

SPECIAL LEASE OF STATE LANDS

This lease is entered into by the State of Montana, as lessor, and the person herein named, as the lessee.

Lease Number	Effective Date	Expiration Date	Term of Lease
4081	March 1, 2013	February 28, 2023	10 Years

Name of Lessee: CITY OF BILLINGS PARK, RECREATION & PUBLIC LANDS

Mailing Address: 390 NORTH 23RD STREET

City/State/Zip/Phone: BILLINGS, MT 59101

Land Located in YELLOWSTONE County belonging to the COMMON SCHOOLS Grant:

DESCRIPTION	Sec.	Twp.	Rge.	Acres
LOT 5	16	1S	26E	5.61
DARLING ISLAND (AKA CARLA ISLAND)	15	1S	26E	71
NORMS ISLAND (AKA BARBARA ISLAND)	20	1S	26E	79.5

Sole purpose for which the land is leased: PARK AND DEVELOPED RECREATION (TRAILS)

In consideration of the rentals to be paid and covenants to be performed by the lessee, his/her administrators, executors and assigns, the lessor hereby leases to the lessee the above described land only for the purpose set forth above.

The lease is subject to terms, conditions and restrictions set forth herein.

IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

- RENTAL** – The lessee shall pay to the lessor an annual money rental as specified in Section 3. At the end of the first **five (5) year** period the rental shall be reviewed and may be adjusted at the discretion of the Director of the Department of Natural Resources and Conservation and any adjustment of the rental fee necessary to secure a fair return to the State shall be made at that time. A review may, at the discretion of the Director, be made at **five (5) year** intervals thereafter. Failure to pay each year's rental on or before due date automatically cancels this lease.
- PLACE OF PAYMENT** – All payments required by this lease shall be made to the Department of Natural Resources and Conservation, P.O. Box 201601 Helena, Montana 59620-1601, or your local Area Office or Unit Office.
- RENTAL FEE** – Rental in the amount of **\$5,990.40**, annually shall be **due and payable by March 1 of each year**. FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THIS LEASE. A NOTICE OF RENTAL DUE WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS RECORDED. THIS RENTAL FEE WILL BE DUE AS OF THE EFFECTIVE DATE OF THIS LEASE.
- RENEWAL LEASE** – If all rentals due the State under this lease have been paid and the terms of this lease have not been violated, the lessee may make application to the lessor, within thirty (30) days prior to its expiration, for additional terms not to exceed **ten (10) years**, provided, however, that in no event shall the cumulative term be extended by the last of such additional terms to a date that is 99 years after the lease commencement date (MCA 77-1-904). The additional terms

shall be at such rental as the Director may determine is a fair return to the State, and subject to periodic reviews of the rental as herein provided; however, should the Director in his/her discretion decide it is in the best interests of the State not to renew this lease the lessor shall notify the lessee at least six (6) months prior to the expiration of the lease of such decision, and the lessee shall have no renewal rights.

5. **RESERVATIONS** – The lessor reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:

(a) **MINERAL AND TIMBER RESERVATION** – All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees and shall not allow or permit any other person to cut, use, remove or destroy such timer or standing trees unless such person is authorized by the lessor.

(b) **ADDITIONAL RESERVATIONS** – The lessor reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed, or to be constructed by the United States Government in furtherance of the reclamation of said lands. The lessor also reserves the right of granting rights-of-way on the above-described land for other purposes. The lessor also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto; and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits for advertising such as signs and billboards. The lessor or its authorized representative may from time to time, at any reasonable hour, enter upon and inspect the leased premises, site or any portion thereof or improvements thereon to ascertain compliance with this lease but without obligation to do so or liability thereof.

6. **RIGHT TO ENTRY** – Representatives of the State Historical Society of the State of Montana shall at all reasonable times, upon written notification to the Department of Natural Resources and Conservation prior to entry, have the right to enter into and upon the premises for the purpose of carrying out the duties assigned the Historical Society by the State Antiquities Act, 22-3-4, MCA.

7. **WATER RIGHTS** – Any water right appropriated or secured on state land by any individual or party for use on or off such state land shall be appropriated or secured in the name of the State of Montana unless prior written permission to do otherwise is granted by the lessor (ARM 36.24.134). The lessor shall be notified prior to such development or appropriation of water right.

8. **CANCELLATION** – The lessor shall have the power and authority in its discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other reasonable cause which in the judgment of the lessor makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interest of the State. Such cancellation shall not entitle the lessee to any refund or rentals paid or exemption from the payment of any rents, penalties or other compensation due the State. Lease cancellation is subject to appeal as provided in Section 77-6-211, MCA.

9. **UNLAWFUL USE** – If any part of the land or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this State or the United States, such unlawful use shall in the discretion of the lessor constitute sufficient reason for the cancellation of the lease. The lessee shall not use or allow to be used any state land under this lease for purposes other than the purpose for which it is granted.

10. **REQUEST FOR IMPROVEMENTS** – The lessee shall have the right to place such improvements on the leased premises as are reasonable taking into consideration the purpose(s) for which the land is leased. A report of proposed improvements containing such information as the lessor may request, including the cost and character of the improvements, their suitability for the uses permitted under the lease, and their character whether fixed or movable, shall be submitted to the lessor for approval before construction or installation of the improvements on the leased premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the lessor for purposes of reimbursement of such improvements and such improvements will be deemed property of the lessor. In addition, placing improvements on state lands without receiving prior written approval may result in cancellation of the lease and/or the obligation of the lessee to remove such improvements and restore the land to its original condition.

11. **LESSOR LIEN** – The lessor shall have a lien upon all buildings, structures, fences and other improvements for payment of the rentals specified herein.

12. **IMPROVEMENTS** –

(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party

while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements as of the time the new lessee takes possession thereof. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the lessor that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.

(b) Upon the termination of a lease, the lessor may grant a license to the former lessee to remove the movable improvements from the lands. Upon authorization, the moveable improvements must be removed within 60 days or they become the property of the state unless the Department for good cause grants additional time for the removal. The lessor shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.

(c) The lessee(s) shall own all improvements upon the lease premises. Ownership of the improvements by any person or entity other than the lessee shall be grounds for cancellation for cause.

(d) The lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the lease manager.

13. **ASSIGNMENT** – If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the lessor, but no such assignment shall be binding on the state unless the assignment is filed with the lessor, approved by the lessor, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the lessor prior to such transfer becoming effective. Until an assignment becomes effective, the lessor will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.

14. **SUBLEASE** – The lessee shall have the right to sublease the lands to another party upon the same terms and conditions as those upon which he leases it from the State, and as otherwise described in this lease, provided that no such sublease shall be legal until a copy thereof has been filed with the lessor and approved by the Director. If a lessee subleases State Land on terms less advantageous to the sublessee than the terms given by the lessor, the Director shall cancel the lease subject to the appeal procedure provided in Section 77-6-211, MCA. Furthermore, subleasing may cause loss of the preference right to renew this lease.

15. **REQUEST TO RELINQUISH LEASE** – The lessee may request the right to surrender and relinquish the lease in whole or in part, by writing to the lessor, at least thirty (30) days prior to the termination of any rental year. The lessor may grant or deny the request and may condition the right to surrender and relinquish upon the payment to the lessor reasonable damages caused by the surrender, which may include removing improvements and restoring the land to its original condition.

16. **LAWS AND RULES** – The lessee agrees to comply with all applicable laws and regulations in effect at the date of this lease, or which may from time to time, be adopted, and which do not impair the obligations of this contract and which do not deprive the lessee of an existing property right recognized by law.

17. **LEASE WITHDRAWAL** – All or any portion of the land under lease maybe withdrawn from this lease by the lessor upon reasonable notice, except through special agreement with lessee. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the State Board of Land Commissioners.

18. **EXTENT** – All covenants and agreements herein set forth between the parties hereto shall extend to and bind their successors, assigns and legal representatives.

19. **UTILITY INSTALLATION** – The lessee, at its sole cost and expense, shall determine the availability to, and shall cause to be installed in, on, and about the leased premises, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone and other like services required in lessee's operations hereunder. Lessee agrees to pay all connection or acreage assessments or charges levied by any public utility, agency or municipality with respect to their services. Notwithstanding the foregoing, lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, waterlines or connections, or street improvements relating to the leased premises, without the prior written consent of the lessor, which consent shall not reasonably be withheld.

20. **TAXES** – The lessee shall pay all taxes, special assessments, levies, fees, and other governmental charges of every kind or nature that may be levied by any and all federal, state, county, municipality, and any other taxes or assessing authority upon the improvements and property owned by lessee on or about the leased premises during the term of this lease. Payment shall be made not later than ten (10) days prior to delinquency of taxes, special assessments, levies, fees, and other governmental charges. Lessee shall cause all taxes imposed upon all improvements situated in, on or about the premises, to be levied or assessed separately from said leased premises and not as a lien thereunder. The lessee is responsible for payment of real and personal property taxes (MCA 15-24-1203 (1)).

21. **FIRE PREVENTION AND SUPPRESSION** – The lessee assumes all responsibility for performing at lessee's own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land to the same extent as if the land was owned by the lessee.

22. **NOXIOUS WEEDS AND PESTS** – The lessee agrees, at lessee's own expense and cost to keep the land free from noxious weeds and to exterminate pests to the same extent as a private owner is required to do. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provision of 77-6-114, MCA, which provides as follows: "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the Board of County Commissioners for such district on such state lands, and such assessment and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected."

23. **INDEMNIFICATION** – The lessee agrees to save harmless and indemnify the lessor for any losses to the state occasioned by the levy of any penalties, fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.

24. **ENVIRONMENTAL** – (a) The lessee shall not store, use, or dispose of any Hazardous Substance(s) in, on, under, or about the Premises in violation of Environmental Law(s). The lessee, at its expense, will comply with all Environmental Laws relating to the lessee's storage, use, and disposal of Hazardous Substances at the Premises. The lessee shall be responsible for and shall defend, indemnify, and hold harmless the lessor from and against any and all claims, costs, and liabilities, including reasonable attorneys' fees, consultants' fees, and expert fees, for damage to the premises caused by any discharge or release of any hazardous substance in violation of environmental laws by the lessee or its affiliates, employees, agents, representatives, contractors, subcontractors, licensees, or invitees.

(b) This Section 24 will survive the expiration or earlier termination of this lease.

25. **INSURANCE** – Lessee shall have appropriate insurance related to the specified use of this lease site and in accordance with the terms of this lease with liability coverage of at least \$1,000,000. Lessee shall name lessor as an additional insured on the insurance policy(ies).

26. **MULTIPLE-USE MANAGEMENT** – Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above described land, subject however, to such specific interests granted to the lessee under the terms of this lease. Permission to close lands categorically closed under A.R.M. 36.25.150(1)(e) is hereby granted and no further permission is required.

27. **SURRENDER OF PREMISES UPON TERMINATION OF LEASE** – The lessee shall upon the termination of this lease peaceably yield up and surrender the possession of the land to the lessor or its agents or to subsequent lessees or grantees. On the expiration or earlier termination of the lease title to all Improvements then held by lessee, **except moveable personal property not constituting fixtures**, will automatically vest in lessor without representation or warranty (MCA 77-1-906 (2)).

28. **LESSEE LIABILITY** – This lease is made upon the express condition that the lessee shall assume all liability for any injury, property damage or loss by any persons and for any injury, property damage or loss to any employee or property of lessee, its agents or employees, or third persons, or to the lessee, from any cause or causes whatsoever while in or upon the said premises or any parts thereof during the terms of this lease or occasioned by the occupancy for use of said premises or any activity carried on by the lessee in connection therewith. Lessee shall indemnify lessor and save, protect, defend, and hold lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or judgments arising from or based upon lessor's ownership of the property, which is the subject of this lease, from any cause or causes whatsoever while in or upon said premises or any part thereof during the terms of this agreement or occasioned by any occupancy and all suits which may be brought against lessor, either alone or in conduction with others, upon any such liability or claim(s). Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against lessor in any such action(s) provided, however, that lessor shall have given lessee written notice of any such claim or demand promptly after receiving notice thereof.

29. **LEASE PREMISES PROTECTION** – The lessor reserves the right to impose restrictions on all state leases as are necessary to adequately protect the land, water, air improvements, or other resources.

(a) The lessee shall protect, in place, all land survey monuments and private property corners. In the event that such

land markers or monuments are destroyed, the lessee shall see that they are reestablished in the same location.

(b) No soil, trees, or other vegetation may be removed from the state school trust lands without prior permission from the lease manager.

(c) The lease premises must be kept free of debris, garbage and any other unsightly objects. This includes lakeshores or streams when adjacent to the site. The lessor may, at its discretion, require removal of junk vehicles, old building materials, improvements that are in disrepair, etc. Open pits, ditches, or other unsafe conditions must be eliminated from the site.

(d) The lessee has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the lease manager, the lessee shall remove such hazards.

(e) Area must be kept free of fire hazards. Forest litter (needles, twigs, duff) must be removed for a distance of ten feet around all buildings and from roof tops. Tree limbs too close to the roof or chimneys must be removed.

(f) The lessee shall fully repair and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the lessee's activities.

(g) Pesticides will be used, stored, and disposed of in accordance with the label.

(h) Disturbance of peace of the community will not be tolerated.

(i) The use of firearms or fireworks is not permitted on the area.

(j) Road Maintenance: The lessee is responsible for the maintenance commensurate with their lease of all state access roads to the leased premises.

(k) Incinerators, fireplaces, stoves or any other type of burner must be fireproofed by use of spark proof screens. All fires must be extinguished prior to leaving the area.

(l) No buildings except boat docks may be constructed within 100 feet of shoreline on river and lakes.

30. **SPECIAL CONDITIONS –**

(a) No livestock may be kept upon the lease premises.

(b) The trails located on Carla Island, aka Darling Island, shall remain in their current natural state. The lessee may only improve the trails with gravel or other hard surfacing such as asphalt or concrete with prior written approval of lessor.

(c) No new trails will be constructed on any portion of the lease area without prior written approval of the lessor.

(d) The lessee shall not conduct any tree or branch removal, brush clearing or any other similar activity within the lease area without prior written consent of the lessor.

(e) The placement of benches in the lease area shall be considered structures and shall require similar prior written approval from the lessor before they are erected.

(f) Lessee shall be responsible for cleanliness of and removal of trash and litter from the site.

(g) Lessee is responsible for the management of public use of this property.

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the State Board of Land Commissioners this day of , 20 .

LESSEE

LESSOR

Printed Name and Title

JOHN E. TUBBS

Director, Montana Department of Natural Resources and Conservation

Signed: _____

By: _____
JOHN GRIMM
Chief, Real Estate Management Bureau