

## **BUY/SELL AGREEMENT**

**WHEREAS** on March 2, 2021 Yellowstone County (“County”), 217 N. 27<sup>th</sup> Street, Billings, Montana 59101, a political subdivision of the State of Montana and Miller Trois, LLC (“Seller”) (collectively “the Parties”) entered into a Memorandum of Understanding (“MOU”);

**WHEREAS** the MOU entered into by the Parties memorialized their intent to establish a relationship whereby the County could purchase seller’s property at 301 N. 29<sup>th</sup> Street, Billings, Montana (a/k/a 2825 3<sup>rd</sup> Avenue North, Billings, Montana 59101) referenced by Tax Code A00264 (“Miller Building” or “Property”). The Property is currently listed for sale the County is interested in acquiring property for the purpose of conducting the business of the County;

**WHEREAS** the County has had the Property’s value appraised pursuant to Montana law including Mont. Code Ann. §7-8-2520 on May 4, 2021 and the value of the Property was determined to be \$4,375,000 (four million, three hundred and seventy-five thousand dollars); and,

**WHEREAS** it is the intent of the Parties to now enter into a buy/sell agreement for the purchase of the Property;

Now therefore the Parties agree as follows:

1. Parties. The parties to this Agreement are the County and the Seller.
2. Subject Property. The subject real property of this Agreement, the Miller Building, is described as 2825 3<sup>rd</sup> Avenue North, Billings, Montana 59101, referenced by Tax Code A00264.
3. Purchase Price of Property and Payment of Earnest Money. The County agrees to pay Seller \$4,341,250 (four million, three hundred and forty-one thousand, two hundred and fifty dollars) for purchase of the real property (“Price”). This amount is Seller’s appraised sale price of \$4,375,000 (four million, three hundred and seventy five thousand dollars), minus the \$33,750 (thirty-three thousand, seven hundred and fifty dollars) provided by the County pursuant to the MOU on March 16, 2021. Upon execution of this Agreement, the County agrees to pay Seller \$16,250 (sixteen thousand, two hundred and fifty dollars) of the Price in earnest money to secure the purchase of the Property. The transfer of the earnest money shall be made within 7 days of the execution of this Agreement to the title company selected by the Seller. The earnest money shall be applied to the purchase price at the time of closing.
4. Possession. Seller agrees to surrender the possession of the Property upon the Parties’ mutual execution of the closing documents and delivery of the documents to the closing agent.
5. Waiver and Exercising of Contingencies. All contingencies contained in this Agreement shall be deemed waived unless completed by the dates specified herein unless an extension is agreed to by both of the parties in writing. If a party exercises its option to terminate this Agreement based on a contingency within the time otherwise specified herein, the party so exercising the option to terminate must notify the other party, in writing, of its desire to do so.

6. Remedy for Non-Performance. Subject to the contingencies contained in this Agreement, should the County not complete the purchase of the Property, Seller shall have the right to retain the earnest money as well as the amount provided pursuant to the MOU as liquidated damages. No further liability shall accrue to the County other than the specified liquidated damages. The Parties agree that the \$16,250 (sixteen thousand, two hundred and fifty dollars) earnest money, in addition to the \$33,750 paid pursuant to the MOU, is reasonable under the circumstances. Should Seller refuse to transfer title to the property upon the County's performance of all other terms of this Agreement, the County shall be entitled to specific performance as its remedy.

7. Closing Date and Fees. The closing date for the payment of the purchase price and transfer of title to the subject property shall be on or before September 1, 2021. The closing shall take place at: \_\_\_\_\_. Closing agent fees shall be equally shared by Seller and the County.

8. Warranty Deed. Seller shall provide the County with a warranty deed at the time of closing.

9. Title Insurance. Seller shall deliver an ALTA Standard Coverage Owners Title Policy to the County at the time of closing. Seller shall pay all costs associated with the procurement of the title insurance policy. The title insurance amount shall be at least equal to the purchase price of the property.

10. Inspection Contingency. The County has conducted an inspection of the Property and waives any further inspection contingencies.

11. Title Contingency. The County's purchase of the Property is subject to the County's approval and satisfaction of a preliminary title report to be delivered to it by Seller. The County's purchase of the Property is further contingent on the Seller's ability to provide title to the County that is free from liens and encumbrances.

12. Taxes Prorated. The Parties agree that all taxes due and owing on the Property shall be prorated between the Parties at the time of closing. Any Rural Special Improvement District or Special District assessments owed by Seller in conjunction with the Property shall be paid off at time of closing.

13. Water and Air Rights. Any water and/or air rights associated or connected or running with the Property shall be transferred to the County at the time of closing. Seller shall be responsible for filing any necessary documents to effectuate any transfer with the Montana Department of Natural Resources and Conservation.

14. Earnest Money Disputes. Any disputes that cannot be resolved by the mutual consent of the Parties regarding the payment of earnest money shall be submitted to binding arbitration. The Parties shall agree on an arbitrator. Should the Parties fail to agree on an arbitrator, each party shall select an arbitrator on its own. The two arbitrators chosen shall then select a third arbitrator who shall hear the dispute.

15. Broker License Disclosure. The Yellowstone County Clerk and Recorder, Jeff Martin, is a licensed real estate broker in the State of Montana. The Clerk and Recorder does not represent

as a licensee Seller or the County in any way. The Clerk and Recorder's involvement with this transaction is simply the administrative duties of the elected office and the Secretary of the Board of County Commissioners.