

MEMORANDUM OF AGREEMENT FOR CITYWIDE ARTS SUPPORT

This Agreement (the “Agreement”) is entered into by and between the City of Missoula, through its Parks and Recreation Department (“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 the City and Arts Missoula for support of Citywide art and culture programs and initiatives.

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 is uniquely positioned and has been a long-term partner in promoting arts and culture by supporting PAC, Sister City, and numerous additional valued arts and culture program services for Missoulians; 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 promote the arts, incubate artists, provide arts based recreational programs, and

WHEREAS, an agreement is necessary to define the 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 Parties agree as follows:

1. Term – This Agreement shall be in effect for a term of one (1) year upon the date all parties have signed, unless terminated earlier pursuant to the terms of this Agreement or by operation of law.
2. 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.
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. The City will make reasonable and timely efforts to notify Arts Missoula of any concerns it may have regarding any 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 faulty item 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.
2. 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 art placed in public spaces, including maintenance performed, budgets, summary of fundraising, visitation, and other relevant information.
3. 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. To pay Arts Missoula \$103,000.00 in FY26 for the Scope of Services outlined in Exhibit A. Payment will be per invoices and up to \$53,000.00 in the first half of the fiscal year and up to \$50,000.00 in the second half of the FY.
2. Work collaboratively with Arts Missoula to accomplish the Scope of Services, with particularly as identified as 1, 2, and 3.

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: _____
Tim DeFors, Deputy City Attorney

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

EXHIBIT A – SCOPE OF SERVICES

Scope of Work: Arts Missoula Contract with the City of Missoula

1. Public Art Support:

- Provide ongoing administrative and logistical support for the Public Art Committee until committee is paused or until December 31st, 2024, whichever occurs first.
- Assist in the planning, coordination, and execution of public art projects such as our work with the Arts Missoula Directory and Sculpture Missoula.

2. Collaboration with Parks and Recreation:

- Partner with Parks and Recreation on integrating art into public spaces.
- Assist in developing art initiatives that enhance the city's parks and community areas.

3. Cultural Plan Development:

- Support the creation of a working group to lead efforts in developing a cultural plan for Missoula. The cultural plan will provide direction for arts and culture for the Missoula valley, including better defining the roles and responsibilities of the City in promotion and supports of arts and culture.
- Facilitate discussions and provide expertise in guiding the process toward a comprehensive cultural strategy for the city.

4. Sister City Programs:

- Manage and grow Missoula's sister city relationships, including exchange programs and cultural collaborations.
- Organize events and activities that strengthen international partnerships and cultural understanding such as Germanfest, New Zealand Day and citizen to citizen exchange.

5. Arts Missoula Directory Development:

- Continue the development of the Arts Missoula Directory, a user-friendly app and website that maps arts resources in Missoula.
- Support and promote public art, local artists, tourism, and economic development through this directory.
- Highlight the app and website as a foundational step toward Missoula's cultural plan.

6. Incubator and Fiscal Sponsorship Programs:

- Continued fiscal sponsorship and support for incubator projects, including Indigenous Made Missoula, No Joke Theatre, All City Jazz, Sculpture Missoula, Wheels on the Bus and Grow Music Missoula.
- Continue support as needed - Successfully launched and transitioned Montana Book Festival, Montana Area Music Association (MAMA), and SPARK to independent 501(c)(3) status. AM provides ongoing support for these groups.

8. National Arts Studies and Reports:

- Partner with Americans for the Arts in producing the national Arts and Economic Prosperity study and the National Arts Vibrancy Index, showcasing Missoula's thriving arts sector.
- Use as resource the completed a year-long study with results published in October 2023.

9. Additional Services:

- Promote First Friday Gallery Nights, enhancing the visibility of local arts.

Exhibit B
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.