

**DONATION AGREEMENT  
FOR THE NEW BASEBALL PARK**

**THIS DONATION AGREEMENT FOR THE NEW BASEBALL PARK** (this "Agreement") is made and entered into on \_\_\_\_\_, \_\_\_\_\_ by and between the CITY OF BILLINGS, a Montana Charter city ("CITY" hereinafter), and JON DEHLER, Billings, State of Montana ("DEHLER" hereinafter).

**RECITALS**

**WHEREAS**, CITY is the owner of a baseball PARK and city park facility located at North 27<sup>th</sup> Street and 9<sup>th</sup> Avenue North in Billings, Montana, known as Cobb PARK in Athletic Park ("Athletic Park" herein); and

**WHEREAS**, a \$12.5 million dollar bond election was approved by voters on November 7, 2006, to fund major renovations to and construction of the baseball PARK at the Athletic Park (the baseball PARK as so renovated and constructed, "PARK" hereinafter); and

**WHEREAS**, the purpose of this Agreement is to grant DEHLER exclusive naming rights for the PARK through use of signage and related activities as set forth in this Agreement, including the exclusive right to have the Logo (as hereinafter defined) affixed to the PARK in the form specified herein so the general public comes to know the PARK as the "DEHLER PARK," in consideration of the donations to be made by DEHLER to CITY in the total amount of \$1,000,000.00 as hereinafter provided.

**NOW, THEREFORE**, incorporating the foregoing recitals herein, CITY and DEHLER mutually agree as follows:

**1. DEFINITIONS.**

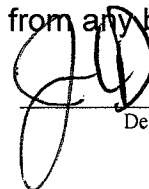
1.1. "Intellectual Property" means, collectively, the Mark and the Logo.

1.2. "Mark" means the word mark "DEHLER PARK."

1.3. "Logo" means the Mark written in the typeface designated on Exhibit "A", or in the derivative or associated trademark, service mark, design, or logotype that incorporates the Mark or any portion of the Mark and is approved by DEHLER in his sole and absolute discretion for use in accordance with this Agreement.

**2. DONATIONS; GRANT OF LICENSE.**

2.1. **IMPLEMENTATION.** In consideration of the exclusive rights granted to DEHLER by CITY pursuant to this Agreement, DEHLER has previously paid Four Hundred Thousand (\$400,000) Dollars to CITY and agrees to donate to CITY in immediately available funds, solely from his own funds and not from any business funds



Dehler

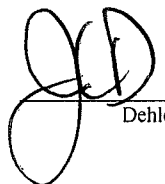
City

or accounts, the remaining balance of Six Hundred Thousand (\$600,000) Dollars in installments on the following dates and in the following amounts:

- (a) \$100,000.00 on July 2012;
- (b) \$100,000.00 on July 2013;
- (c) \$100,000.00 on July 2014;
- (d) \$100,000.00 on July 2015;
- (e) \$100,000.00 on July 2016; and
- (f) \$100,000.00 on July 2017

**2.2. Grant of License.** During the term of this Agreement, DEHLER grants CITY the right to use and to sublicense the use of the Intellectual Property subject to the terms of this Agreement. CITY acknowledges and agrees that (a) as between CITY and DEHLER, DEHLER is the sole owner of the Intellectual Property, (b) the goodwill arising from CITY's use of the Intellectual Property inures to the benefit of DEHLER and (c) CITY shall not acquire any rights in the Intellectual Property other than the rights of use set forth herein. The City's exercise of its license granted by DEHLER under this Section 2.2 shall at all times be in good taste and in a positive and promotional context as it relates to DEHLER and Athletic Park. CITY shall provide reasonable notice to DEHLER of CITY's intent to sublicense the Intellectual Property, including identification of the proposed sublicensee. DEHLER's consent to the sublicense is required, which consent DEHLER may not unreasonably withhold.

**3. NAMING RIGHTS.** DEHLER acknowledges and agrees that (a) as between CITY and DEHLER, CITY is the sole owner of the right to name the PARK and (b) CITY is licensing such naming rights to DEHLER solely during the term of this Agreement. CITY and DEHLER hereby agree the exclusive name of the PARK shall be "DEHLER PARK." CITY agrees to cause all announcements relating to the PARK, in any media, and all advertising for the PARK or any activity or event at the PARK, shall refer to the PARK as the "DEHLER PARK" to the extent any of the foregoing acts are controlled by CITY. CITY agrees to use its best efforts to identify the PARK as "DEHLER PARK" in any press releases, advertising, announcements, the answering of telephones, promotional and print materials produced, performed or disseminated by or for the account of CITY. In connection with the foregoing and notwithstanding anything to the contrary contained in this Agreement, DEHLER permits CITY to retain reasonable identification of the location of the "DEHLER PARK" as the City of Billings or in Billings, Montana. The PARK shall bear no name other than "DEHLER PARK" during the term of this Agreement.

  
Dehler \_\_\_\_\_ City

**4. SIGNAGE AND OTHER NAMING RIGHTS OF DEHLER.** DEHLER shall have the following rights in connection with the naming rights:

**4.1. Permanent Outdoor Signage for Duration of Agreement.** DEHLER shall have the right at DEHLER's expense to affix to the front and back of the PARK prominent and permanent outdoor signage containing the words "DEHLER PARK" and conforming to the dimensions set forth in the diagrams in Exhibit "B". CITY shall ensure that the signage is visible to all patrons attending events, rentals, or programs taking place at the PARK, as well as to patrons visiting the PARK or utilizing the City park adjacent to the PARK.

**4.2. Electronic Media.** CITY shall use its best efforts to cause the PARK to be referred to as "DEHLER PARK" in all public service announcements and/or press releases pertaining to the PARK. CITY shall cause "DEHLER PARK" to be displayed prominently on the PARK website as well as the City of Billings Parks and Recreation website.

**4.3. Print Media.** CITY shall cause the PARK to be referred to as "DEHLER PARK" in all print media advertising promoting PARK events and in all trade publications or brochures in which the PARK is listed.


**4.4. Printed Promotional Material.** CITY shall cause "DEHLER PARK" to be displayed prominently on all posters, flyers and promotions promoting PARK events and to appear on all event tickets printed for events at the PARK.

**4.5. Printed Electronic Communications.** CITY shall cause the PARK to be referred to as "DEHLER PARK" in all printed electronic communication mediums produced for the PARK.

**4.6. Printed Information Guides.** CITY shall cause all PARK information guides to refer to the PARK as "DEHLER PARK."

**4.7. Television and Radio.** CITY shall cause the PARK to be referred to as "DEHLER PARK" in all PARK event television commercials. CITY shall use its best efforts to cause "DEHLER PARK" to have local visibility through broadcasting events at the PARK including:

- 4.7.1. Grand opening events;
- 4.7.2. CITY sponsored community events and performances;
- 4.7.3. Private rentals for non-profit organizations and church groups; and
- 4.7.4. CITY sponsored cultural arts programs for youth.

  
Dehler \_\_\_\_\_ City

CITY shall use its best efforts to cause the PARK to be referred to as "DEHLER PARK" in all PARK event promotions or local radio, including the announcements of upcoming concerts and performances at the PARK.

**4.8. Directional Signage.** CITY shall use its best efforts to have the name "DEHLER PARK" displayed in association with the PARK on all promotional and street and highway directional signs which refer to the PARK.

**4.9. Outdoor Advertising.** CITY shall cause the PARK to be referred to as "DEHLER PARK" on any outdoor billboards owned or otherwise controlled by CITY promoting the PARK and events held at the PARK.

**4.10. Quality Control.** All signage and other usage or placement of the Intellectual Property by or on behalf of CITY shall be subject to the prior written approval of DEHLER. CITY shall not use or permit the Intellectual Property to be used in a manner or context which would disparage or reflect adversely upon the goodwill, reputation or community image of DEHLER and shall notify DEHLER in the event CITY discovers any infringing or harmful use of the Intellectual Property. DEHLER shall have the right to audit CITY's use of the Intellectual Property at the PARK or other premises of CITY during regular business hours upon reasonable notice.

**5. SPONSORSHIP OPPORTUNITIES.** DEHLER shall have the right of first refusal for sponsorship of CITY events at the PARK.

**6. RECREATION AND PARKS BROCHURE ADVERTISEMENT.** CITY shall use its best efforts to mention PARK events, where appropriate, in the CITY's Parks and Recreation brochure and shall refer to the PARK as "DEHLER PARK" in any such mention.

**7. TERM.** Unless sooner terminated as herein provided, this Agreement shall and continue in effect for 20 years thereafter. If the CITY receives an offer from a third party for any of the naming or other rights granted to DEHLER hereunder on or before the expiration of this Agreement, DEHLER shall have the right of first refusal to match such offer, and by doing so shall be entitled to such naming and other rights subject to its right of first refusal. If DEHLER successfully matches any such third party offer, Such new terms as agreed to between CITY and DEHLER shall be included as an amendment to this Agreement and shall take effect at the expiration date of the 20-year term. No such third party offer shall affect DEHLER's exclusive rights hereunder during this initial 20 year term of this Agreement.

**8. ASSIGNMENT.** Neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of all the parties. In no event shall DEHLER assign this Agreement to any entity without the consent of CITY, which consent CITY may withhold in its sole and absolute discretion.



Dehler

City

9. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.

10. **COMPLIANCE WITH ALL LAWS.** DEHLER shall, at the sole cost of DEHLER, comply with all of the requirements of municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities, all municipal ordinances and state and federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Billings business license where required.

11. **COUNTERPARTS.** This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original but all of which together constitute on and the same instrument.

12. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.


13. **GOVERNING LAW.** The laws of the State of Montana (without giving effect to conflicts of laws principles thereof) will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Yellowstone County, Montana.

14. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents and instruments and perform such acts as are necessary or appropriate to implement the terms of this Agreement and the intent of the parties to this Agreement.

15. **NEGATION OF PARTNERSHIP.** CITY and DEHLER shall not become or be deemed a partner or joint venturer with any other party or associate in any such relationship with any other party by reason of the provisions of this Agreement.

16. **NO WAIVER OF DEFAULT.** The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

17. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows or at any other address designated by notice:

  
\_\_\_\_\_  
Dehler City

**CITY:** CITY OF BILLINGS  
P.O. Box 1178  
Billings, MT 59103  
Attention: \_\_\_\_\_


**DEHLER:** Jon Dehler  
200 Regal Street  
Billings, MT 59101

**8. RESOURCE ALLOCATION.** All obligations of CITY under the terms of this Agreement are subject to the appropriation and allocation of resources by the Billings City Council.

**19. GOVERNMENTAL AUTHORITY AND APPROVAL.** CITY represents and states to DEHLER that CITY has requisite power and authority to execute this Agreement and such execution and performance of this Agreement by CITY will not violate any existing statute, charter, rule, ordinance or any agreement or contract to which CITY is a party. CITY represents that no further City Council, City Administrator or other approvals are necessary for the execution and full performance hereunder by CITY.

**20. REMEDIES.** All remedies in law or equity shall be available to the parties upon breach of provisions of this Agreement, including, without limitation, termination by CITY in the event DEHLER fails to make donations in a timely fashion pursuant to paragraph 2.1 hereof. The election of one or more remedies shall not bar the use of other remedies unless the circumstances made the remedies incompatible.

**21. TAX EFFECT.** None of the parties (nor such parties' counsel or accountants) has made or is making in this Agreement any representation to any other party (or such party's counsel or accountants) concerning any of the tax effects or consequences on the other party of the transactions provided for in this Agreement. Each party represents that it has obtained, or may obtain, independent tax advice with respect thereto and upon which it, if so obtained, has solely relied.

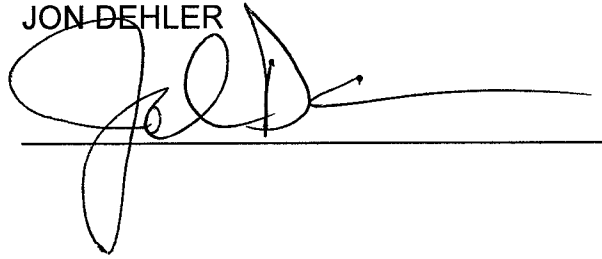
  
Dehler \_\_\_\_\_ City

22. TIME. Time is of the essence in this Agreement.

CITY OF BILLINGS, MONTANA

By \_\_\_\_\_  
Mayor

JON DEHLER

A handwritten signature in black ink, appearing to read 'Jon Dehler', is written over a horizontal line. The signature is stylized and cursive, with a long horizontal stroke extending to the right.