

FACILITY USAGE AGREEMENT
BETWEEN
CITY OF COLUMBIA, MISSOURI
AND
THE CURATORS OF THE UNIVERSITY OF MISSOURI
(Cross Country Running Course)

This agreement (hereinafter “Agreement”) between the City of Columbia, Missouri (hereinafter “City”) and The Curators of the University of Missouri, a public corporation of the State of Missouri (hereinafter “University”), for the construction and use of a championship quality cross country running course is entered to on the date of the last signatory below (hereinafter “Effective Date”). City and University are each individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, the City owns approximately 320 acres of real estate located in the Gans Creek Recreation Area (hereinafter “the Property”) and City has plans to construct a cross country running course on the Property; and

WHEREAS, the University desires for enhanced design elements to be included in the construction of such course and related improvements in order for the location to be suitable for use by its student athletes as a premier site for collegiate cross country meets as well as usage as a NCAA Championship Cross Country course host site location; and

WHEREAS, a championship quality cross country course will strengthen and benefit the City through added tourism, promotion of healthy lifestyles, and community engagement opportunities between student-athletes and Columbia citizens; and

WHEREAS, the parties have determined it would be in their mutual best interest to partner in the development and construction of a premier cross country running course and related improvements at Gans Creek Recreation Area and this Agreement shall set forth the understanding of the parties related to design, funding, construction, maintenance and usage of such course;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I – COURSE DESIGN CONSIDERATIONS AND CONSTRUCTION

The city agrees to set aside no less than 150 acres of the Property for construction of a cross country running course substantially as set forth in the Cross Country Course Master Plan attached hereto as Exhibit A (the “Course”). The determination of the final construction plans will follow the standard City process for all capital improvement projects set forth in Chapter 22 of the City’s Code of Ordinances, with construction starting September 1, 2018 and completion date of August 1, 2019.

In the event the City Council does not authorize the construction of the Course improvements with the minimum features set forth in Exhibit A, either Party may terminate this Agreement upon ten (10) days written notice and this contract shall be at an end.

ARTICLE II – FINANCING OF CONSTRUCTION COSTS

City has budgeted the amount of \$200,000 for construction of the Course and related improvements to the Property and anticipates a reasonable budget for the Course construction as set forth in Exhibit A to be \$960,000.

University agrees to pay a minimum of \$250,000 to the City and act as the lead organization in raising up to an additional \$510,000 for construction of the Course improvements set forth in Exhibit A (the “University Investment”). City agrees to support such fundraising activities by providing collaboration and information sharing using existing city resources. City will make available use of its account at the New Century Fund for purposes of receiving any donations to the City for such project and City will set aside such donations in the New Century Fund for the Course improvements as designated by University and/or the individual donor. In the event a large donor seeks to have on-site sponsorship recognition or naming rights in conjunction with such donation, the City may enter into a separate agreement with such donor to set forth the terms and conditions of such naming rights; however, such donor’s contribution will be credited to the University Investment.

In the event University does not certify to City that it has raised sufficient funds or donor pledges to meet the University Investment for construction of the Course improvements set forth in Exhibit A by December 10, 2018, the University may designate, in writing, which Course amenities set forth in Exhibit A shall be constructed utilizing the University Investment and together with a request this contract be amended to reflect a modification to the University Investment and the Course amenities set forth in Exhibit A.

All plans and specifications for the Course amenities shall be reviewed and approved by the University with the project construction bid through the City’s Purchasing Department. In the event the construction cost of the course and facilities is less than \$960,000, the University Investment shall decrease in proportion to the decrease in construction costs. In the event the construction cost of the course and facilities is greater than \$960,000, the Parties may either (1) negotiate an allocation of the additional costs by addendum to this Agreement; (2) negotiate modifications to the plans and specifications to bring the project to within budget; or (3) either Party may terminate this Agreement upon ten (10) days written notice and this contract shall be at an end. Notwithstanding the foregoing, the University may increase the cash portion of the University Investment beyond \$250,000 without executing a contract addendum by providing written notice to the City of its intent to increase the investment for purposes of construction of the Course.

ARTICLE III – OPERATION AND SHARED USE OF THE COURSE

The Course is intended for use as a community cross country running course and a facility for use by University student athletes for practice and competition events. The Course shall be owned, maintained and scheduled by the City and shall be available for use by the public when not otherwise programmed. The City and University will develop an annual calendar of use for the Course no later than February 1 of each year for the following school year. Such annual calendar shall accommodate the University’s regular cross country practices and meets during University’s academic and athletic calendar. It may also be used for other special events conducted by the University or entities with which the University is associated for the purpose of hosting running camps or conference/regional/national tournaments for student athletes (hereinafter “Special Event”). At the time of scheduling, the city may limit or restrict the use of the course for hosting

of running camps when such use is deemed to be detrimental to the ability of the city to maintain the course in good and usable condition.

When programmed for University use, the Course shall be used and occupied by University only for the purpose of cross country activities for University student athletes and staff. University shall not use or permit the course to be used for any other purpose without the prior written approval of City.

University may display the name and logo of the University on the facilities and install signage during the term of this Agreement which designates the Course as the “home course” of the University. In addition, University may engage in the sale of commercial sponsorship and/or advertising opportunities for University meets and tournaments held at the Course. Notwithstanding the foregoing, the permission granted herein to University to display commercial signage or advertising is limited to installation of temporary marketing materials, advertising and logos within areas designated by City within the boundaries of the Course and shall be limited in duration to the days of the particular events. University’s sale of sponsorship and/or advertising may not conflict with any contractual commitments of City that exist at least ninety (90) days prior to the date any particular event is held.

City expressly reserves naming rights and the right to install permanent signage and marketing materials on the Property at any location which does not interfere with the physical operation of meets conducted at the Course. In the event University’s fundraising for Course construction presents a sponsorship naming opportunity on one or more of the facilities, University shall make a request in writing to City for approval to install permanent signage for such purpose.

ARTICLE IV – CONCESSIONS AND SALES

City agrees to provide the concessions and access to the existing, permanent restrooms at the park for all University meets and Special Events and retains the rights to all sales from the concession facilities. Any additional portable restrooms needed to accommodate the anticipated patrons for large events are to be provided by the University at the University's expense. The University, acting as a regularly licensed concessionaire under the authority and regulation of the Director of Parks and Recreation, may sell concessions in compliance with the department’s standard concessionaire policy.

University may sell non-food items during University’s use of the Course.

ARTICLE V – COST OF USE OF COURSE

To assist in meeting the annual operating expenses of the Course, University shall pay to City a fee for each home meet. The fee to use the course is established by City Ordinance and may be periodically increased over the term of the lease. As of the date of this Agreement, the fee schedule is shown as Exhibit B. During the first five (5) years of this agreement, University shall pay 50% of the fee shown in Exhibit B. There shall be no additional fee charged for regular cross country practices set forth on the annual schedule.

City shall invoice University for the usage of the course. University shall have thirty (30) days from the date of the invoice to make payment to City.

ARTICLE VI – NCAA OR SEC RULES AND REGULATIONS

In the event there are any NCAA or SEC rules or regulations which apply to the course operation or the conduct of an event, to the extent there is any conflict with any term contained in this agreement (including, but not limited to, advertising, concessions or sales) the NCAA or SEC rules or regulation governing conduct of the event shall supersede such term.

ARTICLE VII – USE OF COURSE BY CITY AND OTHERS

University understands and agrees City owns, maintains, and uses the Course and the adjacent parks and facilities as part of a public park system, recreational programming related thereto, and for other governmental purposes as needed. University agrees that the use of the Course is done as an accommodation to University and is not an agreement by City to create a transferable business interest in City’s property for the benefit of University or to subordinate City’s use of the property to University, except as otherwise provided herein. University’s use of the Course shall not interfere with City’s use of adjacent parks and facilities to which the Course is located. In the event University’s use interferes with City’s use of adjacent parks or facilities, the City shall give University written notice of such interference and University shall have thirty (30) days from the date of such notice to remedy and eliminate any such interference. City’s obligation to give University notice of the interference and an opportunity to end the interference shall not preclude City from taking those steps it deems necessary to protect operation and use of adjacent public facilities from further interference. Failure of University to end the interference within thirty (30) days may be considered by City as a breach of this Agreement by University.

The City has existing contracts to host the Missouri State High School Activities Association (MSHSAA) Cross Country Championships so the following dates are restricted to MSHSAA use:

- 2019 - November 7, 8 & 9
- 2020 - November 5, 6 & 7
- 2021 - November 4, 5 & 6
- 2022 - November 3, 4 & 5
- 2023 - November 2, 3 & 4

ARTICLE VIII – MAINTENANCE OF COURSE

City shall be responsible for all general maintenance, operating and custodial costs associated with upkeep and regular daily usage of the Course. University shall be responsible for costs and expenses for competition events organized by University, including any Special Event maintenance and grounds preparations desired for a competition event.

ARTICLE IX - FUTURE UPGRADES

The scope of this agreement shall be limited to initial construction of the Course substantially as set forth in Exhibit A together with ongoing maintenance of the Course as constructed. Future upgrades or course enhancements not specifically set forth in Exhibit A may be constructed by the City with express written consent of the University; provided, however, this Agreement shall not be interpreted to contain any obligation of City to construct any such upgrades or make future alterations to the Course. Any such upgrades or alterations shall be subject to future negotiations between the Parties.

ARTICLE X – SECURITY, PARKING AND TRAFFIC CONTROL

The parties shall work in good faith to identify the resources necessary to adequately provide for security, parking and traffic control to protect the public health, safety and welfare of the public and participants during any meet or Special Event held by the University prior to the date of the event. During all University activities, University shall assign as many members of its organization as necessary to manage and control security, parking, traffic control, and to keep fire lanes and access for emergency vehicles clear. If University fails to provide sufficient resources for security, parking and traffic control such that supplemental City staffing is required for such functions, University shall reimburse the City any of City's reasonable costs associated with City staffing for security, parking and traffic control for such meet or Special Event.

ARTICLE XI – NONDISCRIMINATION

During the term of this Agreement, University shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin. University shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia Code of Ordinances.

ARTICLE XII – HOLD HARMLESS AGREEMENT

To the fullest extent not prohibited by law and without waiving any governmental immunities or limitations of liability available to either Party, each party shall indemnify and hold harmless the other Party, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of indemnifying Party, its agents or employees in connection with use of the Property as set forth in this Agreement. It is the responsibility of each Party to identify and maintain insurance or self-funded coverage which shall meet its obligation to indemnify and hold harmless as set out herein.

ARTICLE XIII – NO WAIVER OF IMMUNITIES

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

ARTICLE XIV – ANNUAL APPROPRIATION

All obligations of City and University under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

ARTICLE XV – NO ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

ARTICLE XVI- NO THIRD-PARTY BENEFICIARY

No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any person, so as to constitute any such person a third-party beneficiary under this Agreement.

ARTICLE XVII – RULES, LAWS, AND ORDINANCES

University agrees to abide by and uphold the policies and ordinances of the City of Columbia and the laws and regulations of the State of Missouri and of the United States of America, in connection with its performance under this agreement.

ARTICLE XVIII – DURATION OF AGREEMENT

This Agreement shall extend for an initial term of ten (10) years from the Effective Date (hereinafter “Initial Term”). The parties may provide for up to two (2) additional ten (10) year extensions on the same terms and conditions upon written approval of both Parties at least ninety (90) days prior to the expiration of the Initial Term. Failure to execute a written extension prior to the expiration of the Initial Term shall result in this contract being at an end.

ARTICLE XIX – TERMINATION

Termination for Convenience. This Agreement may be terminated by either Party following the giving of one (1) year’s written notice of the Party’s intent to terminate to the Other Party. Notwithstanding the foregoing, if City shall have completed the Course construction as set forth herein, University shall not terminate this Agreement for convenience without first paying the University Investment to the City. Likewise, it is expressly understood that University will have made a considerable investment into construction of the Course, if City terminates this Agreement for convenience during the Initial Term of this Agreement, then City shall reimburse University an amount equal to the University Investment divided by the number of years remaining on the Initial Term.

Termination by Mutual Agreement. This Agreement may be terminated by the mutual agreement of the Parties.

Termination due to default. Upon the occurrence of an event of default, the non- Defaulting Party shall be entitled to terminate this Agreement after providing the defaulting party 90 days to cure said default. A Party shall be considered in default of this Agreement upon: (1) The failure to perform or observe a material term or condition of this Agreement, including but not limited to any material default of a representation, warranty or covenant made in this Agreement; (2) The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator; or (3) The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement.

Upon termination, for any reason, any property in the possession of the other Party, which was provided by City or University, shall be returned to said Party.

ARTICLE XX - NOTICES

The following persons are designated by the respective Parties to act on behalf of such Party and to receive all written notices and payment invoices:

If to CITY:

City of Columbia
Parks and Recreation Department
ATTN: Director
P.O. Box 6015
Columbia, MO 65205-6015

With a copy to:

City of Columbia
City Counselor
701 E Broadway
Columbia, MO 65201

If to UNIVERSITY:

University of Missouri – Columbia
Attn: Intercollegiate Athletic
1 Champions Drive, Suite 200
Columbia, MO 65211

With copy to:

General Counsel
227 University Hall
Columbia, Missouri 65211

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice.

Any such notice, demand, request, or communication shall be deemed completed when sent by certified or registered mail to the other Party at the address set forth herein or delivered in person to said Party or their authorized representative.

ARTICLE XXI – AMENDMENTS/MODIFICATION

The provisions of this Agreement may be amended only upon the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.

ARTICLE XXII - GOVERNING LAW AND VENUE

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

ARTICLE XXIII - ENTIRE AGREEMENT

This Agreement contains the full understanding of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreement shall be effective to the contrary. All previous or contemporaneous agreements, representations, promises and conditions relating to the Agreement described herein are superseded. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both Parties.

ARTICLE XXIV - AUTHORIZED REPRESENTATIVES

The signatories to this Agreement, by signing this Agreement, represent that they have obtained authority to enter into this Agreement on behalf of the respective parties to this Agreement and bind such parties to all terms and conditions contained in this Agreement.

ARTICLE XXV – SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, The Parties hereunto set their hands and seals the day and year written below.

THE CURATORS OF THE UNIVERSITY OF MISSOURI

Printed Name: _____

Title: _____

Date: _____

CITY OF COLUMBIA, MISSOURI

John Glascock, Interim City Manager

Date: _____

ATTEST:

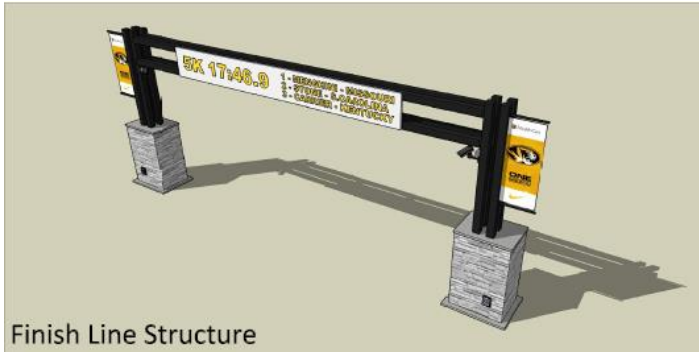
Sheela Amin, City Clerk

APPROVED AS TO FORM:

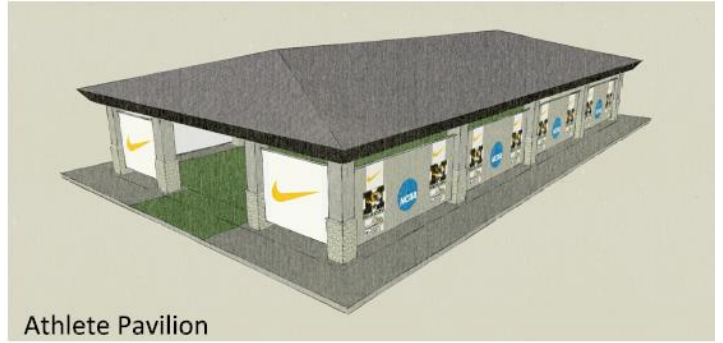
Nancy Thompson, City Counselor

Gans Creek Recreation Area Cross Country Course Facilities

University of Missouri – City of Columbia



Finish Line Structure



Athlete Pavilion



Timing Tower



Race Headquarters w/ Restrooms

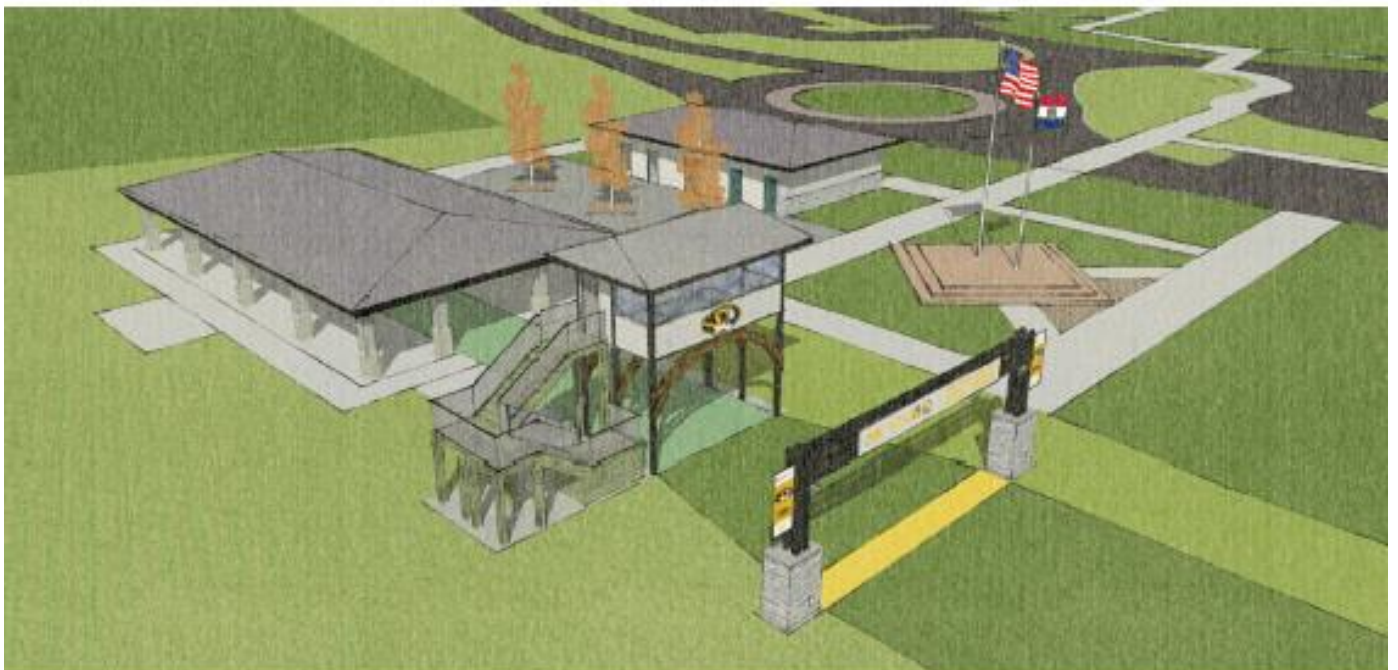


Exhibit B

Proposed Cross Country Course Fees

Course Fees

Dedicated Course Fee/Athlete Pavilion	\$	1,300.00
Dedicated Course Fee/Athlete Pavilion and Indoor Pavilion	\$	1,500.00
Fee Per Participant in Each Range 0-100	\$	2.40
Fee Per Participant in Each Range 101-200	\$	2.04
Fee Per Participant in Each Range 201-300	\$	1.80
Fee Per Participant in Each Range 301-400	\$	1.56
Fee Per Participant in Each Range 401-500	\$	1.20
Fee Per Participant in Each Range >500	\$	1.00
Porta Pot Traditional Per Unit Fee*	\$	60.00
Porta Pot Handicapped Per Unit Fee*	\$	70.00

Event Fees

Non-Refundable Race Deposit**	\$	300.00
Gate Fee - minimum***	\$	100.00
Non Food Vendor Fee - per day	\$	50.00

*Rental Porta Pots Required for Races with More 200 Racers; # Determined by Race Size

**Applied to final rental fee if tournament goes

***\$100 minimum or \$1 per ticket sold; whichever is greater