

USE AGREEMENT FOR AMEND PARK

3/4/2023

THIS USE AGREEMENT, made and entered this _____, by and between the following:

THE CITY OF BILLINGS, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as City, and

AMEND PARK DEVELOPMENT COUNCIL, a nonprofit corporation, hereinafter designated as APDC;

WITNESSETH;

WHEREAS, City owns the premises known as Amend Park (50+ acres) that has been developed as multi-use sports, and special events complex; and

WHEREAS, APDC was established in approximately 1992 with its mission to promote and maintain Amend Park, raise funds to develop Amend Park to complement the neighborhood and fill a community need for a multi-use, sports and special events complex, through the open space concept of park development with a focus on soccer;

WHEREAS, City has spent over \$1,560,000, mowing, irrigation and trash removal at Amend Park since 1992;

WHEREAS, in 2016, City spent \$30,000 replacing three roofs and remediation of black mold in the park restroom at Amend Park;

WHEREAS, the conception, construction, and maintenance of Amend Park has been funded by public funds provided by the City of Billings, user fees, and private donations, majority of which have come from the soccer community of players, parents, supporters;

WHEREAS, APDC cooperates with and is supported by the Billings Parks and Recreation Department of the City of Billings, School District 2, Yellowstone Soccer Association, Magic City Soccer Association, and the Edge Soccer Academy. Which collectively sponsor youth and adult recreational and competitive soccer programs for more than 5,000 players annually; and

WHEREAS, Amend Park is a “multi-use” park that serves as the “home” for Youth, High School, Adult Soccer, and High School Lacrosse.

NOW THEREFORE, the Parties agree as follows:

1. **SCOPE:** This Agreement shall relate to the scheduling, maintenance and development of Amend Park. Amend Park shall, at all times remain a public park available for public use

consistent with this agreement and City policies and regulations. All development and operation of Amend Park will comply with all applicable provisions of the Land and Water Conservation Funds, as set forth in **Exhibit “A”**, attached hereto and incorporated by this reference and City regulations, including any future amendments thereto.

2. AGREEMENT MONITORING AND BUDGET FOR AMEND PARK OPERATIONS:

The management and operation of Amend Park will be subject to an annual review by City Staff. Such review will include financial statements, event and user fees and charges, maintenance performance, park usage and activities, capital improvements, facilities maintenance, and future programs. Such review will be completed by the first monthly meeting of the Billings Parks, Recreation and Cemetery Board’s January meeting.

3. **APDC** shall submit an annual budget to the City Council for approval, setting forth the anticipated expenditures, event and user fees and charges for the operation of Amend Park. The City Council shall review and consider approving the proposed budget on or before the last regularly scheduled meeting in January of each year.

4. **TERM:** The term of this Agreement shall be for one calendar year commencing upon the date of its execution (Anniversary Date) by the parties. This Agreement shall renew automatically for like term, for each year up to five years, upon the Anniversary Date unless terminated by one of the parties as specified herein.

5. **PREMISES:** Amend Park covered by the Agreement shall include the Amend Park Soccer Complex, as in **Exhibit “B”**, attached hereto and incorporated herein by this reference. Amend Park is located north of King Avenue East between South Billings Boulevard and The Streeter Brother Subdivision, approximately, in Billings, Montana.

6. **TERMINATION:** Either party may terminate this agreement by providing the other notice of their intent to terminate by providing at least ninety (90) days advance written notice. Said notice shall be delivered to the other party in accordance with the notice provision hereof. Upon termination, APDC shall have a duty to leave the premises in a condition similar to that of the Premises upon execution of this agreement.

7. **APDC’S RIGHTS & DUTIES:** In addition to the other provisions of this agreement, APDC shall have the following rights and duties:

7.1. **Schedule:** During the term of the agreement, APDC shall have exclusive right to schedule the fields and pavilion located on Amend Park utilizing the use process described herein.

7.2. **Maintenance Responsibilities:** APDC will, at minimum, ensure the following:

7.2.1. **Maintain** Amend Park restrooms, pavilion building, Amend Park signage; provide playing field layout and marking.

7.2.2. **Provide** for the playing field turf maintenance and horticultural practices including practices including fertilization and aerification of the playing fields on the Amend Park premises, and the application of turf grass weed control and turf maintenance treatments, thereon as necessary turf; and make repairs incidental to wear and tear on the playing fields. The Sports Field Managers Association (SFMA) Annual Athletic Field Maintenance Calendar for Cool-Season turf Grasses shall be used as a guide in determining proper field maintenance and horticultural practices.

7.2.3. **Provide** for the mowing of the soccer fields, not otherwise provided herein, as needed to maintain an acceptable playing height during scheduled soccer use. The SFMA's Annual Athletic Field Maintenance Calendar for Cool-Season Turf Grasses shall be used as a guide in determining proper mowing height.

7.2.4. **Provide** regular cleanup of the premises following scheduled uses, to include picking up litter on playing fields and surrounding areas contiguous to the playing field and depositing all litter into appropriate garbage receptacles provided by City. If litter is not picked up prior to the weekly mowing, or in a timely manner after schedule activities, City has the authority to pick up the litter and charge APDC.

7.2.5. **Provide** for the day-to-day maintenance of the synthetic turf field in accordance with the manufacturer's guidelines and keep records of all maintenance activities. All records will be provided to City in conjunction with next season's budget as provided in section '2'.

7.2.6. **APDC** may contract with the City to perform any of its non-turf maintenance responsibilities described above.

7.2.7. **APDC** shall contract with the City to perform all turf related responsibilities described above. APDC shall also contract with the City for all snow removal from any fields. APDC will reimburse City for snow plowing of fields at a rate of \$48.38 per hour, not to exceed \$150.00 per field.

7.2.8. **City** and Amend Park will create a Spring/Summer and Fall/Winter turf maintenance memorandum of understanding detailing mowing, fertilization, irrigation, aeration, seeding, sodding, and pest control.

7.2.9. **APDC** may employ a facilities manager/director/ or administrator whose responsibility among others, will be to facilitate and coordinate APDC's duties under this agreement.

7.2.10. **Utilities:** APDC shall be responsible for all utility costs associated with the Amend Park Premises with the exception of water and electrical service related to the irrigation of Amend Park.

7.2.11 **Restroom Facilities:** When permanent restrooms facilities are unavailable APDC shall provide for placement of adequate portable toilet units in Amend Park, except when no organized activities or events are scheduled. APDC shall clean the pavilion restrooms as often as needed to provide clean and sanitary restrooms for public use during usual Amend Park operation hour. If the restrooms are not kept clean and sanitary, City has the authority to clean the restrooms and charge APDC.

7.3 **Fees and Charges:** APDC may establish and charge fees and expenses, including but not limited to:

7.3.1. **Event fee** for all approved and schedules uses, including sport camps and schools, and other sporting, cultural, recreational events, and special events.

7.3.2. **Fee** for each individual, and/ or organization, for each approved Use Permit Applied for based on the current schedule of uses approved by APDC. Any such fee shall be equitably applied, charged and collected from all users, groups, organizations, or entities, public or private.

7.3.3. **City** scheduled events shall not be subject to any fee established by APDC, except for the costs directly attributable to that event, including the cost of stocking restrooms and providing portable toilets, field layout, paint, striping and damage associated with any event.

7.4. **Improvements:** APDC shall have the right to improve the Amend Park Premises in accordance with the Amend Master Plan, as currently adopted, or amended.

7.4.1. **Improvements** not contained in the Amend Park Master Plan must either be added to the Amend Park Master Plan through the Parks and Recreation Department's Park master Plan policy.

7.4.2. **In all cases,** APDC and City mutually agree to notify each other of any proposed new development sufficiently in advance to allow a reasonable time for each to review and approve preliminary plans or proposals.

7.4.3. **Any Project** greater the \$25,000, will be awarded and managed by City. For all other projects APDC must secure all applicable permits and authorization under municipal, state, and federal law for any improvement under its control.

7.4.4. **All improvements** made to the Amend Park Premises in accordance herewith will become property of City upon completion.

7.5 **Concessions:** APDC shall have the right and responsibility for operation of any, and all, concessions associated with the Amend Park Premises during APDC scheduled uses and events. City will receive all revenue from City sponsored events for which they provide their own concessions. Concessions shall include all food and beverage items, as well as any other

products or goods to be sold or served on the Amend Park Premises. APDC shall have the right to:

7.5.1. **Assign** its right to operate any and all concessions to other groups, organizations, or entities.

7.5.2. **Contract** in whole or in part any concessions services associated with the Amend Park premises, or to operate through its own employees or member or users.

Provided, however that:

7.5.3. **All concessions** shall meet all applicable City, Health, Fire and Building Codes, including Signage; shall comply with all existing, and/or future policies adopted by City relating to the operations of concessions and placement of vendors and be off irrigated fields.

7.6. **Naming:** During the term of agreement APDC shall submit naming and memorial contribution opportunity request, and recommendations to City to name and designate field spaces, buildings, other structures and amenities on the Amend Park Premises for review under the City of Billings Parks, Recreation & Public Lands (PRPL) park naming policy.

7.7. **Advertising sales:** Amend Park has the exclusive right to sell advertising rights, space and opportunities, within the facility and retain all revenue from such sales including, but not limited to, signage, banners, scoreboard advertising, displays, announcements, program advertisements and product placements. APDC will coordinate with PRPL for placements of advertising on irrigated fields.

8. **CITY'S RIGHTS AND DUTIES:** in addition to other provisions of this agreement and those provided by law, City shall have the following right and duties:

8.1. **Provide** for the timely and regular irrigation of the Amend Park and its playing fields including trees, shrubs and other plantings.

8.2. **Mow** all grass and weed areas in Amend Park during the growing season, including all playing surfaces that is consistent with standard park practices.

8.3. **Control** weed growth on fences, along curb lines, and walkways.

8.4. **Maintain** all City sewer lines, water lines, and underground or overhead electrical lines, electrical services, curbs, gutters, and walkways.

8.5. **Empty** all dumpsters serving the Amend Park complex as needed.

8.6. **Turn** on all water lines and plumbing at earliest appropriate time, in the spring drain and disconnect the same in the fall.

9. **UTILITIES:** City shall be responsible for water service and electrical service related to irrigation of Amend Park.

10. **RESTROOM FACILITIES:** City shall be responsible for restoring operation of permanent restroom facilities in the spring and winterizing in the fall. The City shall be responsible for daily openings and closing of permanent restrooms seasonally with other City PRPL Operations.

11. **COST REIMBURSEMENT:** Any expenses incurred by APDC attributable to an event scheduled by City shall be reimbursed to APDC.

12. **RIGHT OF ENTRY AND INSPECTION:** Nothing herein shall interfere with City's right to enter and inspect the premises for any purpose consistent with his agreement or with the City's operation and maintenance of public park facilities. PRPL and APDC will jointly conduct a semi-annual (Spring and Fall) inspection of Amend Park.

13. **USE REQUEST:** All request for use by City and any person or organization shall be submitted to APDC in writing for approval at least (14) days prior to the proposed event unless a shorter period is approved by APDC. Approval or disapproval of all proposed uses shall be the responsibility of APDC and communicated to the event coordinator, within (7) days of receiving the event request, unless a shorter period is approved by the coordinator and APDC. APDC will post all approved events to its website within 24 hours of approval and will also notify PRPL via a method agreed to by both parties. APDC shall not unreasonably withhold approval.

14. **PROCEEDS:** The parties agree that the proceeds (defined as gross proceeds from all user fees, concession revenue, and any other payments, donation, grants, or contributions related to Amend Park or activities conducted at Amend Park) from the operation of Amend Park, shall be applied according to the following priorities.

14.1. **To APDC's** administrative cost and expenses.

14.2. **To Full-fill** APDC's maintenance responsibilities, under 7.2.

14.3. **To fund** a synthetic field Replacement Fund.

14.5. **To the City's** cost to fulfill its maintenance responsibilities under 8.1.

14.6. **Finally,** any remainder shall be provided to City for future operation and maintenance costs of Amend Park. Funds provided to City under this paragraph, will be separately accounted for and tracked to ensure that they are expended in accordance wherein.

15. **NOTICE:** APDC shall at all times maintain a mailing address, phone number, and designated agent accessible to the public and City for resolution of issues relating to this agreement and to receive notices associated therewith. APDC shall notify City with any changes in contact information prior to the effective date of the change.

16. **ASSIGNMENT:** This agreement is not assignable by the APDC in whole or in part without the prior written approval of the City Council.

17. **NON-DISCRIMINATION:** the undersigned, either as an individual or on behalf of a group or organization, hereby agrees that this facility shall not be used in any manner that would discriminate against any person or persons in the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.

18. **BREACH:** Should this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within (30) days of said notice, or such other reasonable period of time as the parties may agree; then this Agreement may be terminated at the option of the party wronged through a written notice of such provided at the end of the cure period. In the event of a dispute regarding any asserted breach, the parties agree to meet in a timely fashion to attempt resolution of the asserted breach. If the parties are not able to resolve said breach, or reach agreement, regarding such, the parties agree to mediate this dispute prior to initiation any proceeding to terminate the Agreement based upon the alleged breach. Each party will be responsible for the payment of one-half of the mediator's costs. If mediation fails to resolve the dispute than either party may pursue termination and all other available remedies including, but not limited to litigation in court.

19. **ATTORNEYS FEES AND COSTS:** In the event, it becomes necessary for either party to this agreement to retain an attorney to enforce any of the terms or conditions of the agreement, then the prevailing party shall be entitled to reasonable attorney fee and costs, including costs of in-house counsel.

20. INDEMNIFICATION/INSURANCE:

20.1. **APDC** shall require that all organizations, or vendors, providing concessions to Amend Park Premises shall indemnify, defend and hold APDC and City harmless from and against all claims, damages, losses and expenses arising out of or resulting from such organizations or vendors providing concession negligent acts or omissions or those of any sub-contract, agent, or anyone directly or indirectly volunteering for or employed by them.

20.2. **APDC** shall provide proof of liability insurance for all if its own programs and events in the minimum of \$1,500,000 each occurrence naming City as additional, non-contributory insured. APDC shall also require that each additional organization or vendor providing concessions using Amend Park Premises carry minimum liability insurance in the amount of one million five hundred thousand and no/100 dollars (\$1,500,000) each occurrence (MCA Section 2-9-108 (1). Each organization shall provide APDC a Certificate of Insurance naming APDC and the City of Billings as additional insured parties. APDC shall provide a copy of said certificate to City for each event.

21. **AMENDMENTS AND MODIFICATION:** The parties shall also have the right to mutually renegotiate the terms and conditions herein on an annual basis upon either party's

request. The parties hereby agree that any amendments, or modifications, to this agreement, or any provisions herein shall be made in writing and executed in the same manner as the original document and shall, after execution, become part of this Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement this 3/4/2023

CITY: **CITY OF BILLINGS**, a Montana Municipal Corporation

DocuSigned by:
William A Cole
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By: William Cole, Mayor

ATTEST:

By: Denise R. Bolilman
D503C2218DC34F0...
City Clerk

APDC: **THE BILLINGS AMEND PARK DEVELOPMENT COUNCIL**, A Montana Corporation

DocuSigned by:
Mike Mayott
282699DCDBB44A6...
By: Michael Mayott, President
Amend Park Development Council