

Yellowstone County



COMMISSIONERS
(406) 256-2701
(406) 256-2777 (FAX)

P.O. Box 35000
Billings, MT 59107-5000
bocc@yellowstonecountymt.gov

January 28, 2025

City of Billings
Attn: Mr. Chris Kukulski, City Administrator
210 North 27th Street
Billings, MT 59101

Dear Mr. Kukulski:

Enclosed with this letter you will find an Addendum to Lease Agreement for the space we currently rent from the City at the Stillwater Building. It has been executed by the Board of County Commissioners. Along with this addendum, we are enclosing a copy of the correspondence forwarded to you on November 19, 2024 in which we formally declined our three-year option to extend the lease and referenced our desire to come to a short-term lease arrangement with the City.

The attached addendum follows the terms that our OMB Director suggested to you at a breakfast meeting late last year.

There is likely uncertainty over the next five years as to your needs at Stillwater, our court related space needs, and what requirements or decisions made at the state level might have on your operations and ours. Further, we don't believe it is in your or our best interests to consider any long-term arrangement for space until we get closer to the time that the City moves beyond some limitations currently attached to the Stillwater Building.

Our goal is to keep this extension simple and straightforward. As consideration, the City will be given an "early" 3% increase in your lease rate to us that has occurred every January that we have occupied third floor space.

We trust that you will find this addendum acceptable and will forward it to the Billings City Council for final approval.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

A handwritten signature in black ink, appearing to read "Mark Morse".

Mark Morse, Chair

A handwritten signature in black ink, appearing to read "Michael J. Waters".

Michael J. Waters, Member

A handwritten signature in black ink, appearing to read "John Ostlund".

John Ostlund, Member

ADDENDUM TO LEASE AGREEMENT

The Agreement dated January 23, 2018, between WC COMMERCIAL, LLC (WC), lessor, and YELLOWSTONE COUNTY (COUNTY) a political subdivision of the State of Montana, lessee, is amended by agreement of the parties by this Addendum. The City of Billings (City) subsequently purchased the building. As part of that transaction, WC assigned its lease rights to the City. There is no other agreement between the parties outside of the original Agreement and this Addendum with regards to the building.


References in this Agreement to the Contract are to the Contract as previously amended or varied.

IN CONSIDERATION OF the Parties agreeing to amend their obligations in the existing Contract, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to keep, perform, and fulfill the promises, conditions, and agreements below:

1. The Contract is amended as follows:
 - a. The County declines the 3-year option, as communicated in writing to the City by the Board of County Commissioners on November 19, 2024.
 - b. The City shall allow the County, at the County's sole discretion to continue to lease the premises on a month-to-month basis, beginning May 23, 2025 for a term of up to 12 months to May 22, 2026.
 - c. The County will give the City a 90-day notice of intent to vacate and terminate, should it determine that it will not exercise the full term of this extension.
 - d. In exchange, the County will pay an additional 3% to the monthly rate at the end of the 7-year lease term, ending on May 22, 2025, as compensation to the City.
2. Except as otherwise expressly provided in this Agreement, all of the terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF the Parties have duly affixed their signatures on this 21 day of January, 2025.

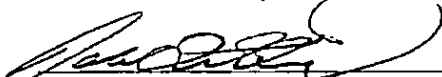
YELLOWSTONE COUNTY BY AND THROUGH
ITS BOARD OF COUNTY COMMISSIONERS



Mark Morse, Chairperson

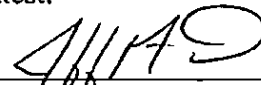


Michael J. Waters, Member



John Ostlund, Member

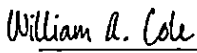
Attest:



Jeff Martin
Yellowstone County Clerk and Recorder

CITY OF BILLINGS

Signed by:



2CA11D5623334EE
Authorized Agent of City of Billings

Yellowstone County



COMMISSIONERS
(406) 256-2701
(406) 256-2777 (FAX)

P.O. Box 35000
Billings, MT 59107-5000
bocc@yellowstonecountymt.gov

November 19, 2024

City of Billings
Attn: Mr. Chris Kukulski, City Administrator
210 North 27th Street
Billings, MT 59101

Dear Mr. Kukulski:

Please be advised that Yellowstone County will not be exercising the three-year renewal option on its space at the Stillwater Building in May of 2025. Our 2018 lease with WC Commercial, assumed by the City upon its purchase of the building on October 15, 2021 requests notification of intent at least 180 days prior to the expiration of said lease on May 22, 2025.

While the language in the lease only applies to the County exercising the option, the Board of County Commissioners seeks to state our decision not to exercise the option for clarity of intent. Further, the County desires to negotiate a short-term extension of the lease to accommodate our need for the leased space until our remodeled County Administration Building, located at 2825 3rd Avenue North, is ready for occupancy at or near the end of 2025.

It is our opinion that by the end of a short-term extension, the County will have more certainty as to our longer-term space needs, the costs of our remodel of the County Administration Building, the remodel of the Courthouse to allow for court related growth well into the future, along with being able to fully assess how 2025 legislative changes may impact our finances into the future.

Sincerely,

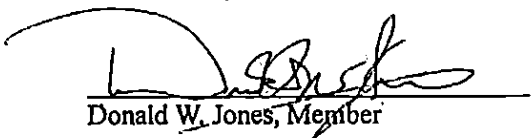
BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA



John Ostlund, Chair



Mark Morse, Member



Donald W. Jones, Member

Cc: Mr. Kevin Iffland, Assistant City Administrator
Ms. Jessica Iverson, City Facilities Manager
Mr. John Caterino, City Facilities Superintendent

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

Parties

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

Leased Property

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

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

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

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

County Counter Space

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

Additional Considerations

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

Use of the Property

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

Term and Option to Renew

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

Rent

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

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

CAM's

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

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

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

Option to Expand

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

Time is of the Essence—Liquidated Damages

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

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

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

Information Technology and Telephone Lines

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

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

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

Server Room

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

Peaceful Possession

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

Maintenance

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

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

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

Janitorial Services and Grounds Maintenance

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

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

Building Security

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

Utilities

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

Access to the Leased Property

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

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

Liability and Casualty Insurance

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

Official Notices

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

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

Applicable Law

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

Compliance with the Law

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

Subleasing

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

Modifications to Leased Space

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

Waiver

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

Severability

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

Entire Agreement

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

Modification

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

Condominium

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

Attorney's Fees

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

YELLOWSTONE COUNTY BY AND THROUGH
ITS BOARD OF COUNTY COMMISSIONERS


DATED this 23rd day of January, 2018.


John Ostlund, Chairman


Denis Pitman, Member

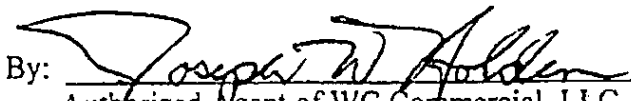

Robyn Driscoll, Member

Attest:


Jeff Martin
Yellowstone County Clerk and Recorder

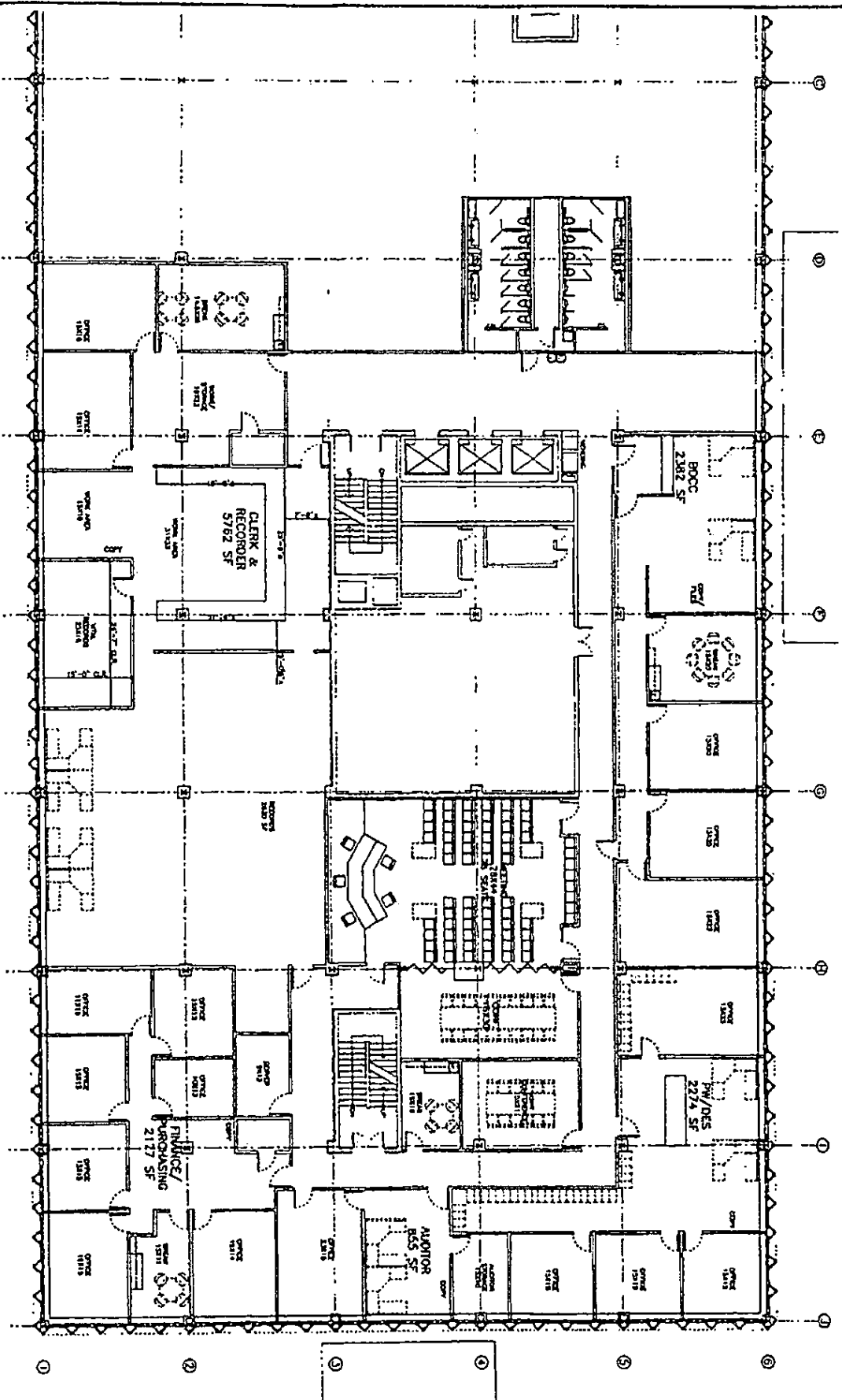
WC COMMERCIAL, LLC

DATED this 23rd day of January, 2018

By: 
Authorized Agent of WC Commercial, LLC



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



Drawn By: RLB
 Checked By: RLB
 Date: XX-XX-2017
 Project #: 160102
 Cadd file:



EFC
 ENGINEERING COMPANY
 ENGINEERS • ARCHITECTS • SURVEYORS • PLANNERS

EGGART ENGINEERING COMPANY
 720 LOHWEST LANE
 BILLINGS, MT 59106
 OFFICE: 406-438-9151
 FAX: 406-438-9150
 WWW.EGGMOUNT.COM

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

PRELIM

SHEET#:
A101L

EXHIBIT "A"

CAM charges Stillwater building:

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

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

Utilities.

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

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

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

TOTAL \$0.71 psf.

Normal Maintenance (labor and materials).

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

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

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

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

TOTAL \$1.16 psf.

Major Maintenance (labor and materials).

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

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

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

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

TOTAL \$0.29 psf.

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

Snow Removal \$20,000 per year

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

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

City Council Regular

Date: 03/10/2025
Title: Lease Agreement Addendum with Yellowstone County for Space in the City Hall Building
Presented by: Kevin Iffland, Assistant City Administrator
Department: City Hall Administration
Presentation: No
Legal Review: Yes
Project Number: N/A

RECOMMENDATION

Staff recommends that City Council approve the addendum to the lease agreement with Yellowstone County for space in the New City Hall Building, extending the lease on a month-to-month basis for up to 12 months with a 3% increase in the lease rate, effective May 23, 2025.

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

Yellowstone County has leased approximately 17,395 square feet of office space on the third floor of the Stillwater Building (New City Hall) since May 23, 2018, under an agreement originally signed with WC Commercial, LLC. The lease was later assigned to the City of Billings when the City acquired the Stillwater Building on October 15, 2021.

The original lease was for a seven-year term, expiring on May 22, 2025, with an option for the County to extend for an additional three years under the same terms. On November 19, 2024, the County formally declined the extension option but requested a short-term lease extension to accommodate its ongoing space needs while it completes renovations to the County Administration Building.

Under the proposed lease addendum, Yellowstone County will continue to occupy the space on a month-to-month basis for up to 12 months, ending no later than May 22, 2026. The County has agreed to provide the City with at least 90 days' notice before vacating the premises. In consideration of this extension, the County will pay an additional 3% to the monthly lease rate as of May 23, 2025.

STAKEHOLDERS

City of Billings: Owner of the New City Hall Building and lessor of the leased space.
Yellowstone County: Lessee of the space, responsible for lease payments and space usage.
Billings City Council: Decision-making body responsible for approving the lease extension.
County Administration: Overseeing Yellowstone County's facility needs and transition planning.
City Facilities Management: Responsible for maintaining and managing the leased property.
Legal Counsel: Reviewing terms and compliance with contractual obligations.
Public and Taxpayers: Indirect stakeholders impacted by financial and space management decisions.

ALTERNATIVES

City Council may:
Approve the lease addendum as presented, allowing the County to remain in the space for up to one year on a month-to-month basis.

Deny the lease addendum, requiring the County to vacate the space at the end of the current lease term on May 22, 2025.

Propose modifications to the terms of the lease extension before approval.

FISCAL EFFECTS

As of January 2025, Yellowstone County has been paying \$35,501.85 per month, inclusive of common area maintenance (CAM) charges. Under the proposed lease addendum, this amount will increase by 3% on May 23, 2025, bringing the new monthly payment to approximately \$36,566.91. Over the course of a full 12-month extension, this would generate an additional \$12,780 in lease revenue for the City.

The City will remain responsible for building operations and common area maintenance as outlined in the original lease terms.

Attachments

Proposed Lease Amendment
Assumed Lease