

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING REGARDING THE SUBLEASE AGREEMENT BETWEEN THE COUNTY COMMISSION OF OHIO COUNTY, WV, AND THE CITY OF WHEELING FOR PORTIONS OF REAL PROPERTY LOCATED AT 1500 CHAPLINE STREET WHICH THE CITY SHALL USE AND OCCUPY THE SUBLEASED PREMISES FOR OPERATIONS OF CITY GOVERNMENT AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER SUCH DOCUMENTS TO EFFECTUATE THIS MATTER AS CONTEMPLATED BY THE CITY COUNCIL AND THE COUNTY COMMISSION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

WHEREAS, The County Commission and the City are parties to a Joint Maintenance and Operations Agreement dated December 31, 1959 (Joint Agreement), a copy of which is on file in the Office of the City Solicitor along with the Contract of Lease Purchase Agreement between the Ohio County Building Commission and the County Commission; and

WHEREAS, The City and the County desires to execute this Sublease Agreement, a copy of which is attached and incorporated herein, and confirm the termination of the 1959 Joint Agreement; and

WHEREAS, The Finance Committee discussed at a meeting held in November 15, 2022 with detailed information supplied, by City Manager Herron, to City Council concerning the intentions of the parties in executing said Sublease Agreement and the City's financial obligations; and

WHEREAS, the City Manager is authorized to negotiate and execute the terms of the Sublease Agreement between the City and the County detailing the matters concerned with the Subleased Premises from the County to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Sublease Agreement described generally herein as well as attached and incorporated in this Ordinance shall be finalized, subject to such terms and conditions described therein and accepted by the City upon passage of this Ordinance by the City Council.

Section 2. The City Manager is hereby authorized to negotiate all necessary terms deemed to be in the best interest of the City of Wheeling and to execute and deliver Sublease Agreement and other documents as shall be necessary to effectuate this matter in accordance with the issues addressed herein.

Section 3. This Ordinance shall be effective from and after the date of its passage.

SUBLEASE AGREEMENT

This Sublease Agreement (this “Sublease”), dated as of December 20, 2022 and effective as of December 22, 2022 (the “Effective Date”), is entered into between **THE COUNTY COMMISSION OF OHIO COUNTY, WEST VIRGINIA**, a political subdivision of the State of West Virginia (the “County Commission”), and **THE CITY OF WHEELING**, a municipal corporation and political subdivision of the State of West Virginia (the “City” and, together with County Commission, collectively referred to herein as the “Parties” or individually as a “Party”).

RECITALS

WHEREAS, the County Commission and the City are parties to that certain Joint Maintenance and Operation Agreement dated December 31, 1959 (the “Joint Agreement”), which relates to the maintenance and operation of the City-County Building located at 1500 Chapline Street, Wheeling, West Virginia (the “City-County Building”);

WHEREAS, the City currently (i) occupies a portion of the first floor of the City-County Building, which currently houses the City’s Police Department, Finance Department, City Council Chambers and Executive Session Room, Municipal Courtroom, and Utility Accounting & Revenue Department, (ii) occupies the entire third floor of the City-County Building, which currently houses the offices of the City Clerk and the City Manager, the Legal Department, the Human Resources Department, the Public Works Department, the Building and Planning Department and the Economic and Community Development Department, and (iii) has an allocation of parking spaces in the rear parking lot (collectively, the “Subleased Premises”);

WHEREAS, in connection with the issuance of the Bonds (as defined below), the County Commission transferred ownership of the City-County Building to the Ohio County Building Commission (the “Building Commission”) pursuant to a Deed dated December 20, 2022 and recorded in the Office of the Clerk of The County Commission of Ohio County, West Virginia, in Deed Book _____, at Page _____;

WHEREAS, at the request of the County Commission, the Building Commission will simultaneously herewith issue its Lease Revenue Bonds, Series 2022 A (Ohio County City-County Building Improvement Project) (the “Series A Bonds”) and the Lease Revenue Bonds, Series 2022 B (Taxable) (Ohio County City-County Building Improvement Project) (the “Series B Bonds” and together with the Series A Bonds, the “Bonds”), the proceeds of which will be used to (i) finance the costs of the construction, renovation, improvements, and equipping of the City-County Building, including, but not limited to, upgrades to the HVAC system, roofing, windows, fire suppression system and electrical systems, together with other improvements thereon (the “Project”), and (ii) pay the costs of issuance of the Bonds and related costs;

WHEREAS, concurrently with the issuance of the Bonds, the Building Commission, as lessor, and the County Commission, as lessee, entered into that certain Contract of Lease-Purchase dated the date hereof, which is attached hereto and incorporated herein as Exhibit A (as amended, supplemented, restated or otherwise modified from time to time, the “Lease”);

WHEREAS, in connection with the foregoing, the County Commission and the City desire to enter into this Sublease and to confirm the termination of the Joint Agreement; and

WHEREAS, the County Commission desires to sublease the Subleased Premises to the City, and the City desires to sublease the Subleased Premises from the County Commission, all in accordance with the terms and conditions of the Lease and this Sublease.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Demise. The County Commission hereby leases the Subleased Premises to the City, and the City hereby leases from the County Commission the Subleased Premises.

2. Term. The term of this Sublease (the “Term”) shall commence on the date hereof (the “Commencement Date”) and shall expire at midnight on the date which the Lease shall expire as more particularly described in Exhibit A hereto (the “Expiration Date”), unless sooner terminated or cancelled in accordance with the terms and conditions of this Sublease. Notwithstanding the foregoing, the Term may extended upon mutual agreement of the Parties.

3. Permitted Use. The City shall use and occupy the Subleased Premises for operations of the City government and in accordance with, and as permitted under, the terms of the Lease.

4. Annual Budget of Operation and Maintenance Expenses. It shall be the duty of the County Commission to prepare annually on or before the 30th day of June, a budget for the expense of operating and maintaining the City-County Building (the “O&M Annual Budget”). The O&M Annual Budget, once approved by the County Commission, shall be submitted by the County Commission to the City Manager of the City for approval by the City Council of the City; provided, however, that prior to approval by the City, the City may request that the County Commission provide back-up documentation to support all or any specific line item listed in the O&M Annual Budget.

5. Payment of Base Rent and Additional Rent.

(a) Throughout the Term of this Sublease, the City shall pay to the County Commission base rent in the amounts shown on Exhibit A attached hereto and incorporated herein (“Base Rent”) commencing on February 15, 2023, and quarterly thereafter on each May 15, August 15, November 15, and February 15. Such amounts are equal to forty percent (40%) of the Regular Lease Payments to be paid by the County Commission pursuant to the terms of the Lease.

(b) In the event that future capital improvements to the City-County Building are required, the City and the County Commission agree to reasonably negotiate increases to Base Rent to reflect the cost of any such capital improvements and shall amend this Sublease to reflect related increases in Base Rent and any extensions of the Lease.

(c) In addition to Base Rent, commencing on the Commencement Date and continuing throughout the Term of this Sublease, the City shall pay to the County Commission forty percent (40%) of the O&M Annual Budget for the City-County Building (the “Additional Rent”). The amount of Additional Rent shall be payable to the County Commission in monthly

installments commencing on January 1, 2023 and continuing on the first day of each month thereafter. The County Commission shall be responsible for the remaining sixty percent (60%) of the O&M Annual Budget.

(d) All Base Rent and Additional Rent shall be due and payable as provided in subsections (a) and (c) above without demand therefor unless otherwise designated by County Commission and without any deduction, offset, abatement, counterclaim, or defense.

6. Subordination to Lease. This Sublease is subject and subordinate to the Lease.

7. Representation of the County Commission. The County Commission represents and warrants as of the date hereof that (i) the County Commission is the tenant under the Lease and has the capacity to enter into this Sublease with the City and that pursuant to Section 14 of the Lease and (ii) no notice or consent is required from the Building Commission in connection with this Sublease.

8. Condition. The City accepts the Subleased Premises in their current, "as-is" condition.

9. Performance by the County Commission. The County Commission shall have the sole right, subject to the terms of the Lease, to operate, maintain, manage and administer the Subleased Premises, including, but not limited to, all matters with respect to subleasing of all or any portion of the Subleased Premises, acquiring and disposing of furnishings, fixtures and equipment, renovating, improving or removing portions of the Subleased Premises and all other matters incidental to the operation, maintenance, management and administration of the Subleased Premises; provided, however, the County Commission shall not dispose of furnishings, fixtures and equipment or renovate, improve or remove portions of the Subleased Premises without the City's prior approval. The City hereby agrees that the County Commission is solely responsible for the performance of the foregoing obligations. In addition, the County Commission shall specifically be responsible for the following with regard to the Subleased Premises:

(a) To maintain all mechanical, electrical and plumbing equipment of the City-County Building in a good state of repair and in operation at all times when the operation of the same is needed;

(b) To maintain all elevators, corridors and other public space of the City-County Building at all times clean and free of litter and unsightly objects and to keep the hallways unobstructed;

(c) To maintain sidewalks and parking lot area adjacent to the City-County Building at all times clean and free of ice, snow and litter;

(d) To enforce rules for regulating the use of the City-County Building parking lot;

(e) To trim grass, shrubbery and flowers in areas about the City-County Building and maintain said areas at all times in presentable condition;

(f) Each night to remove all waste paper and trash from each room of the building regardless of occupancy, except such rooms, if any, as may be permanently locked, such as locked vaults and similar areas;

(g) To sweep the floors and dust all furniture and equipment in all rooms;

(h) To replace unoperable light bulbs; and

(i) To repair all plumbing and electrical wiring and in general to perform all such services as may be needed to keep the building in good operating condition.

10. No Privity of Estate; No Privity of Contract. Nothing in this Sublease shall be construed to create privity of estate or privity of contract between the City and the Building Commission.

11. No Breach of Lease. The City shall not do or permit to be done any act or thing, or omit to do anything, which may constitute a breach or violation of any term, covenant, or condition of the Lease, notwithstanding such act, thing, or omission is permitted under the terms of this Sublease.

12. Defaults of the Parties. If either Party fails to cure a default under this Sublease within any applicable grace or cure period, the other Party, after sixty (60) days' notice, shall have the right, but not the obligation, to seek to remedy any such default on the behalf of, and at the expense of, the other Party. In the case of (i) a life safety or property related emergency or (ii) a default which must be cured within a time frame set out in the Lease which does not allow sufficient time for prior notice to be given, the other Party may remedy any such default without being required first to give notice.

13. Consents. Whenever the consent or approval of the County Commission is required, the City shall also be obligated to obtain the written consent or approval of the Building Commission, if required under the terms of the Lease. The County Commission shall promptly make such consent request on behalf of the City and the City shall promptly provide any information or documentation that the Building Commission may request.

14. Assignment or Subletting. The City shall not sublet all or any portion of the Subleased Premises or assign, encumber, mortgage, pledge, or otherwise transfer this Sublease (by operation of law or otherwise) or any interest therein, without the prior written consent of: (a) the County Commission, which consent may be withheld in its sole discretion; and (b) the Building Commission.

15. Insurance. The County Commission agrees to maintain insurance on the City-County Building in compliance with the requirements of Section 17 of the Lease, and the City shall be named as an additional insured under applicable policies.

16. Notices. All notices and other communications required or permitted under this Sublease shall be given in the same manner as in the Lease. Notices shall be addressed to the addresses set out below:

To City at:

The City of Wheeling
1500 Chapline Street
Wheeling, West Virginia 26003
ATTN: City Manager

To County Commission at:

The County Commission of Ohio
County, West Virginia
1500 Chapline Street
Wheeling, West Virginia 26003
ATTN: Ohio County Administrator

17. Entire Agreement. This Sublease contains the entire agreement between the Parties regarding the subject matter contained herein and all prior negotiations and agreements are merged herein. If any provisions of this Sublease are held to be invalid or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Sublease shall remain unaffected.

18. Amendments and Modifications. This Sublease may not be modified or amended in any manner other than by a written agreement signed by all Parties hereto.

19. Successors and Assigns. The covenants and agreements contained in this Sublease shall bind and inure to the benefit of the County Commission and the City and their respective permitted successors and assigns.

20. Counterparts. This Sublease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Sublease delivered by either facsimile or email shall be deemed to have the same legal effect as delivery of an original signed copy of this Sublease.

21. Defined Terms. All capitalized terms not otherwise defined in this Sublease shall have the definitions contained in the Lease.

22. Choice of Law. This Sublease shall be governed by, and construed in accordance with, the laws of the State of West Virginia, without regard to conflict of law rules.

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IN WITNESS WHEREOF, the Parties have caused this Sublease to be executed as of the Effective Date.

COUNTY COMMISSION:

THE COUNTY COMMISSION OF OHIO
COUNTY, WEST VIRGINIA

By: _____

Name: Randy Wharton

Title: President

CITY:

THE CITY OF WHEELING, WEST
VIRGINIA

By: _____

Name: Robert Herron

Title: City Manager

Exhibit A

Contract of Lease-Purchase

(attached hereto)

Exhibit B

Base Rent

(attached hereto)