

CARAS PARK MANAGEMENT AGREEMENT

THIS AGREEMENT is between the City of Missoula, 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), including the Brennan's Wave Overlook. See 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 2016 and end on December 31, 2016. The Owner may, at Owner's option, extend the terms of the Agreement for one (1) year terms for eight (8) annual terms beginning with January 1, 2016 and extending through December 31, 2023. 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. **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, which shall include a financial summary of extraordinary events.
6. **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. 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.
7. **Pavilion Area Rental.** Manager shall be entitled to rent the Pavilion Area to persons and entities for cultural, social and political events consistent with use of a City Park. 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 Brennan's Wave Overlook, 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 usage 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 rent the Events Ring or Brennan's Wave Overlook only at a separate rate. Events Ring or Brennan's Wave Overlook rentals shall be secondary to Pavilion rental. Rental of any space will not impede normal traffic on trails without a pre-approved active transportation plan by the Owner. When separate groups wish to rent the Events Ring, East Caras Park or Brennan's Wave Overlook and the Pavilion at the same

time, the Pavilion rental shall take precedence if a compromise is impractical. Events Ring and Brennan's Wave Overlook rentals may be canceled by Manager up to two (2) weeks in advance if it is determined by Manager the secondary space rentals cannot be accommodated with a Pavilion rental. Manager shall notify secondary space renters that no firm commitment to reserve secondary space rentals can be made until two (2) weeks before the rental date.

East Caras Park. Manager shall have the ability to request from Owner an expansion of an event related to a Caras event. The request for use of East Caras Park causes the event to meet the conditions for an Extraordinary Events status (See #29 of Agreement and Exhibit B). 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.

8. **Assignment.** Manager shall not assign or encumber its interest in this Agreement or in the Pavilion, the Events Ring, East Caras Park or Brennan's Wave Overlook.
9. **Mutually-Agreed Upon Capital Improvements Planning.** Owner and Manager shall mutually address capital planning and improvements, including permanent fixtures, signage and art installations.
 - a. **Signs.** Manager shall not permit signs without the Owner's written approval except on site recognition of Pavilion donors and temporary event signs. Any sign not 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.
10. **Noise Ordinance.** The City of Missoula acknowledges the dependence of a vibrant downtown economy on a quality downtown residential environment. Therefore, 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 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday. Please note exceptions to amplification times for Extraordinary Events in Exhibit "B".
11. **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.
12. **Nondiscrimination.** All conduct of Manager in administering its duties under this Agreement shall be on the basis of merit and qualification and there shall be no discrimination on the basis 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.
13. **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, water and sewer. Manager shall be responsible for the cost of all services and utilities furnished to the site after installation, except water. Owner shall be responsible for water charges. Owner shall bill Manager for electrical charges 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 2016 shall be Two Thousand, Four Hundred, and Six Dollars and Sixty-Three Cents (\$2,406.63). 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.

14. **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. Owner shall also have the right to two (2) free rentals of the Pavilion Area each year, including set up costs with the date of the rental subject to availability. In addition, additional Owner use days and the terms of usage shall be negotiated by March 31 of each year.
15. **Promotional Recognition.** Manager shall include Owner in the onsite recognition. Manager shall also include Owner in Pavilion promotional matters wherever possible and appropriate.
16. **Personal Property and Liability Risk.** Owner shall not be liable to Manager, or those claiming through or under Manager, for injury, death or property damage occurring in, on or about the Pavilion or Events Ring, 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 or Events Ring 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 and a half Million Dollars (\$1,500,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate for personal injuries sustained by any one or more persons. All policies of insurance shall name both Owner and Manager as insured thereunder and shall protect the interests of Owner. A copy of the insurance policy shall be provided to Owner.

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.

17. **Alcohol Permit.** The parties acknowledge that any rental of the Pavilion Area that involves the use of alcohol requires a 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 submit the collected fees to the Director of Parks and Recreation by January 31 of each year for the previous year's collection of alcohol permit fees.
18. **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:

OWNER REPRESENTATIVE
Donna Gaukler

MANAGER REPRESENTATIVE
Linda McCarthy

City of Missoula Parks & Recreation
Currents Aquatic Center
600 Cregg Drive
Missoula, MT 59801
dgaukler@ci.missoula.mt.us

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.

19. **Surrender of Premises.** Upon the expiration or the termination of this Agreement, Manager shall, at its expense:
- a. Remove Manager's goods and effects and those of all persons claiming under Manager; and,
 - b. Surrender the Pavilion Area to Owner.

Any property left on the Pavilion or Events Ring after the expiration or termination of the term of this Agreement shall be deemed to have been abandoned and shall become the property of Owner.

20. **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.
21. **Default.** The occurrence of any of the following shall constitute a default by Manager:
- a. Failure to perform any other 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 if Manager commences to cure the default within thirty (30) day period and diligently and in good faith continues to cure the default.
 - b. 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 quit the premises. No such notices shall be deemed a forfeiture or a termination of this Agreement unless Owner so elects in the notices.

22. **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.

23. **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:
- a. 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.
 - b. 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.
 - c. 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 eighteen percent (18%) 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.
 - d. 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.
24. **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. Any improvements or construction valued or contracted at \$3000 or less must be approved by the Owner representative before procurement or work begins. Any improvements, construction or contracts greater than \$3000 will be per separate Agreement by Owner and Manager.
25. **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.
26. **Binding on Assigns, Etc.** 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.
27. **Maintenance of Pavilion.** During the term of this Agreement, Manager shall be responsible for:
- a. Maintaining the Pavilion structure and all Manager-owned equipment for safety and appearance per Operations and Management Guidelines or manufacturer specifications.
 - b. Providing pre-event set up and during event tasks including, but not limited to staging, tables, seating, sound and electric systems, restroom, garbage, and area cleaning, stocking, other tasks required for a safe, quality event and their associated costs.

- c. 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, Events Ring, and Brennan's Wave Overlook rentals and Manager-sponsored events.
- d. Providing recycling bins for the public for all Out to Lunch and Downtown ToNight events and providing trash bins for all events scheduled by Manager.
- e. Providing trash dumpsters and paying for its service for all Pavilion rentals, Events Ring, and Brennan's Wave Overlook rentals and Manager-sponsored events.
- f. Inform all Pavilion Area users, including Pavilion rentals, Events Ring, and Brennan's Wave Overlook rentals and Manager-sponsored events 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.
- g. 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 two (2) times per month from March through September of each year and one time monthly October through April. Additional notification of schedule changes and cancellations that impact parks use and parks staff shall be provided as they arise. Each spring Parks and Recreation will provide the MDA staff with an updated distribution list for pavilion events.
- h. Schedule events consistent with legal requirements regarding access to Missoula City parks.
- i. Obtaining from a licensed structural engineer a structural report and occupancy limit for the Brennan's Wave Overlook.
- j. Advising in all rentals of the safety and risk management requirements necessary for safe use of the Brennan's Wave Overlook.
- k. When renting or using East Caras Park per #7 above, and as part of a larger event, Manager shall be responsible for returning the area to pre-event conditions pertaining to cleanliness, safety, and usability; provide trash services; and inform users/renters 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.

During the term of this Agreement, Owner continues to be responsible for:

- a. Maintaining the Events Ring and the grass and grounds of Caras Park, including Brennan's Wave Overlook.
- b. Keeping all park furniture (i.e. Benches, tables, trash cans, etc.) in clean and safe condition.
- c. General maintenance and cleaning of the restrooms in Caras Park.
- d. Keeping all Caras Park paths clear and safe for public traffic.

- e. Providing twenty (20) trash cans and fifteen (15) picnic tables prior to the start of the season and replacing, if possible, any of such items of stolen, damaged or otherwise removed from the premises, if possible.
- f. Maintaining park electrical problems and park lights in the areas covered by this Agreement other than the Pavilion and Events Ring.

28. **Extraordinary Events.** The parties acknowledge that the location and improvement of and in Caras Park may continue to engender requests for rental of Caras Park, East Caras Park and the Overlook for large events. Extraordinary events are defined as events which have some or all of the following characteristics:

- a. Will or might attract crowds over two thousand, five hundred (2,500) people;
- b. Requires significant equipment beyond that which is routinely available for the Pavilion;
- c. Potential for noise ordinance violation;
- d. Requires increased security;
- e. Requires additional restroom facilities;
- f. Significantly impacts traffic in the Caras Park area;
- g. Excessive garbage disposal requirements;
- h. Involves the use of Caras Park outside the Pavilion and Events Ring Areas (East Caras Park or the Overlook);
- i. Risk of potential damage to Caras Park and the surrounding area;
- j. Any event referred to the Committee by Manager;
- k. Potential for illegal activity.

Extraordinary events specifically do not include Out to Lunch or Downtown ToNight. Manager shall not rent the Pavilion Area for extraordinary events without following the procedures set out in this paragraph. Manager shall notify Owner through the Extraordinary Events Subcommittee of any requests to hold extraordinary events within three (3) days of receipt of a request for such an event. The parties reserve the right to deny or revoke the privilege of rental of the property. Decisions on whether an extraordinary event shall be allowed and, if so, under what terms and at what rental rate shall then be made by a subcommittee of the City Parks and Recreation Board. The Subcommittee will be composed of 2 Park Board members, 2 MDA Representatives, and one citizen appointed by the Park Board per nominations from the Riverfront Neighborhood. The Subcommittee may choose to engage additional resources and opinions in making a determination as to permitting an Extraordinary Event. Additionally, the City Parks and Recreation Board shall hold at least one annual public meeting as a means to review all Caras Park events and to provide direction for future events and/or park improvements, policy or other management concerns to further the benefit of Caras Park to the community and

the City of Missoula. The review of events will take place annually at the March or April Parks and Recreation Board meeting.

The Extraordinary Events Sub-Committee with input from the Owner and Management Staff and public shall determine if proposed extraordinary events are appropriate for Caras Park. Extraordinary events shall make a significant contribution, to be determined by the Extraordinary Events Sub-Committee, to Caras Park improvements and repairs. If a proposed extraordinary event is allowed, the Extraordinary Events Committee shall decide what special terms, if any, are appropriate for the extraordinary events and the appropriate rental fee for the event. The special terms shall include all restrictions contained in this Agreement. The committee may adopt parameters to manage Extraordinary Events. A copy of the current parameters is attached as Exhibit B. Access to public rights-of-way, both physical and visual, and noise considerations should be considered thoroughly by the Extraordinary Events Committee. Sworn peace officers shall be provided by the event promoter/Pavilion lessee when crowd control is necessary on rights of way.

The rental amount in excess of the normal rental for the Pavilion Area shall be retained by Manager in a Caras Park improvement fund to be used for improvements or repairs to Caras Park or the Pavilion in a manner mutually agreed to between Owner and Manager. The normal rental amount for the Pavilion shall be retained by Manager.

29. **Relationship of Owner and Manager.** Nothing in this Agreement shall render Owner in any way a partner, joint venturer or associate in any way with 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 _____, 2015.

MISSOULA DOWNTOWN ASSOCIATION CITY OF MISSOULA

By: _____
Heidi Starrett, MDA President

By: _____
John Engen, Mayor of Missoula

ATTEST: _____
Marty Rehbein, City Clerk

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on the ____ day of _____, 2015, by Heidi Starrett as President of the Missoula Downtown Association.

Notary Public for the State of Montana

Residing at: _____

My commission expires: _____

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on the _____ day of _____, 2015, by John Engen, Mayor for the City of Missoula.

Notary Public for the State of Montana

Residing at: _____

My commission expires: _____