

Missoula Art Park Extraordinary Events
Annual Committee Meeting Minutes
April 11, 2017; 11:00 – 12:00 pm
Headwaters @ Currents, 600 Cregg Lane

Committee Members present: Missoula Park Board: Johnna Eisenmann; Sonja Verlanic
Missoula Art Museum (MAM): Laura Millin; Leslie Dallapiazza; Missoula Neighborhood Rep:
Kim Brown Campbell

Others: Donna Gaukler, Missoula Parks & Recreation (MPR); Grace Stopher, MAM; Betsy Willett, MPR

- Public Comments on non-agenda items
 - None

Action Items

Discussion Items:

- Review of Extraordinary Event (EE) Committee and annual meeting
 - Explanation of committee roles and responsibilities.
 - Committee has five voting members
 - Committee will review special events over 200 attendees, look at adopting current MPR park policies. Also working on rental policies and forms for outside rentals with food and/or drink
- Review of management agreement
 - Brief overview of management agreement. MAM has full responsibility for art installations and is currently working on a sign package

Reports & Update

- 2017 Calendar of events
 - **April 21:** Missoula Art Park Dedication and Artist Reception, 4:30-7:30 PM
 - **April 22:** Earth Day Conversation with “By the Bike” Artists, 12 PM
 - **June 24:** Family Art Day in the Art Park, 11 AM – 1 PM
 - **June 27:** MAM Award Party in the Art Park, 5:30-7 PM
 - **July 27:** Family-Friendly Celebration of Hmong Culture, 4-7 PM
 - **September 9:** Saturday+ Artist Discussion with Keith Goodhart, 11 AM – 12 PM

Next meeting: To be determined

Future Items

- Sign Design

Submitted by

Betsy Willett, Administrative Manager

MISSOULA ART PARK MANAGEMENT AGREEMENT

THIS AGREEMENT is between the City of Missoula (Owner), Parks and Recreation Department (as Owner's liaison) and Missoula Art Museum, a Montana non-profit corporation (Manager).

WHEREAS, on July 25, 2016, Missoula City Council, following extensive public process, design, and fundraising by the Missoula Art Museum (MAM), and including a \$75K contribution by Adventure Cycling Association, to create an Art Park on Pine Street, approved contracts awarding construction bids for the development of the MAM Art Park; and

WHEREAS, the partners, including City of Missoula, Missoula Art Museum, and Adventure Cycling Association (ACA), working together will collectively fund improvements to Pine Street and to create the new MAM Art Park, per Exhibit A & B; and

WHEREAS, the MAM Art Park has been a long term goal of the City, the MAM, and also supports the Downtown Master Plan, and further is expected to be a welcoming public space for all residents and tourist alike, and

WHEREAS, the management and maintenance of the MAM Art Park is critical to its success,

Now, therefore the parties agree to the following:

Managed Premises. The City of Missoula (Owner) agrees to allow The Missoula Art Museum or MAM, a 501c3, (Manager) to manage, and Manager agrees to manage, pursuant to the terms and conditions of this Agreement, the area known as the Missoula Art Park, at East Pine Street and Pattee, Missoula, Montana, and as shown in attached Exhibit A. The Missoula Art Park, is a public park, located on lands owned by the City which are adjacent to MAM and also encroach, via a perpetual encroachment easement, into the Pine and Pattee Street Public Right-of-Way (Resolution _____ establishing the perpetual encroachment easement passed by City Council on January 23, 2017,) and is therefore managed via City of Missoula parks related ordinances, resolutions, rules and guidelines.

1. **Term.** This agreement shall commence on first day of February 2017 and end on December 31, 2017. 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, 2018 and extending through December 31, 2025. This Agreement shall be deemed extended unless Owner gives notice of the termination as set out below.
2. **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.

3. **Management Fee.** Owner shall not be required to pay Manager any fee for Management of the Missoula Art Park. Consideration to Manager shall be the ability to manage events in the Missoula Art Park and charge rental on the Missoula Art Park as set out below.
4. **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 Missoula Art Park, which shall include a financial summary of any extraordinary events.
5. **Use.** It is understood and agreed that the Missoula Art Park shall be used and occupied by Manager and persons and entities who rent the Missoula Art Park from Manager for cultural, social, and political events consistent with use of a City Park and Manager's museum use policies. Manager will, in its use and occupancy of the Missoula Art Park, comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority extends to the Missoula Art Park 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 Missoula Art Park
6. **Missoula Art Park Rental.** Manager shall be entitled to rent the Missoula Art Park to persons and entities for cultural, social and political events consistent with use of the Owner's (City Park and Recreation) and Manager's use policies. 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 Missoula Art Park, and retain rents paid for such use with the exception of Non-Owner and Non-Manager events in which case 20% of fee paid shall be paid to Owner for cyclical maintenance. Funds will be held by Owner in the MAM Art Park Enterprise fund. Funds are not to be used for repair of damages caused by renters In order to prevent conflicts regarding events in Missoula Art Park, and in the interest of having as much public usage of Missoula Art Park as possible, Manager has first priority and Owner has second priority in regards to any event in Missoula Art Park, and any events not leasing but utilizing Missoula Art Park must contact Manager to confirm use of Missoula Art Park. Reasonable accommodations will be made to fulfill each request and to make each event as successful as possible. Rental of any space will not impede normal traffic on sidewalks or public right-of-way without an approved closure and detour plan by the appropriate city and/or state officials and per MCA 7-14-4114 and 7-14-4115. Manager shall have the ability to request from Owner an expansion of an event related to a Missoula Art Park event. The request for use of Missoula Art Park causes the event to meet the conditions for an Extraordinary Events status (See #28 of Agreement).
7. **Assignment.** Manager shall not assign or encumber its interest in this Agreement or in the Missoula Art Park.
8. **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 Missoula Art Park donors and temporary event and exhibit 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 and Recreation System Signage.
 - b. **Art Installations.** Manager shall be solely responsible for selection, installation, maintenance, care, and removal of all art installations including repair of any damages to the Park.
9. **Noise Ordinance.** The City of Missoula acknowledges the dependence of a vibrant downtown economy on a quality downtown residential environment. Therefore, all Missoula Art 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.
10. **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.
11. **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.
12. **Utilities.** Owner shall make all arrangements for, and shall be responsible for the initial payment of all connection charges of utilities and services furnished to the Missoula Art Park, including, without limitation, electricity, water and sewer. Manager shall be responsible for the cost of all utility fees, directly connected to the MAM building, and as furnished to the site after installation. Owner is responsible for all other utilities related to the Art Park.
13. **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 priority rights after Manager for free use of the Missoula Art Park each year, including set up costs with the date/s of the rental subject to availability. Direct costs incurred by Manager may be recovered by Manager. Additional Owner use days and the terms of usage shall be negotiated by March 31 of each year.

14. **Promotional Recognition.** Manager shall include Owner in the onsite recognition. Manager shall also include Owner in Missoula Art Park promotional matters wherever possible and appropriate.
15. **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 Art Park, 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 Art Park to any person. Without limiting Managers liability hereunder, Manager agrees, at its own cost and expense to carry and have in continuous effect public liability insurance protecting Owner and Manager in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) per claim and One Million Five Hundred Thousand Dollars (\$1,500,00.00) per occurrence for personal injuries sustained by any one or more persons.

Manager shall, at its own cost and expense, carry Liquor Liability Coverage protecting Manager and Owner in the amount of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate or the amounts required by the State of Montana, whichever is greater.

All policies of insurance shall name both Owner and Manager as insured thereunder and shall protect the interests of Owner. Copies of the insurance policies shall be provided to Owner and Manager.

Owner, at its own cost, shall keep park structures erected on the premises adequately insured for fire and other types of property damage. Manager, at its own cost, shall keep all art installations and related improvements erected on 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 Missoula Art Park.

16. **Alcohol Permit.** Manager The Manager shall maintain a Montana Retail On-Premises Consumption Arts Organization Beer/Wine License from the Montana Department of Revenue. Manager abides by all laws concerning the operation of an establishment licensed for the sale of alcoholic beverages and accordingly, is the sole server of alcoholic beverages in the museum and in the Missoula Art Park.
17. **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
John Engen, Mayor or
Donna Gaukler, Parks & Recreation
Currents Aquatic Center
600 Cregg Drive
Missoula, MT 59801

MANAGER REPRESENTATIVE
Laura Millin
Missoula Art Museum
335 North Pattee
Missoula, MT 59802

dgaukler@ci.missoula.mt.us

lauramillin@missoulaartmuseum.org

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.

18. **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 Missoula Art Park to Owner.

Any property left in the Missoula Art Park 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.

19. **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.
20. **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.

21. **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.

22. **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.

23. **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.

24. **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.
25. **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.
26. **Event Maintenance of the Missoula Art Park** During the term of this Agreement, Manager shall be responsible for:
 - a. Assisting Parks with maintaining the Missoula Art Park 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 Missoula Art Park, and adjacent spaces and restrooms to pre-event conditions pertaining particularly to cleanliness, sanitation, safety and usability by the public following all Missoula Art Park-related events and rentals, and Manager-sponsored events.
 - d. Providing recycling bins for the public events and providing trash bins for all events scheduled by Manager.
 - e. Providing trash dumpsters and paying for its service for all Missoula Art Park rentals, and Manager-sponsored events.
 - f. Timely payment of electrical utility invoices related to event costs at the Art Park..
 - g. Inform all Missoula Art Park users, and Manager-sponsored events that they are required to follow the rules and regulations as outlined in the Missoula Art Park

Lease Agreement, including all city codes and ordinances and Parks and Recreation Department rules and regulations.

- h. Keeping the Parks and Recreation Department, on behalf of the Owner, notified of all events taking place in Missoula Art Park, including all rentals and Manager-sponsored events. Such notice shall be provided monthly April through October of each year and one time in October for November through March. Additional notification of schedule changes and cancellations that impact parks use and parks staff shall be provided as they arise.
- i. Schedule events consistent with legal requirements regarding access to Missoula City parks.
- j. When renting or using Missoula Art Park per #6 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 Missoula Art Park Lease Agreement, including all city codes and ordinances and Parks and Recreation Department rules and regulations.

27. General Maintenance of Missoula Art Park

During the term of this Agreement, Owner continues to be responsible for: (See Exhibit C for a 2016 Maintenance Impact Statement projecting annual costs to Owner (Parks and Recreation))

- a. Maintaining the Missoula Art Park and the grounds of Missoula Art Park.
- b. Keeping all park furniture (i.e. Benches, tables, trash cans, etc.) in clean and safe condition.
- c. Once daily maintenance and cleaning of the restroom in Missoula Art Park.
- d. Keeping all Missoula Art Park paths clear and safe for public traffic.
- e. Maintaining park electrical and park lighting in the areas covered by this Agreement.

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

- a. Will or might attract crowds over two hundred (200) people;

- b. Will begin before 8am or end after 10pm;
- c. Requires significant equipment beyond that which is routinely available for the Missoula Art Park;
- d. Potential for noise ordinance violation;
- e. Use of amplification for more than 2 hours in any one day;
- f. Requires increased security;
- g. Requires additional restroom facilities;
- h. Impacts traffic in right of ways surrounding the Missoula Art Park area;
- i. Excessive garbage disposal requirements;
- j. Risk of potential damage to Missoula Art Park and the surrounding area;
- k. Any event referred to the Committee by Manager;
- l. Potential for illegal activity.

Manager shall not rent the Missoula Art Park 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 MISSOULA ART MUSEUM Representatives, and one citizen appointed by the Park Board per nominations from the Heart of Missoula 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 Missoula Art Park events and to provide direction for future events and/or park improvements, policy or other management concerns to further the benefit of Missoula Art Park to the community and the City of Missoula. The review of events will take place annually at the April or May Parks and Recreation Board meeting.

The Extraordinary Events Sub-Committee with input from the Owner's and Manager's Staff and public shall determine if proposed extraordinary events are appropriate for Missoula Art Park. Extraordinary events shall make a significant contribution, to be determined by the Extraordinary Events Sub-Committee, to Missoula Art 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 additional parameters to #28 above to manage Extraordinary Events. 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/Art Museum lessee when crowd control is necessary on rights of way.

29. **Relationship of Owner and Manager.** It is recognized the Manager is a 501c3 in the State of Montana and that the Missoula Art Museum and the Missoula Art Park are on City Owned property or per perpetual encroachment easement, within the Pine and Pattee Streets ROW. This Agreement shall not render the Owner in any way a partner, joint venture or associate in any way with the Manager in regards to the operation of the Missoula Art Park or subject Owner to any obligation, loss, charge or expense in connection with or arising from the operation of the Missoula Art Park.

DATED this ____ day of _____, 2017.

MISSOULA ART MUSEUM CITY OF MISSOULA

By: _____
Laura Millin,
MISSOULA ART MUSEUM President

By: _____
John Engen, Mayor
City of Missoula

ATTEST:

Marty Rehbein, City Clerk

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on the ____ day of _____, 2017, by Betsy Bach _____ as of the Missoula Art Museum. Board President

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 _____, 2017, by John Engen, Mayor for the City of Missoula.

Notary Public for the State of Montana
Residing at:

My commission expires:
