

**AGREEMENT BETWEEN INVERMERE HOMEOWNERS ASSOCIATION (HOA),
MISSOULA COUNTY (COUNTY) AND CITY OF MISSOULA (CITY)
FOR OPERATION AND MAINTENANCE OF DEDICATED PUBLIC PARKLANDS WITHIN INVERMERE
SUBDIVISION.**

Whereas Invermere Subdivision was approved in 1999 by Missoula COUNTY with conditions that provided for dedication and development of parklands, and

Whereas in 2004 both the CITY and COUNTY adopted the Master Parks and Recreation Plan for the Greater Missoula Area, and

Whereas, the Invermere Subdivision parklands are not identified or recommended per the Level of Service study and guidelines for public funding of maintenance by the Master Parks and Recreation Plan for the Greater Missoula Area, and

Whereas, the CITY and COUNTY have respectively approved a park master plan for the pocket park that will guide use of the parklands and any proposed new improvements, and

Whereas, the Invermere Subdivision's conditions of approval provide for the dedicated parkland's maintenance to be by an entity other than the CITY or COUNTY, and

Whereas the Invermere Subdivision conditions of approval provide for formation of a Homeowners Association and mechanisms to assess its property owners for maintenance of the dedicated public parklands therein, and

Now therefore

A. PARTIES TO THIS OWNERSHIP, OPERATION AND MAINTENANCE AGREEMENT

As authorized by this document on this ____ day of _____, 2021, this Operations and Maintenance Agreement, hereinafter referred to as "AGREEMENT," is entered into by and between the "Invermere Homeowners Association", hereinafter referred to as the "ASSOCIATION", whose mailing address is P.O. Box 56, Lolo, Montana 59847 and the CITY of Missoula, through its Parks & Recreation Department, hereinafter referred to as the "CITY" and Missoula COUNTY through its Parks, Trails and Open Lands Program, hereinafter referred to as the "COUNTY".

B. PROPERTY SUBJECT TO AGREEMENT

Deeded park parcels located in the Invermere Subdivision, PHASES 1, 1A, 2A and 3A, as identified in Exhibit A herein and referred to as "Invermere Park".

C. PROVISIONS AND CONDITIONS

C.1 The purpose of this AGREEMENT is to clarify the role of the ownership, operation and maintenance of the dedicated public parklands in the Invermere Subdivision.

C.2 The parcels that comprise the Invermere public park properties are owned by the CITY and COUNTY respectively. Only the owner of the respective public parklands may grant rights for new uses, change in uses, termination of approved uses, development of new features or trails or physical changes to the parklands consistent with the adopted park master plan (Exhibit B). The

Association shall not authorize, approve, permit or otherwise allow improvements, new uses, changes in use, or grant of easements on or across the parklands, except as permitted herein.

C.3 In accordance with Exhibit A, the approximately 3.9 acre developed portion of Invermere Park shall be designated as a pocket park and shall be used consistent with that designation per the adopted Master Park Plan for the Greater Missoula Area, as may be amended from time to time. The deeded public park parcel identified as Landscape buffer shall be managed for those purposes and for weeds, fire. The subdivision's remaining deeded public parklands (approx. 7.6 acres) shall be managed for open space values – specifically habitat, limited passive recreation activities, weeds, water quality, and fire.

C.4 Reservation of the developed pocket park shall be managed by and through the CITY's Park system. In recognition of the HOA's obligations for parkland maintenance, the HOA shall have the right to reserve the developed pocket park up to four (4) times annually at no cost for HOA sponsored activities and events. These must be scheduled by the HOA through the CITY Parks & Recreation Reservation System prior to February 1 each year to receive priority over any other reservation request.

C.5 The CITY shall be the lead agency for all questions, concerns, and complaints in regards to the Invermere public parklands when such are not within the HOA's purview to manage or address. The CITY shall communicate with the appropriate COUNTY staff on matters specific to the COUNTY's parklands. The COUNTY and CITY may choose to convey some or all of their respective interests in the Invermere parklands to the other, subject to the receiving party's concurrence and formal acceptance.

C.6 Parkland maintenance, including repair and replacement, shall be provided for and funded by the HOA as substantially outlined in the annual maintenance calendar and supporting Maintenance Impact Statement (Exhibits C and D respectively). The noted documents provide for maintenance activities by the HOA to ensure the public parklands and adjoining public walkways (sidewalks) are safe, clean, and suitable for allowed public park uses, and will serve as an asset to the neighborhood and community well into the future.

C.7 The ASSOCIATION shall provide for all maintenance, repair and/or replacement of the dedicated Storm Water Drainage System components, pieces, and parts, wholly and collectively, in accordance with the terms of the approved *Storm Water Facility Maintenance Covenant and Access Easement*.

C.8 The CITY or COUNTY may, as it deems necessary or prudent, periodically inspect the Parklands or Private Storm Water Drainage System or both. The CITY or COUNTY may direct and order the ASSOCIATION to perform required maintenance or repair work. If maintenance or repair work is required, but not performed by the ASSOCIATION, then the CITY or COUNTY may perform said maintenance or repair work and invoice the ASSOCIATION for any / all work performed.

C.9 The HOA shall ensure any contractor(s) it employs to provide park maintenance services, shall have a valid general liability insurance policy in the minimum amount of \$1.5 million total and \$750,000 per occurrence and shall have a valid CITY Business license.

C.10 Each party hereto shall protect, defend, indemnify, and hold harmless each of the other parties, its elected and appointed, agents, employees, and representatives from and against any and

all claims, liabilities, demands, causes of action, judgments, and losses (including costs and reasonable attorneys' fees incurred in the defense thereof) arising in favor of or asserted by any person or entity on account of alleged damage to property, bodily or personal injury, or death arising out of any party's act or failure to act associated with performance or nonperformance of this agreement.

D. AGREEMENT BY ASSOCIATION

E.1 ASSOCIATION hereby certifies that the Real Property subject to this AGREEMENT is within the boundaries of the ASSOCIATION and that they agree to abide by the provisions and conditions outlined within this AGREEMENT.

E.2 The signature on behalf of the ASSOCIATION is set forth within this document signifying their concurrence with this AGREEMENT and the provisions and conditions set forth within.

E.3 ASSOCIATION agrees to accept maintenance, as described above in Section C

E. FINANCIAL ASSURANCES

F.1 ASSOCIATION is responsible for all costs associated with the operation and maintenance of the Private Storm Water Drainage System as described above herein and shown on Exhibit "A" and Exhibit B. Furthermore, ASSOCIATION hereby holds the CITY harmless for any/all financial obligations related to the Private Storm Water Drainage System. Said ownership, operation and maintenance costs and responsibilities shall be the responsibility of the ASSOCIATION.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, effective on the day and year first above written.

SIGNATURES

For the CITY of Missoula:

For the Invermere Homeowners Association:

Mayor

Drake Lemm, Invermere HOA President

Attest

Notary

Marty L. Rehbein, CMC CITY Clerk

For Missoula COUNTY

Attest

Dave Strohmaier, Chair
Missoula County Board of Commissioners

Tyler Gernant, Clerk and Treasurer
Missoula County

Exhibit A:
Map of Invermere Subdivision and related dedicated public parklands

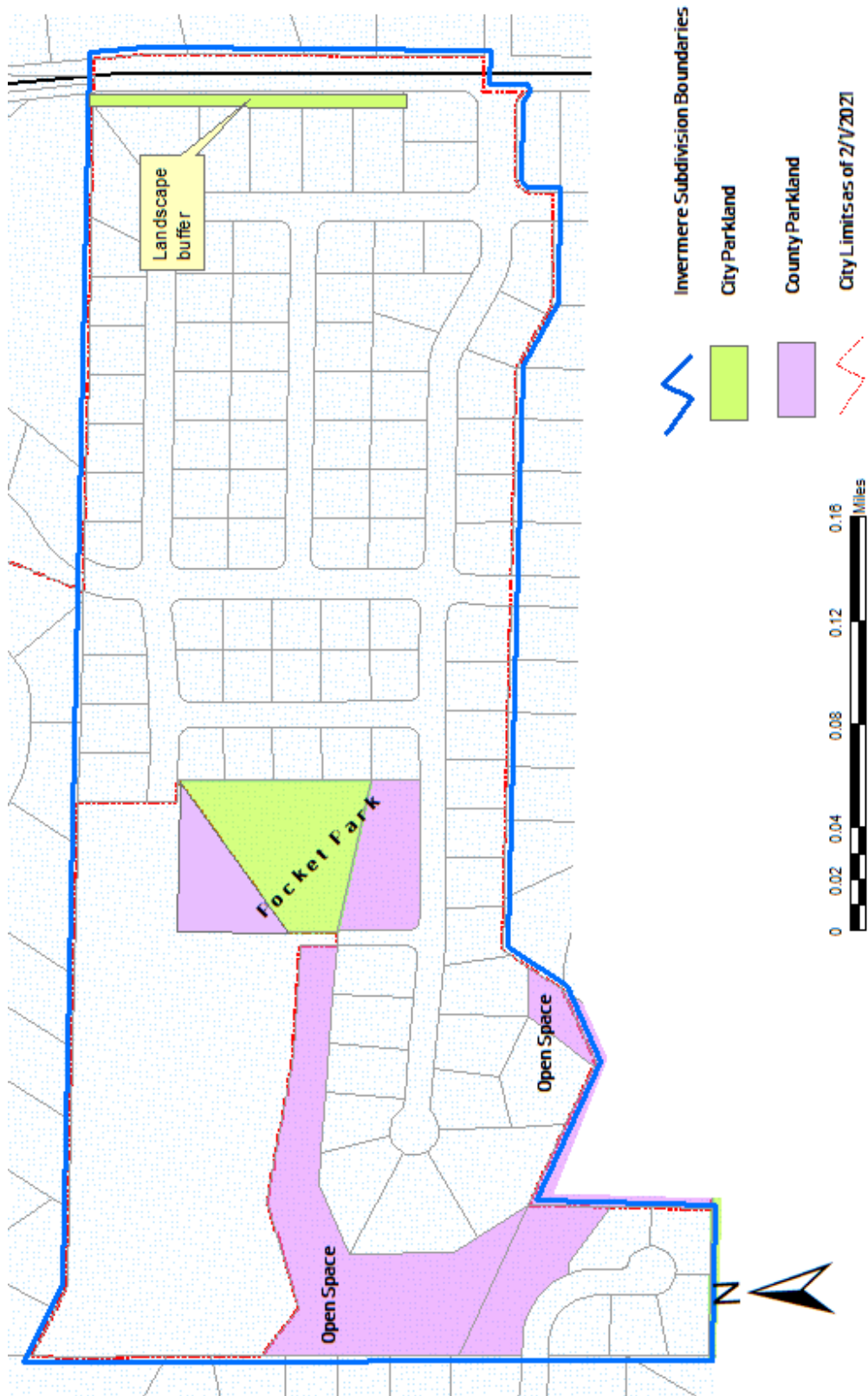


Exhibit B:

Adopted Park Master Plan - Invermere (Pocket) Park

Invermere Park - Proposed Master Plan

June 19, 2020



- 1 Irrigated Turf (~.5 acre)
- 2 Dryland Native Vegetation (~2.8 acres)
- 3 5' wide aggregate path
- 4 Existing drainage swale to remain
- 5 Storm water detention basin 2' deep
- 6 Gathering area with compacted aggregate
- 7 Picnic tables (2)
- 8 Existing trees to remain
- 9 5' wide concrete sidewalk and ADA access
- 10 Mutt-mitt and garbage can locations (2)
- 11 8' wide concrete path - maintenance and ADA access
- 12 Future area for park expansion

Exhibit C:

Annual Maintenance Calendar for Invermere Pocket Park and related dedicated public parklands

Invermere Park: Annual Maintenance Calendar		Standard for City Maintained Parks																
		Type	Occurrence	Activity	Area	Frequency	January	February	March	April	May	June	July	August	September	October	November	December
Horiculture	Seasonal	Aerating	General Use Turf	2 per season														
Horiculture	Seasonal	Fertilizing	General Use Turf	2x per season														
Horiculture	Seasonal	Herbicide Spraying - Broadleaf	General Use Turf	1x per season														
Horiculture	Seasonal	Rough (weed) Mowing	Undeveloped Parks/ROWs	2 x year (April & September)														
Hardscape	Seasonal	Concrete sidewalks & paths	sidewalks, paths	Snow & ice removal/treatment														
Hardscape	Routine	Pathway Sweeping/Blowing	Class I & all paved paths	2x month														
Health/Safety	Routine	Empty Garbage Bins and Cans	Full Site	1x daily														
Health/Safety	Routine	Inspect/replace general lighting (parking lots, restrooms, paths, etc..)	Pathways, bridges, underpasses	1x month														
Health/Safety	Routine	Litter pick up	General Use turf	1x daily														
Health/Safety	Routine	Vandalism	City Maint. Properties	Within 48 hours of report														
Horiculture	Routine	Irrigation Systems Maint	Per Individual system	2x month														
Horiculture	Routine	Mowing	General Use Turf @ 3"	10 day rotation														
Asphalt	Cyclical	Asphalt (Roads, Paths, Sport Courts)	Seal Coat	1x/6 yrs														
Horiculture	Cyclical	Topdressing & overseeding	General Use Turf	As required														
Horiculture	Cyclical	Tree Pruning	Parks	1x/7 years														
	Key:																	

Subject activity should occur during this time period - dependent on conditions and weather

Exhibit C:

Maintenance Impact Statement for Invermere Park and related dedicated public parklands

Attached behind this page

