

Administrative Committee



Regular Meeting ~Agenda~

www.ci.moscow.id.us

Laurie M. Hopkins
City Clerk

208-883-7015

Monday, October 25, 2021

4:00 PM

**Council Chambers
206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to today's meeting. This meeting is open to the public, however attendees in City Hall are required to practice physical distancing, or wear a face covering when physical distancing is not possible. Attendees are also subject to protocols established by Governor Little's Stay Healthy Guidelines of the Idaho Rebounds Plan. If you do not have a mask, a disposable mask will be provided. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item and limitations may be placed on the time allowed for comments. If you plan to address the Committee, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Citizens wishing to comment on business on the agenda are encouraged to communicate with the Mayor and City Council by phone or email (council@ci.moscow.id.us) in order to respect social distancing protocol. Please note that Committee meetings are televised, videotaped and/or recorded. Links to view the Committee meeting live can be found on the City website, YouTube, Facebook and Spectrum Cable 1301. Thank you for your interest in City government.

REGULAR AGENDA

1. Approval of Administrative Committee September 13, 2021 Minutes (ACTION ITEM) - Taylor Riedner

2. Lease with Moscow School District for Ghormley Park Tennis Courts (ACTION ITEM) – Gary J. Riedner

The City owns tennis courts at Ghormley Park. The tennis courts had fallen into disrepair and were unsuitable for playing tennis without extensive and expensive repairs. The City Council originally approved the construction of pickleball courts on the tennis court site. However, a more suitable location was identified at the site of the former Ghormley Park swimming pool because of accessibility and parking, and pickleball courts have been constructed there. As part of the pickleball construction project, the contractor bid an alternate for the demolition of the tennis courts, in the amount of \$53,400. That alternate was not selected, and thereafter it was determined that the resurfacing of the tennis courts with asphalt would make the courts safer, and would provide a hard surface for children's recreation. The cost of resurfacing of the tennis courts was \$25,000, and that project was completed this past summer. Moscow School District (MSD) would like to lease the newly resurfaced area for recreation for the students of West Park Elementary School. MSD has proposed to pay one-half of the cost of the resurfacing (\$12,500) in exchange for a ten-year lease of the site. The area would be open for public recreation outside of school hours.

PROPOSED ACTIONS: Recommend approval of the lease of the Ghormley Park Tennis Courts to Moscow School District, or provide staff further direction.

3. 1912 Center Management Agreement with Heart of the Arts, Inc. (ACTION ITEM) - David Schott

Heart of the Arts, Inc. has consistently and satisfactorily operated the 1912 Center in accordance with the terms of the initial agreement for the entirety of the prior fourteen years and desires to enter into a new lease and operations agreement. The City of Moscow desires to continue leasing the 1912 Center to the Heart of the Arts, Inc. along with having Heart of the Arts, Inc. continue to manage the operations of the 1912 Center. The current lease and operations agreement terminated on September 30, 2021. Idaho Code §50-1407 authorizes the Mayor and City Council to lease City-owned property that is not otherwise needed for city purposes, by resolution. The initial term of the proposed agreement for lease, programs and operations management will commence on October 1, 2021 and shall end on September 30, 2031. Heart of the Arts, Inc. may extend the initial term of the agreement for two (2) consecutive, additional periods of ten (10) years beyond the expiration of the initial term. The first renewal would extend the agreement through September 30, 2041, and a second renewal would extend the agreement through September 30, 2051.

PROPOSED ACTIONS: Recommend approval of the Agreement for Lease, Programs and Operations Management between the City of Moscow and Heart of the Arts, Inc. as operator of the 1912 Center, and authorizing Resolution, or provide staff further direction.

REPORTS

Moscow Farmers Market Program Graphics Unveiling – Amanda Argona

Staff Report (if needed)

ADJOURN

NOTICE: Moscow City Council and committee meetings are televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

Administrative Committee



Regular Meeting ~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

**Monday
September 13, 2021**

4:30 PM

**Council Chambers
206 E. Third St.**

REGULAR AGENDA

PRESENT: Maureen Laflin, Sandra Kelly, Gina Taruscio

OTHERS: Mayor Bill Lambert, Council Brandy Sullivan

STAFF: Tyler Palmer, Megan Cherry, Amanda Argona, David Schott, Bill Belknap, Gary Riedner, Taylor Riedner, Mia Bautista

1. Approval of August 9, 2021 Administrative Committee Minutes (ACTION ITEM) - Taylor Riedner

The minutes were approved as presented.

2. Moscowberfest Alcohol Use Request in Entertainment District (ACTION ITEM) - Amanda Argona

The Moscow Chamber of Commerce is hosting the inaugural Moscowberfest on Saturday, October 2nd, from 4 pm to 8 pm on Main Street between 3rd and 5th Streets. The event is intended to be an annual event stylized in the spirit of fall folk festivals. The applicant anticipates 16 beer and/or wine tents/vendors and 4 food vendor tents, face painting, chalk drawing, yodeling competition, chicken dance, sidewalk checkers, two music locations featuring traditional music, cardboard cutouts for photo opportunities. etc. The event has been reviewed and approved as of August 25, 2021.

Following standard operating procedures for events with alcohol that are within the Entertainment District boundaries, Moscowberfest is requesting a temporary suspension of the open container law by resolution. Per Moscow City Code, Section 10-1-12; a draft resolution has been prepared for Council's consideration.

PROPOSE ACTIONS: Recommend approval of the resolution allowing for the temporary suspension of the open container law within the event footprint of Moscowberfest for the duration of the event; or provide staff with further direction.

Argona reviewed the application and draft resolution for the use of the Entertainment District for Moscoberfest, which includes the event's footprint, the number of vendors involved, and the duration of the event. Six different departments are involved with the process, and all have reviewed and approved the application. Previous events that were canceled due to COVID-19 were events sponsored by the City. At the moment, there are no COVID restrictions; however, there are recommendations. If circumstances change, the City has the right to revoke permits. The City will wait for further guidance from the North Central Health District, the Governor's Office, and Council. The Mayor or City Council will need to re-implement the metric system or other alternatives to address these standards in the future if they wish. The City has not recently reviewed the metrics standings, and the Committee requested that staff researches this before the next Council meeting. The Committee recommended approval and that it be placed on the Council consent agenda.

3. Professional Services Amended Agreement for Alternative Water Supply Project (ACTION ITEM) - Tyler Palmer

The City of Moscow is administering the contract on behalf of the Palouse Basin Aquifer Committee (PBAC) for the Palouse Groundwater Basin Alternative Water Supply Project. The base project anticipated the need for amendments as the project progressed. This amendment extends the work to

include additional work to coordinate with fisheries, and also generate operations and maintenance estimates for alternatives 1 and 2. The proposed amendment extends the contract time to March 31, 2022, and adds \$56,605.00 to the contract, which will be transferred to the City prior to any payment on the amendment. This amendment was approved by PBAC at their August 19, 2021 meeting, contingent on the approval for the extension of administrative services by the City.

PROPOSED ACTIONS: Recommend approval of the proposed Amended Agreement for Alternative Water Supply Project; or provide staff further direction.

Palmer stated that this contract would be executed with ALTA Science and Engineering to continue the work completed in 2017. This work identified alternative water supply projects to help provide water for the 50-year demand horizon and account for population growth. Up to this point, no unusual or unanticipated data has been found. A leadership round table discussion and presentation by ALTA will be on September 15th to share the current findings and where the conservation research is at the moment. The annual Water Summit will be held on October 21st to cover a general basin update that is open to the public. The Groundwater Management Plan was established in 1992, and the population has increased by 35% since then. However, the City currently uses 14% less water now even with the increased growth. Education will continue to be a focal point for the community to inform the public of the declining aquifer and deter the thought that annexations and subdivisions are the sole reason for declining supply.

Mayor Lambert reiterated that the PBAC round table would provide a lot of information. Staff may then help educate the public by sending a press release, news articles, and posting to the City website.

The Committee recommended approval and that it be placed on the Council consent agenda.

4. Affordable Housing Grant Program Proposal (ACTION ITEM) - Bill Belknap

During the development of the FY2022 Budget, the City Council appropriated \$30,000 in funding to be utilized to promote the development of affordable housing within the community. City staff have met with affordable housing developers within the City including the Moscow Affordable Housing Trust and the local Habitat for Humanity Chapter to discuss how the funds could be utilized to leverage grants and donations to support the construction of affordable housing. Staff has prepared an outline for a potential affordable housing grant program that would be available for nonprofit organizations focused upon the development of affordable housing. The outline identifies eligible organizations, allowed use of the grant funds, homebuyer qualifications, and ongoing housing affordability requirements. Staff will provide an overview of the proposed program for the Council's review and consideration.

PROPOSED ACTIONS: Review the proposed program outline and provide staff with direction.

Belknap introduced the item as written above and shared the outline for the program. Eligible organizations are non-profit developers (501C3 entities) such as the Moscow Affordable Housing Trust and Habitat for Humanity. Staff will research eligibility for other entities such as a 501C6. Awards will be a first-come, first-serve starting annually on October 1st with a maximum of \$10,000 per unit unless otherwise specified by Council. Grants will be awarded on a reimbursement basis and paid within 30 days of a property closing notice, and funds go towards the construction of affordable single-family homes and condominiums. The buyer's household income must be 80% or less of the Area Median Income (AMI). The sales price must not exceed affordability for a family of three based on 70% of the AMI annual household income, and the annual mortgage payment may not exceed 35% of the 70% AMI based on the buyer's family size. Units must be owner-occupied at all times, and recipients shall provide means to ensure the grant award will be retained to preserve the affordability of the housing unit. The Fair and Affordable Housing Commission and entities listed above have expressed support of the proposed program. Upon approval, staff will begin implementing the program in the fall of 2021. Staff may be open to exceptions and allowing construction extensions depending on the situation. If all the appropriated funds are not used by the end of the fiscal year, the Council may determine to re-appropriate to the following year. The Committee provided staff with direction to draft a resolution for their consideration.

REPORTS

2020 Weed Monitoring Report and Pesticide Free Park – David Schott

In 2019 the Parks and Recreation Department began to monitor weeds within Lillian Woodworth Otness Park (Otness) and Almon Asbury Lieuallen Park (AAL), both of which have been pesticide-free since April 2019. Findings showed an increase in weeds and staff time for controlling them. The monitoring continued into 2020, which showed an increase again in staff time and weeds. Schott shared details with different weed populations over the last few years in both the parks and additional staffing hours needed as a result. In the future, the staff is recommending designating one park each year to be pesticide-free, excluding fertilizer. This will rotate annually and include a playground to give residents with pesticide sensitivities a safe park option. This rotation will exclude East City Park, Oylear Fields, and the School District community playfields due to high use and disease control. Both the Sustainable Environment and Parks and Recreation Commissions recommended approval for the program beginning in 2022. Depending on the program results, staff may consider two years of pesticide-free for the chosen park rather than one.

Staff Report (if needed)

ADJOURN

The meeting adjourned at 5:17 p.m.

COMMITTEE STAFF REPORT

DATE: Monday, October 25, 2021



RESPONSIBLE STAFF

Gary Riedner, City Supervisor

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

Lease with Moscow School District for Ghormley Park Tennis Courts (ACTION ITEM) – Gary J. Riedner

DESCRIPTION

The City owns tennis courts at Ghormley Park. The tennis courts had fallen into disrepair and were unsuitable for playing tennis without extensive and expensive repairs. The City Council originally approved the construction of pickleball courts on the tennis court site. However, a more suitable location was identified at the site of the former Ghormely Park swimming pool because of accessibility and parking, and pickleball courts have been constructed there. As part of the pickleball construction project, the contractor bid an alternate for the demolition of the tennis courts, in the amount of \$53,400. That alternate was not selected, and thereafter it was determined that the resurfacing of the tennis courts with asphalt would make the courts safer, and would provide a hard surface for children's recreation. The cost of resurfacing of the tennis courts was \$25,000, and that project was completed this past summer. Moscow School District (MSD) would like to lease the newly resurfaced area for recreation for the students of West Park Elementary School. MSD has proposed to pay one-half of the cost of the resurfacing (\$12,500) in exchange for a ten-year lease of the site. The area would be open for public recreation outside of school hours.

STAFF RECOMMENDATION

Recommend approval of the lease of the Ghormely Park Tennis Courts to Moscow School District.

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend approval of the lease of the Ghormely Park Tennis Courts to Moscow School District, or provide staff further direction.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Tennis Court Lease_draft_clean

**LEASE AGREEMENT FOR CITY TENNIS COURTS
BETWEEN MOSCOW SCHOOL DISTRICT AND
CITY OF MOSCOW, IDAHO**

THIS LEASE AGREEMENT FOR CITY TENNIS COURTS BETWEEN MOSCOW SCHOOL DISTRICT AND CITY OF MOSCOW, IDAHO (hereinafter "Lease"), is entered into this ____ day of _____, 2021, between Moscow School District No. 281, 650 North Cleveland Street, Moscow, Idaho, 83843, a body corporate and politic of the State of Idaho (hereinafter "MSD") and the City of Moscow, Idaho, 206 East Third Street, Moscow, Idaho 83843, a municipal corporation of the State of Idaho (hereinafter "CITY").

RECITALS

WHEREAS, CITY owns and maintains tennis courts located at Ghormley Park, 504 Home Street, Moscow, Idaho (hereinafter "the Premises"); and

WHEREAS, Westpark Elementary School, an MSD school, is located adjacent to the Premises; and

WHEREAS, the Premises were in disrepair and have not been used for the playing of tennis in recent years and CITY had decommissioned the Premises for the playing of tennis due to the significant cost of renovation; and

WHEREAS, MSD approached the City and expressed the desire to utilize the Premises as an outdoor play area for the students of West Park Elementary School; and

WHEREAS, CITY and MSD determined that the existing surfacing of the Premises was in significant disrepair and presented a safety hazard to the use of the Premises by students and the public; and

WHEREAS, CITY recently constructed a pickleball facility at Ghormley Park and was able to resurfaced with asphalt to address significant cracking issues and to increase safety at a reasonable cost; and

WHEREAS, MSD and CITY have successfully cooperated on the maintenance and use of other recreational facilities, such as Oylear Field and Moscow School District Community Play Fields, for the mutual benefit of the community and of the students attending MSD; and

WHEREAS, MSD has agreed, in consideration for the use of the Premises for MSD purposes, to reimburse CITY for half the cost of the resurfacing of the Premises; and

WHEREAS, MSD and CITY intend by this Lease to set forth their understandings and commitments to facilitate MSD's use of the Premises for student recreation; and

WHEREAS, both Parties are vested with full authority under Idaho law to enter into this Lease, it not being the intent of either Party nor the purpose of this Lease to create a Joint Powers Agreement pursuant to Idaho Code § 67-2326 through § 67-2333; and

WHEREAS, each Party to this Lease wishes to retain its separate identity, authority and jurisdiction to the full extent of the law while cooperating with the other Party pursuant to this Lease;

NOW THEREFORE, MSD and CITY mutually intend and agree as follows:

TERMS

- 1. LEASE OF PROPERTY.** CITY for and in consideration of a one-time payment, covenants, and conditions hereinafter contained to be kept and performed by MSD, does hereby lease to MSD the tennis courts located at 504 Home Street, Moscow, Idaho 83843 (hereinafter "Premises"), see Attachment "A", herein made a part of this Lease. The Premises leased to MSD consists of an asphalt surfaced area of approximately Nineteen Thousand (19,000) Square Feet that previously contained three tennis courts situated at the south west corner of Ghormley Park.
- 2. CONDITION OF PROPERTY.** At the commencement of the term of this Lease, MSD accepts the Premises, improvements, and any equipment on or in the leased premises, in their existing condition. MSD has had reasonable access to the Premises and has had the Premises inspected and has accepted the inspection. No representation, statement, or warranty, express or implied, has been made by or on behalf of CITY as to such condition, or as to the use that may be made of such property. In no event shall CITY be liable for any defect in such property or for any limitation on its use.
 - 2.1** MSD acknowledges that neither CITY nor any agent of CITY has made any representation or warranty with respect to the Premises or with respect to the suitability or fitness of the Premises for the conduct of MSD purposes.
 - 2.2** The taking of possession of the leased property by MSD shall be conclusive evidence that MSD accepts the same "as is" and that the Premises were in good condition at the time possession was taken.
- 3. TERM.** The term of this Lease shall be for ten (10) years. The term shall commence on September 1, 2021 and end on August 31, 2031. Lease is renewable as a year-to-year lease after the initial term. Any additional compensation must be agreed to by the Parties in writing.
- 4. RENT/PAYMENTS.** Upon execution of this Lease, MSD shall pay to CITY Twelve Thousand Five Hundred Dollars (\$12,500) which is half the cost CITY paid to resurface the Premises, thereby making it usable for MSD purposes. Should this lease be lawfully terminated by either Party prior to the natural termination of the Lease, CITY shall return

One Thousand Two Hundred Fifty Dollars (\$1,250) for each remaining year of the original lease term. MSD shall be responsible for the cost to restore the Premise to its original condition.

5. **NOTICE.** The Parties hereto are CITY and MSD. The exercise of any right or privilege by a Party hereunder shall be made effective by the personal delivery or by the mailing of a written notice of such exercise to the other Party unless a specific provision of this Lease provided otherwise. Such mailing or the mailing of any other notice required or permitted under this Lease shall be made by certified United States mail, postage prepaid, addressed to the other Party at its address set forth herein or such other address of which notice has been given in writing, and shall be deemed delivered forty-eight (48) hours after mailing.

CITY

City Supervisor
206 East Third Street
Moscow, ID 83843

MSD

Superintendent
650 North Cleveland Street
Moscow, ID 83843

6. **MSD'S DUE DILIGENCE REVIEW OF AND ACCEPTANCE OF THE LEASE AND RELATED DOCUMENTS.** MSD has exercised due diligence in its review of the lease documents and accepts the same in reliance upon its own review. MSD has obtained or has had an opportunity to obtain independent legal counsel to review all documents related to this transaction.

7. **USE AND OCCUPANCY.** MSD shall use the Premises for recreational purposes and any and all other school-related activities. CITY grants MSD the right to paint roadways and other appropriate objects on the paved surface to create a play space for children. MSD shall not use or occupy the Premises for any other purpose, nor alter the Premises in any other manner without the prior written consent of CITY.

7.1 MSD shall not use or occupy nor permit the Premises or any part thereof to be used or occupied for any unlawful business, use or purpose, not for any business, use or purpose deemed disreputable or extra-hazardous, nor for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. MSD shall promptly, after the discovery of any such unlawful, disreputable or extra-hazardous use take all necessary steps, legal and equitable, to complete the discontinuance of such use.

7.2 MSD understands the Premises will be open and available for the public's use when it is not being used by MSD. MSD shall post in a public place near or on the Premises the hours it reserves for MSD purposes and during which the public will be excluded.

8. **MAINTENANCE BY CITY.** CITY shall not be liable to make any repairs or to perform any maintenance. Except as provided in the Damage to Premises Section hereof, there shall be no abatement of rent and no liability of CITY by reason of any injury to or interference with MSD's business arising from the making of any repairs, alterations or improvements on the Premises or to any portion thereof.

9. **MAINTENANCE BY MSD.** MSD shall be responsible for all repairs to the Premises or repairs to fixtures of the leased Premises made necessary as a result of any misuse or neglect by MSD or any of its officers, agents, employees, contractors, licensees, visitors, guests, clients, customers or invitees. If MSD fails to make necessary repairs and/or maintain the Premises, CITY shall have the right, upon reasonable written notice to MSD, to make and perform such repairs or maintenance and charge the cost thereof to MSD, which cost shall be payable in full upon demand, and failure to pay the cost thereof shall constitute a breach of this Lease as for non-payment of rent. MSD shall maintain and keep in good repair any walkways and sidewalks, and shall keep the same free from debris, ice and snow, and any dangerous or hazardous conditions, and shall indemnify CITY from any liability for same.
10. **COMPLIANCE WITH LAWS.** MSD, at its sole expense, shall comply with all laws, orders and regulations of federal, state and municipal authorities and with any direction of any public officer, pursuant to law, which shall impose any duty upon CITY or MSD with respect to the Premises. MSD, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease or for making of repairs, alterations, improvements, or additions, and CITY, where necessary, will join with MSD in applying for all such permits or licenses. All repairs, alterations, additions or improvements made by MSD or CITY shall comply with applicable building or other codes.
11. **LIENS.** MSD shall keep the Premises free from any liens arising out of any work performed, materials furnished, or other obligations incurred by MSD and agrees to defend, indemnify and hold CITY harmless from and against any such lien, claim or action thereon, including costs of suit and attorney's fees incurred by CITY, with or without suit, in connection with any such claim or actions.
12. **ACCESS BY CITY.** CITY, at all reasonable times and frequency, shall have the right to enter the Premises to examine the same and to make such repairs, alterations, improvements or additions deemed necessary by CITY, without the same constituting an eviction of MSD in whole or in part. CITY shall also have the right to enter on and/or pass through the Premises, or any part thereof, at such times as such entry shall be required by circumstances of emergency affecting the Premises.
13. **INSURANCE.** Each Party warrants that it shall obtain, and will maintain at its expense for the duration of this Agreement, statutory worker's compensation coverage, employer's liability and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder and for the use of the Premises. The comprehensive general liability insurance shall have, at a minimum, a coverage limit of at least FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per claim, and ONE MILLION DOLLARS (\$1,000,000.00) aggregate.

The amounts of such insurance shall not be deemed a limitation of the indemnity and hold free and harmless covenant contained herein.

MSD shall furnish CITY with policies or certificates of insurance to demonstrate MSD has procured such insurance and that CITY has been named as an additional insured therein. Such policies or certificates shall contain the following provision:

"It is agreed that City is added as an additional insured under this Policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to City under any other third-party liability policy. It is further agreed that the 'other insurance' condition of this policy is amended to conform therewith."

Such policies or certificates of insurance shall contain the covenant of the insurance carrier that thirty (30) days' written notice shall be given to CITY prior to modifications, cancellations, or reduction in coverage of such insurance.

City shall maintain casualty insurance, including property damage and fire insurance for the Premises. Such insurance shall not extend to the contents of the property belonging to MSD. MSD shall assume the risk of loss to the contents of the Premises or placed upon the Premises belonging to MSD and shall undertake, in its discretion, to insure against such loss or damage.

- 14. INDEMNIFICATION BY MSD:** MSD shall indemnify, defend and hold the CITY harmless from and against any and all claims, losses, damages, injuries, liabilities and costs, including attorney fees, court costs and expenses and liabilities incurred in or from any such claim, arising from any breach or default in the performance of any obligation to be performed under the terms of any Definitive Agreement by MSD or arising from any act, negligence or omission by MSD or any of its agents, employees and volunteers. MSD's liability under this paragraph shall be limited by the terms of the Idaho Tort Claims Act and the limits of any insurance provided under the Act and Idaho Code § 67-5776.
- 15. INDEMNIFICATION BY CITY.** CITY shall indemnify, defend and hold MSD harmless from and against any and all claims, losses, damages, injuries, liabilities and costs, including attorney fees, court costs and expenses and liabilities incurred in or from any such claim, arising from any breach or default in the performance of any obligation to be performed under the terms of any Definitive Agreement by MSD or arising from any act, negligence or omission by MSD or any of its agents, employees and volunteers. MSD's liability under this paragraph shall be limited by the terms of the Idaho Tort Claims Act and the limits of any insurance provided under the Act and Idaho Code § 67-5776.
- 16. WAIVER.** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any other covenant, term or condition.
- 17. WARRANTIES AND REPRESENTATIONS BY CITY.** CITY expressly warrants and represents to MSD that CITY has not covenanted or agreed with anyone to restrict the use of the Premises for MSD's purposes and CITY has the right to Lease the Premises to MSD.
- 18. QUIET ENJOYMENT BY MSD.** CITY covenants that if MSD performs all the terms, conditions, and covenants of this Lease to be performed by MSD, MSD shall peaceably and

quietly hold and enjoy the Premises for MSD's purposes for the term hereof without hindrance or interruption by CITY.

19. **SALE OF PREMISES BY CITY.** Any sale of the Premises by CITY shall be subject to all rights of MSD hereunder.
20. **ASSIGNMENT AND SUBLEASING BY MSD.** MSD shall not assign or sublet any part of the Premises or MSD's rights hereunder.
21. **MSD'S DEFAULT; CITY'S REMEDIES.** In the event of an MSD Default, CITY shall have the option to exercise one or more of the following rights and remedies:
 - 21.1. To terminate this Lease, in which event MSD shall immediately surrender the Premises to CITY and restore the premise to its original condition. If MSD shall fail to do so, CITY may enter upon the Premises without notice and again have, repossess and enjoy the same as if this Lease had not been made, and all Terms, conditions, covenants and obligations of this Lease on the part of CITY to be performed shall cease and terminate, without prejudice; and
 - 21.2. To pursue all other rights and remedies to which CITY may be entitled hereunder, at law or in equity, including specific performance of the Lease by MSD. MSD shall be responsible for the cost to restore the premise to its original condition.
22. **CITY'S DEFAULT; MSD'S REMEDIES:** In the event of any failure by CITY to perform any Term, condition, covenant or obligation of this Lease on the part of CITY to be performed within thirty (30) days after the date on which CITY receives from MSD notice specifically describing such failure, MSD (in addition to all other remedies to which MSD may be entitled under this instrument or at law or in equity) may cure such default by CITY on behalf of, and at the sole cost and expense of, CITY. CITY shall reimburse MSD for its costs and expenses in connection therewith within thirty (30) days after MSD's delivery to CITY of an invoice therefor. The foregoing notwithstanding, if CITY shall exercise in good faith diligent efforts within such thirty (30) day period to cure the failure specified in the notice but shall not be able to do so because of acts of God, riots, or labor strikes or other circumstances beyond reasonable control of CITY, then any such failure shall not be considered a default of this Lease by CITY so long as CITY shall continue to exercise in good faith such diligent efforts to cure such failure and shall do so within a reasonable period of time.
23. **ENTIRE AGREEMENT.** This Lease shall constitute the entire agreement of the Parties hereto and any prior agreement between the Parties relating to the Premises, whether written or oral, is merged herein and shall be of no separate force and effect and this Lease shall only be changed, modified, or discharged by agreement in writing signed by both Parties hereto.
24. **APPLICABLE LAW/VENUE.** This Lease shall be governed by, and construed in accordance with the laws of the State of Idaho. If litigation is commenced regarding the enforceability or validity of this Lease, venue for such action shall be in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah. If any

provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law.

25. **BENEFIT OF AGREEMENT.** The terms, conditions, and covenants contained in this Lease shall inure to the benefit of and be binding upon the Parties hereto, their respective heirs, administrators, executors, representatives, successors and assigns.
26. **SEVERABILITY.** If any provision of this Lease is declared by a court of competent jurisdiction to be invalid, illegal, unenforceable or void, then the Parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is invalid, illegal, unenforceable or void. If the remainder of this Lease is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.
27. **LANGUAGE.** The Parties agree that the language, terms, covenants, conditions and agreements contained in this Lease are the product of the negotiations of the Parties. No provision of this Agreement is to be interpreted for or against any Party because that Party or its attorney drafted the provision.
28. **HEADINGS.** The headings in this Lease are for reference only, and shall not in any way control the meaning or interpretation of this Lease.
29. **EFFECTIVE DATE.** Effective date hereof means the date that this Lease is dated immediately below and is the date on which it will take effect regardless of whether one or more of the Parties hereto signed it before or after that date.

DATED this _____ day of _____, 2021.

CITY:

By: Bill Lambert, Mayor

MSD:

By: Gregory J. Bailey, Superintendent

ATTEST:

Laurie Hopkins, City Clerk

ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
COUNTY OF LATAH)

On this _____ day of _____, 2021, before me, a Notary Public in and for said State, appeared Gregory J. Bailey, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative.

Notary Public for the State of Idaho

Residing at _____

My commission expires _____

[illegible]

COMMITTEE STAFF REPORT

DATE: Monday, October 25, 2021



RESPONSIBLE STAFF

David Schott, Assistant Parks and Recreation Director

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

1912 Center Management Agreement with Heart of the Arts, Inc. (ACTION ITEM) - David Schott

DESCRIPTION

Heart of the Arts, Inc. has consistently and satisfactorily operated the 1912 Center in accordance with the terms of the initial agreement for the entirety of the prior fourteen years and desires to enter into a new lease and operations agreement. The City of Moscow desires to continue leasing the 1912 Center to the Heart of the Arts, Inc. along with having Heart of the Arts, Inc. continue to manage the operations of the 1912 Center.

The current lease and operations agreement terminated on September 30, 2021. The initial lease was from January 1, 2007 to September 30, 2011, which was renewable for two consecutive five-year terms only.

The City of Moscow renovated the 1912 Center in the years 2001 and 2002 with the purpose of providing a home for senior citizens' weekly meals and programming, drop-in space for people with disabilities and their care providers, family milestone events, historic heritage, and other artistic and community activities.

The City of Moscow initially entered into an agreement for the lease and programming and operations of the 1912 Center with Heart of the Arts, Inc. commencing on January 1, 2007 for the purpose of operating the 1912 Center in accordance with these purposes.

Idaho Code §50-1407 authorizes the Mayor and City Council to lease City-owned property that is not otherwise needed for city purposes, by resolution.

The initial term of the proposed agreement for lease, programs and operations management will commence on October 1, 2021 and shall end on September 30, 2031. Heart of the Arts, Inc. may extend the initial term of the agreement for two (2) consecutive, additional periods of ten (10) years beyond the expiration of the initial term. The first renewal would extend the agreement through September 30, 2041, and a second renewal would extend the agreement through September 30, 2051.

STAFF RECOMMENDATION

Recommend approval of the Agreement for Lease, Programs and Operations Management between the City of Moscow and Heart of the Arts, Inc. as operator of the 1912 Center, and authorizing Resolution.

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend approval of the Agreement for Lease, Programs and Operations Management between the City of Moscow and Heart of the Arts, Inc. as operator of the 1912 Center, and authorizing Resolution, or provide staff further direction.

FISCAL IMPACT

During the first term of this agreement, the City will pay Heart of the Arts, Inc. a fee of seven thousand dollars (\$7,000) per month. This fee will increase by 2% each term renewal.

During the term of this agreement, the City will pay Heart of the Arts, Inc. forty-five thousand dollars (\$45,000) annually for utilities. This utility fee will increase 1% at each renewal period.

PERSONNEL IMPACT

ATTACHMENTS

1. Resolution 2021- 1912 Center Agreement _clean
2. 2021_1912 Center - HAI_clean FINAL

RESOLUTION NO. 2021 –

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO AUTHORIZE THE LEASE, PROGRAMS AND OPERATIONS MANAGEMENT OF THE 1912 CENTER BY HEART OF THE ARTS, INC.; PROVIDING THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Moscow renovated the 1912 Center in the years 2001 and 2002 with the purpose of providing a home for senior citizens' weekly meals and programming, drop-in space for people with disabilities and their care providers, family milestone events, historic heritage, and other artistic and community activities; and

WHEREAS, the City of Moscow initially entered into an agreement for the lease and programming and operations of the 1912 Center with Heart of the Arts, Inc. commencing on January 1, 2007 for the purpose of operating the 1912 Center in accordance with these purposes; and

WHEREAS, the initial lease was from January 1, 2007 to September 30, 2011, which was renewable for two consecutive five-year terms only; and

WHEREAS, the current lease and operations agreement terminates on September 30, 2021; and

WHEREAS, Heart of the Arts, Inc. has consistently and satisfactorily operated the 1912 Center in accordance with the terms of the initial agreement for the entirety of the prior fourteen years and desires to enter into a new lease and operations agreement; and

WHEREAS, the City of Moscow desires to continue leasing the 1912 Center to the Heart of the Arts, Inc. along with having Heart of the Arts, Inc. continuing to manage the operations of the 1912 Center; and

WHEREAS, Idaho Code §50-1407 authorizes the Mayor and City Council to lease City-owned property that is not otherwise needed for city purposes, by resolution;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Moscow as follows:

That the Lease and Operations Agreement for the 1912 Center by the Heart of the Arts, Inc. as attached is determined to be just and equitable and is hereby approved.

EFFECTIVE DATE. This Resolution shall be effective upon its passage and approval.

PASSED AND APPROVED by the Mayor and City Council of the City of Moscow, Idaho, this _____ day of _____, 2021.

Bill Lambert, Mayor

CERTIFICATION. I hereby certify that the above is a true copy of a Resolution passed at a regular meeting of the City Council, City of Moscow, held on _____, 2021.

ATTEST:

Laurie M. Hopkins, City Clerk

AGREEMENT FOR LEASE, PROGRAMS
AND OPERATIONS MANAGEMENT BETWEEN
CITY OF MOSCOW, IDAHO, AS CITY AND HEART OF THE ARTS, INC.,
AS OPERATOR OF 412 EAST 3RD STREET, MOSCOW, IDAHO

THIS AGREEMENT FOR LEASE, PROGRAMS AND OPERATIONS MANAGEMENT BETWEEN CITY OF MOSCOW, IDAHO, AS CITY AND HEART OF THE ARTS, INC., AS OPERATOR OF 412 EAST 3RD STREET, MOSCOW, IDAHO (hereinafter "Agreement") is made and effective this 1st day of October, 2021, by and between the City of Moscow, Idaho, a municipal corporation of the State of Idaho ("CITY"), and Heart of the Arts, Inc., an Idaho non-profit organization acting as programs and operations manager ("OPERATOR").

1. BACKGROUND.

1.1 Goal. CITY wishes to renew its contract for services of OPERATOR for purposes of marketing, fundraising, operation, maintenance, and day-to-day control of the 1912 Center.

1.2 Control. CITY desires to transfer such control of the 1912 Center to OPERATOR for an extended period of time.

1.3 Benefit. The City Council of Moscow believes that, because OPERATOR fulfilled its obligations in the original Agreement for Lease, it is in the best interest of CITY to continue the transfer to OPERATOR of those annual and day-to-day maintenance, operation and program management matters in order to promote efficiency and to allow for the marketing, fund raising and development of the 1912 Center in a manner consistent with CITY policies and programs.

1.4 Civic Purpose. CITY wishes to ensure the continuance of established and proposed civic uses in the 1912 Center in order to maximize CITY's current investment via donations and grants.

1.5 Authority. This Agreement is authorized by Idaho Code 50-301 *et seq.*, and other provisions of the Idaho Code.

2. DEFINITIONS.

The following terms shall have the definitions ascribed to them below:

2.1 Agreement. Shall mean this document and all exhibits, attachments and amendments hereto.

2.2 CITY. City of Moscow, a municipal corporation of the State of Idaho, whose mailing address is P O Box 9203, Moscow, Idaho, 83843.

2.3 OPERATOR. Heart of the Arts, Inc., an Idaho non-profit organization whose mailing address is P O Box 8851, Moscow, Idaho, 83843.

2.4 Premises. That certain real property located at 412 East 3rd Street, Moscow, Idaho, 83843 consisting of land and improvements, “as is”, in the current state of repair and condition as of the date of the execution of this Agreement, all as more fully illustrated on Exhibit “A” attached hereto and incorporated herein, commonly known as the 1912 Center. The Premises includes CITY’s personal property located in the common areas of the Premises but specifically excludes any personal property of OPERATOR or tenants within the Premises.

2.5 Permitted Use. To the extent practicable, the Premises shall be used in furtherance of civic, community and/or philanthropic purposes ideally serving a broad spectrum of the community in age, gender, race, ability and need. Uses should be or have the potential to be self sustaining and be able to contribute toward the costs of maintenance, operation and repair of the Premises. Users of the Premises should remain adaptable and flexible in how they use and occupy the Premises so as to maximize opportunities for shared use and minimize dedicated spaces.

2.6 Term and Commencement Date. The Term of this Agreement shall commence on October 1, 2021 (“Commencement Date”) and shall end at midnight September 30, 2031 (“Initial Term”), unless terminated earlier in accordance with the terms of this Agreement or as extended pursuant to Section 4 of this Agreement. The Initial Term and the Renewal Term as defined in Section 4.2. are collectively referred to as the Term of the Agreement.

2.7 Rent. There shall be no rent due under this Agreement. Instead, OPERATOR shall be obligated to operate, repair, maintain and replace the Premises as set forth in this Agreement.

3. GRANT OF PREMISES AND POSSESSION.

3.1 Grant of Premises. CITY leases to OPERATOR and OPERATOR leases from CITY the Premises “as is”, in the current state of repair and condition as of the Commencement Date, subject to the terms and conditions of this Agreement.

3.2 Possession. Subject to the rights and privileges of the tenants under the leases described in Exhibit “B” attached hereto and made a part hereof, CITY shall deliver possession of the Premises in the Premises’ existing condition (including the rights, privileges, benefits, rights-of-way and easements now or in the future appurtenant to the Premises) to OPERATOR on the Commencement Date. During the Term, CITY covenants not to disturb the quiet enjoyment or possession of the Premises by OPERATOR, except as permitted by this Agreement.

3.3 CITY’s Title. CITY shall have and retain paramount title to the Premises free and clear of any act or inaction of OPERATOR that may restrict or encumber the Premises.

3.4 CITY and OPERATOR. Present uses of the rooms as described in Exhibit “B” shall not be discontinued by OPERATOR without express written consent of CITY.

4. INITIAL TERM AND RENEWAL.

4.1 Initial Term. The Initial Term of this Agreement is set forth in Section 2.6.

4.2 Renewal Term. Subject to the conditions precedent set forth in Section 4.3, OPERATOR may extend the Initial Term of this Agreement for two (2) consecutive, additional periods of ten (10) years (“Renewal Term”) beyond the expiration of the Initial Term upon the

terms and conditions set forth in this Agreement or as mutually agreed upon in writing. First Renewal would be October 1, 2031 through September 30, 2041. Second Renewal would be October 1, 2041 through September 30, 2051.

4.3 Conditions Precedent to Exercise of Renewal Option. OPERATOR shall not be entitled to exercise the Renewal Option (or if OPERATOR has previously exercised the Renewal Option, the exercise shall be negated), in the exercise of CITY's sole and absolute discretion, unless each and every of the following conditions in paragraphs 4.3.1 and 4.3.2 herein have been met in full, without exception or limitation of any kind, unless otherwise agreed to by CITY:

4.3.1 Default. OPERATOR has not been in default, as defined in this Agreement, in any manner, during the Initial Term of this Agreement and OPERATOR has not received any notice of default which is pending cure either at the time OPERATOR delivers to CITY OPERATOR's election to extend the term of this Agreement, at the expiration of the Initial Term or at the commencement of the Renewal Term. Such default may, however, be waived by CITY pursuant to this Agreement.

4.3.2 Financial Commitment. OPERATOR has demonstrated to CITY, in CITY's reasonable opinion, that OPERATOR has the continuing financial ability to operate, repair and maintain the Premises for the foreseeable future in its then-current condition and operation, taking into consideration all relevant factors including, without limitation, the then-current tenants, current and projected fundraising efforts of OPERATOR and the likelihood of success of those efforts, OPERATOR's then-current financial health, assets and balance sheet (or the financial health, assets and balance sheet of any willing guarantor of OPERATOR, provided that such guarantor enters into a guaranty of this Agreement acceptable to CITY in CITY's sole and absolute discretion), and the past payment history of OPERATOR in all aspects of its business. OPERATOR agrees to provide CITY with any documentation requested by CITY in order for CITY to make its determination.

4.4 OPERATOR's Notice of Exercise of Renewal Option. OPERATOR may exercise OPERATOR's Renewal Option by giving written notice of the exercise to CITY not less than one (1) year before the expiration of the Initial Term.

5. PAYMENTS.

5.1 Term Fees. During the first year of the Term of this Agreement, CITY shall pay to OPERATOR a fee of Seven Thousand Dollars (\$7,000) per month. In each succeeding year of the Term, upon submission of a budget request in accordance with CITY's policies and procedures as established from time to time on or before April 1st of each year and subject to appropriation by the City Council of the City of Moscow as set forth in Section 5.3, CITY shall pay to OPERATOR Seven Thousand Dollars (\$7,000) per month for each month during the term of this Agreement on or before the first day of each month during the Term. This Fee amount shall increase by 2% each term renewal.

5.2 Fee Condition. Notwithstanding Section 5.1 to the contrary, the Fee shall not be due if OPERATOR is in default of this Agreement or upon termination of this Agreement pursuant to Section 15.

5.3 Appropriation. CITY, by entering into this Agreement, acknowledges its current intention to make all Fee payments due (and the utility fee payments addressed in 6.7.2 of this Agreement) during the fiscal year such Fee payments are due, but CITY does not commit to a legal or other obligation to make such Fee payments or to incur any liability beyond the revenue and income provided during the then-current fiscal year. OPERATOR has no right to compel CITY to levy or to collect taxes to pay the Fee or utility fee, or to expend funds beyond the amount provided for in the then-current fiscal year of CITY. CITY agrees during the current fiscal year and during each fiscal year during the Term (i) to use reasonable efforts to obtain authorization and appropriation of the Fee and utility fee and that CITY shall, for the ensuing fiscal year in which the Fee payments are scheduled to be made, consider a budget and appropriation of the expenditure of an amount sufficient to allow CITY to make all Fee payments and utility fee payments due in such fiscal year; and (ii) that, to the extent sufficient funds have been appropriated for the current fiscal year, it will make all such Fee payments and utility fee payments.

5.4 Non-Appropriation. In the event CITY fails to receive appropriated funds sufficient to pay the Fee or utility fee in the full amount, CITY shall notify OPERATOR in writing of such occurrence, including the amount of the appropriation, if any, promptly upon CITY's confirmation of such event. Within sixty (60) days after OPERATOR's receipt of CITY's written non-appropriation notice, OPERATOR may elect by written notice to CITY to terminate this Agreement effective as of sixty (60) days following CITY's receipt of OPERATOR's election to terminate this Agreement. In the event OPERATOR should fail to deliver OPERATOR's election to terminate this Agreement because of non-appropriation within the sixty (60) days after OPERATOR's receipt of CITY's written non-appropriation notice, this Agreement shall continue in full force and effect through the subsequent year when, if applicable, OPERATOR again submits its budget request for the Fee and the utility fee and this Section 5.4 shall again take effect.

6. OPERATION OF PREMISES.

6.1 OPERATOR's Use of Premises. Subject to any existing leases or sub-leases described in Exhibit "B" and the following provisions, the Premises shall be occupied and used by OPERATOR and any permitted subtenants of OPERATOR only for the Permitted Use and for no other purpose.

6.1.1 OPERATOR shall preserve the existing uses as public meeting and activity areas available upon a reservation basis during the term of the Agreement. OPERATOR shall be responsible for the acceptance, coordination, and collection of fees for such activities and the provision of a facility supervisor during such reserved use of the Premises. All revenues generated from fees received for the rental of the rooms described in Exhibit "A" areas shall be retained by OPERATOR. All policies, procedures and rental fees shall first be reviewed by the Use Committee as specified within Section 9.4 of this Agreement.

6.1.2 Existing Leases: OPERATOR shall honor any existing leases, sub-leases, and agreements between CITY and any other party related to the Premises and subsequent renewals for the respective portions of the Premises and shall negotiate in good faith to ensure the opportunity for such leases, sub-leases, and uses associated with such leases and sub-leases to continue during the term of this Agreement.

6.1.3 The CITY and OPERATOR agree to negotiate in good faith to use the Premises for CITY department, division, and/or CITY purposes for a limited time when the CITY may have a temporary program-specific need. The Terms of such occupancy, including associated costs, shall be mutually agreed upon in writing.

6.2 Operating Hours. OPERATOR shall be responsible for the management and operations of the Premises which shall include ensuring that the building is unlocked and open for public access between the hours of 9:00 a.m. and 6:00 p.m. Monday through Friday with the exception of the list of approved holidays included within Section 6.3 of this Agreement and during maintenance (where granting access to the public is unsafe or impractical). OPERATOR shall be responsible for and shall ensure that there is a properly trained, equipped and designated facility supervisor within the Premises at all times that the Premises are open for public use and access. OPERATOR shall be responsible for properly and appropriately locking and otherwise securing the Premises during times other than the operating hours listed above.

6.3 Approved Holidays. For the purposes of this Agreement the following are the approved holidays: New Year's Day, Thanksgiving Day, Idaho Human Rights Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans' Day, and Christmas Day. Nothing in this Agreement shall prevent OPERATOR from operating the Premises in accordance with this Agreement on such holidays.

6.4 Subleasing of Premise and Approved Uses. Subleases shall only be allowed in accordance with Sections 2.6 and 9.4 of this Agreement.

6.5 Operational Performance Plan and Assessment. Upon execution of this Agreement, OPERATOR and CITY shall negotiate in good faith to define an Operational Performance Plan that shall identify objectives and milestones to assess the performance of OPERATOR in meeting the objectives of CITY for the development and operations of the Premises. Such mutually agreed upon Plan shall be used to assess the performance of the OPERATOR in meeting the requirements of this Agreement by supporting the existing community uses of the Premises, in promoting, identifying and securing additional users and tenants for the Premises and in securing funds or other means of continuing the capital improvement and development of the Premises. Such Plan shall also include a fundraising plan which shall include proposed fundraising activities to support the development and operation of the Premises. OPERATOR shall conduct monthly 1912 Center Development Committee meetings with a designated CITY representative for the purpose of evaluating OPERATOR's performance toward meeting the objectives of the Operational Performance Plan during the preceding month. OPERATOR and CITY shall meet at least annually to assess the performance of OPERATOR and CITY in accordance with this Agreement.

6.6 Uses Prohibited. OPERATOR covenants and agrees that it will not use or suffer or permit any person or persons to use the Premises or any part thereof for any use or purpose in violation of the laws of the United States of America or the State of Idaho, or the ordinances, regulations and requirements of the City of Moscow, County of Latah, or other lawful authorities.

6.6.1 OPERATOR Compliance with Rules. OPERATOR shall comply with any building rules and regulations of CITY as may now or hereafter be established or from time to time be amended by CITY. CITY shall not be liable to OPERATOR for any violation of such rules.

6.7 OPERATOR's Duties.

6.7.1 Minor Repairs. OPERATOR shall be responsible for minor repairs to the personal property included as part of the Premises. For purposes of this Agreement, "minor repairs" shall be defined as the repair, maintenance or replacement of furniture and fixtures that are not the property of current and/or future tenants of the Premises.

6.7.2 Utilities. During the Term of this Agreement, OPERATOR shall be solely responsible for and shall promptly pay all charges, when due, for natural gas, electricity, water, sewer, garbage, janitorial services, telephone, cable, computer, security, and any other utility or other service used upon or furnished to the Premises. During the Term of this Agreement, CITY shall provide OPERATOR Forty-Five Thousand Dollars (\$45,000) annually for utilities, in addition to the Fee, that shall be payable in twelve (12) monthly installments and which is intended to fund the utility and janitorial services necessary to service the Premises in their current state of development and use. This utility fee amount shall increase 1% at each renewal period. Such utility fee payment shall be paid subject to 5.3 and 5.4 of this Agreement

6.7.3 General Maintenance. OPERATOR agrees at all times, from and after delivery of possession of the Premises to OPERATOR, and at its own cost and expense, to maintain, repair and/or replace in good and tenantable condition the Premises and every part thereof, including fixtures and equipment, and excluding only specific parts of the Premises that are to be maintained by CITY, as set forth in this Agreement. If OPERATOR refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to CITY, CITY shall have the right, upon giving OPERATOR reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of OPERATOR. In such event such work shall be paid for by OPERATOR promptly upon receipt of a bill therefor.

6.7.4 Financial Accounting. OPERATOR agrees that its accounting books and other financial records pertaining to this Agreement, including, but not limited to, operations and fundraising activities related to Premises shall be open and available for examination at all times by CITY within a reasonable time upon request. OPERATOR shall maintain complete accounting records for all activities, including fundraising activities conducted during the term of this Agreement. Such accounting shall include the expenses of the fundraising activity, the funds collected and the expenditures of the collected funds. These records shall be preserved and made available for inspection to CITY upon request throughout the term of this Agreement. OPERATOR also agrees that it shall maintain fiscal records and accounts in accordance with systems and procedures prescribed by law or regulation as applicable to the financial affairs of CITY and that OPERATOR shall annually render a written independent financial review as mutually agreed upon by OPERATOR and CITY within ninety (90) days after the end of each fiscal year of OPERATOR.

6.7.4.1 HVAC and Elevator System. OPERATOR, at OPERATOR's sole cost and expense, shall be responsible for the routine maintenance of the HVAC and elevator system and shall enter into a maintenance contract reasonably acceptable to CITY for the performance of the same.

6.7.4.2 Snow Removal. OPERATOR shall be responsible for snow removal from all interior sidewalks upon or adjacent to the Premises, the Outdoor Plaza as shown on Exhibit "A" and all stairways, landings, walkways and parking areas within or adjacent to the Outdoor Plaza. OPERATOR shall be responsible for snow removal from all public sidewalks (i.e., those parallel to CITY streets) and for snow removal in the 1912 Center parking lots as shown on Exhibit "A".

6.7.4.3 Interior Maintenance. OPERATOR shall be responsible for performing all general maintenance and cleaning to the interior of the Premises in order to maintain a "first-class", clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises.

6.7.4.4 Additional Duties.

a. OPERATOR shall perform all obligations under Section 6.7 in a good and workmanlike manner.

b. OPERATOR shall be responsible for securing the Premises upon completion of any repairs or maintenance by OPERATOR or OPERATOR's employees or agents.

c. Repair and maintenance activities shall be coordinated in such manner as to minimize the impacts upon current programs and uses to the greatest extent reasonably possible.

d. OPERATOR shall attend an annual meeting with City of Moscow officials, as designated by CITY, for the purpose of evaluating the previous year's maintenance.

6.7.5 OPERATOR Improvements. Upon execution of this Agreement, OPERATOR and CITY shall continue with the joint 1912 Center Facility Development Committee (hereinafter "Development Committee") which shall be appointed by CITY and shall include the CITY Building Official, CITY Facilities Manager, a City Council member, a representative of OPERATOR, and two (2) representatives from the community. Community members serving on the Development Committee may also be members of the 1912 Center Use Advisory Committee (hereinafter "Use Committee"). The Development Committee shall develop and recommend a Renovation Plan for the Premises that shall be approved by the CITY and shall define the life safety, structural and utility infrastructure requirements for the Premises (including common use areas, the site and the building envelope) to allow for the use of the undeveloped portions of the Premises. The Renovation Plan shall include standards to be followed for all capital improvements to the Premises. The Development Committee shall also serve as a review board for all Major OPERATOR Improvements, as specified in this Agreement.

6.7.5.1 Minor OPERATOR Improvements: Minor OPERATOR Improvements shall include such items as painting of interior walls, replacement of existing lighting fixtures, refinishing/polishing of flooring surfaces and other non-structural surface finishes. Prior to conducting any Minor OPERATOR Improvements, OPERATOR shall be required to provide a written or verbal report at the 1912 Center Development Committee meeting

where minutes are recorded, describing the improvements to ensure that such Minor OPERATOR Improvements shall not jeopardize the historic or structural integrity of the Premises.

6.7.5.2 Major OPERATOR Improvements: Major OPERATOR Improvements shall include structural, and/or mechanical alterations to the Premises, including but not limited to, replacement of windows, alterations to structural walls, alterations to plumbing or electrical systems, replacement of floor coverings, and all items defined as Major Repairs within Section 6.8.1 of this Agreement. Requests to conduct Major OPERATOR Improvements shall be made in writing by OPERATOR to the Development Committee and CITY with construction drawings and diagrams of sufficient detail and scale to convey the scale and scope of the proposed improvements. Such request shall include details of the proposed improvement including the proposed project manager, anticipated cost and proposed funding of the proposed improvements, who would complete the work, how the work would be conducted, the anticipated time necessary to complete the proposed improvements, and any proposed dispensation proposed in relation to the proposed improvements. The Development Committee shall review such requests for Major OPERATOR Improvements and may request any additional information deemed necessary by the Development Committee to assess and render a decision regarding such Major Improvement Requests. The Development Committee shall make a recommendation to CITY regarding the proposed Major OPERATOR Improvements and CITY shall make the final decision regarding all Major OPERATOR Improvements. CITY reserves the right to deny any Major OPERATOR Improvement request, require a performance bond of the OPERATOR for any such Major OPERATOR Improvement, inspect any Major OPERATOR Improvement during construction, and/or issue a stop work order to any contractor or agent of OPERATOR should the CITY determine that the construction activity threatens the historic or structural integrity of the Premises.

6.8 CITY's Duties.

6.8.1 Major Repairs. Unless otherwise agreed in writing, CITY shall be responsible for major repairs to the Premises. For purposes of this Agreement, "Major Repairs" shall be defined as structural repairs to the building foundation, roof, elevator, fire sprinkler, fire alarm and plumbing (excluding fixtures), the heating, ventilation and air conditioning (HVAC) system, sidewalks, and underground utilities, including but not limited to water, sewer and irrigation lines appurtenant to the building when such repairs are necessary to remedy conditions constituting a threat to life and/or safety of the public and/or occupants of the Premises, unless the major repairs were caused by the negligent or wrongful act or omission of OPERATOR, or OPERATOR's employees, agents, contractors or invitees and OPERATOR shall, at its sole cost and expense, properly repair any and all damage to any part of the Premises resulting from the negligent or wrongful acts or omissions of OPERATOR, OPERATOR's employees, agents, contractors or invitees.

6.8.2 Utilities. CITY's responsibility for utilities to the Premises shall be in accordance with this Agreement as described in Section 6.7.2.

6.8.3 Maintenance. OPERATOR shall be responsible for snow removal from the parking lot of the Premises, pruning the trees on the Premises as needed, and for all general maintenance to the exterior of and grounds of the Premises, including painting, mowing, weeding, irrigation, and general grounds maintenance.

6.8.4 Failure by CITY to Make Major Repairs or to Perform Maintenance. Anything to the contrary notwithstanding contained in this Agreement, if CITY shall fail to commence the making of Major Repairs or perform maintenance as it is obliged to do, in accordance with Sections 6.8.1 and 6.8.3 of this Agreement, within thirty (30) days after written notice given by OPERATOR to CITY, specifying the particulars of CITY's failure, OPERATOR's sole right and remedy for such failure on the part of CITY shall be, after further notice to CITY, to cause such Major Repairs to be made or such maintenance to be performed and to submit to CITY its invoice for the costs and expense thereof, which invoice CITY shall pay, provided that the costs and expense shall not exceed the reasonable value of such Major Repairs or maintenance. Except as stated in Section 6.8, CITY is not required to perform any maintenance, repairs, replacements, improvements or alterations at any time during the Term of the Agreement.

6.9 Labor Assistance. OPERATOR may request labor assistance from CITY in discharging OPERATOR's obligations pursuant to this Agreement. CITY may, in its sole discretion, provide such assistance. In the event that CITY agrees to provide such assistance to OPERATOR, CITY shall submit invoices representing time spent in the performance of such assistance to OPERATOR and OPERATOR shall remit payment for such invoices within twenty (20) days of receipt thereof.

6.10 Signs. All interior and exterior signs on the Premises (including building directories, wall and door signs, and exterior building signs) shall be designed, installed, maintained, repaired, replaced or improved by OPERATOR at OPERATOR's expense with CITY's prior written consent. CITY's consent under the Agreement shall not negate OPERATOR's obligation to obtain any necessary consents, approvals or permits as otherwise required by applicable law, rule or regulation.

6.11 Hazardous Materials.

6.11.1 OPERATOR's Hazardous Material Use. OPERATOR shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by OPERATOR, its agents, employees, contractors, customers, clients, patients, guests or invitees, except as incidental to OPERATOR's permitted use of the Premises or only in quantities that are less than the quantities required to be reported to governmental or other authorities under applicable law or regulations. OPERATOR shall comply with all applicable laws and regulations regulating the use, reporting, storage, and disposal of Hazardous Material.

6.11.2 Hazardous Material Definition. As used in the Agreement, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any federal, state or local governmental authority or political subdivision. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under applicable law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl ("PCB"), (v) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321), (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Solid Waste Disposal Act (42 U.S.C. § 6903), (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601), (viii) defined as a "regulated substance" pursuant to Section 9001 of the Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991, (ix) considered a "hazardous chemical substance

and mixture” pursuant to Section 6 of the Toxic Substance Control Act (15 U.S.C. § 2605), or (x) defined as a “pesticide” pursuant to Section 2 of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136).

6.12 Covenant Against Liens. OPERATOR shall not directly or indirectly create or cause to be created or to remain, and shall promptly discharge, at OPERATOR’s sole expense, any mechanics’ lien or similar lien against the Premises which OPERATOR created or caused to be created by OPERATOR’s work on the Premises. OPERATOR has no authority or power to cause or permit any mechanics’ lien or similar lien created by act of OPERATOR, operation of laws, or otherwise to attach to or be placed upon CITY’s title or interest in the Premises. Any lien against the OPERATOR shall attach only to OPERATOR’s leasehold interest in the Premises. OPERATOR consent to any such lien shall be authorized by the CITY in writing.

7. REAL AND PERSONAL PROPERTY TAXES.

7.1 OPERATOR’s Payment of Taxes. OPERATOR agrees to pay, before they become delinquent, all taxes (both general and special), assessments, or governmental charges lawfully levied or assessed against the Premises or OPERATOR’s personal property.

7.2 Tax Notices. CITY shall furnish to OPERATOR the tax statement for the Premises immediately upon receipt from the taxing authority in the event the tax statement is sent to CITY. If allowed by the applicable taxing authority, OPERATOR may request that all tax bills and notices be sent directly to OPERATOR, and OPERATOR shall provide a copy of such statements to CITY

8. CITY’S RIGHT OF ENTRY AND INSPECTION.

OPERATOR shall permit CITY and its agents at all reasonable times during normal office hours and at any time in the event of an emergency, (i) to enter the Premises for the purpose of inspecting the same or for the purpose of protecting the interest therein of CITY, and (ii) to take all required materials and equipment into the Premises and perform all required work therein, as may be provided for by this Agreement, as may be required by law, or as may be reasonably necessary to maintain any service provided by CITY to OPERATOR hereunder.

OPERATOR shall permit CITY and its agents, upon request, to enter and/or pass through the Premises or any part thereof, at reasonable times during normal business hours to show the Premises to holders of encumbrances on the interest of CITY under the Agreement, to prospective purchasers, mortgagees or lessees as an entirety; and during the period of one (1) year prior to the expiration date of this Agreement, CITY may exhibit the Premises to prospective lessee and/or operators. CITY shall also have the right to enter on and/or pass through the Premises, or any part thereof, at such times as such entry shall be required by circumstances of emergency affecting the Premises or any portion thereof. If during the last month of the term hereof OPERATOR shall have removed substantially all of OPERATOR’s property and personnel from the Premises, CITY may enter the Premises and repair, alter and redecorate the same, without liability to OPERATOR, and such acts shall not relieve OPERATOR of any obligation under this Agreement.

9. CHANGES IN THE PARTIES.

9.1 Relationship of Parties. Nothing contained in this Agreement shall be construed as creating the relationship of principal or agent, employer/employee, partnership or joint venture

between the parties hereto. Neither the method of computation of fees or utility fee payments nor any other provision of this Agreement, nor any act of the parties, shall be deemed to create any relationship other than that of CITY and OPERATOR. It is understood by the parties that OPERATOR's employees shall not be considered employees of CITY for any purpose, including, without limitation, tax, retirement system, or social security (FICA) withholding.

9.2 Designation of Representatives. Each party shall designate, in writing, one representative to coordinate and implement the party's obligations and to accept responsibility for the party's compliance with this Agreement. If the representative is changed, then the party shall notify the other party in writing within seven (7) days. CITY's current representative is the Assistant City Parks and Recreation Director. OPERATOR's current representative is the Heart of the Arts, Inc., Executive Director.

9.3 Successors and Assigns. Subject to Section 9.4, this Agreement shall benefit and bind the successors and permitted assigns of CITY and OPERATOR.

9.4 OPERATOR's Assignment and Subleasing with CITY's Consent. Upon execution of this Agreement OPERATOR and CITY shall continue with the joint Use Committee whose members shall be appointed by CITY and shall be made up of five (5) members which shall include two (2) representatives of OPERATOR, a City Council member and two (2) members of the community. Community members serving on the Use Committee may also be members of the Development Committee. Requests for subleasing shall be submitted in writing to the Use Committee with sufficient detail to describe the area of the Premises proposed to be subleased, the proposed OPERATOR of such sublease, the uses that are proposed under such sublease and the compensation proposed under such sublease agreement. The Use Committee shall review the uses proposed within such sublease request for compliance with the following criteria:

1. The use reflects community need or desire;
2. The use has demonstrated sustainability and/or support for specified program or activity;
3. The use promotes multi-generational participation and sense of community;
4. The use provides opportunity for flexibility and adaptability within the building and sharing of many spaces with other uses and users;
5. The use and/or user group evidences ability to contribute financially (via on-going revenue, or in-kind assistance, help in securing grants, etc.);
6. The user group or use will require a level of finish and renovation for specified program and activities that is achievable, realistic, and does not compromise historic integrity of the building;
7. The use avoids unnecessary duplication of programming; and
8. The use does not pose unreasonable concern to maintenance, ease of operation, security, or consume all available parking resources.

The Use Committee may request any additional information it deems necessary to evaluate the proposed sublease request. When multiple requests have been received for the same area of the Premises, the proposed use which best meets the criteria listed above shall be selected.

The Use Committee's decision regarding the sublease request shall be final. The Use Committee shall also be charged with the supervision of all "rentable" space in compliance with policy and procedures in the building (refer to Exhibit "A") and shall review and make recommendations regarding any proposed rental fee changes for such areas.

9.5 CITY's Transfer. CITY may sell, assign or otherwise transfer the Premises without the consent of OPERATOR; If CITY should sell or transfer CITY's interest in the Premises, then with not less than one hundred twenty (120) days' notice and effective with the date of the sale or transfer, CITY shall be released and discharged from any and all further obligations and responsibilities under this Agreement (except those already accrued).

CITY shall give OPERATOR not less than one hundred twenty (120) days' notice of CITY's intent to sell, assign, or otherwise transfer the Premises. After such notice, OPERATOR shall have one hundred twenty (120) days within which to exercise its option to terminate this Agreement and to vacate the Premises at the time of sale, assignment, or other transfer (unless otherwise agreed with the buyer, assignor, or other transferee). If OPERATOR fails to exercise such option to terminate hereunder, the terms of this Agreement shall continue to bind OPERATOR and the buyer, assignee, or other transferee.

9.6 Mortgage. OPERATOR shall not, either voluntarily or by operation of law, encumber, pledge, transfer or hypothecate all or any part of the Premises or OPERATOR's rights hereunder.

10. SUBORDINATION, QUIET ENJOYMENT, ATTORNMENT, ESTOPPEL CERTIFICATE.

10.1 Subordination. This Agreement, at CITY's option, shall be subject and subordinate to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvement or either thereof, of which the Premises are a part, or on or against CITY's interest or estate therein, without the necessity of the execution and delivery of any further instruments on the part of OPERATOR to effectuate such subordination; provided, however, that so long as the OPERATOR shall not be in default under the terms of this Agreement, the Agreement shall not be terminated nor shall any of the OPERATOR's rights and obligations under the Agreement be disturbed by such lender in the exercise of its rights under the deed of trust or mortgage. If any mortgagee or beneficiary shall elect to have this Agreement subordinated prior to the lien of its mortgage or deed of trust, and shall give written notice thereof to OPERATOR, this Agreement shall be deemed prior to such mortgage or deed of trust, whether this Agreement is dated prior to or subsequent to the date of the mortgage or deed of trust, or the date of the recording thereof.

OPERATOR covenants and agrees to execute and deliver upon demand without charge therefor, such further instruments evidencing such subordination of this Agreement to the lien of any such mortgages or deeds of trust as may be required by CITY.

10.2 Quiet Enjoyment. CITY agrees that OPERATOR, upon paying any monetary sums due under this Agreement and performing the covenants and conditions of this Agreement and upon recognizing any subsequent purchaser from CITY, may quietly have, hold and enjoy the

Premises during the term hereof; subject, however, to all restrictions and covenants contained or referred to in this Agreement.

10.3 Attornment. In the event of a foreclosure or the exercise of the power of sale under any mortgage or deed of trust made by CITY covering the Premises, OPERATOR shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the CITY under this Agreement.

10.4 Estoppel Certificate. OPERATOR shall, from time to time, upon written request of CITY, execute, acknowledge and deliver to CITY a written statement certifying that this Agreement is unmodified and in full force and effect (or that the same is in full force and effect as modified, listing the instruments of modification), and whether or not to the best of OPERATOR's knowledge, CITY is in default hereunder (and, if so, specifying the nature of the default), it being intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of CITY's interest or a mortgagee of CITY's interest or assignee of any mortgage upon CITY's interest in the Premises. If OPERATOR shall fail to respond within ten (10) days of receipt by OPERATOR of a written request by CITY as herein provided, OPERATOR shall be deemed to have given such certificate as above provided without modification.

11. INDEMNIFICATION AND INSURANCE.

11.1 Mutual Release; Waiver of Subrogation. CITY and OPERATOR hereby each release the other party and anyone claiming through or under the other party by way of subrogation or otherwise from any and all insured loss of or damage to Premises, or OPERATOR's personal property, whether or not caused by the negligence or fault of the other party. In addition, OPERATOR shall cause any property insurance policy carried by it which insures the Premises or the contents thereof to be written to provide that the insurer waives all rights of recovery by way of subrogation against CITY in connection with any loss or damage covered by the policy.

11.2 Mutual Indemnification. Subject to the terms of Section 11.1 above, OPERATOR hereby releases CITY and does covenant and agree to indemnify, defend, protect and hold CITY harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against CITY arising from or in connection with the loss of life, personal injury and/or damage to property occasioned by any negligent or willful act or omission of OPERATOR or its agents, contractors, servants or employees during the Term of the Agreement. Subject to the limits of liability specified in Idaho Code 6-901 through 6-929, known as the Idaho Tort Claims Act, CITY shall indemnify and hold OPERATOR, its agents and assigns, harmless from and/or against any and all claims, damages, and liabilities (including attorney's fees) that may be suffered or incurred and that arise as a direct result of and which are caused by CITY's possession, control, operations or performance under this Agreement. CITY's liability coverage is provided through a self-funded liability program administered by Idaho Counties Risk Management Program (ICRMP). Limits of liability, and this indemnification, are sufficient under the Idaho Tort Claims Act. In addition, OPERATOR covenants and agrees to indemnify, defend, protect and hold CITY harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any

nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against CITY and arising from or in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Premises, unless caused by any negligent or willful act or omission of CITY or its agents, contractors, servants or employees. An indemnified party shall have the right to engage its own attorneys in connection with any of the provisions of this Section 11.2 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such party, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Premises is located.

11.3 Liability Insurance. OPERATOR shall provide and maintain commercial general liability insurance (Occurrence Basis) with broad form coverage endorsement covering its obligations under this Section 11 and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in the state of Idaho, shall name CITY as additional insured on the policy and shall contain a waiver of subrogation endorsement in favor of CITY. The initial limits of liability of all such insurance shall be not less than one million dollars (\$1,000,000) for personal injury or bodily injury or death of any one person, one million dollars (\$1,000,000) for personal injury or bodily injury or death of more than one person in one occurrence and five hundred thousand dollars (\$500,000) with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than two million dollars (\$2,000,000) per occurrence. Furthermore, CITY shall have the right to reasonably adjust the dollar amounts required by this Section 11.3 from time to time in CITY's sole discretion upon thirty (30) days prior written notice to OPERATOR.

11.4 Property Insurance. CITY, at CITY's sole cost and expense, shall purchase and maintain casualty insurance insuring the replacement cost of all improvements, buildings, structures, furniture, fixtures, and equipment located on the Premises in such amounts and in such form as CITY may determine.

11.5 Workers' Compensation Insurance. OPERATOR, at OPERATOR's sole cost and expense, shall carry Workers' Compensation Insurance as required by Idaho law. No "alternative" forms or self-insurance coverage shall be allowed.

11.6 Auto Insurance. OPERATOR, at OPERATOR's sole cost and expense, shall carry Commercial Business Automobile Liability Insurance (Occurrence Basis) with one million dollars (\$1,000,000) combined single limit coverage. Such insurance shall be endorsed with a waiver of subrogation endorsement in favor of CITY and include coverage for hired and non-owned vehicles and owned vehicles if OPERATOR owns a vehicle. Furthermore, CITY shall have the right to reasonably adjust the dollar amounts required by this Section 11.6 from time to time in CITY's sole discretion.

11.7 Insurance Requirements. For all insurance which OPERATOR is required to maintain hereunder, OPERATOR shall furnish CITY with certificates evidencing such insurance. All policies shall be obtained from an insurer licensed to do business in the State of Idaho, with a Best's Rating of "A" or higher and a Financial Size Category of "VIII" or higher, or the equivalent thereof. The policies of insurance shall provide that the insurance represented by the certificates

shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to the holders of the insurance and the holders of the certificates. If OPERATOR shall fail to obtain any policy of insurance required hereunder, CITY may obtain the same and keep the insurance in effect, and OPERATOR shall pay CITY the cost thereof plus a ten percent (10%) service charge to cover CITY's administration costs within ten (10) days after receipt of an invoice. No policy will contain a deductible or self-insured retention in excess of five thousand dollars (\$5,000) without CITY's prior written approval. If requested by CITY, OPERATOR will promptly deliver to CITY a certified copy of any insurance policies required by this Agreement. If the forms of policies, endorsement, certificates, or evidence of insurance required by this Section 11 are superseded or no longer available or the rating service of insurers is no longer available or modified, CITY will have the right to require other equivalent or better forms. Furthermore, CITY shall have the right to adjust the dollar amounts required by this Section 11 from time to time in CITY's sole discretion.

11.8 Noncontribution. All insurance carried by OPERATOR hereunder shall be primary and not contributory with any other insurance which is maintained by CITY.

11.9 Blanket Policy. All insurance which OPERATOR is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Agreement and is endorsed with an Aggregate Limits of Insurance (Per Location) endorsement.

11.10 Effect of One Party's Actions on Other Party's Insurance. Neither party shall do or permit to be done anything which shall invalidate any insurance carried by the other party. Each party shall pay the entire increase in the insurance premium if the increase is specified by the other party's insurer as caused by the actions or omissions of the party.

11.11 Effect of CITY's Insurance on OPERATOR's Obligation. From time to time and without obligation to do so, CITY may purchase insurance against damage or liability arising out of or related to the Premises. The purchase or failure to purchase insurance shall not release or waive the obligations of OPERATOR set forth in this Agreement. OPERATOR waives all claims on insurance purchased by CITY.

12. DAMAGE OR DESTRUCTION OF PREMISES.

If at any time during the Term hereof, the Premises are damaged and such damage is not "substantial" as that term is hereinafter defined, and OPERATOR is not responsible for the repair of such damage pursuant to Section 6.7 hereof, then CITY shall promptly repair such damage at CITY's expense, and this Agreement shall continue in full force and effect. If at any time during the term hereof the Premises are damaged and if such damage is "substantial" as that term is hereinafter defined, then CITY may at its option either (a) repair such damage as soon as reasonably possible at CITY's expense, in which event, this Agreement shall continue in full force and effect, or (b) cancel and terminate this Agreement as of the date of the occurrence of such damage, by giving OPERATOR written notice of its election to do so within sixty (60) days after the date of occurrence of such damage.

If the Premises are destroyed or damaged and CITY repairs or restores them pursuant to the provisions of this section, then OPERATOR shall continue operations in the Premises to the

extent reasonably practicable from the standpoint of prudent business management. OPERATOR shall have no claim against CITY for any damages suffered by OPERATOR by reason of any such damage, destruction, repair or restoration, provided CITY undertakes and accomplishes repairs in a reasonably timely fashion.

In the event the damage to the Premises, requiring new construction or need of repair of the same, is caused by the negligence or willful acts of OPERATOR or OPERATOR's employees and agents, there shall be no duty to repair the same on the part of the CITY and OPERATOR shall be responsible for said repairs.

For the purpose of this section, "substantial" damage to the Premises or the building in which the Premises are located shall be deemed to be damaged, the estimated cost of repair of which exceeds ten percent (10%) of the then estimated replacement cost of the Premises or building, as the case may be. The determination in good faith by CITY of the estimated cost of repair of any damage and/or of the estimated replacement cost of the Premises or building, as the case may be, or any part thereof shall be conclusive for the purpose of this section.

13. CONDEMNATION.

In the event of a condemnation or taking under power of eminent domain, the parties shall have the following rights:

13.1 Entire or Substantial Taking. If the entire Premises, or so much thereof as to make the balance not reasonably adequate for the conduct of OPERATOR's operations, notwithstanding restoration by CITY as herein provided, shall be taken under the power of eminent domain, this Agreement shall automatically terminate as of the date on which the condemning authority takes title or possession, whichever shall first occur.

13.2 Awards. Any award for any taking of all or any part of the Premises under the power of eminent domain shall be the property of CITY, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee. Nothing contained herein, however, shall be deemed to preclude OPERATOR from obtaining, or to give CITY any interest in, any award to OPERATOR for loss of or damage to OPERATOR's fixtures and removable personal property or for damage for cessation or interruption of OPERATOR's business.

13.3 Sale Under Threat of Condemnation. A sale by CITY to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes under this section.

13.4 Partial Taking and OPERATOR's Option. A taking of twenty percent (20%) or more of the leased floor area of the Premises shall confer upon OPERATOR the option, to be exercised only within sixty (60) days after OPERATOR shall have received written notice thereof, to terminate this Agreement effective as of the date of such taking, upon written notice to CITY. Failure of OPERATOR to exercise such option shall constitute OPERATOR's agreement that the balance of the Premises is reasonably adequate for the conduct of OPERATOR's business, and this Agreement shall remain in effect.

14. DEFAULT BY OPERATOR OR CITY.

14.1 Default by OPERATOR. OPERATOR shall be in default under this Agreement if any of the following occur: (i) OPERATOR fails to pay when due any payment(s) required to be paid by OPERATOR pursuant to this Agreement and the failure shall not be cured within ten (10) days after delivery of written notice to OPERATOR of the failure; (ii) OPERATOR fails to perform or observe any other covenant, agreement or condition which OPERATOR is required to perform or observe and the failure shall not be cured within thirty (30) days after delivery of written notice to OPERATOR of the failure (or, if the cure cannot be effected within the thirty (30) day period, then within the additional period of time as may be required to cure the default provided OPERATOR is diligently and continuously pursuing the cure to completion); or (vi) OPERATOR vacates or abandons all or a substantial portion of the Premises (OPERATOR shall be conclusively deemed to have abandoned the Premises if OPERATOR shall be absent from the Premises for ten (10) or more consecutive days). In the event OPERATOR cures a default within the applicable time frame set forth above, no default shall be deemed to have occurred under this Agreement.

14.2 Remedies of CITY. In the event of OPERATOR's default as set forth in Section 14.1, CITY, upon the giving of thirty (30) days' (ten [10] days in the event of a failure to pay money) prior written notice to OPERATOR and OPERATOR's failure to remedy the default within such notice period, shall have the remedies set forth in this Agreement including termination of all payments by CITY to OPERATOR. CITY's remedies are cumulative and not alternative remedies.

14.2.1 Legal and Equitable Remedies. CITY and OPERATOR shall have all remedies available at law or in equity.

14.2.2 Termination of Agreement. In addition to all other rights and remedies available to CITY in law and equity upon OPERATOR's default, CITY may (i) change the locks and lock the doors to the Premises and exclude OPERATOR from the Premises, (ii) enter the Premises and remove all persons and property therefrom without being liable for prosecution or any claim for damages for the removal, (iii) declare the Agreement terminated, (iv) commence litigation for any damages sustained by CITY, (v) continue the Agreement in effect and relet the Premises on such terms and conditions as CITY may deem advisable, and (vi) hold the OPERATOR liable for the reasonable cost of obtaining possession of the Premises, the reasonable cost of reletting the Premises (including broker's commissions), and the reasonable cost of any repairs and alterations necessary to prepare the Premises for reletting, less any money actually received from the reletting, if any.

14.2.3 Advance. In the event of OPERATOR's breach, CITY may remedy the breach for the account and at the expense of OPERATOR. If CITY at any time, by reason of the breach, is compelled to pay, or elects to pay, any money or to do any act which will require the payment of any money, or is compelled to incur any expense, including attorneys' fees, in instituting or prosecuting any action or proceeding to enforce CITY's rights under this Agreement, the money paid by CITY, with interest from the date of payment, shall be deducted from any Fees due pursuant to this Agreement.

14.3 Default by CITY. CITY shall be in default under this Agreement if CITY fails to perform or observe any covenant, agreement or condition which CITY is required to perform or

observe and the failure shall not be cured within thirty (30) days after delivery of written notice to CITY by OPERATOR of the failure (or, if the cure cannot be effected within the thirty (30) day period, then within the additional period of time as may be required to cure the default provided CITY is diligently and continuously pursuing the cure to completion).

14.4 Remedies of OPERATOR. In the event of CITY's default, as set forth in Section 14.3, OPERATOR shall have all rights provided at law or in equity, except OPERATOR expressly waives any right to withhold performance of any of OPERATOR's maintenance, repair or replacement obligations set forth in this Agreement.

15. TERMINATION OF AGREEMENT.

15.1 Events of Termination. This Agreement shall terminate upon the occurrence of one or more of the following events: (i) by mutual written agreement of CITY and OPERATOR; (ii) by CITY pursuant to this Agreement; (iii) by OPERATOR pursuant to this Agreement; (iv) upon lapse of the Term; (v) any time prior to October 1, 2021 upon CITY's receipt of thirty (30) days' prior written notice from OPERATOR; or (vi) by reason of Sections 12 or 13 relating to casualty or condemnation of the Premises.

15.2 Surrender of Possession. Upon termination of this Agreement, OPERATOR will immediately surrender possession of the Premises to CITY. If possession is not immediately surrendered, CITY may, in compliance with the laws of the state in which the Premises are located, re-enter and repossess the Premises and remove all persons or property.

15.3 Holding Over. If OPERATOR fails to deliver actual possession of the Premises to CITY upon termination of this Agreement, CITY shall have all remedies available at law or in equity to a lessor of real property in the State of Idaho, plus one of the following remedies: (i) CITY may recover damages from OPERATOR in an amount equal to all damages sustained by CITY by reason of OPERATOR's failure to deliver actual possession of the Premises to CITY; or (ii) CITY may accept OPERATOR's failure to deliver actual possession of the Premises to CITY as an irrevocable offer to renew this Agreement for a month to month period.

15.4 Condition of Premises upon Termination. OPERATOR, upon termination or abandonment of this Agreement or termination of OPERATOR's right of possession, agrees as follows:

15.4.1 Removal of Property. Except as permitted by this Agreement, OPERATOR shall not remove any alterations, improvements or additions made to the Premises by OPERATOR or others without the prior written consent of CITY, which consent may be withheld for any reason or for no reason. OPERATOR shall immediately remove, in a good and workmanlike manner all personal property of OPERATOR. All damage occasioned by the removal shall be promptly repaired by OPERATOR in a good and workmanlike manner. If OPERATOR fails to remove any property, CITY may (i) accept the title to the property without credit or compensation to OPERATOR, or (ii) remove and store the property, at OPERATOR's expense, in any reasonable manner that CITY may choose.

15.4.2 Restoration of Premises. OPERATOR shall restore the Premises to a broom-clean condition and in the condition existing on the Commencement Date, with the

exception of ordinary wear and tear. If OPERATOR fails to properly restore the Premises, CITY, at OPERATOR's expense, may restore the Premises in any reasonable manner that CITY may choose.

16. CLAIMS AND DISPUTES.

16.1 Rights and Remedies Cumulative. Except as expressly provided in this Agreement, each party's rights and remedies described in this Agreement are cumulative and not alternative remedies.

16.2 Nonwaiver of Remedies. A waiver of any condition stated in this Agreement shall not be implied by any neglect of a party to enforce any remedy available by reason of the failure to observe or perform the condition. A waiver by a party shall not affect any condition other than the one specified in the waiver and any waiver shall waive the specified condition only for the time and in the manner specifically stated in the waiver. The acceptance by CITY of compensation from OPERATOR after termination of the Agreement, after termination of OPERATOR's right of possession, after the occurrence of a default, or after institution of any remedy by CITY shall not alter, diminish, affect or waive the Agreement termination, termination of possession, default or remedy.

16.3 Attorney Fees and Costs. If CITY incurs attorney fees or costs to enforce any term, covenant or condition of this Agreement, including to recover possession of the Premises, OPERATOR shall pay CITY for attorney's fees and costs and, if legal action is taken, such fees shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Likewise, if OPERATOR incurs attorney fees or costs to enforce any term, covenant, or condition of this Agreement, CITY shall pay OPERATOR for attorney's fees and costs, and if legal action is taken, such fees shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should CITY, without fault of CITY, be made a party to any litigation instituted by OPERATOR or by any third party against OPERATOR, or by or against any person holding or using the Premises through or under OPERATOR, or for the foreclosure of any lien for labor or materials furnished to or for OPERATOR, or otherwise arising out of or resulting from any act or omission of OPERATOR, OPERATOR covenants to save and hold CITY harmless from any judgment rendered against CITY and/or the Premises or any part thereof, and all costs and expenses, including attorney's fees, incurred by CITY in or in connection with such litigation.

16.4 Interpretation and Jurisdiction. It is agreed that this AGREEMENT shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah. The invalidity of any portion of this Agreement shall not affect the validity of any other portion of this Agreement. This Agreement constitutes the entire, completely integrated agreement among the parties and supersedes all prior memoranda, correspondence, conversations and negotiations. Whenever the consent of either party is required to an action under this Agreement, consent shall not be unreasonably withheld or delayed.

16.5 Waiver of Jury Trial. CITY and OPERATOR hereby agree that each of them shall waive trial by jury in any action, proceeding or counterclaims brought by either CITY or

OPERATOR against the other. This waiver applies to any matters whatsoever arising out of or in any way connected with this Agreement, or the relationship of CITY and OPERATOR, or OPERATOR's use of the Premises, or any emergency statute, or any remedy authorized by statute.

17. GENERAL PROVISIONS.

17.1 Notices. All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States certified mail, return receipt requested, or by United States express mail or other established express delivery service (such as Federal Express) with signature confirmation required, postage or delivery charge prepaid, addressed to the appropriate party at the address set forth in Section 2 of this Agreement. The person and address to which notices are to be given may be changed at any time by such party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 2 as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

17.2 Brokers. CITY and OPERATOR each represent and warrant that it has neither employed nor associated with any broker or agent in connection with this Agreement and have not agreed to pay any commissions or finders fees to any other broker. CITY and OPERATOR each hereby agrees to indemnify and defend the other against any and all commissions, finders' fees or other fee or any claim therefor by any broker in connection with this Agreement claiming through the indemnifying party.

17.3 Non-recording. This Agreement or any memorandum of this Agreement shall not be recorded unless all parties further consent.

17.4 Time is of the Essence. Time is of the essence with respect to the obligations to be performed under this Agreement.

17.5 Joint and Several Liability. If there is more than one (1) OPERATOR, the obligations imposed by this Agreement upon OPERATOR shall be joint and several.

17.6 Entire Agreement - Modification in Writing - Captions. This Agreement contains the entire agreement of the parties. No representations, promises, or agreements oral or otherwise between the parties not contained in this Agreement shall be of any force and effect. Neither this Agreement nor any provisions hereof may be changed, waived, discharged, or terminated except in writing executed by CITY and OPERATOR. The parties acknowledge that minor changes to this Agreement may be necessary from time to time and hereby agree that such may be proposed in writing to the other party. A response to a proposal for modification shall be given within forty-five (45) days of receipt of the proposed change. The captions for Agreement Sections are for convenience only and shall have no effect upon the construction or interpretation of any part of this Agreement.

17.7 Severability. The illegality, invalidity or unenforceability of any term, condition, or provision of the Agreement shall in no way impair or invalidate any other term, condition, or provision of the Agreement. All such other terms, conditions, and provisions shall remain in full force and effect.

17.8 Force Majeure. Time periods for CITY's performance under this Agreement, including services to be furnished by CITY as provided for in this Agreement, shall be extended for periods of time during which CITY's performance is prevented due to circumstances beyond CITY's control. This would include, without limitation, strikes, embargoes, repairs, alterations, governmental action, acts of God, war, or other strife. CITY shall not be liable for any costs or damages incurred by OPERATOR due to such circumstances. Suspension or interruption of any services provided by CITY shall not be deemed an eviction, or relieve OPERATOR of any obligation under this Agreement.

SIGNATURES.

OPERATOR

Heart of the Arts, Inc.

Stephanie Clarkson, President

Date: _____

CITY

City of Moscow, Idaho

Bill Lambert, Mayor

Date: _____

ATTEST:

Laurie M. Hopkins, City Clerk

Approved as to Form:

Mia Bautista, City Attorney

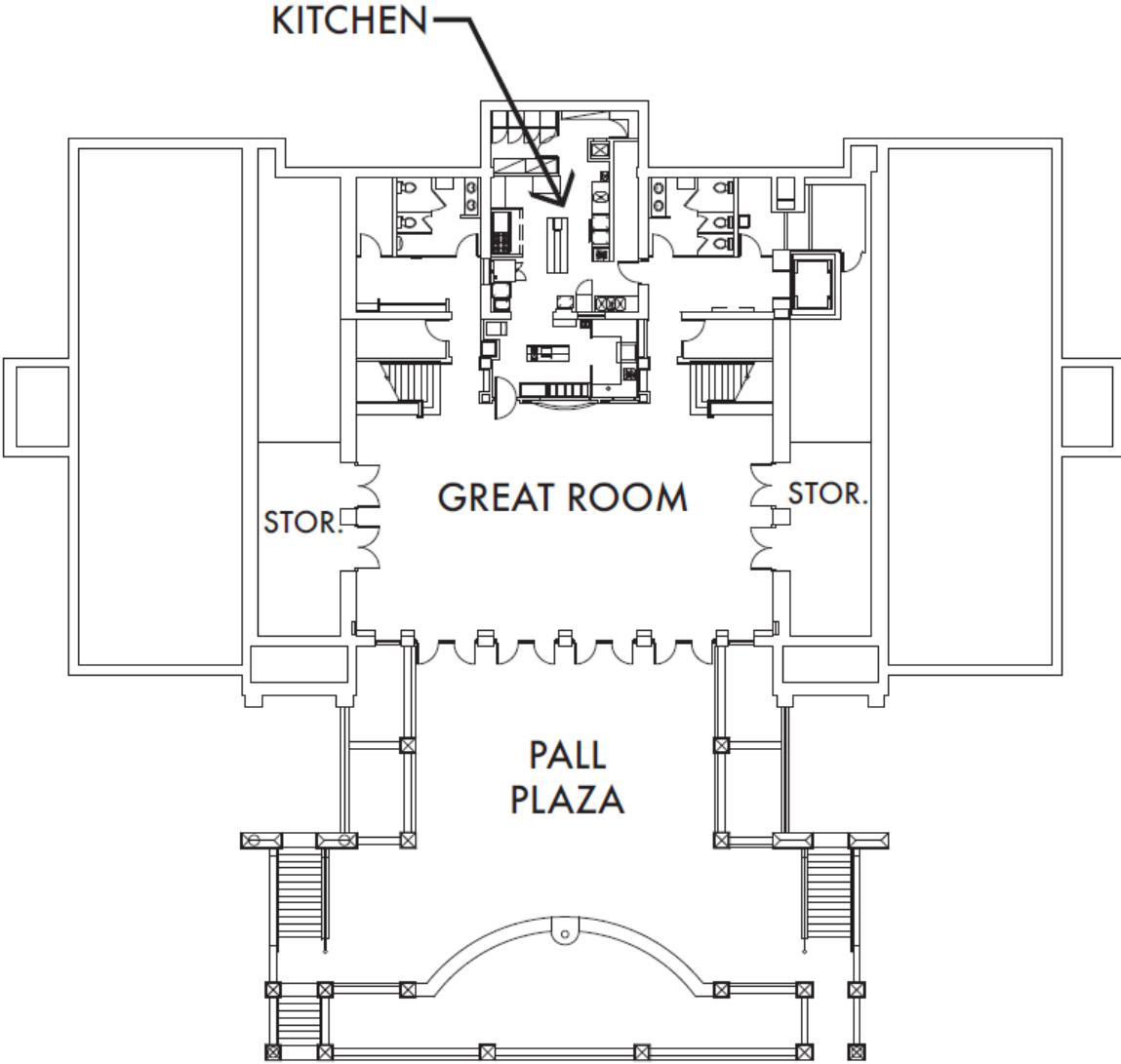
ACKNOWLEDGMENT

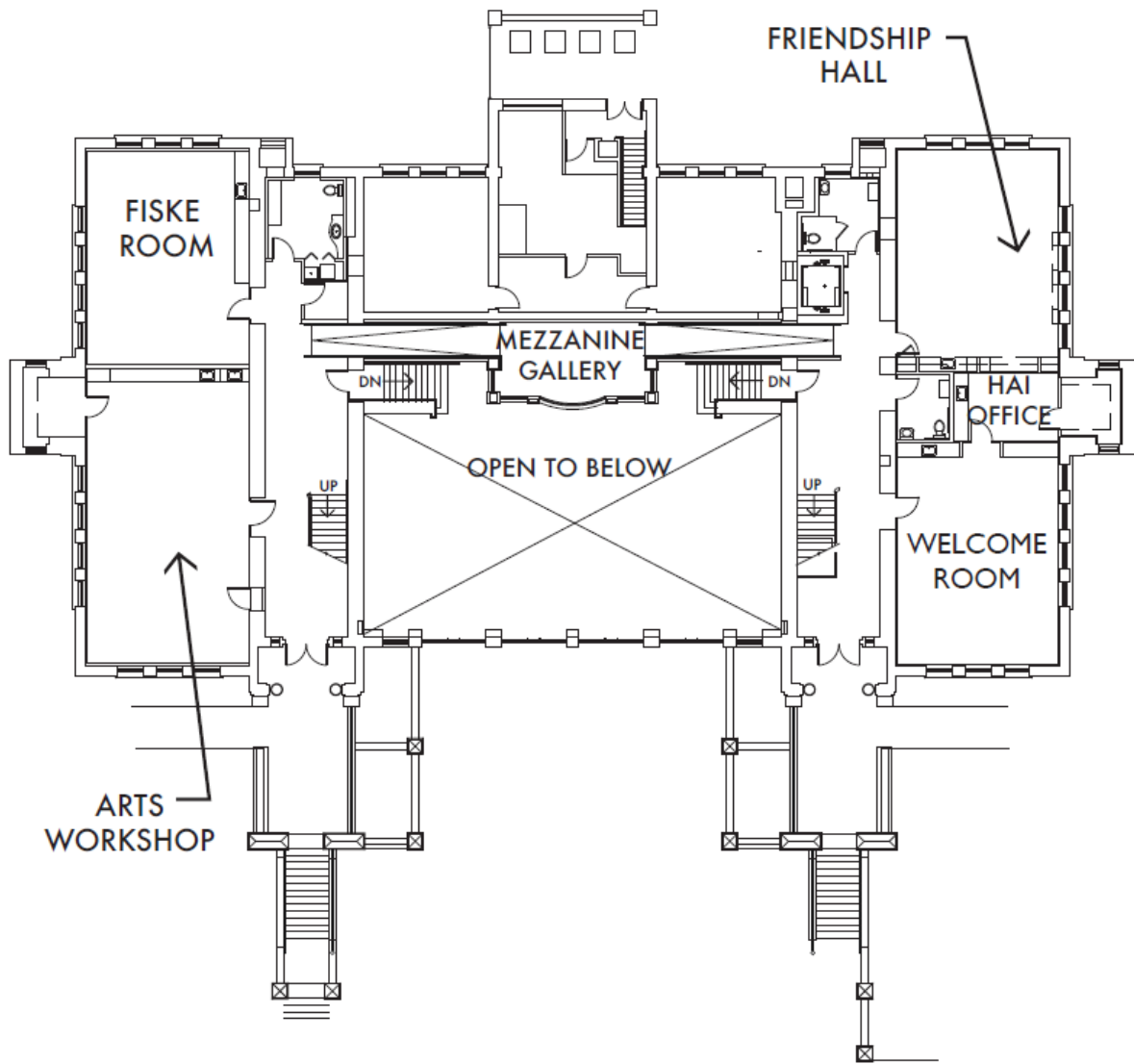
STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2021, before me, a Notary Public in and for said State, appeared Stephanie Clarkson, President, known to me to be the person named above and acknowledged that he/she executed the foregoing document as the duly authorized representative for Heart of the Arts, Inc.

Notary Public for the State of _____
Residing at _____
My commission expires _____

EXHIBIT A





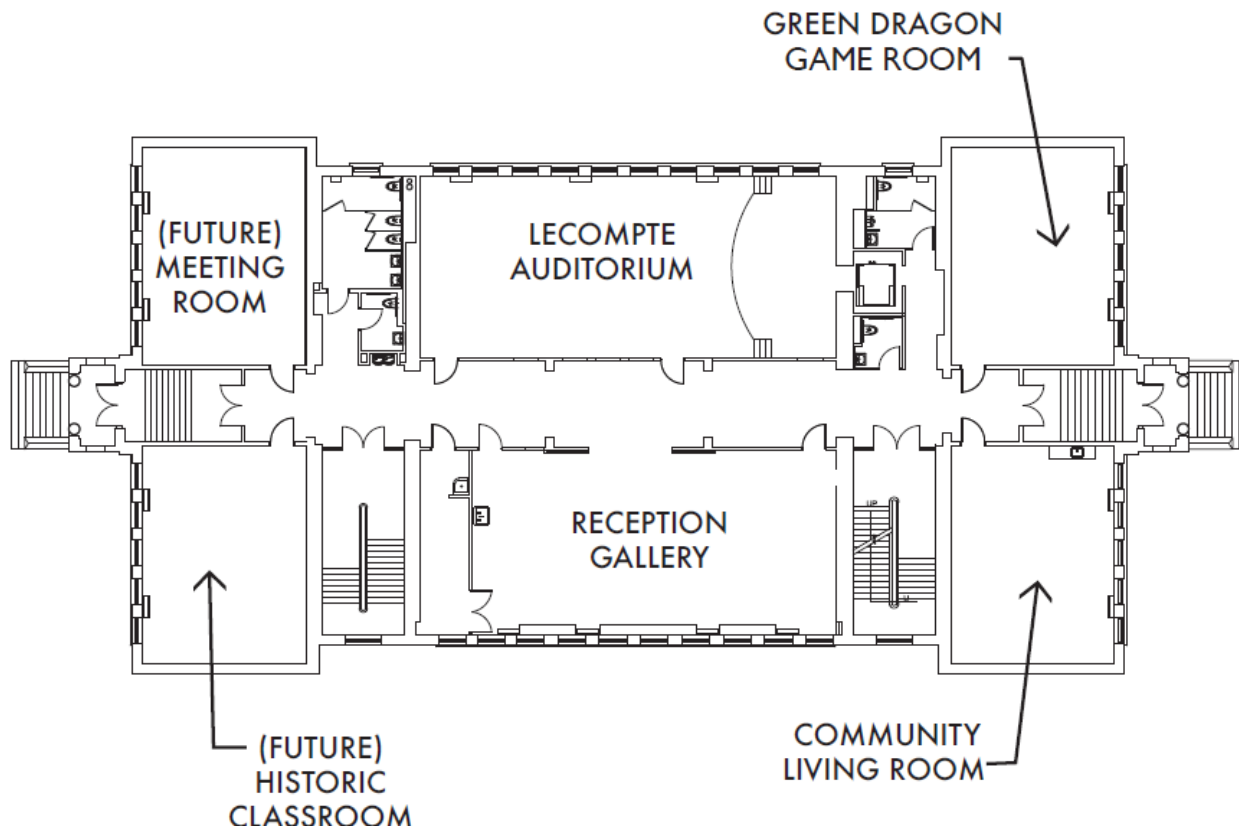


Exhibit A – Aerial View of 1912 Center, Parking Area and Grounds

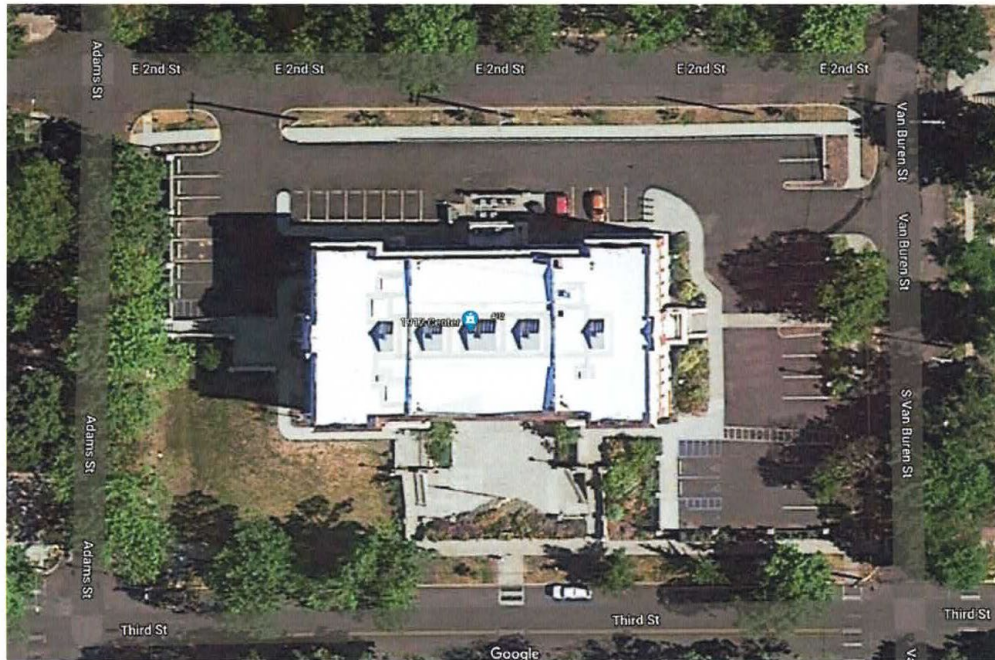


EXHIBIT B

EXISTING LEASES

Friendly Neighbors Senior Citizens, Inc. lease with Heart of the Arts, Inc. (HAI), renewal on an annual basis, for use of areas of the building for Senior Center Activities and Senior Meal Program.