

**PLAYFAIR PARK  
FACILITIES USE AGREEMENT**

This **FACILITIES USE AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_ day of November, 2023 (the "Effective Date") by and between **City of Missoula and the Missoula Parks and Recreation Department** (collectively, "Owner"), and **Always On, LLC**, a Texas limited liability company ("Producer").

**1. Facilities:** In consideration of the terms, provisions and covenants herein contain, Owner does, by these presents, lease and demise unto Producer, and Producer does hereby accept from Owner, the exclusive right to conduct a music festival and associated events, activities and concessions (collectively, an "Event") at the facilities and areas described on Addendum A attached hereto (the "Event Areas") situated on and/or adjacent to the property known as "Playfair Park" and "Splash Montana" located in Missoula, Montana (the "Park") on the terms hereinafter set forth. The initial Event Area is outlined green on Addendum A, but may be extended to the area outlined in red on Addendum A by mutual agreement of Owner and Producer. A summary outline with respect to the initial proposed Event is attached to this Agreement as Addendum B, however such summary is provided for illustrative purposes only and is non-binding and this Agreement and its other addenda will control and prevail.

**2. Permitted Use:** Producer shall use the Event Areas for the following purposes (collectively, the "Permitted Use"):

- a. Producer shall have the right to conduct an annual Event during the Term (as defined below).
- b. Producer shall have the right, at its own expense, to conduct event related-activities, festivities, promotions and similar activities in the Event Areas during each Event.
- c. It is the intent of this Agreement that (i) Owner's responsibilities are merely to assist with and supervise the Events, subject to Producer's express rights under this Agreement, and (ii) Producer will be responsible for all operations, liabilities, and any additional costs incurred, or services provided in connection with the Events as provided herein or as otherwise may be agreed by the parties in writing.

**3. Term:**

- a. The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and end upon completion of the Post-Event Activities (as defined below) with respect to the eighth (8<sup>th</sup>) annual Event held hereunder. Producer shall have the right to extend the Term for additional successive periods of eight (8) years each (each, an "Extension Term"). Producer may exercise any Extension Term by providing written notice of such exercise to Owner on or prior to December 31<sup>st</sup> of the calendar year immediately preceding the calendar year in which the Term is then scheduled to expire (e.g., if the first Event is held in July 2025, then for the first Extension Term commencing on August 1, 2032, the Producer must provide such a written exercise notice to Owner on or before December 31, 2031). The Initial Term together with all Extension Terms (if applicable) are collectively referred to herein as the "Term."
- b. Producer and Owner shall mutually agree in good faith on the date for the initial Event (so called herein), which shall be a mutually agreed two-day (or longer, given agreement between Producer and Owner) period in the last 15 days of June and/or the first 15 days of July in either 2024 or 2025. The Initial Event shall, unless otherwise agreed by Owner and Producer, be from 12:00pm on July 5, 2024 through 10:00pm on July 6, 2024; provided, however, that Producer may defer the Initial Event to 2025 by providing written notice to Owner on or prior to February 29, 2024. Producer shall have the right to conduct move-in, set up and on-site marketing activities (radio and television spots, etc.) (collectively, "Pre-Event Activities") during the seven-day period preceding each Event. Producer shall have the right to conduct break down and move-out activities (collectively, "Post-Event Activities") during the three-day period following each Event. In the event that Producer remains in possession of the Event Areas after expiration of such Post-Event Activities period, then Producer shall pay to Owner as additional rent \$1,000 per day plus all expenses, costs, losses or damages reasonably incurred by Owner as a result of such holding over.
- c. During the Term, Owner shall not lease or otherwise permit the Park to be utilized for a music festival or similar event by any other person or entity.

**4. Termination:** This Agreement will terminate upon the expiration of the Initial Term except if extended as provided above. In addition, this Agreement may be terminated as provided for in Addendum C.

**5. Rental Fees:** Producer agrees to pay a rental fee to Owner with respect to each Event as follows:

- a. A rental fee in the amount of \$9,800/day will be provided to Splash Montana for the days of the actual Event. Producer agrees that it will not occupy the parking lot in front of Splash or on the South side up to the edge of the pump house during the days leading up to an Event or after an Event concludes, except as mutually agreed with Owner.
- b. A guaranteed fee in the amount of \$50,000 (the "Guaranteed Fee"), which shall be credited against the

aggregate Admission Fees due for such Event in accordance Section 5(d) below.

c. \$10.00 for each admission ticket sold by Producer for such Event (“Admission Fee”), excluding refunded and chargeback sales. The price of tickets to the Event shall be determined by Producer. Multi-day tickets (two-day and three-day tickets) will be counted as one ticket, and single-day tickets will be counted as one ticket.

d. Producer shall remit the Guaranteed Fee to Owner not less than seven days prior to the first day of the Event. Within 60 days after the last day of such Event, Producer shall certify to Owner in writing (i) the total number of admission tickets sold by Producer for such Event (excluding refunded and chargeback sales), and (ii) the cost of the materials and labor actually expended by Producer to restore the turf of the Event Areas to the condition in which it was in immediately prior to the Pre-Event Activities (the “Turf Restoration Costs”). An Admission Fee Balance (so called herein) shall exist if the aggregate Admission Fees for all admission tickets sold by Producer for such Event (excluding refunded and chargeback sales) exceeds the sum of the Guaranteed Fee plus the Turf Restoration Costs. Producer shall remit any Admission Fee Balance to Owner within 90 days after the last day of such Event, provided that the maximum Admission Fee Balance payable by Producer to Owner for any Event is \$70,000.

## **6. Utilities, Services, Temporary Improvements for the Event Areas and Ordinances:**

a. Owner agrees to provide electrical power, water and high-speed Internet connectivity to the Event Areas during Pre-Event Activities, Events and Post-Event Activities (collectively, an “Event Period”) provided Owner currently has these services available. Otherwise, Producer may bring those services on site for the Events at its own expense.

b. Producer will be responsible for arranging all commercial services for the Event, such as janitorial, audio visual, decorator, private on-site security, photographer, registration personnel, ushers, and parking lot attendants, and will deal directly with vendors for its requirements. To the extent Producer wishes to utilize any of Owner’s employees or operations staff (“Employees”) for the Event, Producer will contract with City of Missoula through an Agreement to Purchase of Special Event Parks Services.

c. Producer and Owner will coordinate fire, police and medical plans and protocols for each Event.

d. Except as otherwise agreed in writing by the parties, Producer accepts the Event Areas as is, where is, and except as otherwise expressly provided herein any physical improvements, utility upgrades, permits, licenses or authorizations by any authority that may be required for Producer’s intended use shall be at the sole cost and expense of Producer, provided that Owner will cooperate in good faith with Producer’ efforts to acquire any such permits, licenses or authorizations. All temporary improvements or modifications to the Event Areas for the Events will be the responsibility of Producer unless otherwise agreed by Owner and Producer. Producer must submit to Owner any requested improvements or modifications to the Event Areas and Owner will have the right to review and approve any improvements and modifications to the Event Areas, which approval will not be unreasonably withheld, conditioned or delayed by Owner.

e. Owner acknowledges and agrees (on behalf of itself and the City of Missoula) that Producer and its concessionaires shall be permitted to sell food, merchandise, beer, wine and liquor at and within the Event Areas during each Event (12.40.040 and 12.40.057), and that any ordinances prohibiting such sales or limiting the decibel level of outside events or creating curfews with respect to noise or events (in each case prior to 11:00 pm) shall not apply to the Events (9.30.040 (C.4) and 12.40.065 (29)). To the extent that any present or future laws, ordinances, rules, regulations, code provisions or policies of the City of Missoula (or any department thereof) conflict with any provision of this Agreement (including, without limitation, this Section 5(e)), Owner acknowledges and agrees (on behalf of itself and the City of Missoula) that the terms of this Agreement shall control and prevail. Owner will consult with Producer in good faith regarding any proposed projects or initiatives that may materially impact any of the Event Areas during the Term.

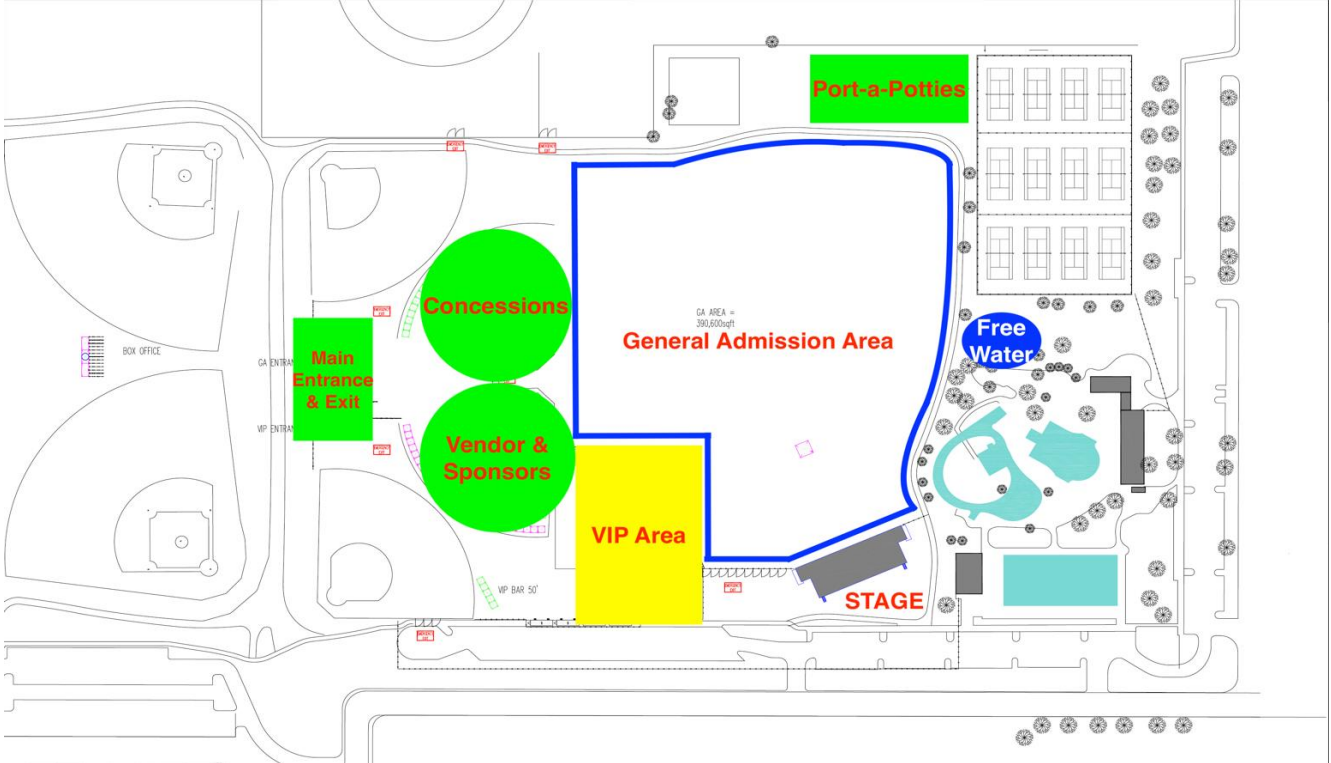
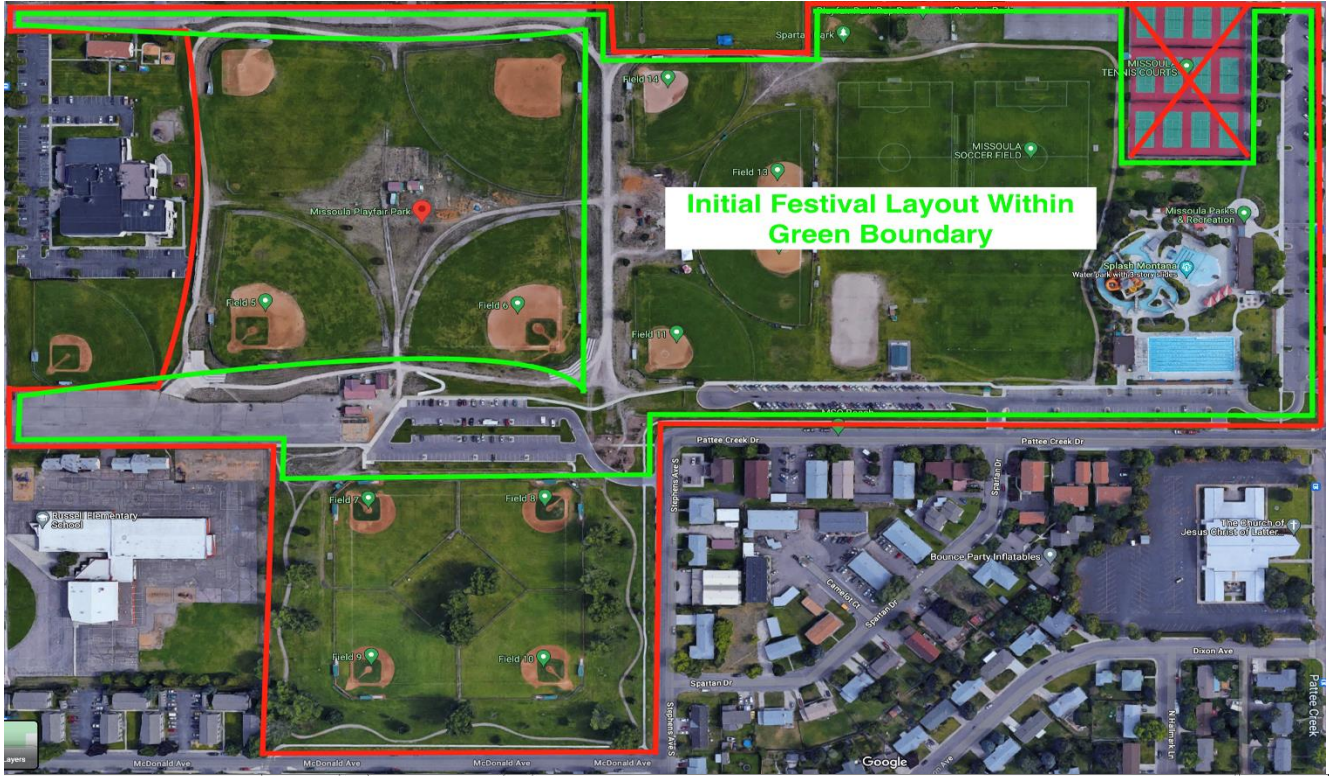
## **7. License to Marks; Audio and Video Rights:**

a. Owner hereby grants to Producer, and Producer hereby accepts, a non-exclusive, non-transferable (except as permitted by Section 3 of Addendum C attached hereto), sublicensable, royalty-free, fully-paid right and license in and to all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles and other source or identifiers owned by Owner relating to the Park (collectively, the “Licensed Marks”) to (a) make, have made, sell, have sold, offer to sell, have offered to sell, use, have used, distribute, have distributed, market and have marketed merchandise bearing the Licensed Marks on a worldwide basis during the Term and (b) generally market, advertise and commercialize Producer and its Events relating to the Park; provided, however, that any usage by Producer of any Licensed Marks shall be subject to Owner’s prior written approval (not to be unreasonably withheld, conditioned or delayed). Producer shall also, during the 12-month period immediately following the expiration or termination of the Term, be permitted to sell, have sold, offer to sell, have offered to sell, use, have used, distribute, have distributed and market and have marketed its then-existing completed inventory of such merchandise.

b. Producer will have the right to film Events for live broadcast and to display, broadcast and disseminate all video and audio images and content of the Events in any and all media (now known or hereafter devised)



# ADDENDUM A EVENT AREAS



**ADDENDUM B  
ILLUSTRATIVE  
EVENT SUMMARY**

## **Missoula Music Festival**

**Venue: Playfair Park**

**Dates: July 5-6 or 6-7, 2024**

**Event Hours: Approx. 2 PM – 10 PM**

**Load In: June 30**

**Load Out: July 10**

### **Music Genre:**

- Adult Contemporary, Rock, Alternative Country, Americana, Jam, Singer-Songwriter, Blues, Reggae, Electro Pop, Comedy, etc. – A family-friendly oriented event.
- NOT music typically found invasive or likely to promote inappropriate/violent or illicit/illegal behaviors.

### **Benefit:**

- The event will donate a portion of annual event proceeds to the Missoula Parks & Recreation Department with the following goals inclusive of those proceeds:
  - Yearly maintenance and upkeep of Playfair and the surrounding area.
  - Subsidizing annual post-event turf repair after each year's event.
  - Investment into the long-term master plan of the park and surrounding areas to better the site for the community and the event over the long term.

### **Year 1 Capacity:**

- Approx. 390,000 sq ft of event space divided by 7 sq feet per person equals 55,000 patrons. These events' average sq ft per person is 7 sq ft per person. Based on the final talent lineup, year one capacity is conservatively estimated between 10,000-20,000 patrons per day.
- Over time we will seek to increase this capacity based on on-site expansion. The goal is to have an overly comfortable experience for patrons and operational success, so we can use the event data to build a more significant event over time when warranted.

### **Ticketing:**

- The event can only be accessed via tickets purchased from an official online or physical location. To access the event, patrons must scan a physical ticket or RFID wristband at our controlled Front Gate locations.
- City and County, Life Safety departments will be provided ticket sales reports until and through the event days. These reports will be audited and verified by the ticketing company.
- Additionally, the producer can provide actual counts of how many patrons are onsite at any given time during the event. Usually, this information is provided on an hourly basis.

### **Entrance Protocol:**

- All patrons will enter through controlled gates, pass through metal detectors, and might be subject to further search before entry.

### **Firearm Sniffing Dogs:**

- Firearm sniffing dogs will detect anyone carrying guns in or around the event site. These highly effective canines will clear the venue before the event, check vendor booths, act as a first and second line of defense with the metal detectors, and work the parking lots and soft targets.

**Zero Tolerance Policy:**

- The event will hold a zero-tolerance policy for underage drinking or illicit drug use. Patrons caught abusing this policy will be removed immediately and not allowed to attend any future days of the event that weekend.

**Bag Policy:**

- ALL bags must not be larger than 12" x 6" x 12" and will be searched before entry.
- Hydration packs are allowed and do not need to be clear but must be emptied of all liquid and have no more than two pockets in addition to the one holding the water reservoir.

**Example Allowable and Not Allowed Items List:**

- Please follow [this LINK](#) for a working example of items allowed and not allowed into the event site. Please scroll to the [CENTEROO/MAIN VENUE](#) list for the proper checklist.

**Chairs & Blankets Rules:**

- One foldable outdoor chair per person will be allowed, as well as blankets for seating. Chair and Blanket seating will be permitted in specified areas. All other event grounds will be for standing only.

**No Reentry:**

- No exit and re-entry will be allowed once patrons have arrived at the event. Unless for extenuating circumstances, that will be dealt with on a case-by-case basis, medical being an example of an allowable exit and re-entry.

**Life Safety:**

- **Missoula Police** - will be contracted for various locations, including traffic control and interior and exterior event positions. Including a representative in our Command Center.
- **Missoula Fire** – The Missoula Fire Department should have a paid onsite representative in our Command Center who will be on call for emergencies.
- **Missoula Streets** - All traffic management plans will be made in consultation with Missoula Streets, Police, and Fire Departments.
- **Event Security** - The producers will hire licensed and bonded security companies to secure the perimeter and interior positions of the event site.
- **Site Fencing Infrastructure** – The producers will utilize existing and temporary fence lines to create a hard perimeter for the event, where patrons can only enter and exit at designated locations. All high-priority areas will have a combination of fences and security guards.
- **Medical** – The producer is seeking to create a partnership with Missoula's Health Department, where we would have a combination of representatives from the County and privately hired medical staff to oversee the health and medical aspects of the event, including a representative in our Command Center.

## **Joint Event Command Center**

- This command center will have representatives from public and private entities represented at this festival – including but not limited to Police, Security, Medical, and producers’ logistics and life safety representatives. This will serve as the primary site for all life safety, logistics, weather, and other important communication and execution needs of the festival, its patrons, the city of Missoula, and the producers – specifically Scott Osburn.

## **Weather Ops**

- The festival will employ weather-detecting ops that will keep the producer updated by the minute for any impending weather issues. In the case of a dangerous weather event that would include life-threatening thunderstorms, lightning, and wind, the producer will have a protocol in place to clear the venue well ahead of any inclement weather. This evacuation process will include stopping all music, providing text on the LED panels of the stages, and directing all patrons to leave the venue and seek shelter in their car or the closest available location.

## **Controlled Parking: Missoula Fairgrounds & Sentinel High School**

- Approx. 3,000+ Parking Spots

## **Shuttle Program:**

- In addition to the controlled and uncontrolled parking areas adjacent to Playfair, the event will be contracting with various locations for a shuttle program to and from the event site. This program, in addition to the parking program and the site accessibility via foot and bike, will provide more than enough capacity for an event of this size.

## **Street Closures: *Show days from noon to midnight.***

- Bancroft St. between South Ave and Pattee Creek Dr.
  - Controlled Intersections at all residential intersections along Bancroft St. closure.
  - Residents along Bancroft will be given a special windshield sticker to access their homes during show hours. As a fail-safe, the homeowner can provide a driver’s license with a home address.
- Pattee Creek Dr. at Bancroft St.
  - Residents along Pattee Creek and Spartan Dr. will be given a special windshield sticker to access their homes during show hours. As a fail-safe, the homeowner can provide a driver’s license with a home address.
- Stephens Ave S. and McDonald Ave.
  - Residents along Stephens Ave. and Spartan Dr. will be given a special windshield sticker to access their homes during show hours. As a fail-safe, the homeowner can provide a driver’s license with a home address.

## **ADA Compliance:**

- The event will have ADA-compliant and reserved parking spots, viewing areas, and bathrooms. This department will be led by a team member of the production company, who will work directly with patrons needing accommodation.

**Neighborhood Partnership:**

- This event aims to create a peaceable partnership with all neighbors. The event will be on sale and announced approx.—6 months before the event days. There will also be 60-day and 30-day notice given to all neighbors directly affected by the noise and traffic of the event.
- Neighbors directly affected by the event's noise will be offered free General Admission tickets.
- If the neighbor cannot attend the event due to elderly, physical, or newborn/childcare reasons, the event will work on a case-by-case basis to provide lodging stipends for the event nights. This will not be publicly promoted but dealt with by the producer's customer service team on an incoming basis.

**Camping in Parks:**

- The event producers will not promote, condone, or allow camping in Playfair, Sentinel, or the Missoula Fairgrounds. This will be policed via our private security and Missoula Police when necessary. Additionally, car camping will not be allowed, and all controlled parking lots will be cleared nightly.

**Splash Montana:**

- Splash Montana will be utilized for this event and controlled with security. This area will aim to be a family-friendly zone, and our security will keep out any disorderly or intoxicated patrons that detract from the goals of this usage.

**Cleanup:**

- The event will have designated trash cans, recycling cans, and onsite cleaning staff during the event. The site will also be thoroughly cleaned before each event day.
- The producer will be responsible for returning the park cleaned and in its prior shape immediately upon the event load out approx. 2-3 days after the last event day.

**Turf Management:**

- It will be the producer's responsibility to strike an amicable arrangement that includes annual maintenance and post-event repair of the sites used for the event. The goal is that this event helps fund the areas to be in better shape year-round, regardless of any necessary post-event repairs.

**Portable Toilets/Hand Washing Stations:**

- Approx. 1 toilet per 75 patrons will be available for General and VIP patron use. These toilets will be maintained throughout the event, including emptying, cleaning, and sanitizing each night.
- Hand washing and sanitizing stations will be provided in the Restroom and Food & Beverage areas.

**Water:**

- The event will provide free drinking water for all patrons via water stations. Water sources will be accessed via Splash Montana, and the producer will have a water truck onsite if needed. Example of water stations - <http://www.eventwatersolutions.com>

**Food:**

- Food vendors will be contracted with and permitted for the event. This will include a mix of food trucks and tented food preparation and selling areas. An overly adequate amount of food will be available throughout the event.



**Liquid Concessions:**

- Alcohol (Beer, Wine & Liquor) will be sold at this event, and all drinking patrons will be given an ID check and unique daily wristband to identify that they are 21 years old and older.
- All necessary permits will be obtained for the selling of alcohol in accordance with Montana State Laws.
- Additionally, there will be onsite security that will patrol the grounds in search of any underage drinking.
- Water, sodas, and various other non-alcoholic drinks will be available for sale at the event.

**Merchandise Vendors:**

- Merchandise, craft, and art vendors will be allowed at the event. All items or objects sold at the event will be above board and vetted. This is a family-friendly event, and we will ensure that all partners uphold the standard that families with various values would agree with. No drug paraphernalia, obscene, or lude items will be allowed to be present or sold at this event.

**Insurance:**

- The producers will hold general liability insurance and event cancellation insurance. These policies will name all necessary stakeholders as additional insured, and the proper mutually agreeable indemnification and force majeure language will be agreed upon in the venue contract.

**Lodging:**

- The Producers will work with lodging entities, such as hotels, RV sites, and campgrounds, to ensure ample availability for out-of-town guests.

**The University of Montana Engagement:**

- Since the producer – Scott Osburn, is a grad of UofM and sits on the board of the Entertainment Management in the Business school, there will be a significant amount of student involvement in this event.

*Prepared by -*

Scott Osburn / Always On, LLC

[scott@werealwayson.com](mailto:scott@werealwayson.com) / 214.507.2514

**ADDENDUM C  
ADDITIONAL TERMS AND CONDITIONS**

- 1. Producer's Obligations: In addition to the conditions provided for in the Agreement, Producer agrees as follows:**
  - a. Producer shall provide proof of a valid current City of Missoula Business License prior to selling tickets to the Event.
  - b. At least 10 days prior to the commencement of each Event, to provide Owner (within the time period specified) the following:
    - (i) Duly executed certificates of insurance with respect to each policy of insurance required to be procured by Producer, each such policy naming Owner as an additional insured;
    - (ii) The names and addresses of concessionaires, exhibitors and contractors of Producer who will be making use of or performing work in the Event Areas at any time during such Event Period; and
    - (iii) The required City of Missoula Agreement for Purchase of Special Event Police Services to Assistant Chief of Police to acquire additional assistance from uniformed police officers, in the form attached to this Agreement as Addendum F;
  - c. During each Event Period, to maintain the Event Areas in good and safe condition and to notify Owner promptly of and, at Producer's own cost and expense, to repair or replace any damage or injury done to the Park caused by Producer or Producer's agents, contractors, patrons or employees. Producer shall be responsible to prepare the turf of the Event Areas immediately prior to each Event, and will pay the vendor that provides such preparation services directly. Producer shall be responsible, at its own expense, to restore the turf of the Event Areas to the condition in which it was in immediately prior to the Pre-Event Activities; Producer and Owner shall meet and confer during the Post-Event Activities for each Event to mutually agree upon the scope of the turf restoration that will be required with respect to such Event. Producer will, if requested by Owner, provide not less than 10 days prior to the commencement of each Event a bond in the amount of \$150,000 to secure Producer's turf restoration obligation for such Event. Producer's cost for such turf restoration shall be credited against the aggregate Admission Fees due for such Event in accordance Section 5(d) of this Agreement.
  - d. To deliver the Event Areas to Owner at the end of each applicable Event Period in as good and clean repair and condition as at the commencement of such Event Period, reasonable wear and tear excepted;
  - e. Subject to Section 5(e) of the Agreement, not to occupy or use the Event Areas for any business or purpose which is unlawful;
  - f. Subject to Section 5(e) of the Agreement, to comply with all laws, ordinances, rules and regulations of any federal, State of Montana, City of Missoula, or other government or governmental agency having jurisdiction over the Event Areas relating to Producer's use or occupancy of the Event Areas;
  - g. Comply with the City of Missoula's Non-Discrimination and Affirmative Action Policies attached and incorporated as Addendum D; and
  - h. Not to permit any mechanics, materialmen's or other liens to be placed upon the Event Areas (and nothing in this Agreement shall be construed as constituting consent by Owner thereto, expressed or implied) by Producer's contractors and subcontractors that could give rise to the filing of any such liens against Owner's interest in Event Areas.
- 2. Concessions, Parking and Sponsors:** Producer may procure its own concessionaires and verify each concessionaire is licensed to do business in the City of Missoula (including, without limitation, food, merchandise, beer, wine and liquor sales) for each Event for the Event Areas at Producer's expense and shall retain all revenues therefrom. Producer shall operate all parking lots within the Event Areas for each Event at Producer's expense and shall retain all revenues therefrom. Producer may procure its own sponsors for each Event shall retain all revenues therefrom.
- 3. Assignment:** Producer shall not, without the prior written consent of Owner (which shall not be unreasonably withheld, conditioned or delayed by Owner), assign this Agreement or sublease the Event Areas or any part thereof; provided, however, that (a) nothing contained herein shall be deemed to prohibit Producer's granting of a license to exhibitors or concessionaires to use specific portions of the Event Areas in connection with the Permitted Use and (b) Owner shall be permitted to assign this Agreement and its rights hereunder to any successor to all or substantially all of Owner's assets relating to the Event (whether by way of asset sale or otherwise). Notwithstanding any provision of this Section 3 to the contrary, Producer may, by providing written notice to Owner, assign its rights with respect to any specific Event Period to an affiliate of Producer organized for the purpose of hosting the Event to occur during such Event Period.
- 4. Casualty Damage and Events of Force Majeure:** If performance by Owner or Producer of any term, condition or covenant in this Agreement is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood or other casualty, condemnation, or any other cause not within the reasonable control of such party, the period for performance of such term, condition or covenant will be extended for a period equal to the period such party is so delayed or prevented; provided, however, that this Section 4 shall not excuse or delay Producer's obligations to pay any fee to Owner on the date that it is due.
- 5. Indemnification:** Owner shall not be liable to Producer, or to Producer's agents, employees, contractors, patrons, guests, licensees or invitees, concessionaires, or to any other person, for any injury or damage to person or property caused by or arising from the performance of this Agreement, except to the extent arising from Owner's sole or gross negligence, willful misconduct, violation of law or breach of this Agreement. Producer agrees to indemnify, defend, and hold Owner and its agents and employees harmless from and against all claims, actions, costs, damages, losses or liabilities arising out of any of the foregoing, including without limitation reasonable attorney's fees and all other reasonable out-of-pocket

expenses incurred in connection therewith, except to the extent arising from Owner's sole or gross negligence, willful misconduct, violation of law or breach of this Agreement.

**6. Insurance:**

a. Producer shall, at its sole cost and expense, procure and maintain during each applicable Event Period commercial general liability insurance, automobile liability insurance, worker's compensation and umbrella liability insurance with coverages and other terms as set forth on Addendum E.

b. Neither Owner nor Producer shall be responsible for any insured or insurable loss of or damage to property of the other party, occasioned by theft, fire, smoke, acts of God, public enemy, riot or civil commotion not associated with the event, and Owner and Producer expressly waive any claim for liability against the other party with respect to any such loss or damage unless such loss or damage is the result of the party's negligence or willful misconduct. Accordingly, it shall be the responsibility of each of Owner and Producer, respectively, to secure its own insurance or otherwise protect itself and its property against such loss or damage. This section shall not apply to the provisions of Section 1.c and 1.d above.

**7. Default/Remedies/Termination:**

a. The occurrence of any one or more of the following shall constitute a default by Producer under this Agreement:

(i) failure of Producer to materially perform, observe or comply with any of the terms, covenants, conditions or provisions of this Agreement, which failure is not cured within 30 days of Producer's receipt of written notice of such failure from Owner; provided, however, that if the parties agree in writing that failure by Producer is of such a nature that it cannot reasonably be cured within 30 days, then Producer shall not be in default hereunder if it commences to cure such failure within such 30-day period and prosecutes such cure diligently, pursuant to the written agreement of the parties, to completion;

(ii) the termination, dissolution, liquidation or permanent cessation of business of Producer;

(iii) the commencement by Producer of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or

(iv) the commencement of any case, proceeding or other action against Producer seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and Producer: (A) fails to obtain a dismissal of such case, proceeding, or other action within 90 days of its commencement; or (B) is the subject of an order of relief that is not fully stayed within 30 days after the entry thereof.

b. Upon the occurrence of any default by Producer under this Agreement, Owner may, at its option, terminate this Agreement by providing written notice to Producer. Upon any such termination of this Agreement, Producer will not be refunded the Guaranteed Fee paid prior to default.

c. The rights and remedies of either party under this Agreement shall be non-exclusive and shall be in addition to and cumulative of all other remedies available to such party at law or in equity.

d. The parties acknowledge the potential impact of the Events on the residential areas near the Park. Accordingly, if within 30 days of the completion of an Event during the Term a petition is signed and submitted to Owner by residents representing 250 of the single-family and/or multi-family residential units located within 0.5 miles of the boundaries of the Park (as such boundaries are outlined in red on Addendum A) which petition raises one or more specific concerns or objections relating to the manner in which Producer conducted such event, then Producer will promptly meet with Owner's staff to develop a plan to address such specific concerns or objections for consideration by the City Council. Upon receipt of such a petition, Owner shall promptly provide Producer with a copy thereof and Producer shall have 60 days from its receipt of such petition from Owner to develop the response plan. Upon presentation of such plan to the City Council, if such plan is not acceptable to the City Council, or if no plan is produced within the time period allowed, then the City Council may, by unanimous vote of all councilmembers present at a duly-noticed public meeting of the City Council at which a quorum of the City Council is present, elect to terminate this Agreement.

**8. Non-disparagement:** During the Term, neither party will publicly disparage, criticize, or intentionally initiate negative publicity about the other party, except in connection with a legal proceeding or in a response to a subpoena in which a party is under oath, in connection with a legal proceeding relating to the parties' respective rights or obligations under this Agreement, or as such party is otherwise required by applicable law to cooperate with a governmental authority.

**9. Miscellaneous:**

a. If on account of any breach or default by any party to this Agreement in its obligations to any other party to this Agreement, it becomes necessary for a party to employ an attorney to enforce or defend any of its rights or remedies under this Agreement, each party will be responsible for its own legal fees in connection with the enforcement or defense of this Agreement.

b. This Agreement constitutes the entire agreement between the parties with respect to the subject matter covered hereby and supersedes and cancels any and all previous or contemporaneous statements, negotiations, arrangements, agreements and understandings, if any, between Owner and Producer with respect thereto. There are no representations, agreements or warranties (express or implied, oral or written) between Owner and Producer with respect to the subject matter of this Agreement, the Event Areas, the Events or the Park other than contained in the Agreement. This Agreement may not be altered changed or amended, except by an instrument in writing signed by both parties.

c. The provision of the Agreement shall be binding upon and inure to the benefit of Owner and Producer and to their

respective successors and permitted assigns.

d. No course of dealing between Owner and Producer or any other person, nor any delay on the part of Owner or Producer in exercising any rights under this Agreement, nor any failure to enforce any provision of this Agreement, shall operate as a waiver of any rights of either party, except to the extent, if any, expressly waived in writing by such party.

e. Any notice or communication required or permitted hereunder must be in writing, and shall be given by registered or certified mail, overnight delivery or hand delivery, and shall be deemed to have been given and received three (3) business days after the date when a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; and, if given other than by certified or registered mail, shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices or communications shall be given to the parties at the addresses set forth on the signature page hereof, or at any other address of which one party notifies the other party in writing.

f. This Agreement shall be construed according to the laws of the State of Montana.

g. The parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any person with respect to this Agreement. The headings in this Agreement are for reference only and shall not be construed to limit or otherwise affect the meaning of any of the provisions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

h. This Agreement may be executed in counterparts (including by electronic signature) that together shall constitute one and the same instrument, and each party agrees that a copy of a counterpart executed by it and sent to the other by any method shall constitute acceptance of this Agreement.

i. The parties will act in good faith with respect to their respective rights and obligations under this Agreement, including, but not limited to, by no unreasonably withholding, conditioning or delaying any agreement, consent or approval required by each of them hereunder.

**ADDENDUM D**  
**City of Missoula's Non-Discrimination and Affirmative Action Policy**

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

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

**The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, physical or mental disability, religion, creed, national origin, sex, age, marital or familial status, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/express, except where these criteria are reasonable bona fide occupational qualifications. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

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

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

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

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

**ADDENDUM E  
MINIMUM INSURANCE REQUIREMENTS**

Producer must procure prior to commencement of each initial Event Period, at its own expense, the following minimum limits of insurance, which will be primary and noncontributory. An original certificate of insurance evidencing the necessary coverages must be provided to Owner 10 days prior to commencement of each applicable Event Period. All insurance carriers must maintain an AM Best rating of "A-" or better.

(I.) General Liability

Coverage Details: Commercial General Liability  
Occurrence Form- Per Project/Location  
Aggregate Limit Contractual Liability  
Broad Form Property  
Damage\*  
Independent  
Contractors  
Limits of Insurance: \$2,000,000 General Aggregate  
\$1,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal & Advertising  
\$1,000,000 Participants Liability  
\$1,000,000 Each Occurrence

(II.) Automobile Liability

Coverage Details: All Owned, Non-

owned & Hired vehicles Limits of Liability:

\$500,000 per

accident

(III.) Workers Compensation

Coverage Details: Statutory Coverage in each state of operation or "all states" coverage.  
Applicable Federal (i.e. Longshoreman's Statutory) if applicable.

Limits of Liability: \$100,000 Each Accident Bodily Injury  
\$500,000 Policy Limit Bodily Injury by Disease  
\$100,000 Each Employee Bodily Injury by Disease

(IV.) Umbrella Liability

Limits of Insurance: \$4,000,000 Each Occurrence  
\$4,000,000 Aggregate

All policies shall include a waiver of subrogation.

(VI.) Certificate Holder

To be provided by Owner to Producer.

(VII.) Cancellation

Thirty (30) days prior written notice is required.

**ADDENDUM F  
AGREEMENT FOR PURCHASE OF SPECIAL EVENT POLICE SERVICES**



**CITY OF MISSOULA  
AGREEMENT FOR PURCHASE  
OF SPECIAL EVENT POLICE SERVICES**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
\_\_\_\_\_, by and between the City of Missoula Police Department in Missoula County, State of  
Montana, hereinafter referred to as “City Police Department” and \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as “Secondary  
Employer” who is desirous of employing the services of City Police Department police  
officers.

In receipt of the mutual covenants and agreements herein contained, the parties agree as  
follows:

1. Secondary Employer is desirous of employing the services of City Police Department  
police officers for the event described below.  
The City Police Department agrees to provide \_\_\_\_\_  
and other necessary administrative resources to support those officers for the purpose of  
City Police Department law enforcement services during the following event as  
described:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
  
2. Secondary Employer agrees that it shall timely reimburse the City Police Department in  
the amount of actual costs of salary, including overtime salary for the officers as well as  
a percentage of that salary for purposes of benefits and other administrative costs  
associated with overtime employment of the officer(s). The City Police Department  
shall bill Secondary Employer within 21 days after the conclusion of the event described  
above and this bill shall be paid within 15 calendar days of the date of the bill to City of  
Missoula – Police Department, 435 Ryman Street, Missoula, Montana 59802.

3. The parties agree that while performing secondary employment, the officers shall follow the City Police Department's policies, rules, regulations, procedures, and standards in addition to the reasonable policies, rules, regulations, procedures, and standards imposed by the Secondary Employer. Where this is a conflict of policies, rules, regulations, procedures and standards, the City Police Department policies, rules, regulations, and standards will take precedence over the secondary employer's policies, rules, regulations and standards.
4. Secondary employer agrees to abide by the City of Missoula's non-discrimination and affirmative action policies; attached as Attachment A and incorporate to this agreement by reference.
5. Secondary employer agrees to deposit the amount of \$\_\_\_\_\_ prior to the first day of the event and the amount deposited will be deducted from the final bill.
6. Secondary Employer agrees to provide liability insurance coverage in the amount of at least \$1,500,000 per occurrence and \$750,000 per claim for the City Police Department officers and shall provide an insurance certificate to this effect, and if possible, name the City of Missoula and City Police Department as additional insured parties. Secondary Employer will provide proof of insurance for general liability to City Police Department prior to the signing of this agreement.
7. Indemnification – To the fullest extent permitted by law, Secondary Employer shall indemnify and hold harmless the City Police Department, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of the defense thereof, to the extent caused by or arising out of Secondary Employer's negligent acts, errors or omissions in work or services performed under this Contract.

To the fullest extent permitted by law, the City Police Department shall indemnify and hold harmless the Secondary Employer, its appointed officials, officers, agents, directors, and staff from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of the City Police Department's negligent acts, errors, or omissions in work or services performed under the contract.

8. This agreement may be terminated and a pro-rata payment for services received by Secondary Employer shall be paid to the City Police Department. This agreement may be terminated by:
  - A. Mutual consent of the parties;
  - B. For Cause: Either party may terminate this agreement in the event the other party fails to performs its obligations as described in the Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provide to the other party;
  - C. The City Police Department reserves the right to cancel this agreement, at their



discretion, but only when the police officer(s) assistance is needed for patrol or other general police duties on behalf of the City of Missoula under emergency circumstances.

9. The term of this agreement will commence upon endorsement by all parties and expire: \_\_\_\_\_, unless terminated as set forth above.

**In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first herein above written.**

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**City of Missoula, Montana**

**Secondary Employer**

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Business Name: (please print)

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Address: (please print)

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Telephone Numbers (cell, too, if applicable)

\_\_\_\_\_  
Employer Tax ID #:

\_\_\_\_\_  
Name of person signing contract: (printed)

\_\_\_\_\_  
Signature of person signing contract & date