

AGREEMENT FOR CONSTRUCTION AT FREEDOM PARK

This AGREEMENT FOR CONSTRUCTION AND JOINT USE OF A FACILITY AT HERON RIVER (“Agreement”) is made this ____ day of _____, 2023 (“Effective Date”), by and between the City of Star, a municipal corporation organized under the laws of the State of Idaho (“City”) and Heron River Development, LLC (“Heron River”), a limited liability company organized under the laws of the State of Idaho (collectively, “Parties”).

WHEREAS, the Parties are mutually interested in enhancing the Star community’s quality of life by providing and supporting recreational facilities and opportunities for members of the Star community;

WHEREAS, the Parties recognize that through cooperation between public and private parties, publicly-held facilities can be enhanced to meet broader community needs for physical activity and recreation;

WHEREAS, Heron River has proposed to construct Freedom Park facilities with the Heron River Subdivision, in Star, Idaho (“Facilities”), for use by members of the public;

WHEREAS, upon the expiration of this Agreement, and in consideration of past and proposed contributions and commitments of the Parties to maintenance and upkeep of the Facilities, the Parties agree to consider extending the term hereof, if such extension is in the best interest of both Parties and appropriate under the circumstances;

WHEREAS, the Parties’ respective governing bodies find that it is fiscally responsible and in the best interest of the community to enter into an agreement for the construction of the facilities at Freedom Park;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. CONSTRUCTION OF FACILITIES

A. Heron River’s obligations.

1. Construction of Facilities. Heron River shall construct in the Heron River Subdivision the following facilities: Freedom Park, including walkways, landscaping, and irrigation (collectively, the “Facilities”), to be developed generally at the location, and in accordance with the plan, as show in *Exhibit A* hereto. Such construction shall include, but shall not necessarily be limited to, the following:

a. **Specifications.** Heron River shall construct the Facilities in accordance with industry standards for such facilities. Specifically, Heron River’s construction of the Facilities shall include, but shall not be limited to, each and all of the following:

- (1) Western parking lot
- (2) Rock landscape wall along both ponds per plans
- (3) Concrete pathways per plans, to include bollards already purchased by city

- (4) All irrigation facilities to include new irrigation pump station, design build
- (5) Sand for beaches per plans
- (6) Grasses and Trees per plans
- (7) Water fountains in ponds for aeration per plans
- (8) Electrical work as required.
- (9)

2. **Final Completion.** Upon final completion of the Facilities, Heron River shall obtain and deliver to City:
 - a. Waivers of lien from any and all sub-contractors and major materials suppliers;
 - b. Report from an independent testing agency approving the structural soundness of the constructed facilities and installation materials and methods; and
 - c. Written proof of final inspection and approval of the Facilities by the City Engineer.
3. **Primary Source of Contact for Heron River.** Heron River shall provide City the name, e-mail address, and telephone number of specific Heron River personnel (hereinafter “Heron River Construction Contact”) who shall serve as Heron River’s primary contact between City and Heron River for all matters regarding construction of the Facilities.
4. **Costs.** Heron River shall be responsible for the first \$500,000 of the cost of the Facilities. Such costs do not include the value of the land upon which the Facilities are constructed. Heron River shall provide a construction budget prior to commencing any construction on the Facilities. Heron River shall work within City’s budget and work with city on completion of the tasks in an order that is feasible with the City’s budget.

B. City’s obligations.

1. **Temporary construction easement conveyed.** City does hereby give, grant and convey unto Heron River a temporary easement over and across any portion of the City property reasonably necessary to stage and use materials and equipment during the construction of the Facilities, as directed by the City Engineer. Heron River’s right to have and to hold the said easement and right-of-way on the Premises shall be temporary, and shall terminate upon City’s Final Acceptance of the Facilities as set forth in this Agreement. Following City’s Final Acceptance of the Facilities, City shall restore the construction easement area.
2. **Amenities.** City shall install any comfort and convenience amenities at the Facilities, at City’s sole election.
 - a. Shade structures per plans
 - b. Park benches per plans
 - c. Garbage cans per plans
 - d. Signage per plans
 - e. Dockzilla
3. **Primary Source of Contact for City.** City shall provide Heron River the name, e-mail address, and telephone number of specific City personnel (hereinafter “City Construction Contact”) who shall serve as City’s primary contact between City and Heron River for all matters regarding construction of the Facilities.

4. **Final Acceptance.** Following Final Completion, as signified by Heron River's delivery of the enumerated documentation as specified herein, the City shall execute Final Acceptance of the Facilities, which shall be signified by City's adoption of a resolution indicating that the City accepts the delivery of the Facilities as constructed by Heron River and delivered to City.
5. **Costs.** City shall be responsible for all costs in excess of \$500,000. City shall be required to pay its share of the costs upon Final Acceptance of the Facility.

II. GENERAL PROVISIONS.

The following provisions shall be applicable during both Heron River's construction of the Facilities, and Heron River's and City's joint use of the Facilities.

- A. **Notice.** Communication between the Heron River Construction Contact and the City Construction Contact regarding day-to-day matters shall occur during bi-monthly meetings between the Heron River Contact and the City Contact. All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when personally served, or mailed in the United States mail, certified, return receipt requested, addressed as follows:

To City:

City of Star
 Attn: Ryan Morgan, City Engineer
 10769 W State Street
 Star, Idaho 83669

To Heron River:

Heron River Development, LLC
 Attn: R. Craig Groves
 1500 W Bannock
 Boise, Idaho 83702

Any party may change its authorized representative and/or address for the purpose of this paragraph by giving written notice of such change to the other party in the manner herein provided.

- B. **Time of the essence.** The Parties acknowledge and agree that time is of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
- C. **Assignment.** Heron River shall not assign or sublet all or any portion of its respective interests in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of City. This Agreement and each and all of the terms and conditions hereof shall apply to and are binding upon the respective organizations, agents, legal representatives, successors, and assigns of the parties.
- D. **No agency.** Neither Heron River nor its respective employees, agents, lessees, contractors, officials, officers, servants, guests, and/or invitees shall be considered agents of City in any manner or for any purpose whatsoever in their respective construction, use, and/or occupancy of the Facilities.
- E. **Insurance – Heron River.** Heron River shall submit to City proof of an insurance policy issued by an insurance company licensed to do business in Idaho protecting Heron River, and Heron

River's employees, agents, contractors, officials, officers, servants, guests, and/or invitees from all claims for damages to property and bodily injury, including death, which may arise in connection with construction of the Facilities. Such insurance shall name City as an additionally insured party, and shall afford at least one million dollars (\$1,000,000.00) per person bodily injury, one million dollars (\$1,000,000.00) per occurrence bodily injury, and one million dollars (\$1,000,000.00) per occurrence property damage. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City as set forth in this Agreement. If City becomes liable for an amount in excess of the insurance limits herein provided due to the actions or omissions of Heron River or any Heron River employee, agent, contractor, official, officer, servant, guest, and/or invitee, Heron River covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property.

- F. No warranty; use is on as-is basis.** City and Heron River makes no warranty or promise as to the condition, safety, usefulness, or habitability of the Facilities.
- G. Compliance with laws.** In performing the scope of services required hereunder, City and Heron River shall comply with all applicable laws, ordinances, and codes of federal, state, and local governments.
- H. Attorney fees.** Should any litigation be commenced between any or all of the Parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
- I. Term of Agreement.** This Agreement shall become effective as of the Effective Date upon execution by all parties. As to Heron River, except as otherwise set forth herein, this Agreement shall expire upon City's Final Acceptance of the Facilities, unless earlier terminated or extended in the manner as set forth in this Agreement. .
- J. Termination.**
1. **Grounds for termination.** Grounds for termination of this Agreement shall include, but shall not be limited to:
 - a. An act or omission by any party which breaches any term of this Agreement.
 - b. An act of nature or other unforeseeable event which precludes or makes impossible the performance of the terms of this Agreement by any party.
 - c. A change in circumstances that renders the performance by any party a detriment to the public health, safety, or welfare.
 2. **Termination process.** Any party may terminate this Agreement by providing ninety (90) days' advance written notice of intention to terminate. Such written notice shall include a description of the breach or circumstances providing grounds for termination. A thirty (30) day cure period shall commence upon mailing of the notice of intention to terminate. If, upon the expiration of such cure period, cure of the breach or circumstances providing grounds for termination has not occurred, this Agreement may be terminated upon provision of written notice of termination.

- K. Nonappropriation.** The Parties acknowledge that City is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of City's statutory mandate.
- L. Construction and severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
- M. Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part of this Agreement as if the exhibits were set forth in their entirety in this Agreement.
- N. Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by all relevant parties hereto.
- O. Non-waiver.** Failure of any party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after the governing body of either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement.
- P. Applicable law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Idaho and the City of Star.
- Q. Approval required.** This Agreement shall not become effective or binding until approved by the respective governing bodies of Heron River and City.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

Heron River Development, LLC:

BY: _____
 R. Craig Groves

CITY OF STAR:

ATTEST:

BY: _____
 Trevor A. Chadwick
 Mayor

 Jacob Qualls
 City Clerk