

**Memorandum of Agreement
Between**

The City of Missoula, through its Parks and Recreation Department, (MPR) Trees For Missoula, a 501(C)3 nonprofit (TFM), and Climate Smart Missoula, a 501(c)3 nonprofit (CSM), for the provision of custom Shade Shelter(s) within the City's Park System.

This Memorandum of Agreement is entered into this _____ day of February, 2021 by the parties named above for the purpose of specifying the respective roles and responsibilities of the partners related to the approval, siting, design, construction, and maintenance of custom shade shelters that are to be located on City parklands managed by MPR.

WHEREAS, MPR's mission is to provide for an equitable system of parks, trails and open space for the use and enjoyment of all City residents, and

WHEREAS, MPR recognizes the value of shade for promoting an active and healthy community, and

WHEREAS, TFM and CSM have a shared vision of a healthy community full of trees and public spaces where shade is accessible to all people, and

WHEREAS, TFM and CSM, individually and collectively, have a positive history of raising funds for the design, construction and, ongoing collaboration with MPR in the provision of custom shade shelters, and

WHEREAS, the partnerships between MPR and TFM and CSM, and the overlapping goals of each organization, has resulted in the desire for additional custom shade shelters to be installed in future locations to be determined, and

WHEREAS, this Memorandum of Agreement (MOA) is desirable to define responsibilities for the approval, disposition, and provisions for custom shade shelter projects established by the partners whether advanced jointly or individually.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE TO:

This MOA shall apply to existing and future proposed custom shade shelters supplied by TFM or CSM individually or collectively.

Each custom shade shelter supplied by TFM or CSM or both shall meet applicable MPR design standards outlined in the Parks and Recreation Design Manual.

Each proposed custom shade shelter location and design must be reviewed and approved by the City's Parks and Recreation Board.

If at any time a TFM or CSM or both supplied shade shelter is deemed to have become unserviceable or undesirable, MPR shall maintain the option to remove the shelter with 30 days written notice to TFM and CSM.

TFM AND CSM INDIVIDUALLY AND COLLECTIVELY SHALL:

Be responsible for all architecture and engineering services for the design of each shade shelter to be located on City parkland.

Procure at their own expense and be responsible for management of licensed and insured contractors if and when used for installation of a custom shade shelter on City property.

Manage and direct all contractors, partners, and volunteers used for the design, construction of supplied custom shade shelters to be located on City parklands

Provide for regular communication, coordination and completion of an approved custom shade shelter project for acceptance by MPR

MPR Shall:

Provide timely communication and assistance to TFM and CSM or both with siting, design, construction and installation of each custom shade shelter.

Designate a staff member to serve as liaison for project communications, inspection and acceptance of each TFM and/or CSM shade shelter for ownership and on-going maintenance by the City.

Provide TFM and/or CSM with appropriate site access across City parks, open spaces, and trail lands as required for the construction of an approved custom shade shelter.

Accept ownership and provide regular maintenance of each completed custom shade shelter that meets requirements.

Construction of Agreement

- a. Binding on Successors. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successor, heirs, administrators and assigns of the Parties hereto.
- b. Entire agreement. This agreement constitutes the entire understanding of the Parties and no representation or agreements, oral or written, made prior to the execution hereof shall vary or modify the terms herein.
- c. Amendments. Any amendment or variation from the terms of this agreement shall be in writing and shall be effective only after approval of all Parties signing this agreement.
- d. Applicable Law. This agreement shall be construed in accordance with the laws of the State of Montana.

Indemnity and Liability Insurance: TFM and CSM agree to indemnify, defend and save the City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of either TFM or CSM, their respective contractors or Contractor's agents or employees. For this purpose, TFM and CSM individually and collectively shall ensure all contractors retained for shade shelter construction and installation on City property supply proof of Contractor's Workers Compensation insurance and general liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 for each claim and \$1.5 million for each occurrence.

Compliance with Laws: TFM and CSM agree to comply with all federal, state and local laws, ordinances, rules and regulations. Any contractors engaged by TFM or CSM for shelter construction on City property shall provide proof of holding a valid City business license to TFM or CSM who will produce proof to MPR on request.

Nondiscrimination: TFM and CSM will not discriminate against any employee or applicant for

employment because of race, creed, religion, color, sex, sexual orientation, gender identity, or gender expression, or national origin, or because of age, physical or mental disability or marital status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, religion, color, sex, national origin or because of age, physical or mental disability or marital status. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor 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. Partners, 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.

Waiver of Terms and Conditions

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

Extension and Modification

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

Severability

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

Entire Agreement

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

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

ACKNOWLEDGMENT AND APPROVAL OF AGREEMENT:

City of Missoula

Trees For Missoula

By: _____
John Engen, Mayor

By: _____
Print Name: _____
Print Title: _____

Climate Smart Missoula

By: _____
Print Name: _____
Print Title: _____

Approved As To Form:

Attest:

By: _____
Jim Nugent, City Attorney

By: _____
Marty Rehbein, City Clerk, CMC