

Yellowstone Kelly Interpretive Site
Pledge Agreement

THIS AGREEMENT is made this _____ day of June, 2016, by and between **KAMPGROUNDS OF AMERICA, INC.**, a Montana corporation, with mailing address of 550 N. 31st Street, Billings, Montana 59101 (“Donor” or “KOA”) and the **CITY OF BILLINGS** (the “City”), with mailing address of 210 N. 27th Street, Billings, Montana 59101.

RECITALS

A. The City, with the assistance of the Billings Chamber of Commerce and the Billings Parks, Recreation and Preservation Foundation (“Foundation”), has undertaken to raise funds for the preservation and enhancement of the grave of Luther Sage “Yellowstone” Kelly and the construction of an historical interpretive site overlooking the Yellowstone Valley in Billings, Montana (“Yellowstone Kelly Interpretive Site”).

B. The Yellowstone Kelly Interpretive Site is to be located in Swords Rimrock Park, which is owned by the City. Acting primarily through the Department of Parks, Recreation, and Public Lands, the City will ultimately construct the site using funds provided by the City and the Foundation.

C. Donor desires to make a pledge to contribute to the fundraising campaign, and the City desires to accept Donor’s pledge upon the terms and conditions specified in this Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, IT IS HEREBY AGREED:

1. **Recitals.** The foregoing Recitals are true and correct and by this reference are incorporated into the terms and conditions of this Agreement.

2. **KOA Gift.** In order to help the City pay for the preservation and improvement of the Kelly gravesite and the construction of the Yellowstone Kelly Interpretive Site, Donor will give \$15,000 to the City, which funds shall be used solely for the purpose described herein, on the following schedule:

- a. \$5,000 in calendar year 2016, payment to be made no later than December 31, 2016.
- b. \$5,000 in calendar year 2017, payment to be made no later than December 31, 2017.
- c. \$5,000 in calendar year 2018, payment to be made no later than December 31, 2018.

3. **Donor Pledge Conditions/Mutual Reliance.** The parties acknowledge their mutual reliance upon each other in completing this Agreement:

- a. The City, in conjunction with the Billings Chamber of Commerce, the Foundation, and other donors and supporters,

are expending significant resources and relying on Donor's gift to help fund and complete the Yellowstone Kelly Interpretive Site project; and

- b. Donor is committing to contribute substantial funds in reliance upon the representations of the City and its plans for the preservation of the Kelly gravesite and construction of the Yellowstone Kelly Interpretive Site.

Donor has been provided with fundraising materials generally describing plans for completing the Yellowstone Kelly Interpretive Site project at a cost of roughly \$500,000. Timely commencement and completion of the project consistent with the plans is an essential consideration for the pledge being made by Donor under this Agreement.

The parties agree that if the project is not commenced after a reasonable time period, is not progressing in a timely manner, or the scope and purpose of the project significantly changes from the original plans, Donor shall not be obligated to make the future scheduled payments under paragraph 2.

Any determination of inability or failure by the City to satisfy Donor's intent under this paragraph 3 shall be made after consultation among Donor, the City, and the Billings Chamber of Commerce, recognizing the mutual reliance of all of the foregoing in performing their responsibilities under this Agreement and in the development of the project. The purpose of the condition placed on Donor's gift under this paragraph 3 is to assure that the purpose and intent of Donor's gift under this Agreement are satisfied.

4. Recognition of Gift. In consideration of Donor's gift, the City will recognize Donor's gift after consultation with the Donor. The nature and extent of this recognition shall be agreed to in writing by Donor and the City when or before the Yellowstone Kelly Interpretive Site project is completed, which agreement shall incorporate the specific terms for recognition of the Donor's gift.

5. Facsimiles and Counterparts. A facsimile copy of this Agreement containing the signature of any of the parties shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.

6. Time and Binding Effect. Time shall be of the essence of this Agreement. The terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

7. Entire Agreement. This Agreement embodies the entire Agreement between the parties, and supersedes all prior negotiations, understandings and agreements. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first above written or, if date is indicated above, as of the date the Agreement has been signed by both parties. ¹⁰

KAMPGROUNDS OF AMERICA, INC.

By: 
Patrick Hittmeier
Its: President

“Donor”

CITY OF BILLINGS

By: Thomas W. Hanel, Mayor

“City”

Attest: _____