

# Memorandum



**TO:** City of Great Falls Parking Advisory Commission

**FROM:** Garrett Norman  
Planner I  
Planning & Community Devevelopment Department

**DATE:** June 15, 2015

**SUBJECT:** Great Falls Rescue Mission Use Agreement for Surface Parking Lot #3

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Dear Parking Commissioners:

Before Lee Nellis resigned, he formulated a use agreement for the Great Falls Rescue Mission with the intention of leasing Surface Parking Lot #3 to them. The Use Agreement allows the Great Falls Rescue Mission to lease the Surface Parking Lot for \$1.00 per year for 20 years, beginning August 1, 2015. The revenue will be deposited into the Parking Fund. The Great Falls Rescue Mission will be required to permit individuals who currently hold leases in the Surface Parking Lot and allow continuance of their use for one year, beginning August 1, 2015.

Conditions of the lease require the Great Falls Rescue Mission to be responsible for maintaining the Surface Parking Lot for the life of the lease and improve its landscaping by providing additional trees along the 4<sup>th</sup> Street South Boulevard and within the landscaped island in the Surface Parking Lot. These improvements are expected to be made within one year, ending August 1, 2016.

Staff is requesting Parking Advisory Commission input and to then make a recommendation to the City Commission on the contents of the Use Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Norman".

Garrett Norman

Attachments: Draft Use Agreement

## USE AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Great Falls Rescue Mission, Inc., whose business address is 311 Second Avenue South, Great Falls, MT 59405 (hereinafter referred to as "User"), and the City of Great Falls, a municipal entity in the State of Montana, whose address is P. O. Box 5021, Great Falls, MT 59403 (hereinafter referred to as "City"), and collectively referred to as "The Parties."

### RECITALS

**WHEREAS**, User desires to enter into a Use Agreement (hereinafter, the "Agreement") for the use of the City-owned property described as Surface Parking Lot #3, also known as Lot 8 and 9, Block 370 of the Great Falls Original Townsite and (hereinafter referred to as the "Property"), for the purpose of public parking (hereinafter referred to as the "Use"); and

**WHEREAS**, the City deems it to be in the public interest to permit the User to provide public parking for an important downtown institution on property described above, and for the User to manage and maintain this property:

**NOW THEREFORE**, The Parties do hereby covenant and agree as follows:

### GRANT AND CONDITIONS OF USE

The City, for and in consideration of the compensation to be paid and the covenants herein, does hereby grant unto User the Use of the City Property described above and adjoining Property abutments for the purpose stated above. User agrees to Use the Property during the term of this Agreement only for that Use. User further agrees that it will not make or suffer any unlawful, improper or offensive use of the Property, or in any way use or occupy the same contrary to any law of the United States, State of Montana or any ordinance of the City, now or hereafter made. User agrees that it will not conduct activities in which flames, flammable or hazardous materials are involved without the prior approval of the Great Falls Fire Department. User shall not commit, or suffer to be committed, any nuisance or any waste on the Property. User agrees that no use shall be made or permitted to be made of the Property, or acts done, which will cause a cancellation of any insurance policy covering the Property or any part thereof.

User shall not injure, mar or in any way deface or alter the Property and shall not cause or permit anything to be done whereby said Property shall be in any manner injured, marred, defaced or altered without prior written permission from the City. User agrees that no fixture, building, structure, or other permanent installation will be constructed or placed upon the property except as herein provided or otherwise authorized by the City. The City reserves the right to enter upon the property and remove, after notification, any obstacles or structures that may be hazardous to the public. User shall refrain from depositing or discharging any hazardous materials upon the Property, either intentionally or negligently. User agrees to pay the City, separate from the compensation provided for in this agreement for any special maintenance, damage and repairs caused by User's Use.



### **CONDITION OF PROPERTY**

User acknowledges familiarity with the Property's condition and acknowledges no representation, statement or warranty, expressed or implied, has been made by or on behalf of City as to such condition. In no event shall City be liable for any defect in such property or for any limitation on its use. The taking of possession of the Property shall be conclusive evidence that User accepts the same "as is" and that the Property was in good condition at the time possession took place. User agrees to accept the Property in the condition in which it exists at the date of taking possession, without representation or warranty, express or implied, in fact or by law, by City, and without recourse to the City as to the nature, condition or unsuitability thereof, or as to the Use to which the Property may be put.

At the expiration of this Agreement, User shall quit and surrender the Property in as good condition as when received, reasonable wear and tear and damage excepted.

### **TERM**

The Term of this Agreement is 20 years, effective beginning August 1, 2015 and expiring July 30, 2035. Upon expiration of this Agreement, User, or its successors or assigns, may request execution of a new Agreement. If any extension of this Agreement is granted by the City, the City reserves the right to negotiate any conditions and covenants of the extension of this Agreement, including but not limited to the compensation provided for in this Agreement.

### **COMPENSATION**

User agrees to pay the City \$1.00 per year, which is due before on August 1, each year and shall be deposited into the Parking Fund; to undertake and within one year (by August 1, 2016) complete the improvements listed in Exhibit A to this Agreement, and to properly maintain those improvements during the full term of this lease. User also agrees to permit individuals who currently hold leases in Surface Parking Lot #3 at the time this Agreement is executed to continue to use the Property for parking under the current terms and conditions, but with payment going to User rather than the City for one year, beginning on August 1, 2015. After August 1, 2016, User shall have use of the Property for the full term of this Agreement.

User agrees to make landscaping improvements to Surface Parking Lot #3, including re-grading as necessary to create slopes that can be properly maintained; establishing new turf; pruning existing trees to a proper growth form (or alternatively removing and replacing them if it is not possible to re-establish the proper growth form); removing and replacing dead trees; and planting additional trees as shown on the attached Exhibit A. User agrees to provide, install, and maintain its own parking signage. The owner shall, within 60 days after the execution of this lease, submit a plan for the required improvements to the City's Liaison for approval, which shall not unreasonably be withheld.

Failure of User to provide the improvements and the annual compensation, management, and maintenance required herein renders this Agreement void.



## LIAISON

For this Agreement, the contact for User is \_\_\_\_\_,  
\_\_\_\_\_; and the contact for the City is the Director of Planning and  
Community Development or his/her designee.

## LIENS, INDEMNITY & INSURANCE

City's Property shall not be subject to or permitted to become subject to any lien or claims from or arising out of the use and occupation of the leased premises by User. If and in the event such liens or claims arise or occur, User shall promptly and forthwith cause the same to be released or discharged to the extent that the interest of City is encumbered thereby.

User agrees to protect, indemnify, defend, and save harmless the City against and from any and all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), attorney's fees, and losses to the City arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising out of, in connection with, or incidental to the negligence or willful misconduct of User, or its agents, clients, volunteers or employees.

For this purpose, User shall provide City with proof of User's Commercial General Liability insurance issued for personal injury and property damage in amounts not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of "A.M. Best Rating" of A-, VI, as will protect the User, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from the Use under this Agreement. The City shall be included or named as an additional or named insured on the Commercial General Liability policy. Additional Insured Endorsement must be provided as evidence that the City is an additional insured on the insurance policy. The insurance must be in a form suitable to City.

## MISCELLANEOUS PROVISIONS

User may not assign, rent, permit the Use of or otherwise transfer User's rights in this Use Agreement without the prior written consent of City.

This Agreement does not vest User with any compensable interest in the Property or property underlying or adjoining the Use Area. This Agreement is a license for User to utilize the Property for the Use stated herein and does not create any real property right to the benefit of User.

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

User shall not assign or transfer this Use Permit or sublet any portion thereof without the written consent of the City.

User agrees that the City and/or its designated representatives may enter upon the used facilities as herein before described at all reasonable times to make inspection in conformity with this Use Permit.

**APPLICABLE LAW**

This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

**IN WITNESS WHEREOF**, the parties hereto have caused their hands and seals to be fixed the day and year first hereinabove written.

\_\_\_\_\_  
User

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title

\_\_\_\_\_  
Gregory T. Doyon, Manager

ATTEST

\_\_\_\_\_  
Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT

\_\_\_\_\_  
Sara R. Sexe, City Attorney

CITY OF GREAT FALLS



Exhibit A  
Rescue Mission Use Agreement for Surface Parking Lot #3

