

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution 24-11191 entitled: "RESOLUTION APPROVING A MASTER LEASE PURCHASE AGREEMENT AND PROPERTY SCHEDULE IN CONNECTION WITH IMPROVEMENTS TO THE NEW CITY HALL BUILDING" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on March 25, 2024, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council members voted in favor thereof: Shaw, Gulick, Neese, Joy, Kennedy, Aspenlieder, Tidswell, Boyett, Rupsis and Mayor Cole; voted against the same: N/A; abstained from voting thereon: N/A; or were absent: Owen.

WITNESS my hand and seal officially this 25th day of March, 2024.

(SEAL)




Denise R. Bohlman, City Clerk

RESOLUTION 24-11191

RESOLUTION APPROVING A MASTER LEASE PURCHASE AGREEMENT AND PROPERTY SCHEDULE IN CONNECTION WITH IMPROVEMENTS TO THE NEW CITY HALL BUILDING

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals and Authorization.

1.01. In October 2021, the City purchased the former federal courthouse building located at 316 North 26th Street in the City (the "New City Hall Building"). The City has determined to undertake renovations of and improvements to the New City Hall Building to make it suitable for use as a law and justice center and city offices (collectively, the "Improvements").

1.02. Pursuant to Resolution No. 23-11129, adopted by the Council on June 26, 2023, the Council authorized and directed the City Administrator and City Finance Director, in consultation with Baker Tilly Municipal Advisors, LLC ("Baker Tilly") and Dorsey & Whitney LLP ("Dorsey"), to pursue lease purchase financing options with respect to the Improvements and to engage in negotiations and discussions with potential investors, banks, underwriters and other financial institutions with respect to the terms and conditions thereof.

1.03. Pursuant to such authorization, the City Finance Director, Baker Tilly and Dorsey have engaged in discussions with the Montana Board of Investments ("BOI"), regarding a lease purchase financing through BOI's INTERCAP program. BOI approved the financing at a board meeting on February 28, 2024.

1.04. The City proposes to enter into a Master Lease Purchase Agreement with BOI, substantially in the form attached hereto as Exhibit A (the "Lease Purchase Agreement"). The financing of the Improvements will be further governed by the terms and conditions set forth in Property Schedule No. 1 to the Lease Purchase Agreement (the "Property Schedule"), substantially in the form attached hereto as Exhibit B.

1.05. The lease payments payable by the City pursuant to the Property Schedule (the "Lease Payments") shall constitute current expenses of the City and shall not in any way be construed to be debts of the City in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained therein constitute a pledge of the general tax revenues, funds or money of the City. The Lease Payments shall be payable only from current funds which are budgeted and appropriated for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated. The City shall pay the Lease Payments under the Property Schedule by automatic debit from the City's Short-Term Investment Pool ("STIP") account invested by the BOI. The

City has not pledged the full faith and credit or taxing power of the City to the payment of amounts due under the Lease Purchase Agreement or the Property Schedule.

1.06 The City shall pay the Lease Payments under the Property Schedule by automatic debit from the City's Short-Term Investment Pool ("STIP") account invested by BOI. BOI is prohibited from debiting City's STIP account for any other purpose, including but not limited to amounts owed pursuant to Sections 8.04, 13.02 or 13.04 of the Lease Purchase Agreement, without authorization from the City. The City agrees to keep funds in its STIP account sufficient to pay each Lease Payment for the then-current Fiscal Year, subject to the provisions in the Lease Purchase Agreement and Property Schedule, including Section 6.05 of the Lease Purchase Agreement. Notwithstanding anything in the Property Schedule or the Lease Purchase Agreement to the contrary, upon a Nonrenewal or an Event of Default under the Lease Purchase Agreement, BOI is prohibited from debiting the City's STIP account with respect to Lease Payments occurring after the end of the then-current Fiscal Year.

Section 2. Approval of Lease Purchase Agreement and Property Schedule. The City hereby approves the forms of the Lease Purchase Agreement and the Property Schedule, each in substantially the form attached hereto. Each of the Mayor, the City Administrator, the City Clerk and the City Finance Director is hereby authorized and directed to approve, execute and deliver to BOI the Lease Purchase Agreement and the Property Schedule, together with such modifications thereto as may be approved by the officer or officers executing the same, which approval shall be conclusively evidenced by the execution thereof. Each of the Mayor, the City Administrator, the City Clerk and the City Finance Director is also authorized to enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith, in the opinion of Dorsey, as special counsel to the City, or as may be reasonably required by BOI. All actions taken to date by officers and staff of the City on behalf of the City in connection with the Lease Purchase Agreement and Property Schedule are hereby ratified and confirmed.

Section 3. Transcript Certification. The officers of the City are directed to furnish to Dorsey and to BOI certified copies of all proceedings and information in their official records relevant to the authorization of the Lease Purchase Agreement, the Property Schedule and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and enforceability of the Lease Purchase Agreement, the Property Schedule and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

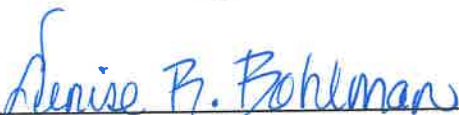
Section 4. Effective Date. This Resolution shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Adopted this 25th day of March, 2024.

CITY OF BILLINGS, MONTANA




William A. Cole, Mayor

Attest: 
Denise R. Bohlman, City Clerk

(SEAL)

EXHIBIT A
FORM OF LEASE PURCHASE AGREEMENT

MASTER LEASE PURCHASE AGREEMENT

Between: Montana Board of Investments (the
"Seller") 2401 Colonial Drive, Third Floor
Helena, Montana 59601
Attention: Senior Bond Program Officer
Telephone: (406) 444-0001

And: City of Billings, Montana (the "Purchaser")
P.O. Box 1178
Billings, Montana 59103
Attention: Finance
Director Telephone:
(406) 657-8433

Dated: March 29, 2024

ARTICLE I DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Account" means a specific Purchaser Bank account assigned by the Bank to be used in conducting transactions through the Short-Term Investment Pool (STIP) Program.

"Agreement" means this Master Lease Purchase Agreement, including all exhibits and schedules attached hereto.

"Bank" means a financial institution designated and authorized as provided in the Purchaser's Resolution authorizing participation in the STIP Program including exhibits thereof, as amended, to send and receive money on behalf of the Purchaser for purposes of participation in the STIP Program.

"Business Day" means any day that is not a Saturday or Sunday and is not a day on which banks in Montana are authorized or required by law to close.

"Commencement Date" is the date when the term of a Property Schedule and Purchaser's obligation to pay Lease Payments thereunder commences, as set forth in the Property Schedule.

"Event of Default" is defined in Section 13.01.

"Fiscal Year" means the fiscal year of the Purchaser, which currently begins on July 1 and ends on June 30 of the next succeeding calendar year.

"Lease Payments" means the lease payments payable by Purchaser under

Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"Lease Payment Dates" means the dates on which Lease Payments are due as set forth in each Property Schedule.

"Nonrenewal" means the determination of Purchaser not to renew the Property Schedule for the next succeeding Renewal Term.

"Original Term" means the period from the Commencement Date until the end of the Fiscal Year in effect at the Commencement Date, as set forth in the Property Schedule.

"Permitted Encumbrances" means, with respect to the Property described under a Property Schedule, the liens and encumbrances described therein as Permitted Encumbrances.

"Property" means the property and improvements purchased under this Agreement pursuant to a Property Schedule, as described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"Property Schedule" means a Property Schedule, substantially in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement, if any, shall be numbered consecutively, beginning with Property Schedule 2.

"Purchaser" means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

"Renewal Term" means each consecutive succeeding Fiscal Year following the Original Term (or such lesser period during which all remaining Lease Payments specified in the Property Schedule shall have been paid), as set forth in the Property Schedule and conditioned upon renewal of the Property Schedule by Purchaser.

"Seller" means the entity identified as such in the first paragraph

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

"Term" means the Original Term and all Renewal Terms for which a Property Schedule remains in effect in accordance with Article V.

"Vendor" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Seller or Purchaser arranged for the purchase of all or any portion of the Property.

ARTICLE II

2.01 Property Schedules Separate Financings. Each Property Schedule

executed and delivered under this Agreement shall be a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default or Nonrenewal with respect to a Property Schedule, Seller shall have the applicable rights and remedies specified herein with respect to the Property financed and the Lease Payments payable under such Property Schedule.

ARTICLE III

3.01 Covenants of Purchaser. As of the Commencement Date for each Property Schedule executed and delivered hereunder, Purchaser shall be deemed to represent, covenant and warrant for the benefit of Seller as follows:

- (a) Purchaser is a public body corporate and politic duly organized and existing under the constitution and laws of the State and its home rule charter with full power and authority to enter into this Agreement and the Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.
- (b) Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Purchaser should merge with another entity under the laws of the State, Purchaser agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Purchaser's rights and shall assume Purchaser's obligations hereunder.
- (c) Purchaser has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule. On or before the respective Commencement Date for the Property Schedule, Purchaser shall cause to be delivered an opinion of counsel in substantially the form of Exhibit 3 to the Property Schedule.
- (d) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Purchaser, does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Purchaser is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Purchaser or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Purchaser or to which it is subject, other than Permitted Encumbrances.
- (e) Purchaser's exact legal name is as set forth on the first page of this Agreement. Purchaser will not change its legal name in any respect without giving thirty (30) days prior notice to Seller.

ARTICLE IV

4.01 Sale of Property. On the Commencement Date of each Property Schedule executed hereunder, Seller will be deemed to sell, transfer and convey to Purchaser, and Purchaser will be deemed to purchase and accept from Seller, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Term set forth in such Property Schedule.

4.02 Term. The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate on the last day of the Original Term, unless terminated sooner pursuant to this Agreement or the Property Schedule. However, Purchaser shall have the option to renew the Property Schedule for each consecutive succeeding Renewal Term through the final Lease Payment Date set forth in the Property Schedule. The Purchaser shall be deemed to have renewed the Property Schedule for a Renewal Term if, prior to the commencement of such Renewal Term, Purchaser appropriates moneys for the payment of the Lease Payments payable thereunder during such Renewal Term. If Purchaser renews the Property Schedule, the Term of the Property Schedule shall be extended upon all of the same terms and conditions as are provided herein and in the Property Schedule. In the event the Purchaser should renew a Property Schedule for all Renewal Terms and pay all Lease Payments, the rights of the Seller in the Property described in such Property Schedule will be terminated. If the Property Schedule is not renewed as set forth in this Section 4.02, the Property Schedule shall terminate pursuant to Section 6.05 and the Purchaser may not elect to further extend the Property Schedule.

4.03 Delivery, Construction, Installation and Acceptance of Property. Purchaser shall comply with all applicable competitive bidding requirements and prevailing wages for the purchase, acquisition, construction, and installation of the Property, order the Property and shall cause the Property to be delivered, constructed and installed at the locations specified in the applicable Property Schedule. Seller shall disburse proceeds of each Property Schedule based on requests for disbursement submitted by Purchaser as described in Section 7.04 hereof, together with invoices or other documentation of costs incurred in connection with the Property. When the Property described in such Property Schedule is delivered, constructed, installed and accepted as to Purchaser's specifications, Purchaser shall be deemed to have accepted the Property for purposes of this Agreement and the Property Schedule.

ARTICLE V

5.01 Location: Inspection. The Property will be initially located or based at the location specified in the applicable Property Schedule. Seller shall have the right during business hours and upon not less than five (5) Business Days' notice to enter into and upon the property of Purchaser for the purpose of inspecting the Property.

ARTICLE VI

6.01 Payment of Lease Payments. Lease Payments due shall be payable only from current funds which are budgeted or appropriated from the funds or accounts

described in the applicable Property Schedule for such purpose during the then-current Original Term or Renewal Term for the Property Schedule. Purchaser shall pay Lease Payments under a Property Schedule in lawful money of the United States of America, to Seller in such amounts and on such dates as described in such Property Schedule.

602 Lease Payments to Constitute Binding Contractual Obligation. The Seller and the Purchaser understand and intend that the obligation of the Purchaser to pay Lease Payments shall constitute a current expense of the funds or accounts described in the applicable Property Schedule and shall not in any way be construed to be a debt of the Purchaser in contravention of any applicable constitutional or statutory limitation or provision concerning the creation of

indebtedness by the Purchaser, nor shall anything contained herein constitute a pledge of the general tax revenues, taxing power, funds or money of the Purchaser. The Purchaser has not pledged the full faith and credit of the Purchaser, the State or any agency or department of the Purchaser to the payment of the Lease Payments or any other payment due under this Agreement.

The person or entity in charge of preparing the Purchaser's budget will include in the budget request for each Fiscal Year the Lease Payments to become due in such Fiscal Year, and will use reasonable and lawful means to secure the appropriation of money for such Fiscal Year sufficient to pay all such Lease Payments coming due therein. Each Fiscal Year appropriation shall include Lease Payments coming due on the Lease Payment Dates in that Fiscal Year, as well as amounts constituting the interest component of the Property Schedule accruing between the most recent Lease Payment Date and the end of the Fiscal Year.

The Purchaser shall pay the Lease Payments under each Property Schedule by automatic debit from the Purchaser's Short-Term Investment Pool ("STIP") account invested by the Seller. The Seller is prohibited from debiting Purchaser's STIP account for any other purpose, including but not limited to amounts owed pursuant to Sections 8.04, 13.02 or 13.04 hereof, without written authorization from the City. The Purchaser agrees to keep funds in its STIP account sufficient to pay each Lease Payment under each Property Schedule for the then-current Fiscal Year; provided that the City has not elected Nonrenewal with respect to such Property Schedule. Notwithstanding anything in any Property Schedule or in this Agreement to the contrary, upon a Nonrenewal or an Event of Default, the Seller is prohibited from debiting Purchaser's STIP account with respect to the Lease Payments thereunder occurring after the end of the then-current Fiscal Year.

6.03 Interest Component. A portion of each Lease Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Lease Payment thereunder during the Term.

6.04 Lease Payments to be Unconditional. EXCEPT AS PROVIDED IN SECTION 6.05, THE OBLIGATIONS OF PURCHASER TO PAY THE LEASE PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT PURCHASER'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

6.05 Nonrenewal. If Purchaser does not renew the Property Schedule pursuant to Section 4.02, the Property Schedule shall terminate at the end of the then-current Original Term or Renewal Term for the Property Schedule and Purchaser shall

not be obligated to make Lease Payments under the Property Schedule beyond the then-current Original Term or Renewal Term for the Property Schedule; provided that the Purchaser acknowledges that it shall be required to pay amounts constituting the interest component of the Property Schedule accruing between the last Lease Payment Date and the end of such Original Term or Renewal Term. Purchaser shall

give Seller written notice of its determination not to renew at least thirty (30) days prior to the end of the then-current Original Term or Renewal Term. In the event of Nonrenewal, Purchaser shall, no later than the end of the then-current Original Term or Renewal Term for the Property Schedule, deliver possession of the Property under the Property Schedule to Seller at Purchaser's expense, and failure of the Purchaser to deliver possession of the Property within 90 days from the end of the then-current Original Term or Renewal Term in accordance with this sentence is an Event of Default. If Purchaser fails to deliver possession of the Property to Seller upon termination of the Property Schedule by reason of Nonrenewal by the end of the then-current Original Term or Renewal Term, the Nonrenewal and termination shall nevertheless be effective, but Purchaser shall be responsible for the payment of damages in an amount equal to the Lease Payments that would have come due if not for the Nonrenewal attributable to the number of days after the termination during which the Purchaser fails to deliver possession, and failure by the Purchaser to pay such damages is an Event of Default. In addition, if Purchaser fails to deliver possession of the Property to Seller upon termination of the Property Schedule by reason of Nonrenewal by the end of the then-current Original Term or Renewal Term, Seller has the option of entering the Premises to secure the Property at Purchaser's expense.

ARTICLE VII

7.01 Title to the Property. Upon acceptance of the Property by Purchaser and unless otherwise required by the laws of the State, title to the Property shall vest in Purchaser, subject to Seller's interests under the applicable Property Schedule and this Agreement.

7.02 Personal Property. The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon.

7.03 Security Interest. To secure the performance of all of Purchaser's obligations under this Agreement with respect to a Property Schedule, Purchaser grants to Seller, for the benefit of Seller and its successors and assigns, a security interest constituting a first lien on Purchaser's interest in all of the Property under such Property Schedule, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to such Property, all substitutions and replacements for such Property, and on any proceeds of any of the foregoing, including insurance proceeds. Purchaser shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Seller, which Seller deems necessary or appropriate to establish, maintain and perfect a security interest in such Property in favor of Seller and its successors and assigns.

Purchaser shall, on behalf of Seller, file all financing statements necessary or appropriate to establish, maintain, and perfect such security interest. Purchaser shall provide evidence of filing of the financing statements to Seller.

7.04. Disbursements. Proceeds disbursed by the Seller to the Purchaser with respect to a Property Schedule shall be used only for the purpose of paying or reimbursing the Purchaser for the costs of the Property described in such Property Schedule and paying costs of issuing such Property Schedule. Purchaser agrees to obtain releases of claims against payment or performance bonds with respect to all sums disbursed under the Property Schedule to pay costs of the Property, and to provide them to Seller at Seller's request. To obtain a disbursement of proceeds of a Property Schedule, Purchaser shall submit to Seller a signed request for disbursement on a form prescribed by or acceptable to the Seller, together with invoices or other documentation of costs incurred in connection with the Property described in such Property Schedule. Purchaser may obtain disbursements only for costs that have been legally incurred.

ARTICLE VIII

8.01 Maintenance of Property by Purchaser. Purchaser shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and encumbrances, except for the interest of Seller under this Agreement and Permitted Encumbrances. Purchaser shall have sole responsibility to maintain and repair the Property in a manner that complies with the manufacturer specifications and warranties.

8.02 Liens, Taxes, Other Governmental Charges and Utility Charges. Purchaser shall keep the Property free of all liens and encumbrances, except for the interest of Seller under this Agreement and Permitted Encumbrances. If the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Purchaser shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during the then- current Fiscal Year of the Term for such Property Schedule.

8.03 Insurance. At its own expense, Purchaser shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Seller in an amount equal to at least the outstanding principal component of Lease Payments, (b) liability insurance that protects Seller from liability in all events in an amount reasonably acceptable to Seller, and (c)

worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Purchaser may self-insure against all such risks (other than rental interruption). All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State, including a self-insurance program or municipal risk pool. All such liability insurance shall name Seller as an additional insured, to the extent the policy of insurance permits Purchaser to name Seller as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Seller, Purchaser and any other financing party, as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Seller's prior written consent. Purchaser shall furnish to Seller, on or before the Commencement Date for each

Property Schedule, and thereafter at Seller's request, certificates evidencing such coverage, or, if Purchaser self-insures, a written description of its self-insurance program together with a certification from Purchaser's risk manager or insurance agent or consultant to the effect that Purchaser's self-insurance program provides adequate coverage against the risks listed above.

8.04 Advances. In the event Purchaser shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Seller may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Seller shall constitute additional rent for the Term for the applicable Property Schedule and shall be due and payable on the next Lease Payment Date and Purchaser covenants and agrees to pay such amounts so advanced by Seller with interest thereon from the date such amounts are advanced until paid at the rate of 10% per annum, subject to appropriation by Purchaser.

ARTICLE IX

9.01 Damage or Destruction. If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Purchaser will cause the proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property in compliance with the manufacturing specifications and warranties, unless Purchaser shall have exercised its option to prepay the Lease Payments under the related Property Schedule. Any balance of the proceeds remaining after such work has been completed shall be paid to Purchaser.

9.02 Insufficiency of Proceeds. If the proceeds referred to in Section 9.01 are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Purchaser shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the proceeds and, if Purchaser shall make any payments pursuant to this Section 9.02, Purchaser shall not be entitled to any reimbursement therefor from Seller nor shall Purchaser be entitled to any diminution of the amounts payable under Section 6.01, or (b) exercise its option to prepay the Lease Payments pursuant to Section 11.01. The amount of the proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such prepayment may be retained by Purchaser.

ARTICLE X

1001 Disclaimer of Warranties. SELLER MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND SELLER HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS SOLD TO PURCHASER "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY PURCHASER. Purchaser acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Seller. Purchaser understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Seller, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Seller be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

1002 Vendor's Warranties. Seller hereby irrevocably assigns to Purchaser all rights that Seller may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Purchaser's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor, and not against Seller, nor shall such matter have any effect whatsoever on the rights and obligations of Seller with respect to this Agreement, including the right to receive full and timely payments hereunder. Purchaser expressly acknowledges that Seller makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor.

1003 Use of the Property. Purchaser will not construct, install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a

manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Purchaser shall provide all permits and licenses, if any, necessary for the construction, installation and operation of the Property. In addition, Purchaser agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Purchaser may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Seller, adversely affect the interest of Seller in and to the Property or its interest or rights under this Agreement. Purchaser shall promptly notify Seller in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

10.04 Modifications. Subject to the provisions of this Section 10.04, Purchaser shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature, cancel manufacturer warranties, or cause it to be used for purposes other than those authorized under the provisions of State law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section 10.04, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Purchaser shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

ARTICLE XI

11.01 Option to Prepay. Purchaser shall have the option to prepay in whole or in part the Lease Payments due under any Property Schedule at any time and from time to time upon 30 days prior written notice from Purchaser to Seller. The amount of a prepayment shall equal the principal component prepaid, plus interest component accrued and unpaid thereon through the date of prepayment, without premium or penalty. In the event of prepayment in part, the Seller shall reamortize the principal component of the Property Schedule and a new Lease Payment Schedule shall be attached as Exhibit 2 to the Property Schedule.

ARTICLE XII

12.01 Assignment by Purchaser. Purchaser's right, title and interest in, to and under the Property may be assigned, reassigned, leased or subleased, in whole or in part, to one or more assignees, subassignees, lessees or sublessees by Purchaser without the necessity of obtaining the consent of Seller; provided that any assignment shall not be effective until Seller has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Notwithstanding the foregoing, without the prior written consent of the Seller, no such assignment by the

Purchaser shall relieve the Purchaser from its obligations under this Agreement or any Property Schedule. Seller agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Purchaser or any assignee, subassignee, lessee or sublessee to protect its interests in this Agreement and the Property Schedules.

12.02 Assignment by Seller. Seller may not assign any right, title or interest in, to or under this Agreement or any Property Schedule without the prior written consent of the Purchaser.

ARTICLE XIII

13.01 Events of Default Defined. Any of the following shall constitute an "Event of Default" under a Property Schedule:

- (a) Failure by Purchaser to comply with all applicable competitive bidding requirements for the purchase, acquisition, and construction, or installation of the Property, or to pay applicable prevailing wages, or
- (b) Failure by Purchaser to pay any Lease Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (c) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied is given to Purchaser by Seller, unless Seller shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected;
- (d) Any statement, representation or warranty made by Purchaser in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (e) Purchaser shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Purchaser, or of all or a substantial part of the assets of Purchaser, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or

any answer admitting the material allegations of a petition filed against Purchaser in any bankruptcy, reorganization or insolvency proceeding; or

- (f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Purchaser or of all or a substantial part of the assets of Purchaser, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Purchaser is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Purchaser contained in Article VI hereof) Purchaser shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, pandemics, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Purchaser. **Notwithstanding anything in this Agreement to the contrary, an event of Nonrenewal shall not constitute an Event of Default.**

13.02 Remedies on Default. Whenever any Event of Default exists with respect to a Property Schedule, Seller shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating the Property Schedule, and by written notice to Purchaser, Seller may declare all Lease Payments and other amounts payable by Purchaser thereunder to the end of the then-current Fiscal Year of Purchaser to be due, including without limitation delinquent Lease Payments under the Property Schedule from prior Fiscal Years, and such amounts shall thereafter bear interest at the rate of 10% per annum, subject to appropriation by Purchaser;
- (b) Seller may terminate the Property Schedule, and by written notice to Purchaser, Seller may accelerate the principal component of all outstanding Lease Payments due or to become due during the then-current Fiscal Year, in which case Purchaser shall pay to Seller such principal component, together with interest thereon from the date of acceleration until so paid at the rate of 10% per annum, subject to appropriation by Purchaser;
- (c) Seller may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Purchaser, at Purchaser's expense,

to promptly return any or all of the Property to the possession of Seller at such place within the United States as Seller shall specify, and Seller may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State, continuing to hold Purchaser liable for any outstanding Lease Payments due or to become due during the then-current Fiscal Year and all costs and expenses incurred by Seller in exercising its remedies hereunder, including, without limitation, all costs and expenses of taking possession, removing, storing and reconditioning the Property, and including, without limitation, all brokerage and attorneys fees; or

- (d) Seller may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

Notwithstanding anything in this Agreement or any Property Schedule to the contrary, Seller shall have no rights or remedies with respect to Property financed or Lease Payments payable under any Property Schedule unless an Event of Default has also occurred under such Property Schedule.

13.03 No Remedy Exclusive. Subject to the limitations set forth in this Agreement and any Property Schedule, no remedy herein conferred upon or reserved to Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Seller to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article. Notwithstanding anything in this Agreement or any Property Schedule to the contrary, except as set forth in Section 13.02(a) and (b), under no circumstances shall the Seller be permitted to accelerate Lease Payments.

13.04 Costs and Attorney Fees. Upon the occurrence of an Event of Default by Purchaser in the performance of any term of this Agreement, Purchaser agrees to pay to Seller or reimburse Seller for, in addition to all other amounts due hereunder, all of Seller's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Purchaser, shall be secured by this Agreement until paid and shall bear interest at the rate of 10% per annum, subject to appropriation by Purchaser.

ARTICLE XIV

14.01 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall

designate in writing to the other for notices to such party).

14.02 Further Assurances. Purchaser agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Seller, to perfect, confirm, establish, reestablish, continue, or complete the interests of Seller in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

14.03 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and permitted assigns.

14.04 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14.05 Waiver of Jury Trials. Purchaser and Seller hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Seller or Purchaser in the negotiation, administration, performance or enforcement hereof.

14.06 Amendments, Changes and Modifications. This Agreement and each outstanding Property Schedule may be amended in writing by Seller and Purchaser.

14.07 Execution in Counterparts. This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14.08 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. If a dispute arises with respect to the provisions of this Master Agreement or the Property Schedule, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.

14.09 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

SELLER:
MONTANA BOARD OF
INVESTMENTS

PURCHASER:
CITY OF BILLINGS, MONTANA

By: _____
Name: DAN VILLA
Title: Executive Director

By: _____
Name: William A. Cole
Title: Mayor

Attest:

By: _____
Name: Denise Bohlman
Title: City Clerk

Approved for Legal Content:

By: _____

EXHIBIT B
FORM OF PROPERTY SCHEDULE

PROPERTY SCHEDULE NO. 1 MASTER LEASE PURCHASE AGREEMENT

This Property Schedule No. 1 is entered into as of the Commencement Date set forth below, pursuant to that certain Master Lease Purchase Agreement (the "Master Agreement"), dated as of March 29, 2024, between Montana Board of Investments (the "Seller") and the City of Billings, Montana (the "Purchaser").

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Purchaser in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms used herein but not otherwise defined shall have the meanings provided in the Master Agreement.

2. Commencement Date. The Commencement Date for this Property Schedule is March 29, 2024.

3. Term. The Original Term of this Property Schedule commences on the Commencement Date and ends on June 30, 2024. A Renewal Term, if elected by the Purchaser, shall commence on July 1 and end on June 30 of each subsequent year, with the first Renewal Term commencing on July 1, 2024 and ending on June 30, 2025, and the final Renewal Term, if annually continued to be elected by Purchaser, commencing on July 1, 2038 and ending on February 15, 2039.

4. Property Description. The Property subject to this Property Schedule is described in Exhibit 1 hereto, and includes all replacements, parts, repairs, additions, accessions and accessories incorporated therein or affixed or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries. Purchaser shall not remove such property from the locations set forth in Exhibit 1 without giving prior written notice, including the new location of such property, to Seller.

5. Payment Terms.

Maximum Principal Amount: \$14,690,000. Seller shall disburse the proceeds of this Property Schedule to Purchaser pursuant to a written request for disbursement, as described in the Master Agreement, together with invoices, proof of Seller named as additional insured pursuant to Section 8.02 of the Master Agreement, proof of the UCC filing securing the Seller's interest in the Property pursuant to Section 7.03 of the Master Agreement, or other documentation of costs incurred in connection with the Property. The Purchaser shall apply all proceeds to the acquisition, construction and installation of the Property.

Lease Payment Dates shall be on February 15 and August 15 of each year with the first Loan Repayment Date determined as follows:

<u>Date of Draw</u>	<u>First Loan Repayment Date</u>	<u>Payment Consisting of:</u>
February 15 through April 17	August 15	Principal and Interest
April 18 through June 16	August 15	Interest only
June 17 through August 14	February 15	Principal and interest from date of draw
August 15 through October 18	February 15	Principal and Interest
October 19 through December 17	February 15	Interest only
December 18 through February 14	August 15	Principal and Interest from date of draw

(b) Purchaser hereby agrees the Lease Payments will be made on each Lease Payment Date to be calculated by the Seller and consisting of the sum of the following items:

(i) Principal in an amount based upon the initial Amortization Schedule, the Amortization Schedule being initially determined utilizing the Initial Interest Rate. Each advance of the principal of the Lease as shown on the Amortization Schedule shall be repaid in semiannual installments on each Lease Payment Date commencing on the first Lease Payment Date following the date thereof and ending on the final maturity date set forth on the Amortization Schedule. Principal payments will not be adjusted but the interest payment will be adjusted.

(ii) Interest for each Adjustment Period at the Variable Rate.

Interest Component: Principal of this Property Schedule shall bear interest from the date each amount of principal is advanced at the rate per annum equal to the Variable Rate (as hereinafter defined), as determined from time to time, for the Term. Until the initial Interest Adjustment Date (as hereafter defined), the Variable Rate shall be 5.75% per annum. Thereafter, for each Adjustment Period (as hereinafter defined) during the Term, the "Variable Rate" shall be an annual interest rate determined by the Seller, which rate shall equal the rate of interest on the Board of Investments' Annual Adjustable Rate Municipal Finance Consolidation Act Extendable Bond (INTERCAP Loan Program), Taxable Series 2022, as determined under the resolution authorizing such bond, plus up to an

additional 150 basis points (1.50%), as published or posted or otherwise noticed by the Seller following each Interest Adjustment Date.

Interest is calculated on the basis of a 365-day year.

“Adjustment Period” means the period beginning on an Interest Adjustment Date and ending on the date that is the day before the next succeeding Interest Adjustment Date.

“Interest Adjustment Date” means each February 16 during the Term.

Prepayment: Purchaser shall have the option to prepay in whole or in part the Lease Payments due under this Property Schedule at any time and from time to time in accordance with Article XI of the Master Agreement.

Attached hereto as Exhibit 2 is the initial schedule of Lease Payments, based on principal of the Property Schedule advanced on the Commencement Date. A new schedule of Lease Payments shall be calculated within the month following the Interest Adjustment Date, based on the principal amounts advanced under this Property Schedule and the Variable Rate then in effect, with payments due each August 15 and February 15, and such new schedule shall be provided to Purchaser and attached as a replacement Exhibit 2 hereto. In the event of prepayment in part, the Seller shall reamortize the principal amount of the Property Schedule at the then-applicable interest rate and a new Lease Payment Schedule shall be attached as a replacement Exhibit 2 to this Property Schedule.

6. Lease Payments – Funds or Accounts. The Purchaser shall pay the Lease Payments under the Property Schedule by automatic debit from the Purchaser’s Short-Term Investment Pool (“STIP”) account invested by the Seller. The Seller is prohibited from debiting Purchaser’s STIP account for any other purpose, including but not limited to amounts owed pursuant to Sections 8.04, 13.02 or 13.04 of the Master Agreement without written authorization from the City. The Purchaser agrees to keep funds in its STIP account sufficient to pay each Lease Payment for the then-current Fiscal Year; provided that the City has not elected Nonrenewal with respect to this Property Schedule. Notwithstanding anything in this Property Schedule or the Master Agreement to the contrary, upon a Nonrenewal or an Event of Default, the Seller is prohibited from debiting Purchaser’s STIP account with respect to Lease Payments occurring after the end of the then-current Fiscal Year.

7. Opinion. The Opinion of Purchaser’s Counsel is attached as Exhibit 3 heret

o.

8. Purchaser’s Certificate. The Purchaser’s Certificate is attached as Exhibit

4 hereto.

9. UCC Financing Statement Language. Attached as Exhibit 5 hereto.

10. Additional Covenants. The parties acknowledge that Purchaser is pursuing historic tax credit investment with respect to the location of the Property (the "City Hall Building"), which is expected to involve additional leases and subleases of the City Hall Building. The Purchaser hereby covenants that it will be the primary lessee of the City Hall Building in any historic tax credit financing structure, unless the Seller approves an alternative structure in writing. Seller agrees to execute and deliver such other and further documents, certificates and agreements, in each case, in form and substance acceptable to Seller, that may be requested by Purchaser in connection with the historic tax credit transaction. The presence of any such additional leases or subleases does not alleviate or affect Purchaser's payment obligations described in the Master Agreement and this Property Schedule (subject to Section 6.05 of the Master Agreement) or Seller's rights to receipt of payment or rights as a first lienholder.

11. "Permitted Encumbrances" means, with respect to the Property subject to this Property Schedule:

(a) leases and/or subleases of all or any portion of the City Hall Building and/or the Property provided that in accordance with Section 12.01 of the Master Agreement without the prior written consent of the Seller no such assignment by the Purchaser shall relieve the Purchaser from its obligations under the Master Agreement or this Property Schedule;

(b) easements, exceptions or reservations for the joint or common use of all or any portion of the City Hall Building and/or the Property; or

(c) any mechanic's, laborer's, materialmen's, supplier's or vendor's lien or right, so long as such mechanic's, laborer's, materialmen's, supplier's or vendor's liens are removed within thirty (30) days or are being contested in good faith by the Purchaser.

The presence of any Permitted Encumbrance, as described in this Section 11, does not interfere with or waive any obligation Purchaser has for payment of the amounts agreed to in the Master Agreement or this Property Schedule, subject to the limitations set forth in the Master Agreement and this Property Schedule, including Section 6.05 of the Master Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

SELLER:
MONTANA BOARD OF
INVESTMENTS

PURCHASER:
CITY OF BILLINGS, MONTANA

By: _____
Name: DAN VILLA
Title: Executive Director

By: _____
Name: William A. Cole
Title: Mayor

Attest:

By: _____
Name: Denise R. Bohlman
Title: City Clerk

EXHIBIT 1
Description and Location of Property

All of the Property is located at 316 North 26th Street, Billings, Montana 59101.

PROJECT

BUDGET

EXHIBIT 2
Schedule of Lease Payments

EXHIBIT 3
Opinion of Dorsey & Whitney LLP

City of Billings
Billings, Montana

Montana Board of Investments
Helena, Montana

Re: Master Lease Purchase
Agreement City of Billings,
Montana

Ladies and Gentlemen:

We have acted as special counsel to the City of Billings, Montana (the "City"), in connection with the authorization, execution and delivery by the City of the Master Lease Purchase Agreement, dated as of March 29, 2024 (the "Lease Purchase Agreement"), between the City and Montana Board of Investments (the "Seller") and Property Schedule No. 1 thereto, dated as of March 29, 2024 (the "Property Schedule"). In that capacity, we have examined executed counterparts, or copies otherwise identified to our satisfaction, of the Lease Purchase Agreement and the Property Schedule, together with certified copies of certain proceedings taken and certain certificates and affidavits furnished by the City in the authorization, execution and delivery of the Lease Purchase Agreement and the Property Schedule, including a certified copy of Resolution No. [] adopted by the City Council of the City on March 25, 2024. As to questions of fact material to our opinion, we have assumed the authenticity of and relied upon the proceedings, affidavits and certificates furnished to us without undertaking to verify the same by independent investigation. Terms used with initial capital letters but not defined herein have the meanings given to them in the Lease Purchase Agreement.

The lease payments payable by the City under the Property Schedule (the "Lease Payments") are payable solely from the current revenues of the City which are budgeted and appropriated therefor, subject to annual appropriation in accordance with the provisions of the Lease Purchase Agreement and the Property Schedule. The Lease Purchase Agreement and the Property Schedule are not general obligations of the City and the general credit and taxing powers of the City are not pledged to the payment of the Lease Payments. The Seller is selling to the City certain property and improvements described in the Property Schedule (the "Property") acquired, constructed or installed or to be acquired, constructed and installed in the new city hall building. The Property Schedule will be in effect for an original term commencing as provided therein and ending on the last day of the City's current fiscal year. The City has the option to renew the Property Schedule for consecutive additional terms, each commencing on the first day of the City's immediately succeeding fiscal year and ending on the last day of such fiscal year. The Lease Payments will be payable at such times and in such amounts and will comprise principal payments and interest payments as set forth in the Property Schedule. In the event that the Lease Purchase Agreement

and the Property Schedule are not renewed for an additional term or moneys are not appropriated and provided to pay the Lease Payments due during the next succeeding Renewal Term, the Property Schedule is terminated without penalty or liability on the part of the City to pay any Lease Payments coming due after the fiscal year then in effect, but in such event the City has the obligation to deliver possession of the Property to the Seller at the time and in the manner provided in the Lease Purchase Agreement. In the event the City should renew the Property Schedule for all Renewal Terms and pay all Lease Payments, the rights of the Seller in the Property will be terminated. The City will have an option to prepay all unpaid Lease Payments and terminate the Seller's interest in the Property as set forth in the Lease Purchase Agreement.

From our examination of such proceedings, certificates and affidavits, and on the basis of existing law, it is our opinion that the Lease Purchase Agreement and the Property Schedule are each valid and binding instruments of the City, enforceable against the City in accordance with their respective terms.

The opinions expressed in herein are subject, as to enforceability, to the effect of any applicable state or federal laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors' rights and principles of equity, whether considered at law or in equity.

We express no opinion regarding federal, state or other tax consequences related to the Lease Purchase Agreement or the Property Schedule. We note, however, that the portion of each Lease Payment designated as and comprising interest is included in gross income for federal income tax purposes, is included in Montana taxable income for purposes of the Montana individual income tax and is included in gross income for purposes of the Montana corporate income tax and alternative corporate income tax.

We do not express any opinion as to any laws other than the laws of the State of Montana and federal laws of the United States of America as in effect on the date hereof. We assume no obligation to revise, supplement, or update this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in the laws of the State of Montana or of the United States of America that may occur after the date hereof, including, but not limited to, laws which may have retroactive effect.

We have not been engaged, and have not undertaken, to review the accuracy, completeness or sufficiency of any offering materials relating to the Lease Purchase Agreement or the Property Schedule and, accordingly, we express no opinion with respect thereto.

Very truly yours,

EXHIBIT 4
Purchaser's Certificate

Re: **Property Schedule No. 1** to Master Lease Purchase Agreement between the Montana Board of Investments and the City of Billings, Montana.

The undersigned, being the duly elected, qualified and acting City Clerk of the City of Billings, Montana (the "Purchaser") do hereby certify, as of March 29, 2024 as follows:

1. Purchaser did, at a meeting of the governing body of the Purchaser held March 25, 2024, by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Lease Purchase Agreement (the "Master Agreement") by the following named representatives of Purchaser:

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL
William A. Cole	Mayor	_____
Denise Bohlman	City Clerk	_____

2. The above-named representatives of the Purchaser held at the time of such authorization and hold at the present time the respective offices set forth above.

3. The meeting(s) of the governing body of the Purchaser at which the Master Agreement and the Property Schedule were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the resolution approving the Master Agreement and the Property Schedule and authorizing the execution thereof was approved by a two-thirds vote of the members of the governing body and has not been altered or rescinded. All meetings of the governing body of Purchaser relating to the authorization and delivery of Master Agreement and the Property Schedule have been: (a) held within the geographic boundaries of the Purchaser; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Purchaser, if any, and the laws of the State.

4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, a Nonrenewal (as such term is defined in the Master Agreement) exists at the date hereof with respect to the Property Schedule.

5. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Purchaser in any court (a) seeking to restrain or enjoy in the delivery of the Master Agreement or the Property Schedule; (b) questioning the authority of Purchaser to execute the

Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

**PURCHASER:
CITY OF BILLINGS, MONTANA**

By: _____
Name: Denise R. Bohlman
Title: City Clerk

EXHIBIT 5
Language for UCC Financing Statements

SECURED PARTY: Montana Board of
Investments DEBTOR: City of Billings, Montana

This financing statement covers all of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to the property and improvements purchased by Debtor under Property Schedule No. 1 dated March 29, 2024 to that certain Master Lease Purchase Agreement dated as of March 29, 2024, in each case between Debtor, as Purchaser, and Secured Party, as Seller, together with all accessions, substitutions and replacements thereto and therefor, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof, including without limiting, all property and improvements described on Exhibit A attached hereto and made a part hereof.

EXHIBIT A

All of the Property is located at 316 North 26th Street, Billings, Montana 59101.

PROJECT

City Council Regular

Date: 03/25/2024
Title: Lease Purchase Agreement with Montana Board of Investments to Finance the Construction and Improvements to the New City Hall.
Presented by: Teri Walker
Department: Finance
Presentation: No
Legal Review: No
Project Number: N/A

RECOMMENDATION

Staff recommends that City Council authorize the Finance Department to execute lease financing documents, consistent with the attached term sheet, with Montana Board of Investments for improvements to the New City Hall.

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

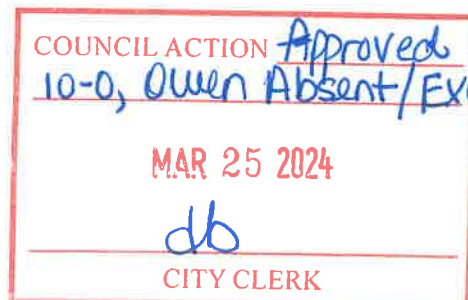
On 2-12-24, staff presented to the Council information on the need for financing on the New City Hall project. Financing is needed to fund construction until other anticipated revenues are realized at the City (i.e. Historic Tax Credits, Sale of Existing City Hall, etc.).

On 2-28-24 the Montana Board of Investments conditionally approved a lease-purchase financing agreement up to \$14.690 million. Funds will be used for actual construction costs as they are incurred and related financing costs (bond counsel and financial advisor).

The following information was provided to City Council at the 2-12-24 meeting:

Original Project Plan

Budgeted Project Amount (12/2022)	43,000,000	
Cash on hand From GF, ARPA, and Other Sources	<u>32,150,000</u>	
Net Construction Financing Need	10,850,000	
Anticipated Funds from Future Revenues	Est. Min	Est. Max
State Entitlement Share (FY24-FY25)	650,000	650,000
Future Marijuana Tax Revenue (FY23-FY27)	800,000	800,000
Historic Tax Credits (FY24-FY25)	2,500,000	3,500,000
Sale of Existing City Hall & Properties (FY25)	<u>4,500,000</u>	<u>7,000,000</u>
	8,450,000	11,950,000



Project Change Orders & Additional Expenses

Additional Expenses	
Elevator Change Order	900,000
Fiber Connection, Asbestos Abatement, NWE work, Garbage	500,000
Additional Change Orders Windows, Generator (net of low bids)	1,000,000

Total Short-term Financing Need	13,250,000
---------------------------------	------------

Potential Long-Term Financing \$2.7 to \$9.5 million
Largely dependent upon HTC and Sale of City Properties

Financing Resolution City Council in March

ALTERNATIVES

City Council may:

- Approve the lease financing terms with Montana Board of Investments; or,
- Not Approve the lease financing terms. If not approved, construction on the New City Hall could be stopped until other financing is arranged.

FISCAL EFFECTS

The interest rate is variable and will be determined every February. Currently, the interest rate is 5.75%. No penalty for prepayment. The term of the lease financing is 15 years. Current estimated short-term financing needs for the project are \$13.25 million. It is estimated that the long-term portion of this will range from \$2.7 to \$9.5 million, largely dependent upon Historic Tax Credits and the sale of City properties. Annual payments will be determined by the total amount drawn, and will be budgeted annually by City Council. If City Council chooses not to annually appropriate funds, the Montana Board of Investments has right to the improvements in the New City Hall.

Attachments

Lease Purchase Resolution