alterations; provided, however, that Landlord may require Tenant to deposit with Landlord an amount sufficient to pay the cost of the Structural Alterations (including, without limitation, reasonable overhead and administrative costs). If the alterations are not Structural Alterations, Tenant will make the Alterations at Tenant's sole cost and expense in accordance with Article 8.

## ARTICLE 8 CHANGES AND ALTERATIONS

**8.1 Landlord Approval.** Tenant will not make any Structural Alterations to the Premises or any Alterations to the Common Area. Tenant will not make any other Alterations without Landlord's prior written consent, which consent Landlord will not unreasonably withhold or delay; provided, however, that Landlord may impose conditions in its reasonable discretion. Along with any request for Landlord's consent, Tenant will deliver to Landlord plans and specifications for the Alterations and names and addresses of all prospective contractors for the Alterations. If Landlord approves the proposed Alterations, Tenant, before commencing the Alterations or delivering (or accepting delivery of) any materials to be used in connection with the Alterations, will deliver to Landlord for Landlord's reasonable approval copies of all contracts, proof of insurance required by Section 8.2, copies of any contractor safety programs, copies of all necessary permits and licenses, and such other information relating to the Alterations as Landlord reasonably requests. Tenant will not commence the Alterations before Landlord, in Landlord's reasonable discretion, approves the foregoing deliveries. Tenant will construct all approved Alterations or cause all approved Alterations to be constructed (a) promptly by a contractor Landlord approves in writing in Landlord's sole and absolute discretion, (b) in a good and workmanlike manner, (c) in compliance with all Laws, (d) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises and any other body exercising similar functions, and (e) in full compliance with all of Landlord' rules and regulations applicable to third party contractors, subcontractors and suppliers performing work at the Property.

**8.2 Tenant's Responsibility for Cost and Insurance.** Tenant will pay the cost and expense of all Alterations, including, without limitation, a reasonable charge for Landlord's review, inspection, and engineering time, and for any painting, restoring, or repairing of the Premises or the Building the Alterations occasion. Prior to commencing the Alterations, Tenant will deliver the following to Landlord in form and amount reasonably satisfactory to Landlord: (a) demolition (if applicable) and payment and performance bonds, (b) builder's "all risk" insurance in an amount at least equal to the replacement value of the Building (excluding the Land, foundation, grading costs and excavation costs), (c) evidence that Tenant and each of Tenant's contractors have in force liability insurance insuring against construction related risks, in at least the form, amounts and coverages required of Tenant under Article 10 and (d) copies of all applicable contracts and of all necessary permits and licenses. The insurance policies described in clauses (b) and (c) of this section must name Landlord, Landlord's lender (if any) and Property Manager as additional insureds.

**8.3 Construction Obligations and Ownership.** Landlord may inspect construction of the Alterations. Immediately after completing the Alterations, Tenant will furnish Landlord with contractor affidavits, full and final lien waivers and receipted bills covering all labor and materials expended and used connection with the Alterations. Tenant will remove any Alterations Tenant constructs in violation of this Article 8 within 10 days after Landlord's written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations Tenant makes or installs (including all telephone, computer and other wiring and cabling located within the walls of and outside the Premises, but excluding Tenant's movable trade fixtures, furniture and equipment) become the property of Landlord upon installation and, unless Landlord requires



Tenant to remove the Alterations, Tenant will surrender the Alterations to Landlord upon the expiration of earlier termination of this Lease at no cost to Landlord.

**8.4 Liens.** Tenant will keep the Property free from any construction, materialmens', designers', or other liens arising out of any work performed, Materials furnished or obligations incurred by or for Tenant or any person or entity claiming by, through, or under Tenant. Tenant will notify Landlord in writing 30 days prior to commencing any Alterations in order to provide Landlord the opportunity to record and post notices of non-responsibility or such other protective notices available to Landlord under the Law. If any such liens are filed and Tenant, within 15 days after such filing, does not release the same of record or provide Landlord with a bond or other surety satisfactory to Landlord protecting Landlord and the Property against such liens, Landlord, without waiving its rights and remedies based upon such breach by Tenant and without releasing Tenant from any obligation under this Lease, may cause such liens to be released by any means Landlord deems proper, including, but not limited to, paying the claim giving rise to the lien or posting security to cause the discharge of the lien. In such event, Tenant will reimburse Landlord, as a sum to be added to Basic Rent, for all amounts Landlord pays including, without limitation, reasonable attorney's fees and costs.

**8.5 Indemnification.** To the fullest extent allowable under the Laws, Tenant will release, indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties and the Property from and against work performed, materials furnished, or obligations incurred by or for Tenant or any person or entity claiming by, through or under Tenant.

## ARTICLE 9

### RIGHTS RESERVED BY LANDLORD

**9.1 Landlord's Entry.** Landlord and its authorized representatives may at all reasonable times and upon reasonable notice to Tenant enter the Premises to: (a) inspect the Premises; (b) show the Premises to prospective purchaser, mortgagees, and tenants; (c) post notices of non-responsibility or other protective notices available under the Laws; or (d) exercise and perform Landlord's rights and obligations under this Lease. Landlord, in the event of any emergency, may enter the Premises without notice to Tenant. Landlord's entry into the Premises is not to be construed as a forcible or unlawful entry into, or detainer of, the Premises or as an eviction of Tenant from all or any part of the Premises. Tenant will also permit Landlord (or its designees) to erect, install, use, maintain, replace and repair pipes, cables, conduits, plumbing and vents, and telephone, electric and other wires or other items, in, to and through the Premises if Landlord determines that such activities are necessary or appropriate for properly operating and maintaining the Building. Except in the case of emergency as provided above, Landlord agrees that at all times during entry onto the Premises by Landlord and its authorized representatives that they shall be chaperoned by the County Election Administrator or its agents/representatives. In addition, Landlord agrees that upon entry onto the Premises that Landlord or its authorized representatives shall sign visitor logs indicating date/time and reason for entry.

**9.2 Control of Property.** Landlord reserves all rights respecting the Property and Premises not specifically granted to the Tenant under this Lease, including, without limitation, the right to: (a) change the name of the Building; (b) designate and approve all types of signs, window coverings, internal lighting and other aspects of the Premises and its contents that may be visible from the exterior

of the Premises; (c) grant any party the exclusive right to conduct any business or render any service in the Building, provided such exclusive right to conduct any business or render any service in the Building does not prohibit Tenant from any permitted use for which Tenant is then using the Premises; (d) prohibit Tenant from installing vending or dispensing machines of any kind in or about the Premises other than those Tenant installs in the Premises solely for Tenant's employees; (e) close the Building after Business Hours, except that Tenant and its employees and invitees may access the Premises after Business Hours in accordance with such rules and regulations as Landlord may prescribe from time to time for security purposes; (f) install, operate and maintain security systems that monitor, by closed circuit television or otherwise, all persons entering or leaving the Building; (g) install and maintain pipes, duct, conduits, wires and structural elements in the Premises that serve other parts or other tenants of the Building; and (h) retain and receive master keys or pass keys to the Premises and all doors in the Premises. Notwithstanding the foregoing, or the provision of any security-related services by Landlord, Landlord is not responsible for the security of persons or property on the Property and Landlord is not and will not be liable in any way whatsoever for any breach of security not solely and directly caused by the willful misconduct of Landlord, its agents or employees.

**9.3 Lock Box Agent/Rent Collection Agent.** Landlord, from time to time, may designate a lock box collection agent or other person to collect Rent. In such event, Tenant's payment of Rent to the lock box collection agent or other person is deemed to have been made (a) as of the date the lock box collection agent or other person receives Tenant's payment (if the payment is not dishonored for any reason); or (b) if Tenant's payment is dishonored for any reason, the date Landlord or Landlord's agent collects the payment. Neither Tenant's payment of any amount of Rent to the lock box collection agent or other person nor Landlord's or Landlord's agent's collection of such amount if the payment is dishonored constitutes Landlord's waiver of any default by Tenant in the performance of Tenant's obligations under this Lease or Landlord's waiver of any of Landlord's rights or remedies under this Lease. If Tenant pays any amount to the lock box collection agent or other person other than the actual amount due Landlord, then Landlord's or Landlord's agent's receipt or collection of such amount does not constitute an accord and satisfaction, Landlord is not prejudiced in collecting the proper amount due Landlord and Landlord may retain the proceeds of any such payment, whether restrictively endorsed or otherwise, and apply the same toward amounts due and payable by Tenant under the Lease.

**9.4 Space Planning Substitution.** Upon not less than 45 days prior written notice to Tenant, Landlord may relocate Tenant to other space of comparable size (and substantially identical quality improvements) within the Building. Landlord will move or pay for moving Tenant's personal property and equipment to the new space and will reimburse Tenant for reasonable, documented out-of-pocket costs Tenant incurs in connection with the relocation. Prior to or concurrently with the relocation, Landlord will prepare, and the parties will execute, an amendment to this Lease to evidence the relocation and make any necessary changes to the Basic Terms resulting from the relocation. Notwithstanding the terms and conditions found in Section 9.4 Landlord agrees that relocation, if at all, will not occur during the Federal Primary Election (from the commencement of this Lease through June 15, 2024 or during the Federal General Election period, October 8, 2024 through November 15, 2024.

## **ARTICLE 10 INSURANCE**

**10.1 Tenant's Insurance Obligations.** Tenant, at all times during the Term and during any early

occupancy period, at Tenant's sole cost and expense, will maintain the insurance this Article 10 describes.

**10.1.1 Liability Insurance.** Pursuant to MCA 2-9-108, Limitation on Governmental Liability for Damages in Tort, Tenant as part of Yellowstone County, a political subdivision of the state of Montana, maintains insurance coverage capped at \$750,000 for each claim and \$1.5 Million for each occurrence. Such insurance must include specific coverage provisions or endorsements (a) for broad form contractual liability insurance insuring Tenant's obligations under this Lease; (b) naming Landlord and Property Manager as additional insureds by an Additional Insured - Managers or Lessors of Premises' endorsement (or equivalent coverage or endorsement); (c) waiving the insurer's subrogation rights against all Landlord Parties; (d) providing Landlord with at least 30 days prior notice of modification, cancellation, non-renewal or expiration; and (e) expressly stating that Tenant's insurance will be provided on a primary non-contributory basis. If Tenant provides such liability insurance under a blanket policy, the insurance must be made specifically applicable to the Premises and this Lease on a per location basis.

**10.1.2 Property Insurance.** At Tenant's option, property insurance providing coverage at least as broad as the current ISO Special Form (all-risks) policy in an amount not less than the full insurable replacement cost of all of Tenant's trade fixtures and other personal property within the Premises and including business income insurance covering at least nine months loss of income from Tenant's business in the Premises. If Tenant provides such property insurance under a blanket policy, the insurance must include an agreed amount and no coinsurance provisions.

**10.1.3 Other Insurance.** Such other insurance as may be required by any Laws from time to time or may reasonably be required by Landlord from time to time. If insurance obligations generally required of tenants in similar space in similar office buildings in the area in which the Premises is located increase or otherwise change, Landlord may likewise increase or otherwise change Tenant's insurance obligations under this Lease.

**10.1.4 Miscellaneous Insurance Provisions.** Tenant as a Department of Yellowstone County is insured through the Montana Association of Counties (MACO). Tenant will provide evidence of insurance by Certificate and will deliver an ACCORD Form 27 with required additional insured endorsements with release of liability and waiver of subrogation.

**10.1.5 Tenant's Waiver and Release of Claims and Subrogation.** To the extent not prohibited by the Laws, Tenant, on behalf of Tenant and its insurers, waives, releases and discharges the Landlord Parties from all Claims arising out of personal injury or damage to or destruction of the Premises, Property, or Tenant's trade fixtures, other personal property of business, and any loss of use of business interruption, occasioned by any fire or other casualty or occurrence whatsoever (whether similar or dissimilar), regardless whether any such Claim results from the negligence or fault of any Landlord Party or otherwise, and Tenant will look only to Tenant's insurance coverage (regardless whether Tenant maintains any such coverage) in the event of any such Claim. Tenant's trade fixtures, other personal property and all other property in Tenant's care, custody or control, is located at the Property at Tenant's sole risk. Landlord is not liable for any damage to such property or for any theft, misappropriation or loss

of such property. Tenant is solely responsible for providing such insurance as may be required to protect Tenant, its employees and invitees against any injury, loss, or damage to persons or property occurring in the Premises.

**10.1.6 No Limitation.** Landlord's establishment of minimum insurance requirements is not representation by Landlord that such limits are sufficient and does not limit Tenant's liability under this Lease in any manner.

**10.2 Landlord's Insurance Obligations.** Landlord will (except for the optional coverages and endorsements Section 10.1 describes) at all times during the Term maintain the insurance this Section 10.2 describes. All premiums and other costs and expenses Landlord incurs in connection with maintaining such insurance are Operating Expense.

**10.2.1 Property Insurance.** Property insurance on the Building in an amount not less than the full insurable replacement cost of the Building insuring against loss or damage by fire and such other risks as are covered by the current ISO Special Forum policy. Landlord, at its option, may obtain such additional coverages or endorsements as Landlord deems appropriate or necessary, including, without limitation, insurance covering foundation, grading, excavation and debris removal costs; business income and rent insurance; earthquake insurance; flood insurance; and other coverages. Landlord may maintain such insurance in whole or in part under blanket policies. Such insurance will not cover or be applicable to any property of Tenant within the Premises or otherwise located at the Property.

**10.2.2 Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, and property damage occurring at the Property in such amounts as Landlord deems necessary or appropriate. Such liability insurance will protect only Landlord and, at Landlord's option Landlord's lender and some or all of the Landlord Parties, and does not replace or supplement the liability insurance this Lease obligates Tenant to carry.

**10.2.3 Landlord's Waiver and Release of Claims and Subrogation.** To the extent not expressly prohibited by the Laws, Landlord, on behalf of Landlord and its insurers, waives, releases and discharges Tenant from all claims or demands whatsoever arising out of damage to or destruction of the Property, or loss of use of the Property, occasioned by fire or other casualty, whether any such claim or demand results from the negligence or fault of Tenant, or otherwise, and Landlord will look only to Landlord's insurance coverage (regardless whether Landlord maintains any such coverage) in the event of any such claim. Notwithstanding the foregoing, Tenant will continue paying Rent without any right of abatement, to the extent Landlord does not receive rent interruption insurance proceeds, if Tenant's negligence or fault causes or contributes to any damage to the Premises or the Property. Landlord's policy or policies of property insurance will permit releases of liability and will provide for waiver of subrogation as provided in this Section.

**10.3 Tenant's Indemnification of Landlord.** In addition to Tenant's other indemnification obligations in this Lease but subject to Landlord's agreements in Section 10.2, Tenant, to the fullest extent allowable under the law, will release, indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties from and against all Claims arising from (a) any breach or default by Tenant in the performance of any of Tenant's covenants or



agreements in this Lease, (b) any act, omission, negligence, willful act, or misconduct of Tenant or its agents, employees, invitees, patrons, suppliers, or licensees, (c) any accident, injury, occurrence or damage in, about or to the Premises, and (d) to the extent caused in whole or in part by Tenant or its agents, employees, invitees, patrons, suppliers, or licensees, any accident, injury, occurrence or damage in, about, or to the Property.

**10.4 Tenant's Waiver.** In addition to the other waivers of Tenant described in this Lease and to the extent not expressly prohibited by the Laws, Landlord and the other Landlord Parties are not liable for, and Tenant waves, any and all Claims against Landlord and the other Landlord Parties for any damage to Tenant's trade fixtures, other personal property or business, and any loss of use or business interruption, resulting directly or indirectly from (a) any existing or future condition, defect, matter or thing in the Premises or on the Property, (b) any equipment or appurtenance becoming out of repair, (c) any occurrence, act or omission of any Landlord Party, any other tenant or occupant of the Building or any other person. This section applies especially, but not exclusively, to damage caused by the flooding of basements or other subsurface areas and by refrigerators, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors, noise or the busting or leaking of pipes or plumbing fixtures. The waiver this section describes applies regardless of whether any such damages results from an act of God, an act or omission of other tenants or occupants of the Property or an act or omission of any other person.

**10.5 Tenant's Failure to Insure.** Notwithstanding any contrary language in this Lease and any notice and cure rights this Lease provides Tenant, if Tenant fails to provide Landlord with evidence of insurance as required under Section 10.1, Landlord may assume that Tenant is not maintaining the insurance Section 10.1 requires Tenant to maintain and Landlord may, but is not obligated to, without further demand upon Tenant or notice to Tenant and without giving Tenant any cure right or waving or releasing Tenant from any obligation contained in the Lease, obtain such insurance for Landlord's benefit. In such event, Tenant will pay to Landlord, as a charge to be added to Tenant's Rent, all costs and expenses Landlord incurs obtaining such insurance. Landlord's exercise of its rights under this section does not relieve Tenant from any default under this Lease.

## **ARTICLE 11 DAMAGE OR DESTRUCTION**

**11.1 Tenantable Within 180 Days.** Except as provided in Section 11.3, if fire or other casualty renders the whole or any material part of the Premises untenable and Landlord determines (in Landlord's reasonable discretion) that it can make the Premises tenantable within 180 days after the date of the casualty, then Landlord will notify Tenant that Landlord will repair and restore the Building and the Premises to as near their condition prior to the casualty as is reasonably possible with the 180 day period (subject to delays caused by Tenant Delays or Force Majeure). Landlord will provide the notice within 30 days after the date of the casualty. In such case, this Lease remains in full force and effect, but, except as provided in Section 11.4, Basic Rent for the period during which the Premises are untenable shall abate pro rata (based upon the rentable area of the untenable portion of the Premises as compared with rentable area of the entire Premises).

**11.2 Not Tenantable Within 180 Days.** If fire or other casualty renders the whole or any material part, of the Premises untenable and Landlord determines (in Landlord's reasonable discretion) that it cannot make the Premises tenantable within 180 days after the date of the casualty, then Landlord will so notify Tenant within 30 days after the date of the casualty and may, in such notice, terminate this Lease effective on the date of Landlord's notice. If Landlord does not terminate this Lease as provided in this section, Tenant may terminate this Lease by notifying Landlord within 30 days after the date of Landlord's notice, which termination will be effective 30 days after the date of Tenant's notice.

**11.3 Building Substantially Damaged.** Notwithstanding the terms and conditions of Section 11.1, if the Building is damaged or destroyed by fire or other casualty (regardless whether the Premises is affected) and either (a) fewer than 15 months remain in the Term, or (b) the damage reduces the value of the improvements on the Property by more than 50% (as Landlord reasonably determines value before and after the casualty), then, regardless of whether Landlord determines (in Landlord's reasonable discretion) that it can make the Building tenantable within 180 days after the date of the casualty, Landlord, at Landlord's option, by notifying Tenant within 30 days after the casualty, may terminate this Lease effective on the date of Landlord's notice.

**11.4 Insufficient Proceeds.** Notwithstanding any contrary language in this Article 11, if this Article 11 obligates Landlord to repair damage to the Premises or building caused by fire or other casualty and Landlord does not receive sufficient insurance proceeds (excluding any deficiency caused by the amount of any policy deductible) to repair all of the damage, or if Landlord's lender does not allow Landlord to use sufficient proceeds to repair all of the damage, then Landlord, at Landlord's option, by notifying Tenant within 30 days after the casualty, may terminate this Lease effective on the date of Landlord's notice.

**11.5 Landlord's Repair Obligations.** If this Lease is not terminated under Section 11.2 – 11.6 following a fire or other casualty, then Landlord will repair and restore the Premises and the Building to as near their condition prior to the fire or other casualty as is reasonably possible with all commercially reasonable diligence and speed (subject to delays caused by Tenant Delay or Force Majeure) and, except as provided in Article 10, Basic Rent for the period during which the Premises are untenable will abate pro rata (based upon the rentable area of the untenable portion of the Premises as compared with the rentable area of the entire Premises). In no event is Landlord be obligated to repair or restore any Alterations or Tenant's Improvements that are not covered by Landlord's insurance, any special equipment or improvements installed by Tenant, any personal property, or any other property of Tenant. It is understood that any increases in the Basic Rent for costs incurred by Landlord will be paid in full notwithstanding the abatement or rent.

**11.6 Rent Apportionment Upon Termination.** If either Landlord or Tenant terminates this Lease under this Article 11, Landlord will apportion Basic Rent on a per diem basis and Tenant will pay the Basic Rent (a) the date of the fire or other casualty if the event renders the Premises completely untenable or (b) if the event does not render the Premises completely untenable, the effective date of such termination (provided that if apportion of the Premises is rendered untenable, but the remaining portion is tenantable, then, except as provided in Article 10, Tenant's obligation to pay Basic Rent abates pro rata (based upon the rentable area of the untenable portion of the Premises divided by the rentable area of the entire Premises) from the date of the casualty and the Tenant will pay the unabated portion of the Rent to the date of such termination).

**11.7 Exclusive Casualty Remedy.** The provisions of this Article 11 are Tenant's sole and exclusive rights and remedies in the event of a casualty. To the extent permitted by the Laws, Tenant waives the benefits of any Law that provides Tenant any abatement or termination rights (by virtue of a casualty) not specifically described in this Article 11.

## **ARTICLE 12 EMINENT DOMAIN**

**12.1 Termination of Lease.** If a Condemning Authority desires to affect a Taking of all or any material part of the Property, Landlord will notify Tenant and Landlord and Tenant will reasonably determine whether the Taking will render the Premises unsuitable for Tenant's intended purposes. If Landlord and Tenant conclude that the Taking will render the Premises unsuitable for Tenant's intended purposes, Landlord and Tenant will document such determination and this Lease will terminate as of the date the Condemning Authority takes possession of the portion of the Property taken. Tenant will pay Rent to the date of Termination. It is understood that any increases in the Basic Rent for costs incurred by Landlord will be paid in full notwithstanding the abatement or rent. If a Condemning Authority takes all or any material part of the Building or if a Taking reduces the value of the Property by 50% or more (as reasonably determined by Landlord), regardless whether the Premises is affected, then, Landlord, at Landlord's option, by notifying Tenant prior to the date the Condemning Authority takes possession of the portion of the Property taken, may terminated this Lease effective on the date the Condemning Authority takes possession of the portion of the Property taken.

**12.2 Landlord's Repair Obligations.** If this Lease does not terminate with respect to the entire Premises under Section 12.1 and the taking includes a portion of the Premises, this Lease automatically terminates as to the portion of the Premises taken as of the date the Condemning Authority takes possession of the portion taken and Landlord will, at its sole cost and expense, restore the remaining portion of the Premises to a complete architectural unity with all commercially reasonable diligence and speed and will reduce the Basic Rent for the period after the date the Condemning Authority takes possession of the portion of the Premises taken to a sum equal to the product of the Basic Rent provided for in this Lease Multiplied by a fraction, the numerator of which is the rentable area of the Premises after the Taking and after Landlord restores the Premises to a complete architectural unit, and the denominator of which is the rentable area of the Premises prior to the Taking. Tenant's obligation to pay Basic Rent will abate on a proportionate basis with respect to that portion of the Premises remaining after the Taking that Tenant is unable to use during Landlord's restoration for the period of time that Tenant is unable to use such portion of the Premises.

**12.3 Tenant's Participation.** Landlord is entitled to receive and keep all damages, awards or payments resulting from or paid on account of a Taking. Accordingly, Tenant waives and assigns to Landlord any interest of Tenant in any such damages, awards, or payments. Tenant may prove in any condemnation proceedings and may receive any separate award for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; provided however, that Tenant has no right to receive any award for its interest in this Lease or for loss of leasehold.

**12.3 Exclusive Taking Remedy.** The provisions of this Article 12 are Tenant's sole and exclusive rights and remedies in the event of a Taking. To the extent permitted by the Laws, Tenant waives the benefits of any Law that provides Tenant any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Article 12.

## ARTICLE 13 TRANSFERS

### 13.1 Restriction on Transfer.

**13.1.1 General Prohibition.** Except as set forth in Section 13.1, Tenant will not cause or suffer a transfer without obtaining Landlord's prior written consent. Landlord may grant or withhold consent in Landlord's sole and absolute discretion. Landlord may also, at Landlord's option by notifying Tenant, recapture any portion of the Premises that would be affected by such Transfer. Tenant's request for consent to a Transfer must describe in detail the parties, terms and portion of the Premises affected. Landlord will notify Tenant of Landlord's election to consent, withhold consent and/or recapture within 30 days after receiving Tenant's written request for consent to the Transfer. If Landlord consents to the Transfer, Landlord may impose on Tenant or the transferee such conditions as Landlord, in its sole discretion, deems appropriate. Tenant will, in connection with requesting Landlord's consent, provide Landlord with a copy of any and all documents and information regarding the proposed Transfer and the proposed transferee as Landlord reasonably requests. No Transfer, including, without limitation, a Transfer under Section 13.1, releases Tenant from any liability or Obligation under this Lease and Tenant remains liable to Landlord after such a Transfer as a principal and not as a surety. If Landlord consents to any Transfer, Tenant will pay to Landlord, as a sum to be added to the Basic Rent 50% of any amount Tenant receives on account of the Transfer in excess of the amount this Lease otherwise requires Tenant to pay. In no event may Tenant cause or suffer a Transfer to another tenant of the Building. Any attempted Transfer in violation of this Lease is null and void and constitutes a breach of this Lease.

**13.1.2 Transfers to Affiliates.** Tenant, without Landlord's consent (provided that Tenant is not in default in the performance of its obligations under this Lease), may cause a Transfer to an Affiliate if Tenant (a) notifies Landlord at least 30 days prior to such Transfer; (b) delivers to Landlord, at the time of Tenant's notice, current financial statements of Tenant and the proposed transferee that are reasonably acceptable to Landlord; and (c) the transferee assumes and agrees in a writing reasonably acceptable to Landlord to perform Tenant's obligations under this Lease and to observe all terms and conditions of this Lease. Landlord's right described in Section 13.1.1 to share in any profit Tenant receives from a Transfer permitted under this Section 13.1.2 and Landlord's recapture right under Section 13.1.1 does not apply to any Transfer this Section 13.1.2 permits.

**13.1.3 Costs.** Tenant will pay to Landlord, an amount to be added to the Basic Rent which consists of all costs and expenses Landlord incurs in connection with any Transfer, including, without limitation, reasonable attorneys' fees and costs, regardless of whether Landlord consents to the Transfer.

## ARTICLE 14 DEFAULTS; REMEDIES

**14.1 Events of Default.** The occurrence of any of the following constitutes and "Event of Default" by Tenant under this Lease:



**14.1.1 Failure to Pay Rent.** Tenant fails to pay Basic Rent, or any other amounts which are authorized to be added to the Basic Rent by this Lease.

**14.1.2 Failure to Perform.** Tenant breaches or fails to perform any of Tenant's nonmonetary obligations under this Lease and the breach or failure continues for a period of 30 days after Landlord notifies Tenant of Tenant's breach or failure; provided that if Tenant cannot reasonably cure its breach or failure within a 30 day period Tenant's breach or failure is not an event of Default, if Tenant commences to cure its breach or failure within the 30 day period and thereafter diligently pursues the cure and effects the cure within a period of time that does not exceed 60 days after the expiration of the 30 day period. Notwithstanding any contrary language contained in this Section 14.1.2, Tenant is not entitled to any notice or cure period before an incurable breach of this Lease (or failure) becomes and Event of Default.

**14.1.3 Misrepresentation.** The existence of any material misrepresentation or omission in any financial statements, correspondence or other information provided to Landlord by or on behalf of Tenant or any Guarantor in connection with (a) Tenant's negotiation or execution of this Lease; (b) Landlord's evaluation of Tenant as a prospective Tenant at the Property; (c) any proposed or attempted Transfer; or (d) any consent or approval Tenant requests under this Lease.

**14.1.4 Guaranty Default.** Guarantor's default (beyond any applicable notice and grace periods) under any guaranty now or after the effective Date securing all or any part of Tenant's obligations under this Lease.

**14.1.5 Other Defaults.** (a) Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not dismissed within 60 days; (d) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within 30 days; or (e) substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure not discharge within 30 days. If a court of competent jurisdiction determines that any act described in this section does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor in possession of the Premises) and such trustee or Tenant Transfers Tenant's interest hereunder, then Landlord is entitled to receive an amount to be added to the Basic Rent equivalent to any Rent or other consideration paid in connection with the Transfer in excess of the Basic Rent otherwise payable by Tenant under this Lease.

**14.1.6 Notice Requirements.** The Notices required by this Article are intended to satisfy any and all notice requirement imposed by the Laws and are not in addition to any such requirements.

**14.2 Remedies.** Upon the Occurrence of any Event of Default, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:

**14.2.1 Termination of Tenant's Possession; Re-entry and Reletting Rights.** Terminate

Tenant's right to possess the Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant's obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Premises) and Tenant continues to be obligated for any must pay all Rent as and when due under this Lease. If Landlord Terminates Tenant's right to possess the Premises, Landlord is not obligated to but may re-enter the Premises and remove all persons and property from the Premises. Landlord may store any property Landlord removes from the Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Upon such re-entry, Landlord is not obligated to but may relet all or any part of the Premises to a third party or parties for Tenant's account. Tenant is immediately liable to Landlord for all re-entry costs and must pay Landlord the same within five (5) days after Landlord's notice to Tenant. Landlord may relet the Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Premises, Tenant will continue to pay Rent when due under this Lease and Landlord will refund to Tenant the Net Rent Landlord actually receives from the reletting up to a maximum amount equal to the Rent Tenant paid that came due after Landlord's reletting. If the Net Rent Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease. Landlord may retain any surplus Net Rent remaining at the expiration of the Term.

**14.2.2 Termination of Lease.** Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant's default, including, without limitation, (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including, but not limited to, any Re-entry Costs, (c) an amount equal to the difference between the present worth, as of the effective date of the termination, of the Basic Rent for the balance of the Term remaining after the effective date of the termination, (assuming no termination) and the present worth, as of the effective date of the termination, of a fair market Rent for the Premises for the same period (as Landlord reasonably determines the fair market Rent) and (d) Tenant's Share of any other sums to be added to the Basic Rent. For purposes of this section, Landlord will compute present worth by utilizing a discount rate of 8% per annum. Nothing in this section limits or prejudices Landlord's right to prove and obtain damages in an amount equal to the maximum amount allowed by the Laws, regardless of whether such damages are greater than the amounts set forth in this section.

**14.2.3 Present Worth of Rent.** Recover from Tenant, and Tenant will pay to Landlord on demand, an amount equal to the then present worth, as of the effective date of termination, of the aggregate of the Rent and any other charges payable by Tenant under this Lease for the unexpired portion of the Term. Landlord will employ a discount rate of 8% per annum to compute present worth.

**14.2.4 Self Help.** Perform the obligation on Tenant's behalf without waiving Landlord's rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease, Tenant will pay to Landlord, as a sum to be added to the Basic Rent, all sums Landlord pays and obligations Landlord incurs on Tenant's behalf under this section.

**14.2.5 Other Remedies.** Any other right or remedy available to Landlord under this Lease, at law or in equity.

**14.3 Costs.** Tenant will reimburse and compensate Landlord on demand and as an sum to be added to Basic Rent for any actual loss Landlord incurs in connection with, resulting from or related to any breach or default of Tenant under this Lease, regardless whether the breach or default constitutes an Event of Default, and regardless whether suit is commenced or judgment is entered, Such loss includes all reasonable legal fees, costs and expenses (including paralegal fees and other professional fees and expenses) Landlord incurs investigating, settling or enforcing any of Landlord's rights or remedies or otherwise protecting Landlord's interests under this Lease. Tenant will also indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties from and against all Claims Landlord or any of the other Landlord Parties incurs if Landlord or any of the other Landlord Parties becomes or is made a party to any claim or action (a) instituted by Tenant or by or against any person holding any interest in the Premises by, under or through Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; or (c) otherwise arising out of or resulting from any act or omission of Tenant or such other person. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any Chapter of the Bankruptcy Code' by exercising and advocating rights under Section 365 of the Bankruptcy Code by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

**14.4 Waiver and Release by Tenant.** Tenant waives and releases all Claims Tenant may have resulting from Landlord's re-entry and taking possession of the Premises by any lawful means and removing and storing Tenant's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the Laws, Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord), protecting and hold harmless the Landlord Parties from and against any and all Claims occasioned thereby. No such reentry is to be considered or construed as a forcible entry by Landlord.

**14.5 Landlord's Default.** If Landlord defaults in the performance of any of its obligations under this Lease, Tenant will notify Landlord of the default and Landlord will have 30 days after receiving such notice to cure the default. If Landlord is not reasonably able to cure the default within a 30-day period, Landlord will have an additional reasonable period of time to cure the default as long as Landlord commences the cure within the 30 day period and thereafter diligently pursues the cure. In no event is Landlord liable to Tenant or any other person for consequential, special or punitive damages, including without limitation, lost profits.

**14.6 No Waiver.** Except as specifically set forth in this Lease, no failure by Landlord or Tenant to insist upon the other party's performance of any of the terms of this Lease or to exercise any right or

remedy upon a breach thereof, constitutes a waiver of any such breach or of any breach or default by the other party in its performance of its obligations under this Lease. No acceptance by Landlord of full or partial Rent from Tenant or any other party during the continuance of any breach or default by Tenant of Tenant's performance of its obligations under this Lease constitutes Landlord's waiver of any such breach or default. Except as specifically set forth in this Lease, none of the terms of this Lease to be kept, observed or performed by a party to this Lease, and no breach thereof, are waived, altered or modified except by a written instrument executed by the other party. One or more waivers by a party to this Lease is not to be construed as a waiver of a subsequent breach of the same covenant, term, or condition. No statement on a payment check from a party to this Lease or in a letter accompanying a payment check is binding on the other party. The party receiving the check, with or without notice to the other party, may negotiate such check without being bound to the conditions of any such statement.

## **ARTICLE 15 CREDITORS; ESTOPPEL CERTIFICATES**

**15.1 Subordination.** This Lease, all rights of Tenant in this Lease, and all interest or estate of Tenant in the Property, is subject and subordinate to the lien of any Mortgage. Tenant, on Landlord's demand will execute and deliver to Landlord or to any other person Landlord designates any instruments, releases or other documents reasonably required to confirm the self-effectuating subordination of this Leases as provided in this section to the lien of any Mortgage. The subordination to any future Mortgage provided for in this section is expressly conditioned upon the Mortgagee's agreement that as long as Tenant is not in default in the payment of Rent or the performance and observance of any covenant, condition, provision, term, or agreement to be performed and observed by Tenant under this Lease, beyond any applicable grace or cure period this Lease provides Tenant, the holder of the Mortgage will not disturb Tenant's rights under this Lease. The lien of any existing or future Mortgage will not cover Tenant's moveable trade fixtures or other personal property of Tenant located in or on the Premises.

**15.2 Attornment.** If any ground lessor, holder of any Mortgage at a foreclosure sale or any other transferee acquires Landlord's interest in this Lease, the Premises or the Property, Tenant will attorn to the transferee of or successor to Landlord's interest in this Lease, the Premises or the Property (as the case may be) and recognize such transferee or successor as landlord under this Lease. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

**15.3 Mortgagee Protection Clause.** Tenant will give the holder of any Mortgage, by registered mail, a copy of any notice of default Tenant serves on Landlord, provided that Landlord or the holder of the Mortgage previously notified Tenant (by way of notice of assignment of rents and leases or otherwise) of the address of such holder. Tenant further agrees that if Landlord fails to cure such default within the time provided for in this Lease, then Tenant will provide written notice of such failure to such holder and such holder will have an additional 15 days within which to cure the default. If the default cannot be cured with the additional 15-day period, then the holder will have such additional time as may be necessary to effect the cure if, within the 15-day period, the holder has commenced and is diligently pursuing the cure (including without limitation commencing foreclosure proceedings if necessary to effect the cure).



## **15.4 Estoppel Certificate.**

**15.4.1 Contents.** Upon Landlord's written request, Tenant will execute, acknowledge and deliver to Landlord a written statement in form satisfactory to Landlord certifying: (a) that this Lease (and all guaranties, if any) is unmodified and in full force and effect (or, if there have been any modifications, that the Lease is in full force and effect, as modified, and stating the modifications); (b) that this Lease has not been canceled or terminated; (c) the last date of payment of Rent and the time period covered by such payment; (d) whether there are then existing any breaches or defaults by Landlord under this Lease known to Tenant, and , if so, specifying the same; (e) specifying any existing claims or defenses in favor of Tenant against the enforcement of this Lease (or of any guaranties); and (f) such other factual statements as Landlord, any lender, prospective lender, investor or purchaser may request. Tenant will deliver the statement to Landlord within 10 Business Days after Landlord's request. Landlord may give any such statement by tenant to any lender, prospective lender, investor or purchaser of all or any part of the Property and any such party may conclusively rely upon such statement as true and correct.

**15.4.2 Failure to Deliver.** If Tenant does not timely deliver the statement referenced in section 15.4.1 to Landlord, (a) Landlord may execute and deliver the statement to any third party on behalf of Tenant and (b) such failure constitutes an Event of Default under this Lease. Further, if Tenant so fails to timely deliver the statement, Landlord and any lender, prospective Lender, investor, or purchaser may conclusively presume and rely, except as otherwise represented by Landlord, (i) that the terms and provisions of this Lease have not been changed; (ii) that this Lease has not be canceled or terminated; (iii) that not more than one month's Rent has been paid in advance; and (iv) that Landlord is not in default in the performance of any of its obligations under this Lease. In such event, Tenant is estopped from denying the truth of such facts.

## **ARTICLE 16 TERMINATION OF LEASE**

**16.1 Surrender of Premises.** Tenant will surrender the Premises to Landlord at the expiration or earlier termination of this Lease in good order, condition and repair, reasonable wear and tear, permitted Alterations, and damage by casualty or condemnation excepted, and will surrender all keys to the Premises to Property Manager or to Landlord at the place then fixed for Tenant's payment of Basic Rent or as Landlord or Property Manager may otherwise direct. Tenant will also inform Landlord of all combinations on locks, safes, and vaults, if any, in the Premises or on the Property. Tenant will at such time remove all of its property from the Premises and, if Landlord so requests, all specified Alterations and improvements Tenant placed on the Premises. Tenant will promptly repair any damage to the Premises caused by such removal. If Tenant does not surrender the Premises in accordance with this section, Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord) protect and hold harmless Landlord from and against any Claim resulting from Tenant's delay in so surrendering the Premises, including, without limitation, any Claim made by any succeeding occupant founded on such delay. All property of Tenant not removed on or before the last day of the Term is deemed abandoned. Tenant appoints Landlord as Tenant's agent to remove, at Tenant's sole cost and expense, all of

Tenant's property from the Premises upon termination of this Lease and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant, and Landlord will not be liable for damage, theft, misappropriation, or loss thereto or in any manner in respect thereto,

**16.2 Holding Over.** If Tenant possesses the Premises after the Term expires or is otherwise terminated without executing a new lease but with Landlord's written consent, Tenant is deemed to be occupying the Premises as a tenant from month-to-month, subject to all provisions, conditions, and obligations of this Lease applicable to a month-to-month, however (a) Basic Rent will be increased to 125% of the most recent Basic Rent, and (b) either Landlord or Tenant may terminate the month-to-month tenancy at any time upon 30 days prior written notice to the other party. If Tenant possesses the Premises after the Term expires or is otherwise terminated without executing a new lease and without Landlord's written consent, Tenant is deemed to be occupying the Premises without claim of right (but subject to all terms and conditions of this Lease) and, in addition to Tenant's liability for failing to surrender possession of the Premises as provided for in Section 15.6, Tenant will pay Landlord a charge for each day of occupancy after expiration of the Term in an amount equal to double Tenant's then-existing Rent (on a daily basis).

## **ARTICLE 17 ADDITIONAL PROVISIONS**

**17.1 Initial Improvements.** Space as is.

## **ARTICLE 18 MISCELLANEOUS PROVISIONS**

**18.1 Notices.** All Notices must be in writing and must be sent by personal delivery, United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified in the Basic Terms or at such other place as either party may designate to the other party by written notice given in accordance with this section. Notices given by mail are deemed delivered within three (3) Business Days after the party sending the Notice deposits the Notice with the United States Post Office. Notices delivered by courier are deemed delivered on the next Business Day after the day the party delivering the Notice timely deposits the Notice with the courier for overnight (next day) Delivery.

**18.2 Transfer of Landlord's Interest.** If Landlord Transfers any interest in the Premises for any reason other than collateral security purposes, the transferor is automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the Transfer, provided that the transferor will deliver to the transferee any funds the transferor holds in which Tenant has an interest (such as a security deposit). Landlord's covenants and obligations in this Lease bind each successive Landlord only during and with respect to its respective period of ownership. However, notwithstanding any such Transfer, the transferor remains entitled to the benefits of Tenant's indemnity and insurance obligations (and similar obligations) under this Lease with respect to matters arising or accruing during the transferor's period of ownership.

**18.3 Successor.** The covenants and agreements contained in this Lease bind and inure to the benefit

of Landlord, its successors, and assigns, bind Tenant and its successors and assigns and inure to the benefit of Tenant and its permitted successors and assigns.

**18.4 Captions and Interpretation.** The captions of the articles and sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular.

**18.5 Relationship of Parties.** This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant other than that of landlord and tenant.

**18.6 Entire Agreement; Amendment.** The Basic Terms and all exhibits, addenda and schedules attached to this Lease are incorporated into this Lease as though fully set forth in this Lease and together with this Lease contain the entire agreement between the parties with respect to the improvement and leasing of the Premises. All preliminary and contemporaneous negotiations, including without limitation, any letters of intent or other proposals and any drafts and related correspondence, are superseded by this Lease. No subsequent alteration, amendment, change, or addition to this Lease (other than to the Building Rules) is binding on Landlord or Tenant unless it is in writing and signed by the party to be charged with performance.

**18.7 Severability.** If any covenant, condition, provision, term, or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Lease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

**18.8 Landlord's Limited Liability.** Tenant will look solely to Landlord's interest in the Property for recovering any judgment or collecting any obligation from Landlord or any other Landlord Party. Tenant agrees that neither Landlord nor any other Landlord Party will be personally liable for any judgment or deficiency decree.

**18.9 Survival.** All of Tenant's obligations under this Lease (together with interest on payment obligations at the Maximum Rate) accruing prior to expiration or other termination of this Lease survive the expiration or other termination of this Lease. Further, all of Tenant's release, indemnification, defense, and hold harmless obligations under this Lease survive the expiration or other termination of this Lease, without limitations.

**18.10 Attorneys' Fees.** If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease, the prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' and paralegal fees, costs and expenditures) from the non-prevailing party.

**18.11 Brokers.** Landlord and Tenant each represents and warrants to the other that it has not had any dealings with any realtors, brokers, finders or agents in connection with this Lease (except as may be specifically set forth in the Basic Terms) and agrees to release, indemnify, defend, and hold the other harmless from and against any Claim based on the failure or alleged failure to pay any realtors, brokers, finders, or agents (other than any brokers specified in the Basic Terms) and from any costs, expense,

or liability for any compensation, commission, or changes claimed by any realtors, brokers, finders or agents (other than any brokers specified in the Basic Terms) claiming by, through or on behalf of it with respect to this Lease or negotiation of this Lease. Landlord will pay any brokers named in the Basic Terms in accordance with the applicable listing agreement for the Property.

**18.12 Governing Law.** This Lease is governed by, and must be interpreted under, the internal laws of the State of Montana. Any suit arising from or relating to this Lease must be brought in the County Yellowstone; Landlord and Tenant waive the right to bring suit elsewhere.

**18.13 Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**18.14 Joint and Several.** All parties signing this Lease as Tenant and any Guarantor(s) of this Lease are jointly and severally liable for performing all of Tenant's obligations under this Lease.

**18.15 Tenant's Waiver.** Any claim Tenant may have against Landlord for default in performance of any of Landlord's obligations under this Lease is deemed waived unless Tenant notifies Landlord of the default within 30 days after Tenant knew or should have known of the default.

**18.16 Tenant's Organization Documents; Authority.** If Tenant is an entity, Tenant, within 10 days after Landlord's written request, will deliver to Landlord (a) Certificate(s) of Good Standing from the state of formation of Tenant and, if different, the State, confirming that Tenant is in good standing under the laws governing formation and qualification to transact business in such state(s); and (b) a copy of Tenant's organizational documents and any amendments or modifications thereof, certified as true and correct by an appropriate official of Tenant. Tenant and each individual signing this Lease on behalf of Tenant represents and warrants that they are duly authorized to sign on behalf of and to bind Tenant and that this Lease is duly authorized obligation of Tenant.

**18.17 Provisions are Covenants and Conditions.** All provisions of this Lease, whether covenants or conditions, are deemed both covenants and conditions.

**18.18 Force Majeure.** If Landlord is delayed or prevented from performing any act required in this Lease (excluding, however, the payment of money) by reason of Tenant Delay or Force Majeure, Landlord's performance of such act is excused for the longer of the period of the delay or the period of delay caused by such Tenant Delay or Force Majeure and the period of the performance of any such act will be extended for a period equivalent to such longer period.

**18.19 Management.** Property Manager is authorized to manage the Property. Landlord appointed Property Manager to act as Landlord's agent for leasing, managing, and operating the Property. The Property Manager then serving is authorized to accept service of process and to receive and give notices and demands on Landlord's behalf.

**18.20 Quiet Enjoyment.** Landlord covenants that Tenant will quietly hold, occupy, and enjoy the Premises during the Term, subject to the terms and conditions of this Lease, free from molestation or hindrance by Landlord or any person claiming by, through or under Landlord, if Tenant pays all Rent as and when due and keeps, observes, and fully satisfies all other covenants, obligations, and agreements of Tenant under this Lease.

**18.21 No Recording.** Tenant will not record this Lease or a Memorandum of this Lease without Landlord's prior written consent, which consent Landlord may grant or withhold in its sole and absolute discretion.

**18.22 Nondisclosure of Lease Terms.** Contracting with a public entity mandates that all agreements are public records under applicable Montana law.

**18.23 Construction of Lease and Terms.** The terms and provisions of this Lease represent the results of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Lease must be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions contained in this Lease are to be interpreted or construed against the party who prepared the executed Lease or any earlier draft of the same. Landlord's submission of this instrument to Tenant for examination or signature by Tenant does not constitute a reservation of or an option to lease and is not effective as a lease or otherwise until landlord and Tenant both execute and deliver this Lease. The parties agree that, regardless of which party provided the initial form of this Lease, drafted or modified one or more provisions of this Lease, or compiled, printed, or copied this Lease, this Lease is to be construed solely as an offer from Tenant to lease the Premises, executed by Tenant and provided to Landlord for acceptance on the terms set forth in this Lease, which acceptance and the existence of a binding agreement between Tenant and Landlord may then be evidenced only by Landlord's execution of this Lease.

**[Signature page on next page]**



Landlord and Tenant each caused this Lease to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.

**LANDLORD:**

Dated: \_\_\_\_\_

WCF I, LLC

By: \_\_\_\_\_

Name: Aaron Sparboe

Title: Managing Member

**TENANT:**

Dated: \_\_\_\_\_

The County of Yellowstone

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**  
**DEFINITIONS**

**"Affiliate"** means any person, corporation or other entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management and policies of the entity by the ownership of a majority of the voting interest of the entity.

**"Alteration"** means any change, alteration, addition or improvement to the Premises or Property.

**"Bankruptcy Code"** means the United States Bankruptcy Code as the same now exists and as the same may be amended, including any and all rules and regulations issued pursuant to or in connection with the United States Bankruptcy Code now in force or in effect after the Effective Date.

**"Basic Rent"** means the basic rent amount specified in the Basic Terms.

**"Basic Terms"** means the terms of this Lease identified as the "Basic Terms" before Article 1 of the Lease

**"BOMA Standards"** means the "Standard Method for Measuring Floor Area in Office Buildings" approved June 7, 1996 by the American National Standards Institute, Inc. and the Building Owners and Managers Association International (ANSI/BOMA Z65.1-1996).

**"Building"** means that certain office building now existing on the Land.

**"Building Rules"** means those certain rules attached to this Lease as **EXHIBIT "E"**, as Landlord may amend the same from time to time.

**"Business Days"** means any day other than Saturday, Sunday, or a legal holiday in the State.

**"Business Hours"** means Monday through Friday from 7:00 a.m. To 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m., excluding holidays.

**"City"** means Billings.

**"Claims"** means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses, or expenses, including, without limitation, reasonable attorneys' and paralegal fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under the Lease.

**"Commencement Date"** means the earlier of (a) the date of Substantial Completion of Tenant's Improvements; (b) the date Tenant commences business operations in the Premises; or (c) the date Substantial Completion of Tenant's Improvements would have occurred but for the Tenant Delay.

**"Commencement Date Memorandum"** Means the form of memorandum attached to the

Lease as **EXHIBIT "D"**.

**"Common Area"** Means the lobby areas, and other areas of the Property Landlord may designate from time to time as common area available to all Tenants.

**"Condemning Authority"** means any person or entity with a statutory or other power of eminent domain.

**"County"** means Yellowstone.

**"Delivery Date"** means the target date for Landlord's delivery of the Premises to Tenant, which is the delivery date specified in the Basic Terms.

**"Effective Date"** means the date Landlord executes this Lease, as indicated on the signature page.

**"Event of Default"** means the occurrence of any of the events specified in Section 14.1 of the Lease.

**"Final Plans"** means the final working drawings and specifications Landlord prepares for the Tenant's Improvements after receiving Tenant's space plan for the Tenant's Improvements.

**"Floor Plan"** Means the Floor Plan attached to the Lease as **EXHIBIT "C."**

**"Force Majeure"** means acts of God: strikes; lockouts; labor troubles; inability to procure materials; governmental laws or regulations; casualty, orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond Landlord's reasonable control.

**"Guarantor"** means any person or entity at any time providing a guaranty of all or any part of Tenant's obligations under this Lease.

**"Hazardous Materials"** means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state, or local statute, law, ordinance, or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies.

**"Hazardous Materials Laws"** means any federal, state, or local statutes, laws, ordinances, or regulations now existing or existing after the Effective Date that control, classify, regulate, list or define Hazardous Materials.



**"Improvement Allowance"** means the amount (per rentable square foot of the Premises) specified in the Basic Terms for the cost of designing and installing Tenant's Improvements.

**"Improvements"** means, collectively, the Landlord's Improvements and the Tenant's improvements.

**"Land"** means that certain parcel of land legally described on the attached **EXHIBIT "B."**

**"Landlord"** means only the owner or owners of the Property at the time in question.

**"Landlord Parties"** means Landlord and Property Manager and their respective officers, managers, directors, partners, shareholders, members, and employees.

**"Landlord's Improvements"** means the base building improvements to the Premises described on the attached **EXHIBIT "F."**

**"Laws"** means any law, regulation, rule, order, statute, or ordinance of any governmental or private entity in effect on or after the Effective Date and applicable to the Property or the use or occupancy of the Property, including, without limitation, Hazardous Materials Laws, Building Rules, and Permitted Encumbrances.

**"Lease"** be amended or modified after the Effective Date.

**"Lease Year"** means each consecutive 12-month period during the Term, commencing on the Commencement Date, except that if the Commencement Date is not the first day of a calendar month, then the first Lease year is a period beginning on the Commencement Date and ending on the last day of the calendar month in which the Commencement Date occurs plus the following 12 consecutive calendar months.

**"Maximum Rate"** means interest at a rate equal to the lesser of (a) 18% per annum or (b) the maximum interest rate permitted by law.

**"Mortgage"** means any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of the Property and any replacements, renewals, amendments, modifications, extensions or refinancing thereof, and each advance (including future advances) made under any such instrument.

**"Net Rent"** means all rental Landlord actually receives from any reletting of all or any part of the Premises, less any indebtedness from Tenant to Landlord other than Rent (which indebtedness is paid first to Landlord) and less the Re-entry Costs (which costs are paid second to Landlord).

**"Notices"** means all notices, demands, or requests that may be or are required to be given, demanded or requested by either party to the other as provided in the Lease.

**"Permitted Encumbrances"** means all Mortgages, liens, easements, declarations, encumbrances, covenants, conditions, reservations, restrictions, and other matters now or after

the Effective Date affecting title to the Property.

**"Premises"** means that certain space situated in the Building shown and designated on the Floor Plan and described in the Basic Terms.

**"Property"** means, collectively, the Land, Building and all other improvements on the Land.

**"Property Manager"** means the property manager specified in the Basic Terms or any other agent Landlord may appoint from time to time to manage the Property.

**"Property Taxes"** means any general real property tax, improvement tax, assessment, special assessment, reassessment, commercial rental tax, tax, in lieu tax, levy, charge, penalty or similar imposition imposed by any authority having the direct or indirect power to tax, including but not limited to, (a) any city, county, state or federal entity, (b) any school, agricultural, lighting, drainage, or other improvement or special assessment district, (c) any governmental agency, or (d) any private entity having the authority to assess the Property under any of the Permitted Encumbrances. The term "Property Taxes" includes all charges or burdens of every kind and nature Landlord incurs in connection with using, occupying, owning, operating, leasing or possessing the Property, without particularizing by any known name and whether any of the foregoing are general, special, ordinary, extraordinary, foreseen or unforeseen; any tax or charge for fire protection, street lighting, streets, sidewalks, road maintenance, refuse, sewer, water or other services provided to the Property. The term "Property Taxes" does not include Landlord's state or federal income, franchise, estate, or inheritances taxes. If Landlord is entitled to pay, and elects to pay, any of the above listed assessments or charges in installments over a period of two or more calendar years, then only such installments of the assessments or charges (including interest thereon) as are actually paid in a calendar year will be included within the term "Property Taxes" for such calendar year.

**"Re-entry Costs"** means all costs and expenses Landlord incurs re-entering or reletting all or any part of the Premises, including, without limitation, all costs and expenses Landlord incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the Premises, removing persons and property from the Premises (including, without limitation, court cost and reasonable attorneys' fees) and sorting such property; (c) reletting, renovating or altering the Premises; and (d) real estate commissions, advertising expenses and similar expenses paid or payable in connection with reletting all or any part of the Premises. "Re-entry Costs" also includes the value of free rent and other concessions Landlord gives in connection with re-entering or reletting all or any part of the Premises.

**"Rent"** means, collectively, Basic Rent.

**"Rent Commencement Date"** means the date set forth in the Commencement Date Memorandum.

**"Security Deposit"** means the security deposit to be provide to Landlord in the amount as set forth in the Basic Terms.

**"State"** means the State of Montana.

**"Structural Alterations"** means any Alterations involving the structural, mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building.

**"Substantial Completion"** means (a) the date that the City or other appropriate authority issues a conditional or unconditional Certificate of Occupancy or similar document for the Premises or (b) if the City or other appropriate authority does not require that a Certificate of Occupancy or similar document be issued for Tenant's occupancy of the Premises, the date that Tenant is reasonably able to occupy and use the Premises for its intended purposes.

**"Taking"** means the exercise by a Condemning Authority of its power of eminent domain on all or any part of the Property, either by accepting a deed in lieu of condemnation or by any other manner.

**"Tenant"** means the tenant identified in the Lease and such Tenant's permitted successors and assigns. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" includes the tenant identified in the Lease and such Tenant's agents, employees, contractor, invitees, successors, assigns and others using the Premises or on the Property with Tenant's expressed or implied permission.

**"Tenant Delay(s)"** means any delays caused or contributed to by Tenant, including, without limitation, with respect to Tenant's improvements, Tenant's failure to submit a space plan for Tenant's improvements, Tenant's failure to timely approve the final Plans and any delays caused by any revisions Tenant proposes to the Final Plans. Tenant Delay excuses Landlord's performance of any obligation related thereto for a period equal to (a) the duration of the act, occurrence or omission which constitutes the Tenant Delay, or (b) if longer, the period of delay actually caused by such Tenant Delay.

**"Tenant's Improvements"** means all initial improvements to the Premises (other than Landlord's Improvements) to be designed and installed by Landlord and paid for by Tenant, subject to the Improvement Allowance.

**"Tenant's Share of Excess Expenses"** means the product obtained by multiplying the amount of Excess Expenses for the period in question by the Tenant's Share of Excess Expenses Percentage.

**"Term"** means the initial term of this Lease specified in the Basic Terms and, if applicable, any renewal term then in effect.

**"Transfer"** means an assignment, mortgage, pledge, transfer, sublease or other encumbrance or conveyance (voluntarily, by operation of law or otherwise) of this Lease or the Premises or any interest in this Lease or the Premises. The term "Transfer" also includes any assignment, mortgage, pledge, transfer, or other encumbering or disposal (voluntarily, by operation of law or otherwise) of any ownership interest in Tenant or any Guarantor that results or could result in a change of control of Tenant or any Guarantor.

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**EXHIBIT "B"**  
**LEGAL DESCRIPTION OF LAND**

Full Legal: BILLINGS ORIGINAL TOWNSITE, S03, T1S, R26E, BLOCK 91, Lot 13 - 18

**EXHIBIT "C"**  
**FLOORPLAN**

(TO BE ATTACHED)

**EXHIBIT "D"**  
**COMMENCEMENT DATE MEMORANDUM**

THIS MEMORANDUM is made and entered into as of \_\_\_\_\_, 2024 by and between WFC I, LLC ("Landlord") and The County of Yellowstone ("Tenant").

**RECITALS:**

1. Landlord and Tenant are party to a certain Multi-Tenant Office Lease Agreement dated as of \_\_\_\_\_ ("Lease"), relating to certain premises (Premises") located in the building commonly known as the Well Fargo Center, located at Billings, Montana ("Building").
2. Landlord and Tenant desire to confirm the Commencement Date and Rent Commencement Date (as such terms are defined in the Lease) and the date the (initial) Term of the Lease expires (and the notice dates(s) and expiration date(s) of any renewal Term(s) provided to Tenant under the Lease).

**ACKNOWLEDGMENTS:**

Pursuant to Section 1.2.3 of the Lease and in consideration of the facts set forth in the Recitals, Landlord and Tenant acknowledge and agree as follows:

1. All capitalized terms not otherwise defined in this Memorandum have the meanings ascribed to them in the Lease.
2. The Commencement Date under the Lease is \_\_\_ \_ \_ \_ \_
3. The Rent Commencement Date under the Lease is \_\_\_\_\_
4. The initial term of the Lease expires on \_\_\_\_\_, unless the Lease is sooner terminated in accordance with the terms and conditions of the Lease.

Landlord and Tenant each caused this Memorandum to be executed by its duly authorized representative as of the day and date written above. This Memorandum may be executed in counterparts, each of which is an original and all of which constitute one instrument.

**[Signatures page on next page]**

**LANDLORD:**

WFC I, LLC

By: \_\_\_\_\_

Name: Aaron Sparboe

Title: Managing Member

**TENANT:**

The County of Yellowstone

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "E"**  
**BUILDING RULES**

1. Neither the whole nor any part of the sidewalks, plaza areas, entrances, passages, courts, elevators, vestibules, stairways, corridors, or halls of the Building shall be obstructed or encumbered by any tenant or used for any purpose other than ingress or egress to and from the space demised to such tenant.
2. No awnings or other projections shall be attached to the outside walls or windows of the Building. No curtains, blinds, shades or screens (other than those furnished by Landlord as part of Landlord's work) shall be attached to, hung in, or used in connection with any window or door of the space demised to any tenant.
3. No sign, advertisement, object, notice, or other lettering shall be exhibited, inscribed, painted, or affixed on any part of the outside or inside of the space demised to any tenant, or of the Building. Interior signs on doors and directory tablets, if any, shall be inscribed, painted, or affixed for each tenant by Landlord at tenant's expense, and shall be of a size, color, and style approved by Landlord.
4. No showcases nor other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors, vestibules, or other public parts of the Building.
5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish bags, or other substances (including, without limitation, coffee grounds) shall be thrown therein.
6. No tenant shall bring or keep, or permit to be brought or kept, any inflammable, combustible, or explosive fluid, material, chemical, or substance in or about the space demised to such tenant.
7. No tenant shall mark, paint, drill into, or in any way deface any part of the Building or the space demised to such tenant. No boring, cutting, or stringing of wires shall be permitted, except picture wall hangings and mounted blueprint racks.
8. No cooking (except microwaves, hot plates, and popcorn machines) shall be done or permitted in the Building by any tenant. No tenant shall cause or permit any unusual or objectionable odors to emanate from the space demised to such tenant.
9. Neither the whole nor any part of the space demised to any tenant shall be used for manufacturing or for the storage of merchandise.



10. No tenant shall make nor permit to be made any unseemly or disturbing noises or disturb or interfere with other tenants or occupants of the Building or neighboring buildings or premises by the use of any musical instrument, radio, television set, or other audio device, unmusical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors, windows, skylights, or down any passageways.
11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows in the space demised to any tenant nor shall any changes be made to the locks or the mechanism thereof. Each tenant must, upon the terminations of this tenancy, restore to Landlord all keys to offices and toilet rooms, either furnished to, or otherwise procured by, such tenant, and in the event of the loss any such keys, such tenant shall pay Landlord the reasonable cost of replacement keys.
12. All removals from the Building, or the carrying in or out of the Building or the space demised to any tenant, of any safes, freight, furniture, or bulky matter of any description must take place during such hours and in such manner as Landlord or its agents may determine, from time to time. Landlord reserves the right to inspect all freights for violation of any of these rules and regulations or the provisions of such tenant's lease.
13. No tenant shall use, occupy, or permit any portion of the space demised to such tenant to be used or occupied as an employment bureau or for the storage, manufacturing, or sale of liquor, narcotics, or drugs. No tenant shall engage or pay any employees in the Building except those actually working for such tenant in the Building, nor advertise for laborers giving an address at the Building.
14. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and, upon notice from Landlord, such tenant shall discontinue such advertising.
15. Landlord reserves the right to control and operate the public portions of the building and public facilities as well as facilities furnished for the common use of the tenants in such manner as it deems best for the benefit of the tenants generally including without limitation, the right to exclude from the building, between the hours of 6 p.m. and 8 a.m. on business days and at all hours on Saturdays except 9 a.m. to 1 p.m., and all day Sundays and holidays, all persons who do not present a pass to the Building signed by Landlord or other suitable identification satisfactory to Landlord. Landlord will furnish passes to persons for whom any tenant requests such passes. Each tenant shall be responsible for all persons for whom it requests such passes and shall be liable to Landlord for all acts of such persons.
16. Each tenant, before closing and leaving the space demised to such tenant at any time, shall see that all entrance doors are locked. Notwithstanding the foregoing, tenants shall have access to the Building 24 hours per day, seven (7) days per week. Afterhours access to enter the Building and use the elevator to the Tenant's floor is via card key supplied by Landlord.
17. No space demised to any tenant shall be used, or permitted to be used, for lodging or sleeping

or for any immoral or illegal purpose.

18. The requirements of tenant will be attended to only upon application at the office of Landlord. Building employees shall not be required to perform any work outside of their regular duties unless under specific instruction from the office of Landlord.
19. Canvassing, soliciting, and peddling in the Building are prohibited, and each tenant shall cooperate in seeking their prevention.
20. There shall not be used in the Building, either by any tenant or by its agents or contractors, in the delivery or receipt of merchandise, freight, or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards, and such other safeguards as Landlord may require.
21. No animals of any kind shall be brought into or kept about the Building by any tenant, with the exception of animals designated for the assistance of the disabled.
22. No tenant shall place, or permit to be placed, on any part of the floor or floors of the space demised to such tenant a load exceeding the floor load per square foot which such floor was designed to carry and which is allowed by law.
23. Landlord reserves the right to specify where in the space demised to any tenant business machines and mechanical equipment shall be placed or maintained in order, in Landlord's judgment, to absorb and prevent vibration, noise, and annoyance to other tenants of the Building.
24. No vending machines shall be permitted to be placed or installed in any part of the Building by any tenant. Landlord reserves the right to place or install vending machines in any of the common areas of the Building.

**EXHIBIT "F"**  
**LANDLORD'S IMPROVEMENTS**

Landlord is not providing any improvements

B.O.C.C Monday Discussion

4.

Meeting Date: 04/29/2024

Title: Project updates - Courthouse Parking Lot ; Metra, Arena Internal Sewer Lines, Cedar Hall

Submitted For: James Matteson, Purchasing Agent

Submitted By: James Matteson, Purchasing Agent

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TOPIC:

**Finance - James Matteson** - Purchasing Update on Courthouse Parking Lot; Metra Arena Internal Sewer Lines, Cedar Hall Water Line

BACKGROUND:

Courthouse parking lot overlay, MetraPark Arena internal sewer lines, Cedar Hall water line

RECOMMENDED ACTION:

Discussion

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Attachments

Courthouse Parking Lot Overlay

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## James Matteson

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**From:** Greg Reid <greid@wwcengineering.com>  
**Sent:** Wednesday, April 24, 2024 1:44 PM  
**To:** James Matteson  
**Cc:** dana@emxmt.com; Kris Kloeckner; Jesse Butler  
**Subject:** RE: Courthouse Parking Lot

All,

Below are notes from our discussion yesterday, that I wanted to put down as a follow up.

- Paving plan is to mill the transition areas and complete a 2" overlay of the lot.
  - The overlay would be 3/8" B-mod.
  - The transition to the existing parking lot to the west needs to be wider than typical (i.e., 12') to make sure that the grades tie smoothly and a lip is avoided at the mill edge. Jesse, as a consideration on this, it may be worth it to do a mill edge on that side that is one paving pass wide and then pave that section, to give you a clean edge to pave against at the mill edge, in lieu of having the mill edge be mid paving pass.
  - The inlets will have milling around them and will have an exaggerated depression. No elevation adjustments are planned for the inlets.
  - The alley approach can have a small rise paved into it draining to the alley to give Tru-North grade to get over the milling edge.
  - The meet lines of the paving should be offset so that they don't match the overlay and previous paving project, to help prevent them reflecting to the surface.
  - **As an additional request, Jesse can you roll the existing asphalt before paving (afternoon before preferably hopefully on a 90 deg plus day).**
- The posts/meters/blocks will be pulled and reset following paving.
- The restriping/parking blocks/meters need to be reset per an updated plan (WWC needs to provide this) with one less parking space per row.
- The electrical pull boxes at the posts need raised to finished grade.

Thanks,  
Greg

  
**WWC** ENGINEERING  
**GREG REID, P.E. | Branch Manager**  
550 S 24th St. W. Ste.201 | Billings, MT 59102  
O: 406.894.2210 | D: 406.534.8158 | C: 406.799.1415  
[www.wwcengineering.com](http://www.wwcengineering.com)

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**From:** James Matteson <jmatteson@yellowstonecountymt.gov>  
**Sent:** Wednesday, April 24, 2024 1:34 PM  
**To:** Greg Reid <greid@wwcengineering.com>; Kris Kloeckner <krisκλοeckner@emxmt.com>; Jesse Butler <jb.tnc@outlook.com>  
**Subject:** RE: Courthouse Parking Lot  
**Importance:** High

**WARNING: This email originated from an external sender. Please use caution when clicking links or opening attachments.**

B.O.C.C Monday Discussion

5. a.

Meeting Date: 04/29/2024

Title: Junction City Memorial Park (Custer) - Delivered Sand Donation Request

Submitted By: Monica Plecker

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**TOPIC:**

Junction City Memorial Park (Custer) - Delivered Sand Donation Request

**BACKGROUND:**

Junction City Memorial Park is a public park owned by Yellowstone County located in Custer. A resident inquired whether the County would consider a donation of 1 large truckload of delivered sand to the park. The volleyball court and sandbox need additional material. If the County were to provide and deliver the sand, the residents of Custer would provide the manpower to place the sand in the park. Custer has a planned park cleanup and volunteer day on May 7th. If the BOCC was supportive of the donation, it would be ideal for the material to be delivered by May 7th. The County has from time to time provided materials for community facilities in Custer. If the BOCC were supportive, the sand and delivery would be coordinated through Public Works.

If the Board were not supportive of a donation of delivered sand, a different alternative to consider would be using vendors and and pay for the materials and delivery out of the park fund. There are available undedicated funds that could be used.

**RECOMMENDED ACTION:**

Provide guidance on the donation request.

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B.O.C.C Monday Discussion

5. b.

Meeting Date: 04/29/2024

Title: Abandonment of a portion of 56th Street West

Submitted For: Tim Miller, Public Works Director

Submitted By: Tim Miller, Public Works Director

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**TOPIC:**

Abandonment of a portion of 56th St W

**BACKGROUND:**

This abandonment was tabled at the April 18th 2023 Commissioners' meeting due to concerns of the city possibly needing the right of way for utility expansion. The concerns have been addressed is no longer opposed to the abandonment.

**RECOMMENDED ACTION:**

NA

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B.O.C.C Monday Discussion

5. c.

Meeting Date: 04/29/2024

Title: Abandonment of a portion of Rosebud Lane

Submitted By: Tim Miller, Public Works Director

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**TOPIC:**

Abandonment of a portion of Rosebud Lane

**BACKGROUND:**

Camp World (FRHP Lincolnshire LLC) would like to abandon a portion of Rosebud Lane to better secure their property.

**RECOMMENDED ACTION:**

NA

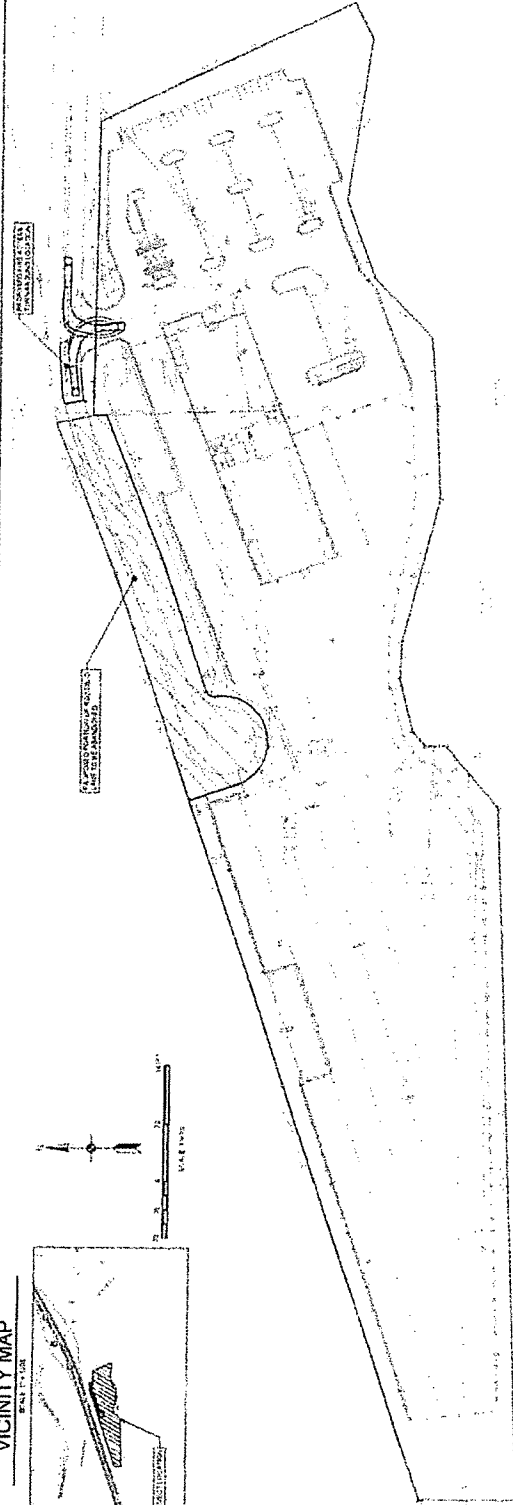
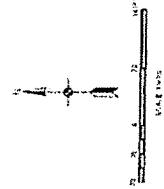
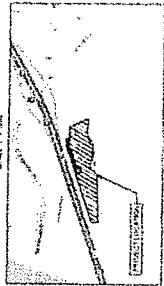
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Attachments

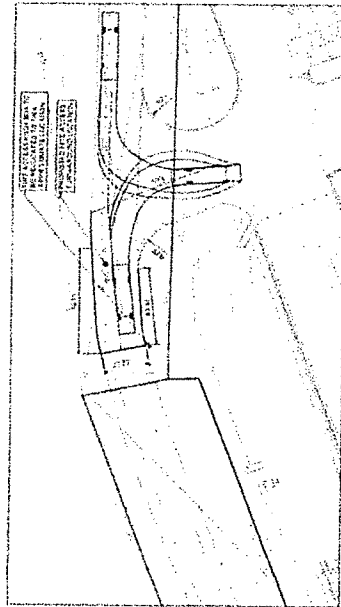
Abandonments

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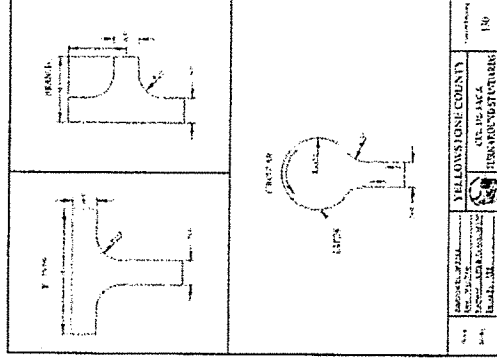
VICINITY MAP



TURN AROUND OPTION



TURN AROUND OPTION (ENLARGED VIEW)



PROJECT NO.	130
CITY OF JARVIS	YELLOWSSTONE COUNTY
DEPARTMENT OF PUBLIC WORKS	DEPARTMENT OF PUBLIC WORKS
DESIGNED BY	DESIGNED BY
DRAWN BY	DRAWN BY
CHECKED BY	CHECKED BY
DATE	DATE

CAMPING WORLD  
BILLINGS  
Rosebud Lane  
Billings, Montana



DATE: 27 JULY 2013  
PROJECT: BILLINGS

ROAD  
ABANDONMENT  
& FIRE ACCESS

C1.0

B.O.C.C Monday Discussion

1.

Meeting Date: 04/29/2024

Title: Proclamation - National Therapy Animal Day

Submitted By: Erika Guy

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TOPIC:

Proclamation - National Therapy Animal Day

BACKGROUND:

See Attachment

RECOMMENDED ACTION:

Discuss

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Attachments

National Therapy Animal Day

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PROCLAMATION

Resolution 24-57

**WHEREAS**, There are thousands of Pet Partners therapy animal teams serving in communities across the United States; and

**WHEREAS**, Pet Partners has designated April 30th as National Therapy Animal Day; and

**WHEREAS**, scientific research shows that interacting with therapy animals can reduce stress, relieve depression, slow heart rate, lower blood pressure and strengthen the immune system; an

**WHEREAS**, therapy animal teams in Yellowstone County play an essential role in improving human health and well-being through the human-animal bond; and

**WHEREAS**, therapy animal teams interact with a variety of people in our community including veterans, seniors, patients, students, and those approaching end of life; and

**WHEREAS**, these exceptional therapy animals who partner with their human companions bring comfort and healing to those in need; and

**WHEREAS**, we encourage more pet owners to consider becoming Pet Partners volunteers to help our community by creating greater access to meaningful therapy animal visits.

**NOW, THEREFORE**, we, the Board of County Commissioners, do hereby proclaim April 30, 2024, as National Therapy Animal Day in Yellowstone County, and encourage our citizens to celebrate our therapy animals and their human handlers. Further, we publicly salute the service of therapy animal teams in our community and in communities across the nation.

**PASSED AND ADOPTED** by the Board of County Commissioners, Yellowstone County, Montana this 30th day of April, 2024.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

YELLOWSTONE COUNTY, MONTANA

---

John Ostlund, Chair

---

Mark Morse, Member

---

Donald W. Jones, Member

ATTEST:

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Jeff Martin, Clerk and Recorder