

**LAND LEASE AGREEMENT
BETWEEN THE MISSOULA COUNTY PUBLIC SCHOOLS
AND CITY OF MISSOULA
FOR SCHOOL PROPERTY COMMONLY KNOWN AS WESTSIDE PARK**

THIS lease is made and entered into as of the ___ day of _____, 2019, by and between MISSOULA COUNTY PUBLIC SCHOOLS ("MCPS" or "Lessor"), 915 South Ave W, Missoula, MT 59801, as owner of the school property commonly known as Westside Park, and the CITY OF MISSOULA, through its Parks and Recreation Department ("City" or "Lessee"), 600 Cregg Lane, Missoula, Montana 59801, as Lessee of the school real property known as Westside Park.

WITNESSETH

WHEREAS, in 1998, Lessee and Lessor executed a lease agreement for the lease of the following described real property, to be used as a public park known as Westside Park:

Block 45 of School Addition to the City of Missoula, Montana according to the map or plat of said School Addition now on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana. (Exhibit A)

WHEREAS, the lease agreement was amended in 2004 to extend the term of the lease to August 31, 2044 given Lessee's capital investment in the park;

WHEREAS, the lease agreement was amended in 2012, to reduce the extent of the Leased Property in order to accommodate construction of a school health clinic in the southwest corner of Westside Park. As revised, the Leased Property is currently described as follows:

Block 45 of School Addition to the City of Missoula, Montana according to the map or plat of said School Addition now on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana, as depicted by Exhibit A.

WHEREAS, the attached 2019 Westside Park Master Plan, ("Master Plan") cooperatively developed by MCPS and the City, serves as a guide for reinvestment and refurbishment of Westside Park (See Exhibit B);

WHEREAS, the parties desire to enter into a new lease agreement that reflects the mutual reinvestment and development of Westside Park as set forth in the Master Plan;

WHEREAS, the parties desire to enter into a new lease agreement that reflects continued cooperation in the use and management of Westside Park for safety, security, and benefit of Lowell Students, neighborhood residents, and the community as outlined in this agreement;

WHEREAS, this lease agreement supersedes the prior lease agreement and addendums.

NOW THEREFORE, in consideration of the foregoing recitals and mutual promises and covenants set forth herein, the parties agree as follows:

Section 1 The Property

The Leased Property is located on a portion of the Lessor's Lowell School property as shown on Exhibit A, referenced hereinafter as "Leased Property" or "Westside Park".

Section 2 Lease Term

2.01. This lease agreement begins on the date first written above and expires on June 30, 2049, unless extended or sooner terminated pursuant to any provisions contained herein.

2.02. Renewal – This lease may be extended in 10 year increments beyond the initial term by mutual written agreement, of the parties.

Section 3 Use of Leased Property

3.01. Lessee shall use, manage and maintain the Leased Property as a public park in accordance with applicable City of Missoula Municipal Code, Montana State Code, and Federal laws, except as otherwise specified in this agreement.

3.02. Lessee shall use the Leased Property for the operation and maintenance of the playgrounds (school-age and preschool), sport court, and park for the benefit of Lowell School, its students, and the public as set forth herein.

(1) Except as set forth below and in 3.06, Lessee shall have the right to provide for short-term reservations of the park facilities to private parties outside of normal school use periods.

(2) Lessor shall have the right to reserve the park area outside of the blue line depicted in Exhibit C during and outside of school hours. Lessor's reservation(s) shall be provided to the City Parks & Recreation Department before January 1 of each new year for priority scheduling. Lessor shall have the right to reserve the park using the City's reservation program after January 1 at any time. Reservations by the Lessor made after January 1 of each new year may "bump" any pre-existing reservation(s) of the park with 14 days advance written (e-mail) notice to the City. Lessor's use of the park area shall be subject to its own policies and procedures and shall be at no cost;

3.03. Lessee acknowledges that Westside Park is located on MCPS-owned property and that the property serves as and accommodates an elementary school. Lessee acknowledges Lessor's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies relating to use of the Leased Property. Lessee shall require all its employees and contractors to refrain from committing any criminal conduct, using tobacco/vapor products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any unauthorized controlled substances, carrying

weapons, or engaging in any inappropriate interactions of any nature whatsoever with students and staff members, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for MCPS's students and staff members.

3.04. Use of the Leased Property as a public park shall not interfere with the school's operations. MCPS retains the right to seek the ejection of any individual from the leased property who is disruptive of school operations or poses a risk to the safety and well-being of its students or staff members.

3.05. Lessor's policies, procedures, and rules shall apply at any time any portion of the Leased Premises is being used by Lessor as provided herein. Lessee may apply and enforce provisions of Missoula Municipal Code, in particular Title 12, governing public use and behaviors when the property is not within the Lessor's exclusive use periods; however, Lessee shall enforce Lessor's Board Policy 4332 (Conduct on School Property) EXHIBIT D, and any subsequent revisions to such policy when any portion of the Leased Property is being used as a public park. Lessor shall provide Lessee with a copy of the current policy and shall provide Lessee with prompt notice of any revisions thereto.

3.06 In connection with Lessee's use of the Leased Property, Lessee acknowledges that:

1. The school-age playground and sport court area, generally depicted within the blue line shown in Exhibit C (LESSOR'S EXCLUSIVE USE AREA DURING SCHOOL HOURS); are closed during the Lowell School year calendar to the public, ordinarily Monday through Friday from 7:30 A.M., until 4:30 P.M., or one-half hour after all classes are dismissed for the day in the event of early release or cancellation of school due to weather or other reasons; and, during any time period where Lessor has reserved use of the area for school-related activities. Lessor is responsible for signage and enforcement of school rules during these times.
2. Lessor shall have access to the Leased Property at all times. Lessor, in its discretion, may restrict or prohibit access to the school-age playground and sport court from time-to-time in accordance with the terms of this lease agreement or to construct improvements.
3. Lessor may adopt reasonable rules, and regulations, in consultation with the City Parks and Recreation Director, which:
 - a. are for the safety, care, order and cleanliness of the playgrounds, and any improvements placed thereon;
 - b. do not unreasonably and materially interfere with the City and public's use and enjoyment of the park; and
 - c. do not require payment of additional monies to Lessor.
4. Lessor may erect or post signs to provide notice of any rule or regulation, adopted by Lessor.

Section 4 Improvements

4.01. Lessor shall pay for and construct a fence around the school-age playground and sport court area (depicted as the area within the blue line on Exhibit C). The fence shall have gated openings to allow for public access during times outside of the exclusive use by Lessor as provided herein. The specific design of the fence and the gates shall be mutually agreed to by the Lessor and the Lessee, to be integrated into the overall design of the park improvements. Lessor shall work cooperatively with Lessee regarding any other improvements to the Leased Property and agrees to coordinate construction with Lessee. Lessor agrees that any improvements shall be consistent with the approved Westside Park Master Plan.

4.02. Lessee shall submit all improvements to Lessor for approval in advance of any construction. Lessee shall coordinate construction of improvements with Lessor. Lessee is authorized to install playground equipment, including the sport court and associated equipment and landscaping on the Leased Property and related improvements in accordance with the Westside Park Master Plan. Planned future park improvements must be consistent with the approved Westside Park Master Plan. Additional planned improvements shall be subject to a negotiated, project specific, development agreement that shall include but not be limited to: scope of work, shared costs (if any), staging, fencing, placing a job trailer, temporary utilities, grading, tree removal, and site restoration. All park improvements shall be designed and constructed in accordance with the Missoula Parks and Recreation Design Manual (2018, or most recent, Edition), Westside Park Master Plan; applicable National Playground Safety Institute Standards, ASTM standards, and/or any other local, state, or federal playground standards applicable to school districts with the more stringent of these standards being applicable. All improvements shall be subject to final design review and acceptance by City's Parks Department and Lessor.

- a. Lessee and Lessor acknowledge the necessity of providing for and granting naming rights in conjunction with the school-age playground project and park improvements to help secure one or more major donors. The parties agree that naming rights shall comply with City Parks & Recreation's and Lessor's donation and naming rights policies and procedures. All naming rights requested and corresponding site recognition shall be mutually approved through the processes established through Lessor's and Lessee's naming rights policies and procedures.
- b. As sufficient funding becomes available, Lessee will be responsible for production of the school-age playground and sport court design options and final design using a public involvement process.
- c. Lessee shall provide for production of stamped construction plans and specification documents that are prepared under the direction of a qualified Landscape Architect who has a Certified Playground Safety Inspector certification. The City shall provide for purchase of play equipment, bidding of construction, including installation, project

management, site restoration, timely payment of project invoices, inspection of the constructed improvements; any required materials testing, engineering inspections; and any required building permits in accordance with the Missoula Parks and Recreation Design Manual (2018, or most recent, Edition) and applicable City, State and Federal Standards related to school playgrounds, and construction.

- d. Lessor and Lessee shall cooperate to minimize impacts from construction of the playgrounds and sport court so as not to unreasonably interfere with the access to and operation of Lowell Elementary School.
- e. Lessee shall notify and obtain the approval by Lessor for any additional improvements to the playgrounds or sport court. Notwithstanding the foregoing, emergency alterations and repairs simply require notice of the repair to Lessor.
- f. Lessor shall pay \$100,000.00 (One Hundred Thousand Dollars and no cents) toward the costs associated with improvements within the exclusive use area. The parties will coordinate to determine the most appropriate means for Lessor to pay toward said improvements.
- g. Lessee shall pay \$100,000 toward the school age playground and \$250,000 additional for park improvements. The parties agree to cooperate to secure donations to pay for park improvements.

Section 5 Maintenance and Services

5.01. Lessee shall be responsible for all maintenance of Leased Property and improvements, except as provided in 5.02. Lessee shall keep improvements placed on the Property in a good, safe, and serviceable order:

- a. Lessor shall provide Lessee with continued and uninterrupted access during the lease term to the existing water meter and irrigation back-flow preventer located near the SE corner of the school health clinic for the purposes of irrigating the Leased Property.
- b. Lessee shall provide for ordinary maintenance of the preschool and school-age playgrounds, including, but not limited to: monthly and weekly inspections; cleaning and patching of any poured-in-place fall zone area; graffiti removal; time and materials for minor equipment repairs and replacements including minor vandalism. Outside of the school year, Lessee shall provide for the maintenance of the school-age playground's Engineered Wood Fiber (EWF) fall zone.
- c. Lessor shall maintain the fencing and signage around the school age playground and sport court.
- d. Lessee may act at its own discretion to minimize any injury to persons or property and shall take all reasonable steps under the circumstances to mitigate any damages.
- e. Either the City or MCPS may request of the other party, temporary closure of leased lands and related facilities to perform repairs, maintenance, or renovation. Requests for

closure shall require notice and approvals at least 15 days in advance, unless closure is for an emergency. Terms and duration of closures shall be in writing and agreed upon by both parties.

- f. The parties agreed to share responsibility for routine inspection of the school-age playground area and sport court to ensure the safety of the areas for school-aged children.

5.02. During the school year, Lessor will also provide for routine safety inspections and the maintenance of the school-age playground's EWF fall zone material and sport courts. Lessor and Lessee agree to develop and adhere to a mutually acceptable and specific schedule, budget and budget tracking, along with protocols for inspections and maintenance of the school age playground and sport court. Lessor and Lessee agree to equally split the costs associated with the replenishment of the EWF fall zone material.

Section 6 Underground Utilities

6.01 To the extent any underground utility easements are required to cross the Leased Property they shall be considered separately from this agreement and shall not be considered an expansion of the terms herein.

Section 7 Compensation

7.01. Lessee shall pay \$1.00 (one dollar) per calendar year as rent for the Leased Property. Payment shall be made to Missoula County Public Schools, 915 South Ave West, Missoula, Montana 59801.

7.02. In the event of catastrophic damage to the playgrounds and play equipment, the parties shall negotiate a separate agreement for cost share repair and replacement of damages.

Section 8 Insurance

8.01 Lessee shall provide Lessor with the Memorandum of Liability Coverage, as evidence of adequate insurance coverage. Lessee shall name Lessor as additional insured.

8.02. Lessee shall require contractors, hired by Lessee to provide services related to the playground project on the Leased Property, to carry insurance in the following amounts and shall name MCPS as an additional insured:

- Workers' Compensation – statutory;
- Employers' Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Automobile Liability - \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate

8.03. In the event either party contracts with a contractor or other third party to use, stage, store

materials, or otherwise occupy a portion of the Leased Property, the policies required herein, shall contain, or be endorsed to contain provisions which list the Lessor and the Lessee, their respective officers, officials, agents and employees as Additional Insureds. The third party insurance coverage shall be primary insurance and in excess of Lessor's or Lessee's insurance.

Section 9 Indemnification

9.01. Each party agrees to indemnify the other against and hold harmless from, all suits, demands, loss or liability, on account of or in connection with any injury, loss or damage to any person or property resulting or claiming to have resulted from the use of the Leased Property by either party, its agents, employees, customers or visitors resulting or claimed to have resulted from the non-indemnifying party's negligent acts or omissions, and further agree that such indemnification shall include all damages, court costs and attorney fees.

9.02. If any action or proceeding shall be brought against an indemnified party, the indemnifying party shall upon notice from the indemnified party defend the same at the indemnifying party's expense by counsel reasonably satisfactory to the indemnified party. When the claim is caused by the joint negligence or willful misconduct of Lessor and Lessee, Lessor's duty to defend, indemnify and hold Lessee harmless shall be in proportion to Lessor's allocable share of the joint negligence or willful misconduct. Said indemnification shall survive the termination of this Lease by default or any other act of the parties or action of law.

Section 10 Non-Discrimination and Affirmative Action Policy

10.01. Lessee will not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, sexual orientation, gender identity, or gender expression, or national origin, or because of age, physical or mental disability or marital status or political ideas. The Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, religion, color, sex, national origin or because of age, physical or mental disability or marital status. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

Section 11. Prohibition on Liens

11.01 Neither the Lessee nor anyone claiming by, through or under the Lessee shall have the right to file or place any mechanic, materialmen or other lien of any kind or character whatsoever upon the Leased Property. In the event that a lien is placed against the Property, Lessee, shall, within twenty (20) days after receiving notice of any such lien, discharge the lien.

Section 12 Assignment

12.01. The Lessee shall not assign this lease agreement without first obtaining the written approval of the Lessor which approval will not be unreasonably withheld.

Section 13 Notices

13.01. Any notices required to be given hereunder shall be both emailed in writing and mailed, postage prepaid, by United States certified mail, return receipt requested, and addressed to the Parties as follows, unless a different address is later designated by either Party in writing:

Notices to the City:

Donna Gaukler
Parks & Recreation Director

Missoula Parks & Recreation Department
600 Cregg Lane
Missoula, MT 59801

Email: Dgaukler@ci.missoula.mt.us

Notices to the Lessor:

Pat McHugh
Executive Director of Business &
Operations

Missoula County Public Schools
915 South Ave. W.
Missoula, MT 59801

Email: pmchugh@mcps.k12.mt.us

Section 14 Lease Agreement Termination

14.01. Unless extended as provided for herein, this land lease agreement shall terminate at the end of its term as specifically provided in this agreement.

14.02. The Lessee agrees that upon termination of this lease agreement, it will surrender, yield up and deliver the property in good, clean condition, as described in Section 3 and 14.06.

14.03. Either party may terminate this lease at any time upon One-Hundred Eighty (180) days written notice to the other party.

14.04. The Lessee understands that Lessor may require the use of the Leased Property and agrees that upon One-Hundred Eighty (180) days written notice to vacate from the Lessor, it will vacate any or all of said Leased Property as identified by Lessor.

14.05 The Lessor acknowledges that the Lessee has invested significant public funds in developing and maintaining the Leased Property. In the event of termination of this agreement before August 31, 2035, the Lessor shall compensate the City for the prorated value of city funded improvements constructed after January 1, 2020.

14.06. In the event of termination of the lease, Lessee shall provide for removal of Lessee park signage, portable toilet, mutt mitt stations, garbage cans and holders, and picnic tables. All park utility costs associated with the Leased Property shall be paid off through the last business day of the land lease and notice of service termination shall be sent by Lessee to affected utilities. Lessee shall remove its locks and/or convey keys for existing facilities to remain within the Leased Property to Lessor.

14.07. Lessee shall repair any damage to the Property caused by the removal of said

improvements, fixtures or personal property.

14.08. Nothing herein shall preclude the parties from mutually agreeing to another means of disposition of the Property or any improvements placed thereon by Lessee.

Section 15. Construction of Agreement

15.01. Binding on Successors. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successor, heirs, administrators and assigns of the Parties hereto.

15.02. Entire agreement. This lease agreement constitutes the entire understanding of the Parties and no representation or agreements, oral or written, made prior to the execution hereof shall vary or modify the terms herein.

15.03. Amendments. Any amendment or variation from the terms of this land lease agreement shall be in writing and shall be effective only after approval of all parties to this lease agreement.

15.04. Applicable Law. This land lease agreement shall be construed in accordance with the laws of the State of Montana.

Section 16 Waiver of Terms and Conditions

16.01 The failure of either party in any one or more instances to enforce one or more of the terms and conditions of this agreement or to exercise any of its rights or privileges, or the waiver of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

Section 17 Extension and Modification

17.01 The parties hereto may extend or otherwise modify the terms of the agreement in whole or in part as circumstances may justify by mutual written agreement. Such modifications may be made in letter form and shall have the same force and effect as a formal addendum or amendment if executed by duly authorized representatives of the parties.

Section 18 Severability

18.01. In the event any provision of this agreement is declared or determined to be unlawful, invalid or unconstitutional such declaration shall not affect, in any manner, the legality of the remaining provisions of this agreement. Each provision of this agreement will be and is deemed to be separate and severable from each other provision.

ENTIRE AGREEMENT: This lease agreement shall constitute the whole agreement between the parties and supersede any prior verbal or written agreement or understanding related to this transaction.

IN WITNESS WHEREOF, the Parties have hereunto caused this lease agreement to be executed in several counterparts, each of which shall constitute an original and all of which taken together shall constitute a single instrument and to be legally binding agreement on this day of _____, 2019.

CITY OF MISSOULA

By: _____
Mayor

Attest: _____
City Clerk

MISSOULA COUNTY PUBLIC SCHOOLS

BY: Robert Watson, Superintendent

EXHIBITS

MISSOULA COUNTY PUBLIC SCHOOLS

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CITY OF MISSOULA

LAND LEASE OF WESTSIDE PARK

**EXHIBIT A
WESTSIDE PARK LAND LEASE AERIAL MAP**



EXHIBIT B ADOPTED WESTSIDE PARK MASTER PLAN

Conceptual Master Plan
April 2019



EXHIBIT C
LESSOR'S EXCLUSIVE USE AREA DURING SCHOOL HOURS



EXHIBIT D
MCPS Policy 4332 – Conduct on School Property

Missoula County Public Schools Community Relations 4332 Conduct on School Property
In addition to prohibitions stated in other District policies, no person on school property shall:

1. Injure or threaten to injure another person;
2. Damage another's property or that of the District;
3. Violate any provision of the criminal law of the state of Montana or town or county ordinance;
4. Smoke or otherwise use tobacco or vapor products; (tobacco includes, but is not limited to, cigarettes, cigars, snuff, smoking tobacco, smokeless tobacco, alternative nicotine product, or any other tobacco or nicotine innovation);
5. Consume, possess, or distribute alcoholic beverages, illegal drugs, or possess dangerous weapons at any time;
6. Impede, delay, or otherwise interfere with the orderly conduct of the District's educational program or any other activity occurring on school property;
7. Enter upon any portion of school premises at any time for purposes other than those which are lawful and authorized by the Board; or
8. Willfully violate other District rules and regulations. "School property" means within school buildings, in vehicles used for school purposes, or on owned or leased school grounds. District administrators will take appropriate action as circumstances warrant.

Legal Reference:

Pro-Children Act of 1994, 20 U.S.C. § 6081 Smoke Free School Act of 1994 § 16-11-302, MCA Definitions § 20-1-220, MCA Use of tobacco product in public school building or property prohibited § 20-5-410, MCA Civil penalty

Policy History:

Adopted on: August 10, 2004 Revised at PN&P Committee on September 28, 2011 and posted for public comment. Approved on: November 8, 2011 First Reading for revision on: March 22, 2105 and posted for public comment. Approved at Second Reading on: May 10, 2016