

REAL PROPERTY LEASE FOR SITE OF MISSOULA URBAN TRANSPORTATION DISTRICT TRANSFER CENTER

WITNESSETH

Whereas, the City as Lessor is willing to lease real property located at the northwest corner of the intersection of West Pine Street and Ryman Street in the 200 block of West Pine in downtown Missoula to Lessee for purposes of MUTD as Lessee constructing a building and leasing the above ground portion as an urban transit district transfer center pursuant to the terms and conditions set forth in this lease as provided herein and hereby agreed to by the parties.

I. PARTIES

This real property lease agreement entered into this ____ day of _____, 2020, by and between the City of Missoula (City), a municipal corporation organized pursuant to the laws of the State of Montana as "Lessor" and the Missoula Urban Transportation District (MUTD) an urban transportation district organized pursuant to the laws of the State of Montana as "Lessee."

II. PREMISES

(A) Lessor, for and in consideration of the terms, conditions, covenants and agreements herein contained agrees to lease the following legally described real property in the 200 block of West Pine Street in the City of Missoula to Lessee:

A Tract of land being a portion of C.P. Higgins Addition, a subdivision of Missoula County, located in the Northwest one- quarter (NW ¼) of Section 22 and the Northeast one quarter (NE ¼) of Section 21, Township 13 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana, being more particularly described as follows:

Commencing at the intersection of Pine Street and Woody Street; thence S.33°49'45"E., 34.72 feet to the TRUE POINT OF BEGINNING; thence S.68°00'00"E., 319.12 feet; thence N.22°00'00"E., 154.50 feet; thence N.68°00'00"W., 77.50 feet; thence S.22°00'00"W., 66.00 feet; thence N.68°00'00"W., 19.00 feet; thence s.22°00-00"W., 13.00 feet; thence N.68°00'00"W., 71.00 feet; thence S.22°00'00"W., 11.00 feet; thence N.68°00'00"W., 151.62 feet; thence s.22°00-00"W., 64.50 feet to the TRUE POINT OF BEGINNING. Containing 28,795 square feet, more or less, being subject to all easements and rights-of-way, as existing, of record, apparent, and all according to the attached exhibit.

(B) Lessor hereby agrees to allow Lessee to construct on the leased premises an urban transit district transfer center including a basement, the design of which must be pre-approved by the Mayor. Any additional future construction activity by Lessee at the lease site must be pre-approved by the Mayor. As consideration for Lessor allowing Lessee to use this real property and construct a building thereon, Lessor shall be entitled to the exclusive use of the basement of the building except for any mechanical facilities serving the above ground transit center.

(C) Lessee shall ensure that construction project payment and performance bonds exist for any construction project Lessee engages in or commences with respect to the leased premises legally described herein. Also, Lessee shall ensure that no construction or materialman's lien or any other liens of any nature are asserted against the leased premises by Lessee taking precautionary measures such as requiring the aforementioned payment and performance bonds as well as requiring that lien releases or waivers are submitted from all contractors, sub-contractors, agents, materialman, etc. prior to final payments being made on the construction project. As between Lessor and Lessee, Lessee shall be solely responsible for defending, removing or satisfying any lien asserted against the leased premises arising out of Lessee's construction activity, occupation or use of the leased premises.

(D) Lessee shall ensure, with respect to any construction activity that occurs, that any required prevailing wages for the construction project are paid as required by law.

(E) Lessee shall be entitled to the use of one reserved parking lot space in the vicinity of the MUTO transfer center facility for MUTO purposes.

(F) Once Lessee has constructed an urban transfer center on Lessor's land, all improvements so constructed or installed, including buildings, shall become the property of Lessor and shall be owned by the City.

(G) Any fixture permanently affixed to either the land or building so that it is not easily removable without damaging or impairing the property it is attached to, shall become the property of Lessor unless Lessor otherwise indicates in writing. Articles or items of personal property attached to the property that are easily detachable or removable without damaging or impairing Lessor's use of the property or the property the article or item is attached to shall be the property of Lessee and may be removed by Lessee.

(H) Lessee shall be entitled to the possession, lease and control of the above-mentioned above-ground portion of the buildings and improvements for one dollar (\$1) per year for a term of twenty (20) years until June 30, 2040, as long as the property is used by Lessee as an urban transit district transfer center and Lessee complies with the conditions and provisions of this lease agreed to by the parties as provided herein.

(I) This lease shall be subject to public utility or other easements that may exist on the real property.

(J) Any building or improvements constructed or installed by Lessee on the leased land shall be in compliance with the federal Americans With Disabilities Act at the time of its construction or installation.

(K) Lessee shall be responsible for the payment of any and all utility costs arising out of Lessee's occupation or use of the leased premises.

(L) Lessee shall be solely responsible for the administration, management and control of the transit facilities and operations during the lease period(s).

(M) If Lessee decides to relocate its transfer center site during the twenty (20) year term of the lease, lessee shall be responsible for the pro rata repayment of any original construction monies to the United States government.

(N) If Lessor terminates or interferes with Lessee's ability to use the lease during the initial twenty (20) year term so that Lessor may use the land for other purposes, Lessor agrees to pay any remaining pro rata repayment monies that would be owed to the United States government arising out of federal monies being used to pay for the original construction of the transfer center.

III. TERM AND RESERVATION OF LESSOR'S RIGHT TO TERMINATE

(A) Lessee shall have the right to have and to hold, control, manage and administer the leased premises above-ground for urban transit district transfer center purposes for a term of twenty (20) years, with the first right to renew the lease for another twenty (20) year term for urban transit district transfer center purposes pursuant to the terms and conditions agreed to by the parties at the time of renewal. Lessee must provide notice of its interest and desire to renew this lease at least 120 days in advance of the expiration of this lease. Lessor and Lessee may agree to revisions to the lease at the time of renewal.

(B) All improvements made on the leased property for which ownership has not previously transferred to Lessor prior to abandonment or expiration of this lease shall revert back to and become the property of Lessor at either the abandonment or the expiration of the twenty (20) year term of the lease.

(C) Until ownership of any building or improvement transfers to Lessor, Lessee shall be responsible for any property, casualty, or liability insurance for any building or improvement and shall identify Lessor as an additional insured on any property insurance policy and if the premises, building or improvement is rendered untenable by fire or other casualty, Lessee shall immediately take action to ensure the safety of the site and within thirty (30) days present to Lessor a plan for repairing, rehabilitating or removing any unsafe or untenable condition.

(D) Lessor may terminate the lease if Lessor determines that there is a public need to use the premises for another purpose, by giving Lessee twenty-four (24) months written notice of Lessor's intent to terminate the lease.

IV. MAINTENANCE OF PREMISES:

(A) Lessee agrees that it will keep the premises, including buildings, structures and grounds, in good repair and in a safe and healthy condition for public use of the property during the term of the lease and upon abandonment or termination of this lease will yield up the premises to Lessor in good condition and repair, ordinary wear excepted.

(B) Lessee shall be responsible for daily maintenance and litter pickup on any premises used by Lessee's facilities and transit operations.

(C) Lessee agrees that the insurance proceeds from any insured loss such as fire, earthquake, etc. with respect to any portion of any construction on the premises will be used to restore, rebuild or clear the land unless otherwise indicated in writing by Lessor. Lessee's maintenance responsibility shall include ice and snow removal on adjacent public sidewalks as well as keeping those public sidewalks maintained and in good repair.

V. NO SUBLETTING OR ASSIGNMENT OF LEASE

Lessee shall neither sublet nor assign any of its interest or rights in this lease or the premises to any person, corporation or other entity without the written consent and approval of Lessor.

VI. LESSEE TO INDEMNIFY, HOLD HARMLESS AND DEFEND LESSOR

Lessee agrees to indemnify, hold harmless and defend Lessor against any and all actions, liabilities, judgments, costs, damages and expenses which may arise out of Lessee's use of the premises or which may accrue against, be charged to or recovered from Lessor by reason or on account of damage to the leased premises or injury to or death of any person arising from Lessee's use of or occupation of or operations conducted at the leased premises including acts of Lessee's agents, contractors and subcontractors. Any final judgments rendered against Lessor for any cause for which Lessee is liable with respect to the leased premises shall be conclusive against Lessee as to Lessee liability and amount.

VII. LESSEE RESPONSIBLE FOR ASSESSMENTS

Lessee shall be solely responsible for paying any special improvement district, street lighting, sidewalk or other special assessment assessed during the lease period as well as for paying all utility cost assessments associated with Lessee's use of the premises.

VIII. LESSEE COMPLIANCE WITH LAWS AND CODES

Lessee shall comply at all times with the provisions of any applicable federal or state law, municipal ordinance or code pertaining to the use or occupation of the leased premises. In addition, Lessee shall comply with the City of Missoula's Anti-Discrimination Policy and Affirmative Action Policy attached to this Lease as Exhibit A.

IX. LEASE PROVISIONS BINDING ON SUCCESSORS IN INTEREST

Lessor and Lessee agree that the provisions and covenants of this lease shall be binding upon, apply and inure to any successors in interest or assigns of the respective parties.

X. TERMINATION OF LEASE PURSUANT TO LESSEE'S DEFAULT OR ABANDONMENT

(A) If Lessee ceases using the leased premises as an urban transit district transfer center, Lessor may deem Lessee's abandonment as Lessee's termination of this lease.

(B) If Lessee otherwise desires to terminate this lease, Lessee may do so upon one hundred and twenty (120) days written notice to Lessor.

(C) In the event of any Lessee breach of any provision, covenant, term, or condition contained in this lease, Lessor shall have the right to terminate this lease immediately upon giving written notice to Lessee of the breach or default. Lessee shall have thirty (30) calendar days to cure or correct any beach or default of this lease agreement. However, failure or neglect of Lessee to timely correct its breach or default shall be grounds for termination of this lease.

(D) Failure or neglect of Lessor to act upon any breach of one or more of the provisions, covenants, terms and conditions of this lease shall not constitute or be construed as a waiver of Lessor action on any subsequent breach of any kind of this lease by Lessee.

XI. NOTICES

Whenever it is necessary for a party to provide notice to the other party, notices to the respective parties shall be mailed or personally delivered to the other party as follows:

LESSOR: Mayor
City of Missoula
435 Ryman
Missoula, Montana 59802

LESSEE: General Manager
Missoula Urban Transportation District
1221 Shakespeare
Missoula. Montana 59802

X. SEVERABILITY

It is Lessor and Lessee's intent that if for any reason a final court ruling invalidates any provision, covenant, term or condition of this lease, all remaining provisions, covenants, terms or conditions shall remain in full force and effect.

LESSOR:

LESSEE:

Jesse Dodson
Chair, Missoula Urban
Transportation District Board

John Engen
Mayor
City of Missoula

ATTEST:

City Clerk

SEAL

State of Montana)

) ss.

County of Missoula)

This instrument was acknowledged before me on this ____ day of _____, 2020, by _____, Chair of Missoula Urban Transportation District Board.

NOTARY PUBLIC for the State of Montana
Residing at _____
My Commission Expires _____

ATTACHMENT A

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Human Resource staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, C.E.T.A. program participants, trainees and applicants.