

CARAS PARK MANAGEMENT AGREEMENT

THIS AGREEMENT is between the City of Missoula, through its Parks and Recreation Department, (Owner) and Missoula Downtown Association, a Montana non-profit corporation (Manager). The parties agree to the following:

- 1) **Managed Premises.** Owner agrees to allow Manager to manage, and Manager agrees to manage, pursuant to the terms and conditions of this Agreement, the area of Caras Park, Missoula, Montana, known as Caras Park Pavilion and Caras Park Events Ring and areas immediately adjacent to the Pavilion and Events Rings (herein Pavilion Area) per Exhibit A. In addition, Manager may use the storage areas and ticket booth in the restroom building.
- 2) **Term.** This agreement shall commence on first day of January 2024 and end on December 31, 2024. The Owner may, at Owner's option, extend the terms of the Agreement for annual terms for eight additional periods beyond the initial term beginning with January 1, 2024, and extending through December 31, 2031. This Agreement shall be deemed extended unless Owner gives notice of the termination as set out below.
- 3) **Termination of Agreement.** Owner may terminate this Agreement with or without cause upon thirty (30) days written notice to Manager, subject to Manager being allowed to fulfill its rental obligations that exist at the time of the notice of termination.
- 4) **Management Fee.** Owner shall not be required to pay Manager any fee for Management of the Pavilion. Consideration to Manager shall be the ability to manage events in the Pavilion Area and charge rental on the Pavilion Area as set out below.
- 5) **Annual Meeting.** Owner and Manager shall meet annually in the spring, and Manager shall present annually, in March or a mutually agreed upon date, to the Parks & Recreation Advisory Board for annual review, problem solving, planning and investment strategies.
- 6) **Accounting Report.** By January 31 of each year, Manager will submit to the Parks and Recreation Director an accounting of the previous year's financial statements for all activities relating to management of Caras Park Pavilion.
- 7) **Use.** It is understood and agreed that the Pavilion Area shall be used and occupied by Manager and persons and entities who rent the Pavilion Area from Manager for cultural, social, and political events consistent with use of a City Park. The Owner, including the general public, has the right to use areas within this agreement so long as the Owner's, or the public's use does not interfere with the Manager's scheduled use. The Manager will, in its use and occupancy of the Pavilion Area, comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority extends to the Pavilion Area or to any business conducted upon the property. No liens may be filed against publicly owned City property. Manager covenants that no liens will attach to the real property as a result of Manager's operation of the Pavilion or Events Ring.
- 8) **Pavilion Area Rental.** Manager shall be entitled to rent the Pavilion Area to persons and entities, as noted above in Use. Manager shall be responsible for all costs and expenses associated with such rentals. Manager shall be entitled to set rental rates for use of the Pavilion Area, and retain all rents paid for such use. In order to prevent conflicts regarding events in Caras Park, and in the interest of having as much public utilization of Caras Park as possible, Manager has priority in regards to any

event in Caras Park, and any events not leasing the Pavilion but utilizing Caras Park must contact Manager to confirm use of Caras Park. All accommodations will be made to fulfill each request and to make each event as successful as possible. Rental of the Pavilion at full rental rate shall include use of the Events Ring. Manager may also rent the Events Ring only at a separate rate. Events Ring rentals shall not interfere with Pavilion rentals. Rental of any space will not impede normal traffic on trails without a pre-approved active transportation plan submitted and approved by the Owner. When separate groups wish to rent the Pavilion, Events Ring, Underbridge Play-space, and East Caras Park at the same time, the Pavilion rental shall take precedence if a compromise is impractical.

- 9) **Beartracks Underbridge Play-space:** Owner and Manager shall develop a coordinated process for program reservations such as after school and summer camps, as well as coordinated utilization during Caras Park events. Owner shall be responsible for management, maintenance and repairs. Manager shall provide the recreation furnishings, as well as needed additional services (see Maintenance, Pavilion Manager's Responsibilities) during Manager scheduled events. Owner will not charge Manager for Manager's use of Underbridge Play-space. In order to accommodate Manager held and hosted events and reduce conflict, Manager shall have priority scheduling of the Underbridge Play-space until March 1 of each year.
- 10) **East Caras Park.** Manager shall have the ability to request from Owner an expansion of an event related to a Caras event. Events must be attached to a Caras Park rental and may not interfere with an already existing rental at East Caras or Bess Reed Parks, including current agreements with the Holiday Inn for use of Bess Reed Park.
- 11) **Assignment.** Manager shall not assign or encumber its interest in this Agreement or in the Pavilion, the Events Ring, or the Underbridge Playground.
Mutually-Agreed Upon Capital Improvements Planning. Owner and Manager shall be vested in implementation of the North Riverside Parks & Trails Plan and shall work together on improvements and capital investments. Any improvements or construction valued or contracted at \$5,000.00 or more must be approved by the Owner representative before procurement or work begins. Any improvements, construction or contracts greater than \$5,000.00 may be subject to a separate Agreement by Owner and Manager.
- 12) **Signs.** Manager and Owner shall work together on implementation of the Heritage Interpretive Plan adopted via Council Resolution on June 8, 2020, and the North Riverside Parks and Trails Plan, including media plan, for permanent signage and wayfinding systems. Permanent signage in the parks must be reviewed and approved by the Owner. Temporary signage in the parks – such as event signage, project signage or temporary donor recognition shall be approved by the Manager. Signs not appropriately approved by Owner may be removed by Owner at Manager's expense. All signs must comply with provisions of the City Sign Ordinance and Parks System Signage.
- 13) **Noise Ordinance.** All Caras Park events shall comply with the existing noise ordinance and shall not be eligible for "Permit for Relief from Noise Level." Section 9.30.070, MMC. All sound amplification shall cease at 10pm Sunday through Thursday and 11pm Friday and Saturday.
- 14) **Rules, Regulations, Ordinances.** The rules, regulations and ordinances adopted by Owner are made a part of this Agreement, and Manager and Owner shall comply with them. Owner shall have the right from time to time to promulgate amendments and additional rules, regulations and

ordinances for the safety, care and cleanliness of the city parks. Manager and Owner shall comply with the rules, regulations and ordinances, and a violation of any of them shall constitute a default under this Agreement.

15) **Nondiscrimination and Affirmative Action.** Manager agrees and shall comply with the following Non-Discrimination and Affirmative Action policies:

Non-discrimination. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of 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, sexual orientation, or gender identity/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 comply 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:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all people equal opportunity for employment without regard to 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. 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 based on 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.

The City of Missoula's 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.

16) **Utilities.** Manager shall make all arrangements for, and shall be responsible for the initial payment of all connection charges of utilities and services furnished to the Pavilion, including, without limitation, electricity and garbage and recycling removal. Manager shall be responsible for the cost of all services and utilities furnished to the site after installation, except water and sewer. Owner shall be responsible for water and sewer expenses.

Electricity: Electricity expenses for Caras Park are shared equally by Owner and Manager. Owner shall bill Manager for electrical charges on the pavilion structure on or about December 1 of each year of this Agreement. Manager shall pay the electrical bill within thirty (30) days of billing. The electrical charges for 2023 are estimated to be approximately four thousand five hundred dollars (\$4,500.00). The electrical charges shall increase by five percent (5%) annually from here forward unless the cost to owner increases through significant rate increases or increased service. In that event, the rate shall be renegotiated.

- 17) **Right to Enter.** Owner and its authorized representatives shall have the right to enter the premises at all reasonable times for any purposes. Owner shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or the damage arising out of Owner's entry on the premises as provided in the paragraph.
- 18) **Owner Use of the Pavilion:** Owner shall also have the right to three (3) free rentals of the Caras Park Pavilion and Events Ring each year, including set up costs with the date of the rental subject to availability. If needed, additional Owner use days and the terms of usage shall be noticed and negotiated annually by April 30.
- 19) **Promotional Recognition.** Manager shall include Owner in the onsite recognition. Manager shall also include Owner in Pavilion promotional matters wherever possible and appropriate.
- 20) **Personal Property and Liability Risk.** Manager is responsible for the areas subject to this Agreement and assumes the responsibility to manage risk in these areas. Owner shall not be liable to Manager, its employees, agents or licensees, for injury, death or property damage occurring in, on or about the Pavilion, Events Ring, or adjacent areas, and Manager shall indemnify Owner, hold it harmless, and defend Owner from any claim or damage arising out of any injury, death or property damage occurring in, on or about the Pavilion, Events Ring, or adjacent areas to any person.

Without limiting Manager's liability hereunder, Manager agrees, at its own cost and expense, to carry in continuous effect public liability insurance protecting Owner and Manager in the amount of one million, five hundred thousand dollars (\$1,500,000.00) per occurrence and three million dollars (\$3,000,000.00) general aggregate for personal injuries sustained by any one or more persons. A certificate of liability shall be provided showing the Owner as the Certificate Holder and named as Additionally Insured. Certificate shall be provided to the Owner each year after Manager renews the policy.

Manager, at its own cost, shall keep all structures erected on the premises adequately insured for fire and other types of property damage.

Certificates of the insurance providing for not less than fifteen days' notice to Owner prior to cancellation shall be furnished to Owner prior to Manager taking possession of the Pavilion.

- 21) **Larger-than-Normal Events:** In an effort to protect the integrity and assets of Caras Park, Manager and Owner agree that events extending beyond the normal type of events in the park shall be subjected to a higher level of scrutiny to ensure the park can accommodate the needs. Larger-than-normal events shall be defined as events that limit entrance in the riverfront parks & trails, significantly impact traffic in and around the riverfront parks, extend beyond three days, require

significant security presence, may impact other use agreements within the park such as parking and the Carousel, and/or extend beyond the traditional boundaries of Caras Park. Reservations for events that are larger-than-normal shall be reviewed and approved by Parks & Recreation staff, or if deemed appropriate, by the Parks and Recreation Advisory Board.

- 22) **Alcohol Permit.** The parties acknowledge that any rental of the Pavilion Area that involves the use of alcohol requires a current year park alcohol permit. Manager shall obtain the appropriate information, form and fee necessary to obtain the permit. On submission of all appropriate information, the form and fee to Manager, the renter shall be deemed to have the required park alcohol permit. Manager shall retain fees from alcohol permits.
- 23) **Notice.** Any notice, communications or report required or permitted under this Agreement shall be in writing and may be delivered by mail, e-mail or in person. Notices, communications or reports transmitted by mail shall be deemed delivered when deposited with the United States Postal Service, certified, return receipt requested. Failure to accept mailed notice shall not negate the effectiveness of the notice. Notices, communications or reports transmitted by e-mail shall be deemed delivered when reader confirmation is received. Notices, communications or reports transmitted by personal delivery shall be deemed delivered when hand delivered to the address of the party. The addresses for delivery of notices, communications or reports are as follows:

<u>OWNER REPRESENTATIVE</u>	<u>MANAGER REPRESENTATIVE</u>
Donna Gaukler or Director City of Missoula Parks & Recreation Currents Aquatic Center 600 Cregg Drive Missoula, MT 59801 GauklerD@ci.missoula.mt.us	Linda McCarthy or Executive Director Downtown Missoula Partnership and/or Missoula Downtown Association 218 East Main Street, Suite C Missoula, MT 59802 Linda@missouladowntown.com

In the event a party changes its address, the party shall notify the other party. Any notice delivered to a previous address before notice of a change of address shall be fully effective.

- 24) **Surrender of Premises.** Upon the expiration or the termination of this Agreement, Manager shall, at its expense:
- Remove Manager’s goods and effects and those of all persons claiming under Manager
 - Surrender the Pavilion Area to Owner
 - Surrender permanent improvements installed in the Pavilion Area and Beartracks Underbridge Play space to Owner.
 - Terminate, or through mutual agreement by Owner transfer, any future rentals or agreements to use the areas subject to this Agreement.
 - Any property left on the Pavilion or Events Ring after the expiration of the term or termination of this Agreement shall be deemed to have been abandoned and shall become the property of Owner.
- 25) **Hold Over.** All obligations and duties imposed by this Agreement upon Owner and Manager shall remain the same during any period of occupancy by Manager after termination of the Agreement.
- 26) **Default.** The occurrence of any of the following shall constitute a default by Manager:

- Failure to perform any provisions of this Agreement if the failure to perform is not cured within thirty (30) days after notice has been given Manager. If the default cannot reasonably be cured within thirty (30) days, Manager shall not be in default of this Agreement, or if Manager commences to cure the default within thirty (30) day period and diligently and in good faith continues to cure the default.
- Failure to maintain any insurance coverage as required by the Agreement shall be cause for the immediate termination of the Agreement.
- Notices given under this paragraph shall specify the alleged default and the applicable Agreement provision, and shall demand Manager perform the provisions of this Agreement, within the applicable period of time, or vacate the premises. No such notices shall be deemed a forfeiture or a termination of this Agreement unless Owner so elects in the notices.

27) **Waiver of Covenants.** No delay or omission in the exercise of any right or remedy of Owner on any default by Manager shall impair such a right or remedy or be construed as a waiver. Only a written notice from Owner to Manager shall constitute acceptance of the surrender of the premises and accomplish a termination of this Agreement.

Owner's consent to or approval of any act by Manager requiring Owner's consent or approval shall not be deemed to waive or render unnecessary Owner's consent to or approval of any subsequent act by Manager.

Any waiver by Owner of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provisions of this Agreement.

28) **Remedies.** In the event of a default, Owner shall give written notice of default to Manager. Manager shall have thirty (30) days after the receipt of such notice to cure a default. No such notice shall be deemed a forfeiture or termination of this Agreement unless Owner so elects in the notice. In the event Manager does not cure the said default within the allowed thirty (30) day period, Owner shall have the following remedies. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law:

- Owner can continue this Agreement in full force and effect, and this Agreement will continue in effect as long as Owner does not specifically elect in writing to terminate this Agreement on account of Manager's default.
- Owner can terminate Manager's right to possession of the premises at any time. No act by Owner other than giving notice to Manager shall terminate this Agreement.
- Owner, at any time after Manager commits a default, can cure the default at Manager's cost. If Owner at any time, by reason of Manager's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Owner shall be immediately due from Manager to Owner at the time the sum is paid, and if paid at an alternative date shall bear interest at the rate of fifteen percent (15%) per annum from the date the sum is paid by Owner until Owner is reimbursed by Manager. The sum together with interest on it shall be additional rent.
- In the event of default Owner shall be entitled to recover for all amounts including attorney's fees, expended by Owner on account of such default.

29) **Indemnification.** Manager shall indemnify Owner against all liabilities, expenses and claims incurred by Owner as a result of any failure of Manager to perform any covenant required to be performed by Manager hereunder; and from failure to comply with any requirement of any

governmental authority. Owner shall indemnify Manager against all liabilities, expenses and claims incurred by Manager as a result of any failure of Owner to perform any covenant required to be performed by Owner hereunder; and from failure to comply with any requirement of any governmental authority.

30) **Quiet Possession.** Manager, upon performing the covenants herein agreed by it to be performed, shall and may peaceably and quietly have, hold, and enjoy the said premises for the term specified.

31) **Binding on Assigns.** All of the terms, conditions, covenants and provisions of this Agreement shall extend to and be binding upon the assigns and successors of Manager. The Owner must approve any successors in interest in writing.

32) **Maintenance of Pavilion.**

During the term of this Agreement, **Manager Responsibilities** shall include:

- Maintaining the Pavilion structure and all Manager-owned equipment for safety and appearance per Operations and Management Guidelines or manufacturer specifications.
- Providing pre-event set up and during event tasks including, but not limited to staging, tables, seating, sound and electrical systems, restrooms, garbage & recycling, area cleaning, stocking, and other tasks required for a safe, quality event and their associated costs.
- Returning the Pavilion Area, Events Ring and adjacent spaces and restrooms to pre-event conditions pertaining particularly to cleanliness, sanitation, safety and usability by the public following all Pavilion-related events and rentals and Manager-sponsored events.
- Providing event garbage and recycling bins for the public for all events held in in the Pavilion Area and adjacent areas if associated with event.
- Providing garbage and recycling dumpsters and paying for its service for all Pavilion rentals and Manager-sponsored events.
- Inform all Pavilion Area users that they are required to follow the rules and regulations as outlined in the Pavilion Lease Agreement, including all city codes and ordinances and Parks and Recreation Department rules and regulations.
- Keeping the Parks and Recreation Department notified of all events taking place in Caras Park, including all Pavilion rentals and Events Ring rentals and Manager-sponsored events. Such notice shall be provided every two weeks March through October and monthly November through February. Additional notification of schedule changes and cancellations that impact parks use and parks staff shall be provided as they arise. Each spring during the annual meeting Owner will provide Manager with an updated distribution list for pavilion events.
- Scheduling events consistent with legal requirements regarding access to Missoula City parks.
- During the term of this Agreement, **Owner Responsibilities** include:
 - Maintaining the lawn and landscaping on the grounds of Caras Park and the Events Ring.
 - Maintaining the trail and park lighting.
 - Keeping all park furniture – including benches, tables, garbage cans and containers – clean, safe and in good working condition.
 - Maintaining and daily (during summer season) cleaning of the restrooms in Caras Park, including the bottle refill station.
 - Maintaining clear and safe pedestrian and bicycle pathways for the public.

- Providing fifteen (15) picnic tables – including at least three (3) ADA accessible tables prior to the start of the season, as well as replacing any such items stolen, damaged or otherwise removed from the premises, if possible.
- Assist with maintaining park electrical problems in the areas covered by this Agreement.
- During the term of this Agreement, the **Manager and Owner** may mutually agree to share costs for Security and other costs which provide mutual benefit.

33) **Relationship of Owner and Manager.** Nothing in this Agreement shall render Owner as a partner or associate to the Manager in the operation of the Pavilion or subject Owner to any obligation, loss, charge or expense in connection with or arising from the operation of the Pavilion.

DATED this ____ day of _____, 2023.

MISSOULA DOWNTOWN ASSOCIATION

CITY OF MISSOULA

By: _____
Bob Burns, MDA Board President 2023

By: _____
Jordan Hess, Mayor of Missoula

ATTEST:

Martha Rehbein, CMC/Legislative Services/City Clerk

STATE OF MONTANA

: ss.