

**COMMUNITY RECREATION CENTER
HONEY BEAR DAY CARE AGREEMENT**

THIS DAY CARE AGREEMENT, made and entered into this ____ day of _____ 2002, by and between the City of Great Falls, Montana, a municipal corporation, hereinafter referred to as "City" and Honey Bear Day Care hereinafter referred to as "*PROGRAMMER*".

WITNESSETH:

WHEREAS, the City has accepted the proposal and qualifications of the *Programmer*; and,

WHEREAS, the parties hereto have reached an understanding concerning the operation of said day care do hereby agree and covenant as follows:

1. PURPOSE

It is the intent of the contract to provide day care at the Recreation Center. All service and programming performed by *Programmer* shall be of the best quality, all service shall be prompt and courteous, all personnel shall be clean and presentable and the facility, including all equipment, shall be kept in accordance with required safety standards.

2. TERM OF AGREEMENT

The term of this agreement shall be for three (3) years, beginning August 1, 2002, with a two (2) year renewable option at the sole discretion of the City. This agreement may be terminated prior to the expiration of this term by either party giving written notice not less than sixty (60) days prior to the annual anniversary date of this agreement.

3. RENTAL

The day care area consists of a location within the Recreation Center in the lower level including office space, and shared use of the main floor "activity room".

In consideration therefore, the *Programmer* shall pay the City a rental on the 15th of each month beginning August 15, 2002.

2002 One Thousand One Hundred Dollars (\$1,100) each month;

2003 One Thousand One Hundred Fifty Dollars (\$1,150) each month

2004 One Thousand Two Hundred Dollars (\$1,200) each month

The City has the option to negotiate the rental for years 2005 and 2006 if the contract is renewed.

4. INSPECTION AND USE OF THE SITE

a) The Park and Recreation Director, hereafter referred to as "Director" or his representative shall at all times have inspection access to the day care area or any other areas used by *Programmer*. Day care area is designated on attached floor plan;

b) The *Programmer* shall make no alterations, changes or revamping, moving or remodeling of the premises, without prior written permit signed by the Director, and in addition thereto, shall obtain all permits required for such work under city ordinance. Any such alterations or additions shall be the sole responsibility of the *Programmer*, inclusive of any and all financial, material, or labor considerations, and will become the property of the City upon termination of this agreement;

c) The City shall furnish all water, electricity, gas for operation of the day care.

d) All storage of material and equipment shall be within premises described;

e) *Programmer* will be responsible for all damage to property, public or private that may be caused by this operation in the performance of this agreement.

f) *Programmer* will have access to outside play area.

5. MAINTENANCE

The *Programmer* shall conduct ordinary day to day maintenance and minor repairs necessary to keep the day care area in acceptable condition. The City will be responsible for major repairs to the facility, including but not limited to water, sewer, electrical, plumbing, heating and cooling systems and City owned equipment.

6. ACCESS

The Programmer will ensure all shared entry ways into other lessee/renter areas will be clean and clear of all items to cause entry way to be obstructed, and maintained as such.

7. CLEAN UP

The *Programmer* shall keep any counters, tabletops, chairs, walls, fixtures, equipment, floors, and storage cleaned in accordance with the requirements of the City/County Health Department and ordinances and regulations of the State of Montana. All Health Department reports shall be submitted to the Park and Recreation Director for review. *Programmer* shall furnish all cleaning supplies and materials needed to maintain the day care premises.

8. EQUIPMENT INVENTORY

An inventory of city-owned equipment will be made jointly by the *Programmer* and the City. A listing of that beginning equipment and fixture inventory will be made an attachment to this agreement. *Programmer* is responsible for providing all the necessary equipment.

9. PAYMENTS

The *Programmer* shall pay when due all bills, debts, and obligations incurred by the day care program operations and will not permit the same to become delinquent or in any way impair the rights of the City under this agreement.

10. PERMITS AND LICENSES

The *Programmer* shall procure, supply, and post in places to be designated by the City all permits and licenses necessary to be procured for carrying on of the day care. The *Programmer* shall pay all taxes assessed or levied against its business or merchandise.

11. HOURS AND BUILDING SECURITY

Daily operating hours are estimated to be from 7:30am – 6:00pm Monday through Friday. The *Programmer* will be allowed to use discretion regarding closing during periods of non activity. Programmer must arrange with Recreation Supervisor for access during center closed times and is responsible for damages or losses during these times.

12. SIGNS

No display signs, or advertising materials of any kind shall be used or placed on the exterior of the building except with prior approval of the Park and Recreation Director.

13. ASSIGNMENT

The *Programmer* shall not assign or sublet this agreement, or any right, privilege of interest thereunder, directly or indirectly, without prior written permission of the City.

14. VERBAL AGREEMENTS

Verbal agreements with any officer, agent or employee of the City either before or after execution date of this agreement shall not affect or modify the terms or obligations contained in this agreement.

15. INDEMNITY AND INSURANCE

a) The *Programmer* shall indemnify and save the City harmless from and against any loss, damage, or liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortuous or negligent act on the part of the *Programmer* or it's agents or employees; and for *Programmer* or its agents or employees; and for such purpose the *Programmer* shall procure and maintain in full force and effect during the terms of this agreement, liability insurance, including product liability, in a reliable company or companies with a minimum policy limit of \$1,000,000 single limit per occurrence; and naming the City of Great Falls as an additional insured party on the policy to be evidenced by a certificate of insurance presented to the Park and Recreation Director upon signing this agreement and thereafter on or before August 15th;

b) The *Programmer* will be required to carry sufficient Worker's Compensation insurance to cover employees;

c) The City shall maintain fire and extended coverage insurance on the building and City-owned equipment and other contents of the building. *Programmer* may purchase insurance of such amounts and types as desired to protect its equipment and inventory;

d) *Programmer* shall comply with all local, state and Federal laws and regulations pertaining to non discrimination and equal opportunity in the area of employment, subcontracting and use of City facilities.

16. INDEPENDENT CONTRACTOR

Programmer and its employees are hereby recognized as independent contractors by the city and are not employees or agents of the city and are therefore not entitled to worker's compensation or any benefits of

employment with the city.

17. DELIVERY AFTER TERMINATION

The *Programmer* will deliver the day care area, and all city-owned equipment to the City at the termination of this agreement in good condition and state of repair as when received except for ordinary wear and tear or damage caused by an Act of God.

18. MUTUAL COVENANTS

It is mutually agreed by and between the City and *Programmer*:

- a) If *Programmer* shall pay the rental as herein provided and shall keep, observe and perform all of the other covenants of this agreement by *Programmer* to be kept, performed and observed, *Programmer* shall, and may, peaceably and quietly, have, hold and enjoy the said premises for the term aforesaid; and
- b) The day care is located in the Community Recreation Center, which is owned and held by the City of Great Falls for the use and benefit of the general public, and that should the City determine that said premises are needed for any other purpose whatsoever, to be used by the general public or for public good, the City shall have the right and privilege of canceling and terminating this lease upon giving the *Programmer* sixty (60) days notice in writing of its intention to cancel and terminate this lease; and
- c) This agreement and all the covenants and provisions herein contained, shall inure to the benefit of and be binding upon the successors and assigns any right, title or interest whatsoever; and
- d) If *Programmer* shall at any time be in default in the payment of rent herein reserved, or in the performance of any of the covenants or provisions of this agreement, and *Programmer* shall fail to remedy such default within fifteen (15) days after written notice thereof from the City, it shall be lawful for the City to enter upon the premises, and again, repossess and enjoy the same as if this agreement had not been made, and thereupon this agreement and everything herein contained on the part of the City to be done and performed shall cease and terminate, without prejudice, however, to the right of the City to recover from *Programmer* all rent due up to the time of such entry; in the case of any such default and entry by the City, the City may relate said premises for remainder of said term for the highest rent obtainable and may recover from *Programmer* any deficiency between the amount so obtained and the rent herein reserved.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the persons duly authorized thereto the day and year first hereinabove written.

CITY OF GREAT FALLS

ATTEST:

John Lawton, City Manager

Peggy Bourne, City Clerk

REVIEWED AS TO FORM:

Programmer

David V. Gliko, City Attorney

(SEAL OF CITY)

Addition to the Honey Bear Day Care Lease:

The equipment as listed below is owned by Ken & Linda Larson, Honey Bear Day Care:

- Dishwasher
- Cabinets
- Refrigerators
- Microwaves
- Freezers
- Shelving
- Cupboards
- Furniture
- Toys
- Child Care Equipment

All owned equipment is stored in the day care facility and/or the main floor “activity room”.