

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF SCULPTURAL ART AT SILVER PARK.

This Agreement (the "Agreement") is entered into by and between the City of Missoula, through its Parks and Recreation Department and the Public Art Committee (collectively the "City"), and Arts Missoula, a Montana registered, 501(c)3 Montana non-profit corporation ("Arts Missoula").

PURPOSE

This Agreement outlines the roles and responsibilities of a partnership between the City and Arts Missoula, for siting, construction, selection, display, installation, de-installation, use, and maintenance of a Sculptural Art walk at Silver Park.

Recitals

WHEREAS, the City Council finds that public art enhances and adds greatly to the quality of life of Missoula's citizens, attracts tourism, and provides incentives to businesses to locate in the city, thereby expanding Missoula's economic base; and

WHEREAS, Arts Missoula has a history of promoting the arts in the community including raising funds, public engagement, and collaboration to place art in public places; and

WHEREAS, Arts Missoula has a vision of creating and maintaining a sculpture art walk in and along public park and trail spaces that are accessible to all people; and

WHEREAS, City, through its Parks & Recreation Department, provides public parks and trails where in its residents may find and pursue renewal, inspiration, and a healthy active lifestyle; and

WHEREAS, this Agreement provides opportunity to work collaboratively to advance mutual goals of the organizations that will result in display of sculptural art in numbers and manner that promotes the arts, establishes a sculpture walk, provides for a public selection process, and provides private funding for installation, de-installation, and maintenance of art; and

WHEREAS, an agreement is necessary to define responsibilities of the parties to best serve the Missoula community.

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

1. Term – This Agreement shall be in effect for an initial term of 10 years upon the date all parties have signed, unless terminated earlier pursuant to the terms of this Agreement or by operation of law.
2. The City, through its Parks and Recreation Board, agrees to approve up to 10 locations for siting individual sculptural art pieces within Silver Park. Conceptually, individual sculptural art works provided for under this Agreement could be sited at any of the locations identified in Exhibit A. No more than five sculptural art installations may occur in any one year. The Parties acknowledge and agree that all sculptural works displayed

under this Agreement are on City property and must comply with City rules and directives regarding use of City property. Once 10 sculptural art pieces are installed in the park, the parties may mutually agree to expand the program and add more sculptural art locations.

3. Arts Missoula may prepare a plan that provides for expansion of the sculpture walk at its own expense and in consultation with the city. The City, through its Parks & Recreation Board and the Public Art Committee, shall have the right to review and approve, amend, or disapprove the plan.

Sculptural Art

1. The Parties acknowledge and agree that Arts Missoula is solely responsible for arrangements with artists and contractors regarding payment for services, term of display, siting, engineering, installation, maintenance, de-installation, insurance for art and installation, as well as ownership and return of sculpture works provided for under the terms of this agreement.
2. All sculptural art proposed to be displayed under the terms of this Agreement shall be reviewed and affirmed by the City's Public Art Committee in an open public process. The City's Parks & Recreation Director shall have final approval authority for each piece proposed to be displayed in Silver Park.
3. Arts Missoula shall ensure all artists, engineers, contractors and volunteers providing paid or volunteer services that involve access across or to public trails or parklands for engineering and architectural investigation, installation, de-installation or maintenance of sculpture work(s) have the minimum required insurance coverage for workers compensation, liability insurance, automobile insurance, and a City of Missoula business license, when applicable.
4. In event Arts Missoula wishes to donate any sculptural art piece(s) to the City, the gift and any conditions attached shall be considered by both the Parks & Recreation Board and Public Art Committee, who shall prepare their respective recommendations to Mayor and City Council for final consideration as to whether the City will accept, site, insure and maintain the piece(s).

Use Of Public Parklands and Trails

1. The City shall not be responsible for any costs incurred related to the use of City parklands as contemplated by this Agreement, including but not limited to costs for: required engineering studies and siting/installation plan preparation; construction of foundations, display pads, bases/plinths; landscape modifications; access/accessibility; deinstallation, or for the sculptures themselves.
2. Silver Park was previously a sawmill operation. The site is subject to potential subsidence due to decay of in situ pockets of wood waste. Each proposed sculpture installation shall require sufficient geotechnical investigation and engineering to ensure the piece(s) are securely attached to the ground, are stable, and meet applicable engineering and design standards (most current version of Montana Public Works Standards and Specifications). The City Parks and Recreation Department retains the right to determine the sufficiency of geotechnical and engineering reports/plans prepared for each site, and further

reserves the right to impose conditions on each installation to ensure the safety of the public and public property is protected.

3. Arts Missoula may adopt and/or modify landscaping for a portion of a shrub bed surrounding and/or under a sculpture piece. Arts Missoula will be responsible for bed care, planting, weeding, pruning, and winterizing of any such modified landscape areas, inclusive of restoring the area to original condition if the landscaping is no longer desired. No park trees shall be removed, pruned, or roots damaged by Arts Missoula, its artists, volunteers, or contractors without the express approval of the City Forester. Arts Missoula shall be responsible to provide a minimum six inch (6") wide concrete mow strip border, or an approved alternative, around any sculpture piece(s) approved to be sited in irrigated park turf.
4. If a sculptural piece is intended to be interactive and/or touched by park users, Arts Missoula shall include provisions for an accessible route/access from the park's existing system of sidewalks, paths, and trails.
5. It is acknowledged that Silver Park utilizes well water for irrigation. The water is typically high in minerals and may discolor pieces over time due to overspray, and Arts Missoula agrees to notify artists of this consideration.
6. The City will make reasonable and timely efforts to notify Arts Missoula of any concerns it may have regarding a sculpture placed in Silver Park under this Agreement. If at any time a sculpture piece or its foundation, base, or related improvements are deemed unsafe or unserviceable, the City Parks and Recreation Director maintains the option to remove or cure the improvement without notice.

Arts Missoula Shall:

1. Maintain current and adequate insurance coverages for workers compensation, general liability, automobile, and property (damage or loss) for all sculptural pieces installed in the park(s) under the terms of this agreement and that are not owned by the City, as follows:
 - A. Workers Compensation insurance accepted by the State of Montana for Arts Missoula's employees and volunteers when performing work within the city's park system.
 - B. Comprehensive General liability insurance in the minimum amount of \$1,500,000.00 per occurrence and \$3,000,000 in the aggregate
 - C. Comprehensive Automobile liability insurance for accidents occurring during installation or at the project site that are attributable to Arts Missoula, its employees, contractors, or its agents' conduct.
 - D. Property Damage insurance for theft, vandalism, and loss in an amount sufficient to cover the combined value of all art and related improvements placed in the Park under this Agreement that are not owned by the City.
2. Provide for all costs of geotechnical, architecture and engineering services and any applicable City permits required for the design, construction, and placement of concrete pads, bases, plinths, signs, and sculptural art per this agreement.

3. Provide for securing services from licensed, insured contractors as/when needed for construction and installation of display pads, bases, and sculptural pieces.
4. Be responsible for all costs of maintenance of the sculptural pieces inclusive of the pad and display base/plinth.
5. Notify the City as soon as reasonably possible regarding any sculpture installation that Arts Missoula becomes aware requires maintenance.
6. Have opportunity to schedule up to two annual reserved uses of the Silver Park shelter(s) at no cost for benefit of the sculpture walk. Arts Missoula shall be responsible to schedule its no-cost shelter uses annually between January 2 and January 31 through the Parks & Recreation Department reservation system.
7. Provide an annual update in October or November of each year to the City Parks and Recreation Board, reviewing terms of this Agreement and providing details of the sculptures placed or planned to be placed in the Park, including maintenance performed, budgets, summary of fundraising, visitation, and other relevant information.
8. Arts Missoula and its contractors shall hold harmless, indemnify, and shall defend the City and each of their officers and employees and agents, from any and all liability claims, demands, losses, costs, damages, expenses or liability to the extent arising or alleged to arise from the installation of art pursuant to this Agreement, or Arts Missoula or its contractor's performance or non-performance of the work contemplated by this Agreement, but not including claims related to the sole negligence of the City. Arts Missoula shall procure and maintain in force, at its expense, the insurances required.

City Shall:

1. Through its Public Art Committee, provide for public process to review and act on each sculptural piece proposed to be sited in the Park under the terms of this Agreement. The Committee may provide technical review and advice regarding proposed materials, security, maintenance, health, safety, and wellness relevant to the sculpture and its proposed location in the Park.
2. Through its Parks and Recreation Department, be responsible for the overall park and trail operations and maintenance around each sculpture placed in accordance with this Agreement, pursuant to its adopted policies and procedures.
3. Through its Parks and Recreation Department, provide review of submitted engineering reports and plans for: geotechnical/engineering for siting and sizing of each piece's foundation and base; attachment points/methods, and materials; technical aspects concerning park access, coordination of maintenance; installation of the piece, selection of landscape plant materials, and amendment of park infrastructure as necessary to site and display the piece(s).
4. Through its Parks and Recreation Department, provide at no cost to Arts Missoula up to two reserved uses of Silver Park shelter(s) per year for benefit of the sculpture walk.

Standard Conditions

Non-Discrimination

Arts Missoula shall take affirmative action to ensure all hiring is done 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 or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications. 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. Arts Missoula agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

Affirmative Action Policy

Contractors, subcontractors, subgrantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, M.C.A., or forfeit the right to continue such business dealings. See Exhibit B.

Default and Termination

If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within thirty (30) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

Previous Agreements

This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

Notices

Except as otherwise set forth herein, written notices shall be directed as follows and shall be deemed received when hand-delivered or three days after being sent by certified mail, return receipt requested:

To the City
Director of Parks & Recreation
City of Missoula
600 Cregg Lane
Missoula, MT 59801

To Arts Missoula
President, Board of Directors
Arts Missoula
1637 South Higgins Ave.
Missoula, MT 59801

Modification And Waiver

This Agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this Agreement or of any breach

of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of the Agreement. Any waiver must be in writing.

Jurisdiction And Venue

This Agreement and any extensions hereof shall be governed and constructed in accordance with the laws of the State of Montana, and the venue for any dispute shall be in Missoula County.

Term Of Agreement

This Agreement will be in force and effect on the date signed by the Mayor of the City of Missoula and shall run until the term is expired or unless terminated in writing, as provided hereinbefore.

Assignment of Contract

No assignment of rights or duties imposed by this Agreement is allowed without the express written approval of the non-assigning party. No assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

Successors and Assigns

The Parties each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in this Agreement.

Severability

If any provision or part of this Agreement is held to be void or unenforceable under a Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ACKNOWLEDGMENT AND APPROVAL OF AGREEMENT:

City of Missoula

Arts Missoula

By: _____
Andrea Davis, Mayor

By: _____
Print Name _____
Print Title _____

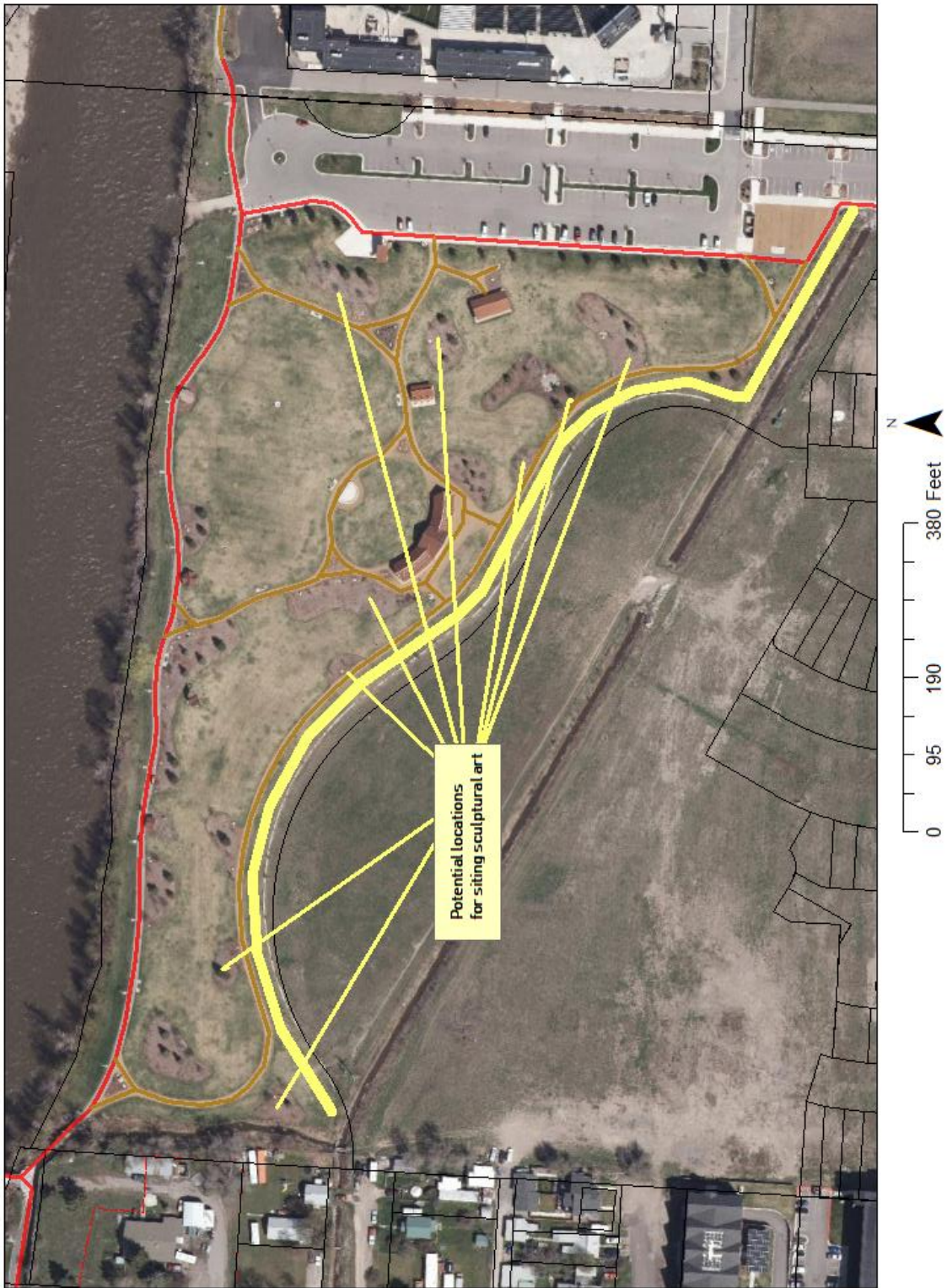
Approved As To Form:

Attest:

By: _____
Ryan Sudbury, City Attorney (Civil)

By: _____
**Claire Trimble, City Clerk
& Legislative Services Director**

Exhibit A – Map of approved Sculpture Walk concrete pad locations (Silver Park)



Affirmative Action Policy

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, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. 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.