

MEMORANDUM OF UNDERSTANDING

Between
City of Billings and
Billings Tourism Business Improvement District

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Billings, Montana, a Montana municipality (“City”) located at City Hall, 210 North 27th Street, Billings, MT 59101, and Billings Tourism Business Improvement District (“BTBID”) located at 815 South 27th Street, Billings, MT 59101. City and BTBID are sometimes referred to herein individually as a “party” and collectively as the “parties”.

Recitals

WHEREAS, in 2017 the owners of qualified lodging facilities in the City of Billings petitioned the City pursuant to §§ 7-12-110 et seq. MCA to renew a tourism business improvement district and on May 8, 2017, the Billings City Council approved Resolution No. 17-10619 to renew the District to be known as the Tourism Business Improvement District No. 0002 of the City of Billings, Montana (referred to herein as the BTBID).

WHEREAS, City Resolution No 17-10619 became effective October 1, 2017, and provides that the duration of the BTBID shall be for a period of 10 years as prescribed by § 7-12-1141 MCA and provides for the boundaries of the District, the property to be assessed, and the amount of assessments.

WHEREAS, the purpose of the BTBID is to aid in tourism, promotion, and marketing within the District, to promote and market Billings, and to leverage visitor dollars in order to grow the local economy.

WHEREAS, BTBID provided financial assistance and coordinated completion of the 2018 Victus Advisors Yellowstone County Sports Facility Market Needs Assessment, a study of a potential sports facility for Billings and Yellowstone County and has remained involved in the promotion and development of the potential sports facility that is now known as the Multi-Generational Recreation Center (MGRC).

WHEREAS, on July 10, 2023, the City passed Resolution 23-11136 to call for a special election placing a bond initiative on the ballot on November 7, 2023, to submit the question of issuing general obligation bonds totaling an amount up to \$143M for Parks, Trails, and Recreation Improvement projects. On August 28, 2023, the City approved Resolution 23-11148 to establish guidelines for projects to be funded from the general obligation bonds and other revenue sources, including funding the MGRC as a project with a budget in the amount of \$110M, with \$85M to be funded from general obligation bonds.

WHEREAS, the primary mission of the MGRC is to serve the diverse recreational needs of the residents of Billings and a secondary mission is to support economic activity through sports tourism and related events.

WHEREAS, City and BTBID agree that the purpose of the BTBID and the missions of the MGRC are compatible and consistent to achieve both parties' goals and they wish to cooperate and work together to promote the success of the MGRC.

WHEREAS, on July 13, 2023, the BTBID Board voted to increase the District assessment for FY 2025 by \$2.00 to an amount of \$4.00 per occupied room per night.

WHEREAS, on July 13, 2023, the BTBID Board conditionally approved providing funding for promotional, marketing, administrative and operational expenses of the MGRC not to exceed \$800,000 per year for a period of 10 years to help defray anticipated operating shortfalls of the MGRC.

WHEREAS, BTBID's proposed funding support for the MGRC is made with the intent to further the purposes of the BTBID and support the success of the MGRC.

WHEREAS, City and BTBID wish to document their agreement regarding BTBID's commitment of funding to the MGRC in the event the ballot measure is approved on November 7, 2023, and regarding the future operation and management of the MGRC.

NOW, THEREFORE, City and BTBID, in consideration of the covenants and promises in this MOU and other good and valuable consideration receipt of which is hereby acknowledged, hereby agree as follows:

1. The parties acknowledge that the Recitals above are true and correct statements of fact and incorporated herein.
2. **BTBID Funding Commitment for MGRC.** Subject to the conditions set forth in Section 7 below, BTBID will provide funding for promotional, marketing, administrative and operational expenses of the MGRC in an amount not to exceed \$800,000 per year ("Maximum Annual Funding Payment") for a period of 10 years to help defray anticipated operating shortfalls of the MGRC. (the "BTBID Funding Commitment"). The amount of the BTBID Funding Commitment in each fiscal year of operation of the MGRC shall be the amount of any operating shortfall for the previous fiscal year of the MGRC and shall not exceed the Maximum Annual Funding Payment. The amount of the BTBID Funding Commitment shall be based on any actual financial operating shortfall of the MGRC and not its budgeted operating shortfall. The amount of the BTBID Funding Commitment shall not include any operating shortfall that results from any set aside for a capital maintenance fund, for capital expenditures, or for specialized revenues generated or committed to the City to reduce annual bond or debt service.

3. **BTBID Request for Increased FY 2025 Assessment.** City and BTBID acknowledge that the BTBID intends to propose a work plan and budget for FY 2025 that will include an increase in its assessment from \$2.00 per occupied room per night to \$4.00 per occupied room per night, which is an amount sufficient to satisfy the BTBID Funding Commitment. The parties acknowledge that BTBID intends to submit this work plan and budget and request the increased assessment regardless of whether the ballot measure is approved on November 7, 2023. Subject to the conditions set forth in Section 7 below, if the ballot measure is approved, BTBID intends to allocate a portion of the increased assessment funds to the BTBID Funding Commitment.

4. **BTBID Future Requests for Assessment.** BTBID will propose work plans and budgets for fiscal years after FY 2025 that will include amounts necessary to pay the BTBID Funding Commitment.

5. **BTBID Renewal of District.** To the maximum extent permitted by law, BTBID agrees to request a renewal of the BTBID for an additional 10-year term prior to the termination of the current term of the BTBID and to submit work plans and budgets for the renewed District that will include amounts necessary to pay the BTBID Funding Commitment.

6. **Payment of BTBID Funding Commitment** The parties acknowledge that timing of the BTBID Funding Commitment is subject to and contingent upon several unknown variables including the timing of receipt of assessment funds by BTBID, completion of construction and commencement of operation of the MGRC, the need for ramp-up funds prior to opening the MGRC, determination and approval of annual BTBID work plans and budgets, the frequency of payments by BTBID, realization of funds and availability for use, and other contingencies. The following ground rules shall apply to payment of the BTBID Funding Commitment:

- a. The parties will confer on commencement of payments, the payee, and method of payment. The BTBID Funding Commitment will be paid directly by BTBID.
- b. The parties anticipate that BTBID will first receive actual increased assessment funds in July of 2025 (FY 2026) to be available for the BTBID Funding Commitment.
- c. BTBID will not be required to expend any portion of the Maximum Annual Funding Payment that was not required or expended during a fiscal year. Such unexpended funds will no longer be committed to fund the MGRC and will not carryover to subsequent years. BTBID shall be entitled to expend such unexpended funds for its other programs to promote tourism in the District.

- d. The parties will determine a mechanism to adjust payment, if any, of the BTBID Funding Commitment to account for budgeted versus actual operating shortfalls of the MGRC.

7. **Conditions Precedent to BTBID's Funding Commitment.** The BTBID Funding Commitment pursuant to Section 2 of the MOU is expressly conditioned and contingent upon satisfaction of each of the following conditions precedent in each year of the BTBID Funding Commitment as applicable:

- a. The November 7, 2023, ballot measure for the general obligation bonds to fund the proposed projects, including the MGRC, is approved by the voters.
- b. The City approves issuance of general obligation bonds and approval of design and construction of the MGRC consistent with Resolution No. 23-11148 and the MGRC master plan.
- c. Construction of the MGRC is completed and operations of the MGRC commence before January 1, 2028.
- d. The City and BTBID approve the BTBID's FY 2025 work plan and budget to provide the increased assessment to fund the BTBID Funding Commitment.
- e. The City and BTBID approve the BTBID's subsequent annual work plans and budgets in amounts necessary to fund the BTBID Funding Commitment.
- f. The City and BTBID property owners approve a renewal of the District to take effect upon termination of the current 10 year term of the District in October of 2027.
- g. The City Administrator appoints a committee to study the optimal management structure for the MGRC considering the mission and goals to make a recommendation to Council. At least 20% of the voting membership of the committee shall be appointed by the BTBID.
- h. The MGRC will be operated by a qualified, experienced, and proven facility manager or management group with a proven resume of success in managing all facets of the activities and facilities of the MGRC to maximize profitability, revenues and to minimize operating shortfalls.
- i. The facility manager or management group for the MGRC will provide its annual budget to BTBID at least 60 days prior to submission of its annual budget for City approval and will confer with BTBID regarding its budget to allow for coordination with BTBID's work plan, budget and the BTBID Funding Commitment.

- j. The City Administrator will form an operational authority/commission to oversee the management contract with the facility manager or management group for the MGRC. At least 20% of the voting membership of the operational authority/commission shall be appointed by BTBID.
- k. BTBID will participate in the initial and any future RFP process for management of the MGRC.
- l. The MGRC will be consistently operated and managed to promote its primary mission to serve the diverse recreational needs of the residents of Billings and its secondary mission to support economic activity through sports tourism and related events.
- m. MGRC management will coordinate with BTBID in promoting, arranging and scheduling sporting events that support BTBID’s purpose of promoting tourism, lodging stays, and sports tourism in the District while also considering the primary mission of the MGRC to serve the diverse needs of the residents of Billings.

8. **Validity of Agreement.** In the event the ballot measure is not approved on November 7, 2023, the MOU shall be null and void and of no force or effect.

9. **Additional Documents.** The parties shall execute and acknowledge, if required, any and all documents consistent with this MOU and necessary to carry out its terms and conditions.

DATED this _____ day of _____, 2023.

City of Billings

By: _____

Its: _____

Billings Tourism Business Improvement District

By: _____

Its: _____