ADDENDUM TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MISSOULA AND MISSOULA COUNTY HIGH SCHOOL DISTRICT FOR RIVERFRONT PARCELS OF LAND

This Addendum is between THE CITY OF MISSOULA (hereinafter the City), 435 Ryman, Missoula, Montana 59801, and MISSOULA COUNTY PUBLIC SCHOOLS (formerly the Missoula County High School District and hereinafter MCPS), 215 S. Sixth West, Missoula, Montana 59801.

Whereas:

A. The City of Missoula and Missoula County High School District entered into an agreement in 1983 to develop parcels of land in the Riverfront area, establish mutual obligations of the parties with respect to those parcels to provide for the use and public benefit of the parcels as open spaces, hereinafter "Development Agreement."

B. The parties have developed and operated the parcels pursuant to the Development Agreement.

C. The parcels (Developed Turf Area) currently used by Hellgate High School students for curricular (gym) and extra-curricular (band, football, track) activities are inadequately developed to serve the needs of the students. The Developed Turf Area does not provide adequate facilities/areas for practice of individual track and field events, including running, throwing, and jumping. There is also inadequate storage.

D. Further development of the Developed Turf Area is necessary for the continued use of the property.

E. Further development of the practice facilities in the Developed Turf Area serves the public interest and would enhance public use of the property.

F. The parties now wish to modify the Development Agreement to allow for additional development of the property used by MCPS as well as clarify the parties' respective obligations under the Development Agreement.

In consideration of the foregoing recitals and the following terms and conditions, it is agreed as follows:

I. Effect of Modification

The terms and conditions of the Development Agreement shall control to the extent the terms and conditions have not been modified by this Addendum. If there is a conflict, the terms and conditions of this Addendum shall control.

II. Modification of Track and Practice Football Areas

A. MCPS has the authority under the Development Agreement to improve the Developed Turf Area in multiple phases, as mutually agreed by the City and MCPS and per Exhibit A, to increase the utility of its current use and provide improved access for the public benefit.

B. Notwithstanding Section III of the Development Agreement, the parties agree that MCPS may further improve the Developed Turf Area in the following manner and as set forth in the project plans attached hereto as Exhibit A:

i. Place a security gate at the cul-de-sac entrance of the Developed Turf Area to control access to the property.

ii. Place rocks around the cul-de-sac entrance to the Developed Turf Area to control access to the property.

iii. Construct areas, including concrete pads, for track and field throwing events (discus, shotput).

iv. Construct a permanent storage facility shed, with concrete foundation, for MCPS practice equipment.

v. Create barriers between the Developed Turf Area and the public track area to minimize the risk of injury from the throwing events.

vi. Increase safety and notification signage around Developed Turf Area to be posted during track practice. Signage to be mutaually agreed upon and approved by City and MCPS.

vii. Increase drainage area around football practice field.

viii. MCPS will schedule a pre construction meeting with prelimnary irrigations plans

ix. Final site plans, marterials, and construction specifications shall be reviewed an approved by City.

x. Impact to field after construction to be mitigated and returned to original condition by MCPS using standards set by the City.

C. Notwithstanding Section III of the Development Agreement, the parties agree that MCPS may also improve the Developed Turf Area during additional construction phases in the following manner and as set forth in the project plans attached hereto as Exhibit A:

i. Re-surface existing track for use as community, all-season, six-lane track.

Comment [g1]: Because the City provides much of the maintenance and incurs much of the liability for the area when used as a park, any improvements should have prior approval of City.

Comment [g2]: Is this paragraph needed? Staff recommends deletes "A"

Deleted: during its initial phase

Comment [km3]: Need to address lock issues and closure time, would recommend no gate or to have open during specific seasons as this is a primary bike, Police and Parks Department access entrance.

Comment [km4]: Parks – post and rail fence no rocks as rocks are more of a safety and maintenance concern.

Comment [km5]: Define traffic pattern to building so as not to damage turf.

Comment [km6]: Park suggest using temporary barrier rather than going to expense of concrete. The plans would need to be reviewed for structural integrity of the barrier. Concrete barrier – may be a liability if someone trips or falls off at night. Agreed a barrier is needed when discuss or javelin is thrown.

Comment [km7]: Parks suggest temporary sandwich boards to be stored in the facility shed. Would need sign plan, materials, etc if wanted permanent signage.

Deleted: .

Comment [km8]: Need plan to mitigate any damage to turf following construction…particularly spring construction

Deleted: based on review

Deleted: Parks

Deleted: staff

Comment [g9]: Recommend soil testing, numerous aerations, sod, or seed and fencing, fertilizer and weed control. Confirm overall plans as well as turf repair with Hellgate Football program

Deleted: Parks Department

Deleted: Exibit B (this document will include the standards we want them to use for returning area back to former condition or better) Need help with this part

ii. Construct high-jump area, including hard surface area.

iii. Construct long jump area, including landing area (with sand or other like material).

iv. Construct pole-vault area, including hard surface area.

D. MCPS shall bear all costs related to the improvement of the Developed Turf Area provided herein.

E. MCPS shall be responsible for maintenance of the improvements provided herein.

F. MCPS shall notify the City prior to initiating construction activities of the additional phases.

G. The City shall bear no financial responsibility for the improvements provided herein.

H. Any other development or improvement not specifically provided for herein, unless incidental to the developments and improvements provided for herein, shall require written modification of the Development Agreement and this Addendum.

III. Use of Developed Turf Area

A. Notwithstanding Section III of the Development Agreement, the parties agree that MCPS:

i. Shall be allowed to use the Developed Turf Area for student activities at night, during weekends, or during the summer with prior notice to the City; and

ii. May hold limited interscholastic contests on the Developed Turf Area with prior notice to the City.

B. With the exception of those times during which MCPS has exclusive access to the Developed Turf Area as allowed herein, the general public may use the Developed Turf Area for recreational activities.

C. Notwithstanding Section XI of the Development Agreement, which requires approval of ¾ of the members of the Missoula City Council to make changes, modifications of Section III described herein and any future changes shall require only majority approval of the members of the Missoula City Council after notice and a hearing on the issues.

IV. Indemnity and Insurance

Comment [g10]: Staff recommends deleting Section III of Addendum, which retains language of existing agreement.

Comment [km11]: All events must be scheduled through Recreation Manager by requested date to prevent overlap of use/events..

Comment [km12]: Understanding was there WAS NOT going to be any competitions held at this field, need to clarify. History notes major concerns related to hosting events.

Comment [km13]: Priority use not exclusive and includes regular use by MCPS during the school year and must be scheduled through Recreation Manager
Also addition that Parks (the community) has the right to use for programs during non scheduled times.

Comment [g14]: Parks recommends stating with current agreement on use of Developed Turf Area.

Comment [g15]: Defer comment to Administration and Council. Staff recommends retaining current language.

A. The City agrees to indemnify and hold harmless MCPS, its employees and agents, their heirs, successors, and assigns, from all claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney's fees, and including loss of use, economic loss, or otherwise, due in any manner to the negligence or intentional acts, including the failure to act, as a result of the City's performance of the Development Agreement and this Addendum.

B. MCPS agrees to indemnify and hold harmless the City, its employees and agents, their heirs, successors, and assigns, from all claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney's fees, and including loss of use, economic loss, or otherwise, due in any manner to the negligence or intentional acts, including the failure to act, as a result of MCPS's performance of the Development Agreement and this Addendum.

C. Each party represents that it maintains comprehensive general liability and/or errors and omissions insurance coverage for injuries to or death of any person or damage to or loss of property arising out of or in any way resulting from performance of the Development Agreement and this Addendum. Each party further represents that its insurance provides for amounts not less than $1,000,000 per occurrence and $3,000,000 general aggregate and $1,000,000 for property damage in any one accident, or the policy may provide a combined single limit for bodily injury and property damage of $1,000,000.

V. Miscellaneous Provisions

A. The parties may only amend or supplement the Development Agreement and this Addendum only by written amendment and with mutual agreement of both parties.

B. Each party will take such actions as any other party may reasonably request or as may be necessary or appropriate to consummate or implement the services contemplated by this Agreement.

C. The Development Agreement and this Addendum and the legal relations between the parties will be governed by and construed in accordance with the laws of the State of Montana.

Comment [g16]: Have forwarded to Jim Nugent for comment.

D. Any notice, which either party may or is required to give, shall be given by mailing the same, postage prepaid, to following:

For MCPS:

Pat McHugh
Missoula County Public Schools
915 South Avenue West
Missoula, MT 59801

For the City:

[Individual's name]
City of Missoula
[Address]
Missoula, MT 59801

E. The Development Agreement and this Addendum are binding upon and will inure to the benefit of each party and its successors or assigns, and nothing in the Development Agreement and this Addendum, express or implied, are intended to confer upon any other person or governmental entity rights or remedies of any nature whatsoever under the Development Agreement and this Addendum.

F. No failure on the part of a party to exercise or delay in exercising a right hereunder will be deemed a waiver thereof, nor will a single or partial exercise preclude further exercise of such or any other right.

G. If a provision of the Development Agreement and/or this Addendum are held to be unenforceable for any reason, the provision will be adjusted rather than voided, if possible, to achieve the intent of the parties. All other provisions of the Development Agreement and this Addendum will be deemed valid and enforceable to the extent possible.

H. Notwithstanding Section X of the Development Agreement, no dispute arising out of the Development Agreement or this Addendum shall be submitted to arbitration. Nothing in this provision precludes the parties from engaging in mediation of any such disputes.

I. If any legal action or other proceedings is brought for the enforcement of the Development Agreement and this Addendum, or because of an alleged dispute, breach, or default in connection with any of the provisions of the Development Agreement and this Addendum, the successful or prevailing party shall be entitled to recover reasonable attorney fees incurred in an action or proceeding in addition to any other relief to which it may be entitled.

CITY OF MISSOULA

_____ Date
Chair, Missoula City Council

MISSOULA COUNTY PUBLIC SCHOOLS

_____
Toni Rehbein Date
Chair, Board of Trustees