

CITY OF GREAT FALLS, MONTANA
A G E N D A R E P O R T

AGENDA # 22
DATE July 17, 2001

ITEM Montana ExpoPark Horse Racing

INITIATED BY John Lawton, City Manager

ACTION REQUESTED Approval of 2001 Interlocal Agreement for Operation of Live Horse Racing & Simulcast Racing

PRESENTED BY Patty Gumenberg, Fairgrounds Director

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RECOMMENDATION:

It is recommended that the City Commission approve the 2001 Interlocal Agreement between City of Great Falls and Cascade County to operate all live horse racing and simulcast racing on the Fairgrounds.

MOTION:

“I move the City Commission approve the 2001 Interlocal Agreement with Cascade County for operation of live horse racing and simulcast racing.”

SYNOPSIS:

The term of the proposed Interlocal Agreement is for the remaining term of the 1988 Interlocal Agreement which expires June 30, 2003. There is no lease fee for use of the facilities. The Interlocal Agreement covers in detail maintenance of facilities, concessions operations, utilities, as well as proof that all insurance, worker’s compensation, City requirements, etc. have been met. The agreement includes the terms that the City Commission outlined to the County in their letter dated February 9, 2001:

1. The City will not relinquish complete control of the backside and frontside grounds and facilities, including the grandstand and the Paddock Club, but would allow the County to use such grounds and facilities (with the exception of the Paddock Club kitchen) at no cost on a limited basis to operate an 11 day live race meet, associated spring training operations, and year-round simulcast operations. We would expect the County to pay for its pro rata share of property insurance and utilities. The City would reserve and retain ultimate management, control, and use of the backside and frontside for Fair and non-fair related events and activities with resulting revenue accruing exclusively to the City of Great Falls.
2. The City will make the needed repairs to the backside; the original cost estimate was \$160,000. This will include but not be limited to the repair of historic barns and demolition of those barns, subject to condemnation of the City Building Official, which have no historical significance and to which the costs of repair exceed the value and needs of the facility. It also includes restoration of the race track surface. The work will be completed through our own crews or through contracting as part of our Fairgrounds maintenance work. (All repairs and improvements were completed by June 15, 2001.)

3. The City Commission will provide financial support to the County in the amount of \$37,000 for year one and \$20,000 for year two for the purpose of running the 11 day live race meet; payable in three equal payments in May, June and July in year one and year two. The year one amount corresponds to the amount of losses reported by the last private sector group to manage racing. The year two amount represents a phase out of City participation and gives the County continued support for a second year to build its program.
4. The City will provide use of the Paddock Club and Beer Bar (with the exception of the Paddock Club kitchen) to conduct simulcast horse racing. The facility could physically support a limited food menu for you to provide if so desired. The facilities will be available to the Fairgrounds for use at all other times.
5. The City will allow the County to retain all concessions revenue from simulcast horse racing and live horse racing. The County would have access to grandstand concession areas for the spring meet. The City will need the facilities Fair Week, but net revenues derived from the two days of horse racing will be paid to the County. (The City has since agreed to allow the County access to the grandstand concession areas the first two days of Fair. The City will operate the concessions in the Beer Bar and pay the County the net revenue.)
6. The County will be responsible for all repairs and maintenance to the backside area after the City completes the above stated improvements.

BACKGROUND:

On October 15, 1996, the City Commission approved the Contract for Lease for privatization of live and simulcast racing with Race Track Management Group. On November 18, 1997, the City Commission approved renewal of the Lease for an additional year. However, RTMG was unsuccessful in obtaining race dates from the Montana Board of Horse Racing and subsequently agreed to terminate the contract and allow Great Falls Racing Association to operate live and simulcast horse racing in Great Falls.

After the completion of the 2000 Live Race Meet, there was no longer a private group interested in running horse racing and the City was reluctant to run racing due to large losses in the past. After negotiations between the City and the County, it was determined that the County would run simulcast and live horse racing through the term of the 1988 Interlocal Agreement which expires June 30, 2003.

2001 INTERLOCAL AGREEMENT

**FOR THE LICENSE OF USE OF A PORTION OF
THE CASCADE COUNTY FAIRGROUNDS TO CONDUCT
LIVE HORSERACING AND SIMULCAST OPERATIONS**

WHEREAS, the Montana Interlocal Cooperation Act (Act), codified at § 7-11-101, MCA, permits local government units to make the most efficient use of their powers by enabling them to cooperate with other local government units on the basis of mutual advantage, and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;

WHEREAS, the Act provides that public agencies may authorize and approve interlocal agreements with other public agencies to perform any administrative service, activity, or undertaking which such public agencies are otherwise authorized by law to perform;

WHEREAS, Cascade County and the City of Great Falls are corporate political subdivisions of the State of Montana, and as such are "public agencies," as defined by § 7-11-103, MCA;

WHEREAS, §§ 7-21-3408, 7-21-3410, 7-16-2101, and 7-5-2101, MCA, authorize Cascade County and the Board of Cascade County Commissioners to acquire, hold, maintain, fund, and operate the Cascade County Fairgrounds, including but not limited to the Four Seasons Arena;

WHEREAS, in 1988, Cascade County and the City of Great Falls entered into an interlocal agreement essentially transferring and assigning the management and operation of the Cascade County Fairgrounds and associated activities to the City of Great Falls for a maximum period of fifteen years, ending no later than July 1, 2003;

WHEREAS, *inter alia*, the 1988 interlocal agreement required the City of Great Falls to continue all then-existing major activities at the fairgrounds, including but not limited to horseracing, and to also maintain, refurbish, and repair all physical improvements upon the fairgrounds;

WHEREAS, Cascade County desires to preserve and conduct horseracing as a major activity at the fairgrounds; and

WHEREAS, the City of Great Falls is inclined to permit Cascade County to use certain portions of the fairgrounds to operate horseracing for the remaining term of the 1988 interlocal agreement pursuant to the terms set forth herein;

WHEREAS, this agreement will not create any separate legal entity and will not result in the acquisition of any jointly owned real or personal property for partition or distribution upon termination; and

NOW, THEREFORE, pursuant to the Montana Interlocal Cooperation Act, and in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, Cascade County and the City of Great Falls hereby agree as follows:

1. Purpose of Agreement.

The purpose of this agreement is to authorize and facilitate Cascade County's limited use of certain portions of the Cascade County Fairgrounds to annually operate a live horseracing season, year-round simulcasting of off-site horseracing, and associated activities, including but not limited to spring training, for the balance of the unexpired term of the 1988 interlocal agreement between Cascade County and the City of Great Falls. The City and County do not desire or intend for this agreement to modify the terms of the 1988 interlocal agreement, except to the extent the terms of this agreement are directly contrary to the terms of the 1988 agreement in which case the terms of this agreement shall prevail.

2. Definition of Horseracing Grounds and Facilities.

For purposes of this agreement, the area of the Cascade County Fairgrounds depicted on the attached **Exhibit A** (map of Cascade County Fairgrounds, a/k/a Montana ExpoPark) highlighted in yellow and bounded by a broken line of demarcation, shall constitute and be referred to as the Horseracing Area of the fairgrounds. The Horseracing Area approximately constitutes the northeast one-third (1/3) of the fairgrounds and includes, but is not limited to the racetrack area, grandstand facility, Paddock Club/Beer Bar facilities, horse stalls, jockeys' room facility, barns, and offices.

However, notwithstanding any other provision of this agreement, the Horseracing Area shall not include the Paddock Club kitchen area or the current location and premises of the *Great Falls Americans* hockey club operations and facilities. Notwithstanding any other provision of this agreement, the County shall have no right to use the Paddock Club kitchen area, absent the special discretionary permission of the City of Great Falls which the City may withhold in its unfettered discretion.

3. Authorized County Use of Horseracing Area.

Cascade County may not use the Horseracing Area for any purpose or under any terms and conditions except for the purposes and under the terms and conditions expressly set forth in this agreement. Subject to the terms and conditions set forth herein,

the City of Great Falls hereby licenses Cascade County to use, at no cost, all facilities and grounds located in the Horseracing Area. The County may use the Horseracing Area for the following purposes and no other:

- (A) to conduct a live horseracing meet and ancillary activities annually, commencing April 1st and terminating on the last date of the live race meet for each year as authorized herein. For calendar year 2001, the live horseracing dates shall be June 23rd, June 24th, June 30th, July 1st, July 4th, July 7th, July 8th, July 14th, July 15th, July 28th, and July 29th, as provided by the certain *Final Order In Re Race Dates* of the Montana Board of Horseracing, dated January 18, 2001.

If Cascade County elects to continue live horseracing after the 2001 season, the City of Great Falls hereby authorizes the County to conduct live racing on the following dates in 2002 and 2003, unless otherwise provided by written agreement:

	<u>2002 Season</u>	<u>2003 Season</u>
(1)	June 15 th	June 21 st
(2)	June 16 th	June 22 nd
(3)	June 22 nd	June 28 th
(4)	June 23 rd	June 29 th
(5)	July 6 th	July 4 th
(6)	July 7 th	July 5 th
(7)	July 13 th	July 6 th
(8)	July 14 th	July 12 th
(9)	July 27 th	July 13 th
(10)	July 28 th	July 26 th
(11)		July 27 th

However, the County may, if different than the above-authorized dates for the last weekend in July (July 28-29, 2002, and July 26-27, 2003), schedule and conduct live racing on the first weekend (Saturday and Sunday) of the 2002 and 2003 *State Fair* (Cascade County Fair). The City of Great Falls shall also not unreasonably withhold consent to alter other authorized dates for 2002 and 2003, upon request of Cascade County, provided that the City shall have no obligation to consent to any requested revision that would: (1) result in more than eleven (11) total race dates per season; (2) authorize live racing on additional or different dates during the 2002 and 2003 fairs; or (3) conflict with previously scheduled City events.

Additionally, Cascade County shall, at its option, be entitled to conduct live racing on one (1) additional date during the summer of 2002 to supplement the ten (10) dates specified herein. The additional date shall be determined by subsequent mutual agreement of the parties. The City of Great Falls shall not unreasonably

withhold consent to the date requested by the County, but shall have no obligation to consent to any additional date during the 2002 fair or to any date that conflicts with a previously scheduled and incompatible City use of the Horseracing Area;

- (B) to conduct horse training, stabling, and ancillary activities annually, commencing on April 1st and terminating no later than three (3) days following the last day of the live racing meet in each season. The County may not use the Horseracing Area for horse training operations and associated activities prior to April 1st. However, notwithstanding any other provision of this agreement, the County may not use or permit the use of the racetrack for horse training at anytime after the last day of the live racing authorized for each year. The County may continue to use the backside of the Horseracing Area for stabling and ancillary activities no later than the third (3rd) day following the last day of the live racing meet in each season; and
- (C) to provide and conduct year-round simulcasting of off-site horseracing, betting, and ancillary activities in the Paddock Club and Beer Bar facilities.

Cascade County may use the grandstand concession areas for live racing events, including but not limited to the two (2) days of live racing during the *State Fair* (Cascade County Fair). However, during the two (2) days of live racing during the fair, County shall not conduct, resume, or continue concessions operations in the grandstand concessions areas before 11:00 a.m. daily, or after one (1) hour after the end of the last live race of the day. The City of Great Falls retains the right to use the grandstand concession area at all other times during fair week.

Except as otherwise provided herein, Cascade County may use the Paddock Club and Beer Bar facilities to conduct and facilitate authorized simulcast operations, live horseracing operations, and associated activities throughout the term of this agreement including but not limited to the two (2) days of fair week during authorized live racing events. However, during the two (2) days of live racing during the fair, the City of Great Falls shall conduct concessions operations in the Paddock Club and Beer Bar facilities on behalf of the County, subject to the County's right to net revenue and as provided by the terms and conditions set forth in this agreement.

During fair week, the County may use the Paddock Club and Beer Bar facilities to conduct simulcasting on the two (2) authorized days of live racing from 11:00 a.m. until one (1) hour after the last live race each day. During fair week, the County may not use the Paddock Club or Beer Bar to conduct simulcasting on dates or times other than on the dates and times provided herein for the two (2) authorized days of live racing during fair week.

The City of Great Falls retains the right to use the Paddock Club and Beer Bar at all times during fair week, except for during the two (2) live racing events that occur during fair week. The City also retains the right to use the Paddock Club and Beer Bar at other times throughout the year that do not conflict with the County's simulcast operations and live racing events.

The City and the County shall coordinate their respective fair week operations to accommodate and provide each other concurrent access to the Paddock Club and Beer Bar facilities as necessary or desirable to prepare, set-up, and transition those facilities for their respective City and County uses and operations during fair week. The City and the County shall not unreasonably interfere with or impair the other's access and use of the Paddock Club and Beer Bar facilities during or in preparation for fair week and shall permit each other all necessary or desirable access to such facilities for fair week preparation, set-up, and transition. During fair week, the City may access and use the Paddock Club and Beer Bar facilities to provide meals and concessions prior to and after the County's live horseracing events.

Pursuant to the terms of this agreement and that certain correspondence dated April 3, 2001, from the Cascade County Attorney to the Liquor License Bureau of the Montana Department of Revenue, the City of Great Falls shall permit Cascade County, at no additional cost or fee, to sell beer and wine at live and simulcast horseracing events in the grandstand and Paddock Club/Beer Bar facilities as City-catered, County operated events under State of Montana Beer/Wine License and Catering Endorsement No. 02-401-0902-302.

Cascade County may place, erect, or install signs in, on, or about the Horseracing Area as necessary or desirable to mark, notice, or advertise the location and occurrence of authorized County live horseracing and simulcast operations. However, the County may not place, erect, or install signs in areas or by content that impair, interfere with, are inconsistent with, or mislead or confuse the public about the City's use, management, or control of the fairgrounds, including the Horseracing Area, for non-horseracing related events under the underlying 1988 interlocal agreement.

Prior to placing, erecting, or installing signs in, on, or about the Horseracing Area, the County shall give the City written notice of the proposed design, content, and location of proposed signage and the City shall remit written notice of approval or disapproval within three (3) business days. Time is of the essence. Any failure by the City to timely remit written notice of approval/disapproval shall be deemed as the City's approval of the proposed signage and location. The scope of the City's signage review shall be exclusively limited to whether the proposed design, content, or location impairs, interferes with, is inconsistent with, or misleads or confuses the public about the City's use, management, or control of the fairgrounds,

including the Horseracing Area, under the underlying 1988 interlocal agreement. However, notwithstanding any other provision of this agreement, the City may not disapprove proposed signage merely on the basis of content if the County agrees to display the signage only during authorized live racing and simulcast events.

Following each and every live horseracing and simulcast event, the County shall immediately sweep and clean the affected frontside areas of the Horseracing Area, including but not limited to the grandstand, Paddock Club, Beer Bar, and associated restrooms and areas, to a reasonably clean condition to accommodate the next public event or session of a public event to be conducted by the City or the County. Time is of the essence.

Following each and every event conducted or permitted by the City in or about the Horseracing Area, the City shall immediately sweep and clean the affected areas of the Horseracing Area, including but not limited to the grandstand, Paddock Club, Beer Bar, and associated restrooms and areas, to a reasonably clean condition to accommodate the next public event or session of a public event to be conducted by the City or the County. Time is of the essence.

The City of Great Falls shall, at all times, provide full, free, and unrestricted access, into and across the fairgrounds, to any and all authorized officers, employees, agents, contractors, horsemen, and patrons of Cascade County as necessary for such persons or entities to access, use, and service the Horseracing Area, as deemed necessary or proper by the Board of County Commissioners, in relation to any use of the Horseracing Area authorized under this agreement. Further, except as expressly provided herein, the City shall have no right to manage, control, disrupt, or interfere with the ingress and egress of patrons of County live horseracing, training, stabling, and simulcasting operations under conditions determined by the County. However, except for the limited purpose of ingress and egress to the Horseracing Area in relation to authorized County activities, the City shall have no obligation to allow County officers, employees, agents, contractors, horsemen, or patrons free access to non-Horseracing Areas of the fairgrounds during the *State Fair* (Cascade County Fair) at times when the fair is open for business to the public.

At all times, except for during fair week, Cascade County shall have the right to allow, under conditions determined by the County, live horseracing and simulcast patrons to park vehicles in all fairgrounds parking areas (midway and designated parking areas) while attending authorized live racing, simulcast, and associated activities conducted by the County at the fairgrounds. The County shall have no right to use fairgrounds parking areas for County patrons during fair week, except as generally provided by the City to all fair patrons during the fair.

4. Reservation Of City Rights.

Except as otherwise provided herein, the City of Great Falls shall retain and hereby reserves the right to manage, control, and use, as provided under the 1988 interlocal agreement, the Horseracing Area for any and all non-horseracing events and activities, including but not limited to *State Fair* (annual Cascade County fair) events and activities, and other non-fair related events and activities conducted by the City of Great Falls under the 1988 agreement. However, the City of Great Falls shall have no authority to manage, control, cancel, schedule, re-schedule, postpone, displace, disrupt, or otherwise interfere with Cascade County's use of the Horseracing Area as authorized under this agreement or the County's administration and operation of activities and events authorized under this agreement. For purposes of this agreement, any reference to "authorized activities or events" means activities or events conducted by the County under the authority of this agreement.

Cascade County shall have no authority to manage, control, cancel, schedule, re-schedule, postpone, displace, disrupt, or otherwise interfere with *State Fair* (annual Cascade County fair) events and activities and other non-fair related events and activities authorized or conducted by the City of Great Falls in its discretion under the 1988 agreement and which do not conflict with County activities authorized under this agreement.

5. Revenue Allocation.

Cascade County shall retain and be entitled to any and all revenues resulting from or generated by the County's management and operation of live horseracing, simulcasting, horse training, and ancillary activities, including but not limited to stable fees, gate admissions to the Horseracing Area, and concessions and beer sales. Additionally, Cascade County shall be entitled to 100% of the net profit derived by the City of Great Falls from concessions and beer sales conducted by the City on behalf of the County in the Paddock Club/Beer Bar facilities from 11:00 a.m. until one (1) hour after the last live horserace on the two (2) days of live racing during fair week.

For purposes of this agreement, net profit shall be exclusively and narrowly defined as gross sales less the direct cost of concession products (food, beverages, and concession supplies) and the direct cost of concession labor. The City of Great Falls shall generate and maintain detailed revenue and expense records and statements to account for net profit. These records shall include but shall not be limited to gross receipt tapes/records, product expense invoices, and labor time sheets and rates.

The County shall have the right, at its sole discretion, to audit and monitor the City's operation and accounting of concessions in the Paddock Club/Beer Bar facilities as they relate to horseracing-related concessions revenue to which the

County is entitled under this agreement. No later than five (5) business days following the last day of the fair, the City shall pay over to the County the net profit from fair week horseracing concessions due under this agreement, together with a detailed income and expense statement accounting for the City's calculation of net profit.

Pursuant to the terms and conditions set forth in the 1988 interlocal agreement, the City of Great Falls shall retain and continue to be entitled to all revenues resulting from or generated by the City's management, operation, or license of any and all non-horseracing events and activities, including but not limited to *State Fair* (annual Cascade County fair) events and activities, and other non-fair related events and activities, authorized or conducted by the City of Great Falls under the 1988 agreement.

6. Repair and Maintenance Of Horseracing Area.

On or before June 1, 2001, the City of Great Falls shall make and complete the following specified repairs of and to the Horseracing Area and equipment at no cost to Cascade County:

- (A) re-install and repair any and all inside racetrack rails that are currently not installed;
- (B) repair and replace any and all damaged or decrepit portions and features of those certain barns and stalls known as barns A, B, C, D, E, F, J, K, L, and M (Rodeo Barn);
- (C) prepare and paint those certain barns, stalls, and structures known as barns A, B, C, D, E, F, J, K, L, M (Rodeo Barn), Test barn, and the backside shower house and restrooms;
- (D) repair to functional use any and all electrical service located on the backside of the Horseracing Area, *i.e.*, that portion of the Horseracing Area north of the grandstand;
- (E) repair to functional use any and all non-functioning plumbing service located on the backside of the Horseracing Area, *i.e.*, that portion of the Horseracing Area north of the grandstand, and all non-functioning plumbing service located in or servicing the grandstand;
- (F) repair the lower deck area of the grandstand (to be completed no later than June 15, 2001);
- (G) replace teeth on one (1) shaker harrow;
- (H) replace teeth on one (1) drag harrow; and

(I) repaint and install new carpet in the Paddock Club.

The City shall perform all specified repairs in a timely and good workmanlike manner, in accordance with prevailing construction standards and customs, and in accordance with applicable building codes of the City of Great Falls. Time is of the essence.

The City of Great Falls shall accomplish the specified repairs by providing all necessary materials and through the use of City labor, equipment, and resources. Alternatively, the City may contract for the specified repairs with qualified independent contractors.

The City of Great Falls will continue to have concurrent access and use of the Horseracing Area until June 15, 2001, for the purpose of effecting the repair and upgrade specified in this section of the agreement. The County may commence horse training and stabling activities in the Horseracing Area on or after April 1, 2001, but shall accommodate and work around the City repair and upgrade work which shall have priority. The City shall not unreasonably impair, obstruct, or delay County horse training and stabling operations during the pendency of the repair and upgrade work.

Upon completion of the above-referenced repairs by the City of Great Falls, Cascade County shall be responsible for all further repairs and maintenance to the backside area, *i.e.*, the Horseracing Area minus the grandstand, Beer Bar, and Paddock Club facilities and areas. The County shall also be responsible for maintaining and repairing the grandstand, Beer Bar, and Paddock Club facilities and areas as necessary to repair damage and conditions resulting from the County's use of those facilities and areas. Except as otherwise provided herein, the County shall also be responsible for all cleaning and janitorial needs and services necessary to maintain the Horseracing Area in a reasonably clean condition during periods of authorized use.

Annually, upon completion of each live horseracing season each year, the County shall paint and repair the barns and structures referenced in this section of the agreement as necessary to restore them to or maintain them in a reasonably damage-free, painted, and clean condition following each season. The County shall annually complete this end of season work no later than the 15th day of October following the last day of live racing in each calendar year. Accordingly, the County shall continue to have concurrent access and use of the Horseracing Area until October 15th of each year for the purpose of effecting the annual season ending repair and maintenance to the referenced Horseracing Area barns and structures. The City may use the Horseracing Area for other purposes during this period (between the last day of live racing and October 15th), but shall accommodate and work around the County repair and maintenance work which shall have priority. The County shall not unreasonably impair, obstruct, or delay City events and uses of the Horseracing Area during this period.

Notwithstanding any other provision of this agreement, following each and every instance upon which the City conducts non-horseracing related events (whether fair related or non-fair related) in or about the Horseracing Area, the City of Great Falls shall be exclusively responsible to immediately clean, repair, and restore all affected or impacted Horseracing Area facilities, equipment, and areas to their prior condition and functionality. Time is of the essence. The purpose of this provision is to ensure and preserve the aesthetics and functionality of the Horseracing Area for authorized horseracing-related activities and to prevent the County from suffering delay and incurring costs necessary to restore or prepare the Horseracing Area for authorized County use following the occurrence of non-horseracing events conducted or authorized by the City of Great Falls.

7. Liability And Insurance.

Cascade County shall hereby and hereafter hold the City of Great Falls harmless from and against any and all manner and form of liability, damages, claims of damages, demands, causes of action, or expenses of any nature or description claimed or asserted by third parties as a result of or arising from the County's wrongful acts, errors, or omissions in the management, operation, or control of the Horseracing Area and/or horseracing activities and events pursuant to this agreement. Cascade County shall carry, maintain, and upon request provide proof of liability insurance covering any and all omissions, acts, incidents, and activities conducted by, resulting from, or occurring incident to the County's management, operation, and control of the Horseracing Area and/or horseracing activities and events pursuant to this agreement.

The County may satisfy the liability insurance requirement of this section through its existing liability insurance coverage provided by MACO/JPIA or an extension of its existing insurance coverage, if necessary. However, the Cascade County shall have no obligation to pay or compensate the City of Great Falls for any additional insurance coverage that the City may elect to obtain for its benefit as a result of this agreement.

The City of Great Falls shall continue to be exclusively responsible for any and all manner and form of liability, damages, claims of damages, demands, causes of action, or expenses of any nature or description claimed or asserted by third parties arising or resulting from the City's management or control of the fairgrounds and not resulting or arising from the County's wrongful acts, errors, or omissions in the management, operation, or control of the Horseracing Area and/or horseracing activities and events under this agreement. Accordingly, the City of Great Falls shall hereby and hereafter hold Cascade County harmless from and against any and all manner and form of liability, damages, claims of damages, demands, causes of action, or expenses of any nature or description claimed or asserted by third parties resulting or arising from the City's management or

control of the fairgrounds and not resulting from the County's wrongful acts, errors, or omissions in the management, operation, or control of the Horseracing Area and/or horseracing activities and events under this agreement.

For each calendar year during the term of this agreement, Cascade County shall be responsible for one-third (1/3) of the City's annual property loss insurance premium on structures located in the Horseracing Area, except for the Paddock Club/Beer Bar facility. The County shall annually make this payment directly to the City's property loss insurance carrier, upon receipt from the City's carrier of an invoice for such payment and a description or break-down of the invoiced cost.

For each calendar year during the term of this agreement, Cascade County shall be responsible for 100% of the City's annual property loss insurance premium on the Paddock Club/Beer Bar facility. The County shall annually make this payment directly to the City's property loss insurance carrier, upon receipt from the City's carrier of an invoice for such payment and a description or break-down of the invoiced cost.

8. Utilities.

Cascade County shall be responsible for its pro rata share of the costs of natural gas, city water service, electricity, solid waste collection service as provided in this section and incurred as a direct result of the County's authorized use of the Horseracing Area during the term of this agreement. The City of Great Falls shall continue to be exclusively responsible for all other utility costs at the fairgrounds, including but not limited to Horseracing Area utility costs that are not related to the County's use of the Horseracing Area.

(A) City Water Service Costs.

For calendar year 2001, the County shall reimburse the City the flat rate, lump sum total of \$3,690.00 as the County's share of fairgrounds water usage costs. The City and the County shall determine the County's share of fairgrounds water usage costs for each subsequent calendar year during the term of this agreement by written addendum to this agreement. As satisfaction of this obligation, the City shall offset this amount (\$3,690.00) from the amount payable to the County for 2001 under § 9 of this agreement.

(B) Electricity Service Costs.

Cascade County shall pay the City of Great Falls the total lump sum, flat rate of \$22,500.00 as the County's share of fairgrounds electricity costs for the 2001 horseracing season (April 1, 2001, through December 31, 2001). As satisfaction of this obligation, the City shall offset this amount (\$22,500.00)

from the amount payable to the County for 2001 under § 9 of this agreement.

After October 1, 2001, the City of Great Falls, upon receipt of written notice from Cascade County that it will conduct live horseracing in 2002, shall, no later than 45 days after receipt of the notice, install three (3) read-only electrical meters as necessary to meter electrical usage in the following areas of the Horseracing Area and no other:

- (1) Paddock Club/Beer Bar facility (low voltage service/meter);
- (2) grandstand facility (low voltage service/meter); and
- (3) backside barns and facilities (high voltage service/meter).

If the installation of the referenced meters will result in any disruption of electrical service to the Paddock Club/Beer Bar facility, then the City shall schedule and conduct the installation on a date approved in advance by the County.

The County shall reimburse the City for one-half (1/2) of the actual invoiced cost of materials and labor necessary to install the referenced electrical meters (not including the referenced switch installation/repairs), provided however that the County's obligation shall not in any event exceed the total sum of \$5,000.00. Upon completion of all of the specified electrical work, the County shall remit to the City the specified electrical work reimbursement upon receipt of an invoice detailing all project labor and materials.

Beginning January 1, 2001, and upon receipt of a monthly or quarterly invoice from the City, the County shall thereafter reimburse the City for the actual cost to the City of any and all electricity used by the County for or incident to County horseracing operations at the Paddock Club/Beer Bar (year-round during the term of this contract) and the balance of the Horseracing Area (April 1st through August 15th during the term of this contract), as determined by actual meter readings. The City's Expo Park Manager and the County's Horseracing Manager shall consult and cooperate with each other to determine a mutually acceptable meter reading procedure to distinguish between City and County electrical usage in the Horseracing Area during the term of this agreement and to cooperatively resolve any and all electricity metering and invoicing issues arising under this agreement.

Notwithstanding any other provisions of this agreement, the City shall, as soon as reasonably possible, install the (600 amp) disconnect switch and any other equipment necessary to correct the switching anomaly referenced in that certain memorandum, dated May 1, 2001, from the City Public Works Department Support Services Supervisor (Hugh Wilkins) to Montana Expo Park Manager (Patty Gumenberg). Time is of the essence.

(C) Natural Gas Service Costs.

For calendar year 2001, commencing April 1, 2001, the County shall reimburse the City for natural gas at 100% of the actual monthly metered cost of natural gas consumed at the Paddock Club facility, provided however that the amount due to the City shall be pro rated and reduced each month to adjust for the gas consumption by the City of Great Falls incident to City operated or sponsored events in the Paddock Club, including but not limited to the City's fair week activities. The City Fair Manager and the County Horseracing Program Manager shall be responsible to make appropriate gas meter readings to distinguish between City and County consumption at the Paddock Club. The City shall invoice the County monthly for the monthly amount due for natural gas under this agreement and shall provide with each invoice a copy of the gas utility's monthly bill and a statement of the City-County pro-ration, if any.

If it is necessary for the City to install a gas meter at the Paddock Club/Beer Bar facility, the City shall: (1) install the meter as soon as reasonably possible but no later than July 22, 2001. If the installation of the referenced meters will result in any disruption of electrical service, then the City shall schedule and conduct the installation on a date approved in advance by the County.

If it is necessary for the City to install a gas meter at the Paddock Club/Beer Bar facility, then for the period between April 1, 2001, and the date of installation of the gas meter, the County shall reimburse the City for the estimated metered cost of natural gas used by the County for or incident to County horseracing operations at the Paddock Club/Beer Bar during that period. Notwithstanding any other provisions of this agreement, after the installation of the gas meter, the County shall reimburse the City only for the actual metered cost to the City of gas used by the County, as otherwise provided by this agreement.

For purposes of this agreement, the estimated metered cost of natural gas used by the County for the period of April 1, 2001, until the date of installation of a gas meter, shall be determined by averaging (after installation of the meter) the actual daily County gas usage for five (5) days (Monday, Tuesday, Wednesday, Thursday, and Friday) in a typical week during the County's use of the Horseracing Area, as agreed by the City and County, and applying that daily average to each and every day in the estimation period and upon which the City did not use the Paddock Club/Beer Bar facility.

After the installation of the natural gas meter, the City may invoice the County for reimbursement for the estimated prior gas usage as provided in this agreement. However, the City may not in advance withhold or offset payment of other monies due to the County under this agreement.

(D) Garbage/Solid Waste Collection And Disposal Costs.

The County shall be exclusively responsible for all costs of garbage/solid waste collection and disposal costs associated with or resulting from the County's operation and management of the Horseracing Area under this agreement. The City shall have no obligation under this agreement to provide garbage/solid waste collection or disposal services to the County. The County may independently contract with the City or a private contractor, or make other arrangement, for its garbage/solid waste collection and disposal needs.

9. City Financial Contribution.

For the 2001 live horseracing season, the City of Great Falls shall make a cash contribution to Cascade County in the total amount of Thirty-Seven Thousand (** \$37,000.00 **) U.S. Dollars payable in full on or before June 29, 2001.

For the 2002 live horseracing season, the City of Great Falls shall make a cash contribution to Cascade County in the total amount of Twenty-Thousand (** \$20,000.00 **) U.S. Dollars, in three (3) installments payable as follows:

- (A) \$6,666.66 due no later than May 1, 2002;
- (B) \$6,666.66 due no later than June 1, 2002; and
- (C) \$6,666.68 due no later than July 1, 2002.

The County may and shall use these funds exclusively to offset the costs of management and operation of live horseracing for the specified live horseracing seasons. However, if, for any reason other than inclement weather, the County fails or declines to operate, or prematurely cancels, a live-horseracing season for the 2001 or 2002 seasons, then the City shall have no obligation to make further payment of the balance of any then-unpaid installments for the subject horseracing season. However, if the County cancels sixty percent (60%) or more of the live racing events authorized by the Montana Board of Horseracing for a particular year for any reason other than inclement weather or natural or public disaster or calamity, then the County shall refund to the City the total of all prior payments made by City to County under this section for that particular year.

10. Term/Duration of Agreement.

This agreement shall be immediately effective upon its execution by the duly authorized representatives of Cascade County and the City of Great Falls. Unless otherwise expressly provided by written agreement of the parties, this agreement shall terminate on July 1, 2003. However, Cascade County may terminate this agreement at any time upon thirty (30) days notice

if the County elects to discontinue authorized horseracing operations. If the County fails or declines to conduct a live horseracing season for any year, then this agreement shall immediately terminate, effective the 1st day of May following the last live horseracing event conducted in the previous year.

11. Amendment.

Except as otherwise expressly provided herein, this interlocal agreement may not be amended except by a written agreement of the undersigned parties, in conformance with the requirements of the Montana Interlocal Cooperation Act, codified at Title 7, Chapter 11, Part 1, Mont. Code Ann. (1999).

12. Merger.

This instrument constitutes the complete and integrated agreement of the parties regarding with the matters addressed herein. This agreement supersedes any and all prior and collateral agreements, representations, and communications, whether written or verbal, between the parties regarding the matters addressed herein. However, notwithstanding any other provision of this agreement, this agreement does not and shall not be construed to alter or modify the terms of the underlying 1988 interlocal agreement, except to the extent that the terms of this agreement are directly contrary to the 1988 agreement in which case the terms of this agreement shall prevail.

13. Construction.

In the event of any ambiguity or imprecision in regard to the construction of the provisions of this agreement, such ambiguity or imprecision shall not, as a matter of course, be construed against either of the undersigned entities. All provisions of this agreement shall be construed to effect the manifest intent and purpose of this agreement.

14. Assent.

Pursuant to § 7-11-104, MCA, the undersigned Cascade County and City of Great Falls hereby authorize, approve, and assent to this agreement.

DATED this 22nd day of June, 2001.

CITY OF GREAT FALLS, and incorporated political subdivision of the State of Montana

By _____
John Lawton, City Manager

RATIFIED by the City Commission of the City of Great Falls, Cascade County, Montana, on this ____ day of _____, 2001.

**CITY COMMISSION OF THE CITY OF GREAT FALLS,
CASCADE COUNTY, MONTANA**

By _____
Randy Gray, Mayor

ATTEST:

Peggy J. Bourne, City Clerk

(CITY SEAL)

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Peggy J. Bourne, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Interlocal Agreement was placed for final passage and approved by the City Commission of the City of Great Falls, Montana, at a meeting thereof held on the ____ day of _____, 2001, and thereby authorizing the signature of the Honorable Mayor of the City of Great Falls.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Great Falls this ____ day of _____, 2001.

Peggy J. Bourne, City Clerk
(CITY SEAL)

CASCADE COUNTY, an incorporated political subdivision of
the State of Montana

By _____
Dirk M. Sandefur
Deputy County Attorney

RATIFIED this ____ day of _____, 2001.

**BOARD OF COUNTY COMMISSIONERS,
CASCADE COUNTY**

Gayle Morris, Chairman

Peggy S. Beltrone, Commissioner

Tom Stelling, Commissioner

ATTESTED this ____ day of _____, 2001.

Rita Hudak, Cascade County Clerk