

MEMORANDUM OF UNDERSTANDING

Between:

THE CITY OF BILLINGS
210 North 27th Street
Billings, MT 59103

and

YELLOWSTONE COUNTY
217 North 27th Street
Billings, MT 59101

1. PARTIES

This Memorandum of Understanding (MOU) is made this 10th day of December, 2024 by and between the **CITY OF BILLINGS** of 210 North 27th Street, Billings, MT 59101, ("**CITY**") and **YELLOWSTONE COUNTY** of 217 North 27th Street, Billings, MT, 59101 ("**COUNTY**") (collectively "**PARTIES**") as public entities in recognition of the benefits of intergovernmental cooperation to better serve the collective interests of both and the public which they serve.

2. PURPOSE

The PARTIES wish to work cooperatively on the donation and disposal by CITY of certain surplus property set forth below and the COUNTY's assumption of ownership and control of that same property all pursuant to the terms of this MOU.

3. BACKGROUND

CITY has a surplus Liebert/Emerson 30KVA UPS unit ("**UPS UNIT**") located at 210 North 27th Street, Billings, Montana. The UPS UNIT is presently still in use as of the date of this MOU and is anticipated to be in use through February 14, 2025. After February 14, 2025 the UPS UNIT will be surplus personal property, will no longer be in use, and must be both disconnected and removed from its present location. The CITY wishes to donate the UPS UNIT to another governmental or non-profit entity. COUNTY is a governmental entity which could use and benefit from the UPS UNIT. The PARTIES enter into this MOU to outline the terms of the CITY's donation of the UPS UNIT to the COUNTY.

4. RESPONSIBILITIES

CITY is responsible for the following:

- a. Ensure adequate access to the UPS UNIT to enable its disconnection and removal by COUNTY on and after the date of February 18, 2025 through the date of March 14, 2025.

COUNTY is responsible for the following:

- a. Disconnection and removal of the UPS UNIT from its present location on CITY property on or after the date of February 18, 2025, but in any event no later than the date of March 14, 2025.
- b. Payment of all costs and expenses associated with disconnection of the UPS UNIT, preparing the UPS UNIT to be moved, moving/relocation expenses, and all future maintenance and other expenses related to the UPS UNIT.
- c. Reimbursement to the CITY of any damage to CITY property which may occur during disconnection and removal of the UPS UNIT.

The PARTIES are responsible for the following:

- a. Execution of such other and further documentation, if any, as may be required to accomplish the terms of this MOU, including transfer of ownership of the UPS UNIT from CITY to COUNTY.

5. TERM OF MOU

The term of this MOU shall commence upon the date of its execution and shall terminate six (6) months thereafter, unless earlier terminated in a manner provided in this MOU.

6. CONSIDERATION

The PARTIES agree that this MOU is supported by good and valuable consideration inasmuch as CITY is receiving the benefit of disconnection and removal of the UPS UNIT which it would otherwise incur expense for and the COUNTY is receiving the benefit of ownership and use of the UPS UNIT for such purposes as will benefit the public which it serves.

7. NO WARRANTY

The CITY does not in any way guarantee or warranty the UPS UNIT for any purpose or for any use.

The COUNTY has inspected the UPS UNIT to its satisfaction to ensure its condition, usability, and usefulness for its intended purpose. The COUNTY accepts the UPS UNIT in an "as-is" condition. The COUNTY acknowledges that the last maintenance on the UPS UNIT was completed in August of 2024, the UPS UNIT is no longer covered by a maintenance plan, and the UPS UNIT is projected to need new batteries in 2027.

8. HOLD HARMLESS AND INDEMNIFICATION

Each party agrees to indemnify and hold the other party harmless against any claims arising from the acts, errors, or omissions of its employees or agents.

9. AUTHORITY

The CITY is authorized by MCA 7-1-4124(3) and AO 160 to dispose of personal property.

10. PARTIES' REPRESENTATIVES

The CITY's representative for all purposes under this MOU is David Watterson.

The COUNTY's representative for all purposes under this MOU is Steve Yogodzinski.

Any formal written notice from one party to another shall be sent to the representative listed above and to the Billings City Attorney's Office.

11. PUBLIC INFORMATION:

All materials related to this MOU are considered public records and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

12. DEFAULT AND TERMINATION

If either party fails to comply with any condition of this MOU at the time or in the manner provided for, the other party may, at its option, terminate this MOU and be released from all obligations if the default is not cured within ten (10) calendar days after written notice of default is provided by the non-defaulting party to the defaulting party. Said notice shall set forth the items to be cured. Should the default not be cured within the ten (10) calendar days, then the MOU may be terminated for breach of its terms. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude the use of the others. Notices of default shall be provided in writing and mailed, or emailed, or delivered in person to the defaulting party's representative.

13. NO CREATION OF ENTITY

This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency or partnership between CITY and COUNTY. Neither CITY nor COUNTY is authorized to act on behalf of the other in any manner in relation to the subject matter of this Agreement, and neither shall be liable for the acts, errors, or omissions of the other entered into, committed or performed with respect to or in the performance of this Agreement.

14. AMENDMENTS

This MOU may be modified at any time the parties deem it necessary. Modifications, revisions, or additions to this MOU shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this MOU.

15. ASSIGNMENT

No party to this MOU shall assign or otherwise transfer its rights or delegate its obligations under this MOU without the prior written consent of the other party. Any attempted assignment, transfer or delegation without such consent shall be void. All of the terms and provisions of this MOU shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

16. GOVERNING LAW, INFORMAL DISPUTE RESOLUTION, VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Montana. Should a dispute arise regarding the terms of this Agreement, the parties shall first enter into good faith discussions in an attempt to resolve the dispute. Should the dispute result in litigation, the parties agree that proper venue lies in the Montana 13th Judicial District Court.

17. ENTIRE AGREEMENT AND REVOCATION OF PRIOR AGREEMENTS

This Agreement embodies the entire understanding between CITY and COUNTY with respect to the specific subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement.

18. TIME OF THE ESSENCE

The PARTIES agree that time is of the essence in this MOU.

19. AUTHORIZED SIGNATURES

The parties represent and agree that the persons signing this Agreement have authorization to bind their respective governmental entities to the terms of the Agreement.

20. SEVERABILITY

If any provision of this MOU is held to be illegal or void, the validity of the remaining terms shall not be affected. Any amendment or MOU hereafter made shall not be effective to modify this MOU unless in writing and signed by both parties.

21. SUCCESSORS AND ASSIGNS

Neither party shall assign, transfer, or encumber any rights, duties, or interests accruing from this MOU without the consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

**BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA**

WILLIAM A. COLE, MAYOR

JOHN OSTLUND, CHAIRMAN

ATTEST:

MARK MORSE, COMMISSIONER

DENISE BOHLMAN, CITY CLERK

DONALD W. JONES, COMMISSIONER

ATTEST:

**JEFF MARTIN, YELLOWSTONE COUNTY
CLERK AND RECORDER**