

Draft of 12/16/16

**CITY OF BILLINGS FACILITY MANAGEMENT,  
OPERATION AND USE AGREEMENT**

This Agreement, by and between the City of Billings, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as "City," and Mustangs Baseball, LLC, a Montana Corporation licensed to conduct business as the Billings Mustangs, hereinafter designated as the "Bal Club," hereinafter collectively referred to as "the parties," states:

**RECITALS:**

The City owns a baseball stadium located at North 27th Street and Ninth Avenue North, in Billings, Montana, more particularly described in Exhibit "A", attached, hereinafter referred to as the "Facility,"

The Bal Club is a professional baseball club and a member of the Pioneer League and a member of the National Association of Professional Baseball Leagues, Inc. (NAPBL);

The Bal Club owns the exclusive right to arrange, control, promote and profit from playing professional baseball in the Billings area and desires to enter into this Agreement with the City for certain activities to be conducted at the Facility;

The Bal Club has unique industry experience in operating Minor League Baseball Teams, multi-purpose event facilities and stadia at the highest level and is considered a professional operator and expert in the field of sports and facility management;

City desires to permit the Bal Club to use the Facility to play professional baseball, and Bal Club desires to use the Facility for those purposes;

The Bal Club and the City desire that quality food, beverage and other concession services be available through concession operations located at the Facility;

The Facility attracts people to the City, provides economic benefit to the City and its residents improves and promotes tourism and enhances the tax base of the City;

The City and the Bal Club desire to permit reasonable use of the Facility by the Billings American Legion Baseball (BALB) program, the Montana State University - Billings (MSU-B) baseball program and other youth baseball organizations;

The Bal Club and the City acknowledge that the Facility is a community asset and intend that the Facility provide a venue for multiple activities and civic events in addition to professional and amateur baseball;

The Facility provides wholesome recreational and entertainment opportunities for the City residents;

The Facility provides residents and visitors from surrounding areas with an opportunity to attend professional baseball games, without the need to travel extended distances and thus increases the attractiveness of the City as a place in which to reside and work; and

The Facility provides the Bal Club with the premiere facility in the Pioneer League in which it can profitably play as an affiliate of a major league team. In consideration of the

premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each part, the parties mutually agree and covenant as follows:

## **FACILITY MANAGEMENT, OPERATION AND USE AGREEMENT Section**

### **1. Facility.**

1.1 Name. The name of the Facility shall be Dehler Park through June 26, 2032. The Ball Club shall have the right to sell and retain the revenue from the sale of the naming rights to the field (example: Company X Field at Dehler Park) The naming rights shall be approved by the Parks, Recreation and Cemetary Board and the Billings City Council, with the payment of fifty percent (50%) of the proceeds to the City of Billings Ballpark Permanent Fund, as outlined in Section 6.9 below. The Ball Club shall not have any right or other interest in the name of the Facility.

1.2 The boundaries of Dehler Park ("the Ballpark") shall include the ballpark and the area north of the ballpark from between left and center field to the sidewalk along 10<sup>th</sup> Avenue North, and all improvements thereon, as depicted in Exhibit A.

1.3 Design. The Facility was designed and constructed to meet or exceed the Standards for Minor League Playing Facilities as set forth in the current version of Minor League Baseball Rule 58, and both the City and the Ball Club will cooperate to ensure that those standards continue to be met in the future.

1.4 Field. To ensure the longevity of the playing field and to keep the playing field in peak playing condition and safe for the users of the field, the Ball Club shall maintain the playing field in a condition that meets or exceeds the Minor League Baseball Facility Standards (MiLB Facility Standards). The parties agree that the Ball Club has established maintenance practices of the field that at the time of this agreement exceed the MLB Facility Standards and are acceptable to the City. The methods used to achieve this level have been based in part by the onsite knowledge of the Ball Club's Field Staff. As such, the Ball Club shall continue with these practices and consult with the Professional Standard of Care shown on Exhibit B. The Parties agree, due to the desire to have BALB, MSUB, and other community baseball teams have an opportunity to play at the Facility, that the field does receive an extraordinary amount of wear and tear that is not due to the play of the Ball Club and as such, Ball Club will use commercially reasonable efforts to maintain the field at a level outlined herein.

1.5 Administrative Offices. At all times during the term of this Agreement, the Ball Club shall have the right to use designated administrative, Ball Club office and storage space in the Facility as shown on Exhibit A attached herein, subject to the City's right of inspection by authorized City representatives during regular business hours and upon reasonable notice. The Ball Club and the City shall also have the right of shared access to, and inspection of, all common areas of the facility including the stadium, kitchens, conference room, restrooms, and mechanical and custodial rooms, by giving reasonable

amount of time in advance. The Ball Club shall have the right to display its name and logo on areas inside and outside of the Facility as appropriate and consistent with other Minor League Baseball Facilities.

1.6 Expansion, enhancement and capital improvement. The City and the Ball Club agree to work together in good faith throughout the term of this Agreement toward their common goal of enhancing the Facility.

## **Section 2. Effective Date and Term.**

2.1 Effective date. This Agreement is effective upon the date it is executed by the parties.

2.2 Initial Period. This Agreement will expire December 31, 2026.

2.3 Options to Extend. At the end of the initial period of this Agreement, both parties shall have the option to extend this Agreement, upon terms to be agreed upon by the parties, for additional periods of ten (10) years.

2.4 Surrender of Possession upon Termination: The Ball Club agrees that upon termination of this Agreement it will surrender possession and deliver the Facility, including permanent fixtures installed by the Ball Club. The Facility shall be surrendered and delivered in good, clean condition except for ordinary wear and tear. Removables shall remain property of the Ball Club and may be removed upon termination of this Agreement.

## **Section 3. Management, Operation, Scheduling and Use of the Facility.**

3.1 General. The Parties share the right and responsibility to manage, operate, administer, supervise and schedule the use of the Facility in manner consistent with this Agreement, Minor League Baseball Industry Standards, and the priorities and understandings stated in this Section 3.

3.2 Priorities. Events at the Facility shall be scheduled in accordance with the following priorities:

(a) Professional baseball. The Parties shall maintain and use the Facility for professional baseball games and related functions as a first priority throughout the term of this Agreement;

(b) Billings American Legion Baseball. Ball Club agrees to accommodate the game schedule needs of the Billings American Legion Baseball (BALB) program to the fullest possible extent throughout the term of this Agreement, subject to the first priority of professional baseball, and upon reasonable terms and conditions, bearing in mind the long history and tradition of BALB baseball in Billings;

(c) Montana State University-Billings. The Ball Club agrees to accommodate the schedule of the MSU-B Baseball program throughout the term of this Agreement, subject to the priorities of professional and BALB baseball, and upon reasonable terms and conditions;

(d) Non-baseball events. The Parties desire that the Facility provide a venue for multiple uses and civic events, subject to the priorities set forth in this Section and;

(e) Youth baseball. The Ball Club understands the value to the community of encouraging the growth, development and popularity of baseball and agrees to accommodate requests by youth baseball programs to use the Facility to the extent possible and upon reasonable terms and conditions. These will be for championship games only.

3.3 "Baseball," "Baseball-related" and "Non-baseball" Events, Defined. As used in this Agreement,

(a) "Baseball" events include baseball games and all activities, entertainments and promotions planned, scheduled or undertaken incidental to, in conjunction with, or during the course of any baseball game;

(b) "Baseball-related" events include any activity, organized or scheduled for the purpose of facilitating, improving, promoting, honoring or financing professional or amateur baseball, its players or affiliated organizations, but not incidental to, in conjunction with or during the course of a baseball game; and

(c) "Non-baseball" events include activities, entertainments, gatherings or uses that are neither "baseball" nor "baseball-related" events.

3.4 Scheduling of "Baseball" and "Baseball-related" Events. The Ball Club shall have the exclusive right and responsibility to schedule and manage baseball events at the Facility on available dates and in a manner consistent with, and subject to, the priorities stated in Section 3.2, above.

3.5 Scheduling of Non-Baseball Events. The City and the Ball Club each shall have the right and responsibility to schedule and manage non-baseball events at the Facility on available dates, provided that no event involving the playing surface of the Facility may be scheduled without prior consultation and mutual approval from the other Party. Each Party shall be responsible for all the costs of and receive all the revenue derived from the events it schedules.

3.6 Reserved dates for City/PRPL Parks, Recreation and Public Lands) (PRPL). On or before December 31, each year, The Ballclub will reserve and provide to City/PRPL no fewer than fifteen (15) dates and times between May 1 and September 30 on which the City/PRPL may schedule non-baseball events for all or a specified portion of the Facility. The months of June, July and August shall include a minimum of 1 block of three days per month. It is understood and agreed, however, that if no event has been scheduled by City/PRPL within ten (10) days of any reserved date, such date shall be deemed jointly available to the Parties for the scheduling of baseball, baseball-related or non-baseball events on a first-come, first served basis.

~~Reserved dates for City/PRPL: Once the conditions have been fulfilled in accordance with Section 3.3, herein, the Ball Club and City shall agree to 15 priority dates that will be reserved for the City's use. The Ball Club shall have any remaining dates for its use or for Special Events. These dates do not include the Ball Club's regularly scheduled games in the Pioneer League. This selection process shall occur annually on or before December 31, or within 10 days of the Pioneer League's season schedule being released, whichever is later.~~

Once chosen, each party shall have the exclusive right to use the chosen date for its special event. If the City or the Ball Club has chosen a date and realizes that it will not hold an intended event, the party will make the date available for use by the other party. Throughout the year, each party shall have the right to secure additional dates for special event uses that have not been selected as a Priority Date herein, at no cost to the other party. These dates shall be secured by communicating the intended date in writing to the other party. In the case when one date is desired by both parties, the party that has held the date first (first hold) shall have the right to the date and must confirm the date with the other party.

3.7 Calendar of Non-baseball Events and Master Calendar. The City shall maintain a Calendar of non-baseball events at the Facility and promptly provide notice to the Club when any non-baseball event is placed on said Calendar. In consultation and cooperation with the City /PRPL, the Ball Club shall maintain a Master Calendar of all events (baseball and non-baseball events) at the Facility.

#### **Section 4. Rent, ~~and~~ Annual Financial Review and Taxes.**

4.1 Fixed rental payment. For the term of this contract, the Ball Club will pay a fixed annual rent to the City in the amount of Sixty Thousand and No Hundredths Dollars (\$60,000.00), in two equal payments of Thirty Thousand Dollars (\$30,000.00) due on or before June 1 and December 1. The annual rent will be deposited in the "City of Billings Ballpark Permanent Fund" for major repairs and capital improvements to the Facility as outlined in Section 6.9 of this contract.

4.2 Annual review. The Ball Club shall maintain financial records in proper form. A review of the City of Billings Ballpark Permanent Fund (established in Section 6.9, below), will be conducted annually by the Facility Review Committee (outlined in Section 6.10, below). The Ball Club will provide the City/PRPL with a copy of the report provided to Minor League Baseball on the Ball Club's outstanding debt by October 31<sup>st</sup> each year of the contract. In addition, the Ball Club will send its most recent financial report to the City's Bond Counsel for review and certification of solvency at the City's expense each year no later than the anniversary date of the contract's signing. The current City Bond Counsel is Dorsey and Whitney in Missoula, Montana. The City will notify the Ball Club of any changes in Bond Counsel as needed.

4.3 Prohibitions on Liens Against the Facility. Neither the Ball Club nor any contractor or subcontractor hired by, or doing work on behalf of, the Ball Club shall have the right to file or place liens of any type or character upon the Facility. The Ball Club agrees to fully comply with statutory laws concerning payment, performance, mechanics and materialmen's bonds in advance of any and all contractors and subcontractors performing work on the Facility during the term of this Agreement. Copies of such bonds shall be provided to the City prior to the performance of any work, materials, service or labor on the Facility.

4.4 Taxes. Ball Club shall pay and discharge all applicable taxes of any kind, including but not limited to the State of Montana privilege tax on beneficial use of otherwise tax exempt property, as provided in 15-24-1203, MCA, and all other assessments, penalties, charges, rates or liens levied on any part of the leased premises or on any improvements or fixtures.

#### **Section 5. Concessions, fundraising, pricing and revenue.**

5.1 Authority. The Ball Club shall be the sole and exclusive vendor of food, drink, and novelty items for all Ballpark Events including BALB and MSU-B, except those sponsored by the City. This will include Team Home Games, Ball Club Special Events, and all other non-City activities and events held at the Ballpark for the Term of this Agreement. The Ball Club shall be the sole beneficiary of all revenues derived from the operation and sales of concessions and merchandise for its Home Games and non-City Special Events.

For City Events, the City or a designated third party shall be the beneficiary of all revenues. The City agrees that neither it nor its designated third parties will use the concession equipment or space utilized by the Ball Club for its provision of services.

Either Party may grant concession rights to a third party or third parties (i.e., concessionaires) as it deems appropriate for the conduct of its business at the Ballpark.

Neither party shall have the right to use each other's equipment to provide concession services.

Either Party shall have the right to prohibit patrons and guests from bringing into the Ballpark any outside food and/or drink to its Home Games, special Events and activities. Should any Party choose to allow patrons to bring in outside food or drink, the allowing Party shall immediately assume all liability and responsibility for such actions, and hold harmless the other party.

The Ball Club agrees to conduct concession sales in a clean, professional, and businesslike manner similar to operations in other Minor League ballparks and agrees to comply with all local, state and federal laws and regulations.

5.2 Naming and advertising rights and baseball promotion. Ball Club has the exclusive right to sell naming and advertising rights, space and opportunities within the Facility in compliance with City Code. Ball Club shall retain all revenue from such sales, including but not limited to signage (including signage that faces to the exterior of the Ballpark), banners, scoreboard advertising, displays, announcements, program advertisements and product placements subject to the following exceptions and limitations only:

(a) The right to name the Facility exercised in Section 1.1, above, and all revenue from the sale of such right, belongs exclusively to the City from June 17, 2008, to June 26, 2032. Thereafter, if this Agreement has been renewed and is in effect, the Ball Club subsequently may exercise alternate naming rights with the concurrence of the City and with payment of fifty percent (50%) of the Net Revenues (as defined in Section 5.2(h) to the City of Billings Ballpark Permanent Fund, as outlined in Section 6.9 below.

(b) From June 17, 2008, to September 30, 2017, revenue received from Wendy's of Montana for scoreboard advertising sold to defray the cost of construction of the Facility belongs exclusively to the City. In exchange, Wendy's name will remain on the electronic scoreboard, through September 30, 2017, and Wendy's will receive four tickets to all events to be held in the stadium through that period. Wendy's will have an option to renew signage rights at the current rate at the time of renewal.

(c) From June 17, 2008, to September 30, 2017, revenue received from First Interstate Bank (Bank) for scoreboard advertising sold to defray the cost of construction of the Facility belongs exclusively to the City. The scoreboard sign for the Bank will occupy a space for 10 seasons, from July 1, 2008, through September 30, 2017, and the Bank will receive four tickets to all events to be held in the stadium for a period of 10 years. The Bank sign shall remain in the same location and size it currently holds through September 30, 2017. The number of advertisers on the scoreboard through September 30, 2017, will be limited to 3 companies in addition to the Bank, and none of the other advertisers will represent the financial services industry.

(d) From June 17, 2008, to September 30, 2017, revenue received from donations related to scoreboard signage from Jean E. Dimich and Mike D Dimich and Sons dba Pepsi-Cola Bottling Company of Billings belongs exclusively to the City. The Donors have the right to have the Pepsi logo placed on the scoreboard in a mutually agreed upon size and format through September 30, 2017, and will have right of first refusal to the same signage for a period of 10 years at the current rate at the time of renewal.

(e) Any naming and advertising rights sold by the Ball Club may shall not extend beyond the term of this agreement without the express written consent of the City, and

(f) Without exception, the sale of naming rights in the Facility will be undertaken in a manner consistent with the standards of professional baseball and recognizing the Facility is intended to provide a venue and environment suitable for family entertainment.

(g) Once the above sponsorship advertising agreements in 5.2(a) through (d) above have expired, Ball Club shall have the exclusive right to sell and retain the revenue received for the open inventory located on the scoreboard.

(h) All revenues received by the Ball Club in accordance with Section 5.2 (g), minus marketing expenses, activation expenses, commissions, and other delivery costs (the "Net Revenues"), shall be accrued and fifty percent (50%) shall be returned to the City of Billings Ballpark Permanent Fund to be used to invest back into the enhancement or purchase of the existing scoreboard.

(i) ~~The team~~ Ball Club shall have the right to display the company logo and name as a condition to fulfill the field naming rights agreement.

(j) The naming rights of the team and any revenue derived from those rights will revert to the City in the event of the sale of the Ball Club or the termination of the lease with the Mustangs.

5.3 Safe, clean concession operations and food service. The Ball Club will at all times use necessary care to provide safe, clean operations for all events at which it engages in concession sales. Ball Club agrees that all of its storage, preservation, refrigeration, preparation, cooking and delivery of food and beverage will fully comply with all standards of RiverStone Health, and the City's Fire Department and Building Codes Division for all events at which it engages in concession sales.

5.4 Vendor Selection. Except for City-sponsored events, the Ball Club has the exclusive right to contract with third parties for concession and vending services at baseball and baseball-related events and to select and sell partial or exclusive concession rights for baseball and baseball-related events at the Facility and to lease, rent or delegate the right to engage in concession sales for baseball and baseball-related events at the Facility upon terms it considers appropriate and consistent with the requirements of Section 5.3, above. Provided, the City shall have the authority to determine its own contracts and fees for events that it sponsors.

5.5 Pricing. The Ball Club has the exclusive right and authority to determine and set reasonable prices and lease and rental rates for admission, concessions, advertising, sponsorships, naming rights (subject to the provisions of Section 5.2) and use of the Facility, except for City-sponsored events.

## **Section 6. Cleaning, maintenance, repairs, safety, improvements and ownership.**

6.1 Duty of Ball Club. The Ball Club has the right and responsibility to regularly clean, maintain, preserve, repair and safely operate the Facility in accordance with this Section and applicable laws and in such a manner as to meet or exceed all applicable standards of Minor League Baseball.

6.2 Duty of City. The City has the right and responsibility to clean, maintain, preserve, repair and safely operate the Facility, except the playing surface, during and immediately following each non-baseball related event it schedules pursuant to Section 3.7, and at all times to maintain, preserve and safely manage the grounds of Athletic Park Block outside the confines of the Facility walls, including but not limited to sidewalks, landscaping, artwork, memorials, parking lots, protective netting and related structures.

6.3 Playing surface, grounds and irrigation. The Ball Club has the exclusive right and responsibility to maintain, repair and prepare the baseball playing surface and any areas that include improvements made by and providing income to the Ball Club. The City shall be responsible for the reasonable cost of maintenance, repair and preparation of the playing surface, outside the ordinary course of Ball Club operations, necessitated by City-sponsored events. The Ball Club shall maintain the grounds within the interior walls of the Facility in a manner that meets or exceeds all Applicable Standards, including maintenance of the irrigation system within the Facility.

6.4 Cleaning. The Ball Club agrees that all public areas within the Facility, including seating, entrances, restrooms and concession facilities will be cleaned daily if needed with cleaning agents with complete Material Safety Data (MSD) information on site and procedures approved by the City-County Health Department. The entire Facility will be cleaned at least monthly from April to September.

6.5 Maintenance and utilities within the Facility. The Ball Club shall pay all utility charges and regularly perform all routine maintenance within the Facility, including but not limited to: painting, plumbing, mechanical, HVAC, and electrical and other needed repairs in accordance with professional building management standards by knowledgeable service personnel, or as reasonably directed by the City. The Ball Club shall use its own equipment for all such maintenance or separately contract for such maintenance and repairs. To insure Ball Club's compliance with cleaning, maintenance, all on-site concession operations and City-authorized improvements, the City's representative shall inspect the Facility quarterly.

6.6 Repairs. The Ball Club will be responsible for making routine repairs within the Facility costing \$5,000 or less, in the aggregate, will be undertaken by the Ball Club as soon thereafter after discovery as can reasonably be arranged, up to a total of \$5,000 annually. The City will contribute \$30,000 annually to a routine maintenance fund to be used after the Ball Club has reached its maximum \$5000.00 contribution. The unspent portion of each year's fund will be retained for five year. for repairs costing up to \$30,000. In order to expedite the repair process, the City Administrator or his/her designee is hereby authorized by the City Council to approve such repairs in keeping with the City's Purchasing Policies and Procedures. All City-paid repairs of more than \$25,000 are considered Capital Repairs and shall be approved as outlined in Section 6.9, Capital Repair and Improvement Fund. The City shall be responsible for the cost of repair of damage occurring at City-sponsored events.

6.7 Restrooms. The Ball Club agrees the public restrooms will be stocked, supplied and checked regularly during baseball and baseball-related events and that cleaning will be performed as needed. The City agrees it is responsible for restocking, supplying, checking and cleaning the public restrooms during and following non-baseball events.

6.8 Fire and life safety. As required by the Billings Fire Department, emergency exit systems shall be operational and fire code compliant at all times. that the Facility is in use, as required by the Billings Fire Department. In addition, the Ball Club agrees to comply with the Life Safety Code and in specific, the following items:

(a) Emergency lighting shall be provided as required by City Code  
(b) Fire extinguishers shall be inspected monthly and the date and initials of each inspection noted on an inspection card attached to each extinguisher. The fire extinguishers will be serviced and properly mounted with Type K extinguishers placed in or near each cooking area.

(c) Fire hoses shall be inspected monthly during the operating season and all deteriorated hoses and corroded hose connections will be replaced according to the Uniform Fire Codes Compliance with the above Fire Codes will be done at Ball Club expense.

(d) The Facility is smoke free and smoking shall not be permitted anywhere within the ticket booths and entrance fences, locker rooms, spectator seating, and field areas. ~~except in an approved and clearly designated and signed location outside the stadium equipped for tobacco use.~~

(e) The handicapped accessibility and seating areas shall be appropriately equipped and clearly indicated.

6.9 Capital repair and improvement fund. The City has created and shall administer a fund known as the "City of Billings Ballpark Permanent Fund," which is a permanent fund of the City available for major repairs and capital improvements to the Facility (work beyond the scope of routine maintenance and repair duties described in Section 6.6 of this Agreement). Separate accounts within the permanent fund may be established and earmarked for particular uses, plans and projects within the Facility or Athletic Park Block. Prior approval of the Facility Review Committee created in Section 6.10, below, is required to authorize any expenditure of funds from the Ballpark Permanent Fund. Any single expenditure from the Ballpark Permanent Fund exceeding \$25,000 must receive prior approval from the Mayor and City Council. Regardless of the amount of any expenditure, all contracts must comply with the City Purchasing manual and City contracting rules.

6.10 Facility Review Committee. A Facility Review Committee consisting of one authorized representative each of the City's Parks, Recreation and Public Lands Department, the City's Park Board and the Ball Club, and two members appointed by the City Council shall as necessary periodically review the management, operation, use and maintenance of the Facility. This Committee shall make recommendations to the Mayor and City Council for any expenditure exceeding \$30,000 from the Ballpark Permanent Fund.

6.11 Remedies. In the event either Party does not satisfactorily perform its cleaning, upkeep and maintenance obligations under this Agreement, the other Party has the right to hire a third-party to perform such obligations and charge the cost of such cleaning, Upkeep or maintenance to the non-performing Party.

6.12 Improvements by Ball Club. The City agrees to allow the Ball Club, at its own expense:

(a) To build a 3,000-square-foot, glass-enclosed "Great Room" above the concession stands behind the third base dugout, covering the width of the concourse, provided that the City will supervise design and construction of the structure to ensure it meets City standards;

(b) To build a children's play area and zip line from the area between left and center field to the sidewalk along 10<sup>th</sup> Avenue North. Any play area or zip line must meet the American Society for Testing and Materials (ASTM) and Consumer Product Safety Commission guidelines;

(c) To make any non-structural improvements and add any decorations to the interior of the Ballpark, provided that the Ball Club complies with all City permitting and construction requirements. Exterior improvements may be made with consent of the City/PRPL;

(d) To display advertising throughout the interior of the Ballpark, with the exceptions of signs above, below and beside the scoreboard, and to keep all revenues derived from such advertising. No later than January 1, 2020, the Facility Review Committee will evaluate and make a recommendation to the City Council on expansion and replacement of the video board portions of the scoreboard;

(e) To build Additional seating or standing areas, including tables, beverage stations, bars, canopies, food vending areas, and other seating enhancements as presented and approved by the Ball Club and City;

(f) To build Additional concession stands, portable food and beverage carts and vending areas; and

(g) To build Additional improvements as recommended by the Facility Review Committee and approved by the City Council.

6.13 Ownership. Any trade fixtures and equipment installed by the Ball Club shall remain the property of the Ball Club. All permanent fixtures, repairs and improvements to the Facility are deemed to be part of the Facility after completion of their construction/installation and thereafter are the property of the City,

### **Section 7. Fireworks and displays.**

7.1 Fireworks and similar displays will be permitted in accordance with applicable laws and ordinances and in the discretion of appropriate City authorities. At no time shall any such displays interfere with operations of the Billings Logan Airport.

### **Section 8. Continuation of professional baseball at the Facility.**

8.1 Continuing operations. During the term of this Agreement, the Ball Club agrees to maintain membership in the NAPBL and operate a professional baseball team in Billings, Montana, at the Facility.

8.2 Covenant not to relocate. The Ball Club agrees to schedule and play its home games at the Facility during the entire term of this agreement, and provided that the Facility continues to meet or exceed all applicable standards of professional baseball, covenants not to relocate the playing site of more than one of its home games without the prior written consent of the City.

### **Section 9. Miscellaneous**

9.1 Ball Club employees. It is understood and agreed that no agent, servant, employee, contractor or subcontractor of the Ball Club shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant of the Ball Club.

9.2 Announcement. The Ball Club agrees to make the following announcement before each event that takes place at the Stadium:

"Ladies and Gentlemen:

Welcome to Dehler Park owned by the City of Billings, and the proud home of the Billings Mustangs Professional Baseball Club. For your safety, the Mustangs and the City of Billings ask you to take a moment to familiarize yourself with the nearest passageways and exits to be used in case of fire or other emergencies.

These exits are located at (description of exits).

Also, we would like to remind you that Dehler Park is a SMOKE-FREE facility by order of the Billings City Council. Further, please be attentive to the field of play because at times objects, such as bats and balls may enter the seating area.

Thank you for your cooperation."

9.3 Assignment. This Agreement is not assignable by the Ball Club in whole or in part without the prior written approval of the City.

9.4 Ballpark Sale. The City shall not sell or attempt to sell the Ballpark or any part thereof to any party for the duration of this agreement.

9.5 Indemnification. The Ball Club and each contractor or subcontractor of Ball Club performing work on the facility and other organizations using the Facility shall indemnify, defend and hold ~~have the duty to defend~~ the City and hold it harmless from and against all claims, liabilities, damages, losses, judgments and expenses including reasonable attorney's fees and litigation costs arising out of or resulting from the negligent acts or omissions of anyone they employ directly or indirectly, including sub-contractors, agents and volunteers. All users shall agree to, acknowledge and sign applicable document(s) containing this indemnification.

The City shall indemnify, defend and ~~hold have the duty to defend~~ hold the Ball Club and hold it harmless from and against all claims, liabilities, damages, losses judgments and expenses including reasonable attorney's fees and litigation costs arising out of or resulting from the negligent acts or omissions of its officers, employees or contractors.

9.6 Insurance. The Ball Club, each vendor providing services to a Ball Club event or City event and each a n y other organization including but not limited to BALB and MSU-B, using which use the Facility shall annually renew and carry liability and property, fire and casualty insurance naming the City as a primary, non-contributory insured when applicable, as approved by the Billings City Attorney, including liquor liability insurance (when alcohol will be sold and/ or consumed) as approved by the Billings City Attorney, covering the Ball Club and all other users.

The Ball Club, each vendor providing services to a Ball Club event or City event and all other seasonal and single event users shall also obtain a separate liquor liability insurance policy or endorsement in the amount of One Million and no/100 Dollars (\$1,000,000) Per Occurrence naming the City as a primary, non-contributory insured when any alcoholic beverages are sold or consumed during any event.

The Ball Club and all other seasonal and single event users shall obtain a Commercial General Liability (CGL) insurance policy ~~in an amount as set forth below, and under the terms and conditions as approved by the Billings City Administrator or Billings City Attorney. The Ball Club and all other seasonal and single event users shall also obtain a separate liquor liability insurance policy in the amount of One Million and no/100 Dollars (\$1,000,000) per Occurrence when any alcoholic beverages are sold or consumed during any event.~~

Except for Liquor Liability insurance, all other The required insurance will be equivalent to in the minimum amount of One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000) per occurrence (MCA Section 2-9-108(1) and shall be in effect for the entire baseball use season including practice and scheduled games for the term of this agreement. Prior to the start of the use of the Facility each year, the Ball Club and all

other permitted users shall provide the City a Certificate of Insurance made out to the City of Billings and naming the City of Billings as a primary, non-contributory insured in all categories of insurance. The City reserves the right to require reasonable increases in insurance coverage or changes in types of coverage as the circumstances or insurance industry practices may require. The City shall be notified by Ball Club or its insurer in writing thirty (30) days prior to any cancellation or nonrenewal of the policy. The notice of cancellation must be sent to the City.

If all or significant portion of the Facility is damaged or destroyed by fire or other casualty, in the event such loss is covered by insurance to the extent of eighty percent (80%) or more of the value of such portion(s) the City shall repair and rebuild the Facility with reasonable diligence to the condition immediately before the loss, the condition required by law or Minor League Professional Standards, at the sole option of the City. Such repairs or rebuilding shall be completed as soon as reasonably possible and in consultation with the Ball Club. If, in the good faith judgment of the Parties, there is substantial interference with the operation of the Ball Club's use of the Facility that requires the Ball Club to temporarily use another Facility, the sole remedy will be a pro rata abatement of payments due to the City in this Agreement for the period of time such interference has occurred. The Ball Club shall have the right to schedule home games at another facility during such time.

If at the sole option of the City the facility is not or cannot be restored to the condition immediately before such casualty or loss, the condition required by law or to Minor League Professional Standards following such casualty or loss, this Agreement may be canceled and voided by the Ball club. Under such termination by Ball Club, neither Party shall have any claim of any kind or type against the other Party as a result of such termination.

9.7 Ball Club agrees not to discriminate in any manner on the basis of age, gender, marital status, race, color, creed, handicap, height, weight, national origin with respect to any applicant or employee, and will use its best efforts to conform in all respects to the pertinent provisions of federal, state and/ or local laws, ordinances, rules and regulations of employment practices. Ball Club agrees that in serving the public, its employees shall not, on the grounds of gender, marital status, race, color, creed, handicap, height, weight, national origin, discriminate or permit discrimination or refuse to serve a person or group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.

9.8 Stadium Security. The Ball Club shall provide security at each home baseball game and pay for up to two (2) uniformed Police Officers. ~~at each Ball Club Home baseball game.~~

9.9 Breach and Remedies. Should any material condition of this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within thirty (30) days of said notice, this Agreement may be terminated at the option of the Party wronged without further notice; provided, however, that this clause shall not require the termination of this Agreement, nor shall it prevent the issuance of any other remedy at law or in equity.

9.10 Default. The Ball Club shall be considered in default of this Agreement if:

- a) The Facility is abandoned or vacated by the Ball Club; or
- b) Proceedings are commenced against the Ball Club by any court under a bankruptcy act or for the appointment of a trustee or receiver of the Ball Club's property, either before; or after the commencement of the term of this Agreement; or
- c) The Ball Club fails to perform any of its material conditions or obligations under this Agreement after thirty (30) days receipt of written notice.

9.11 Default Remedies. In addition to any other remedy provided in this Agreement, the Parties shall be entitled to remedy any default following the expiration of the required notice as follows:

- a) Recover of monies due and owing, together with interest from date such monies were due;
- b) A right of specific performance of non-monetary covenants and agreements;
- c) Cancel and terminate this Agreement immediately or at any date elected by the non-defaulting Party;
- d) If this Agreement is terminated because of the Ball Club's default for any reason, the amount to be paid by the ball club shall be equal to the principal amount owed plus accrued interest

9.12. Dispute Resolution. If a dispute arises concerning any provision in this Agreement, the parties shall follow this order of resolving the dispute:

- a) The parties shall first attempt to informally resolve the dispute.
- b) If the matter remains unresolved, the parties shall then attempt to resolve the dispute through mediation using an agreed-upon process.
- c) If mediation does not resolve the dispute, the parties may mutually agree to binding arbitration with an agreed upon process; however, the Parties are not obligated or required to submit the dispute to binding arbitration and may proceed to d) below without such mutual agreement.
- d) The Parties may unilaterally pursue other remedies including but not limited to litigation.

9.13 Applicable Law and Venue for Litigation. This Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue for any litigation related to this Agreement shall be in the Montana Thirteenth Judicial District Court, Billings, Yellowstone County, Montana, and there shall be no other venue for resolution of disputes arising from the Agreement or the performance of its terms.

9.14 Attorney fees and costs. In the event it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, then the prevailing party shall be entitled to a reasonable attorney's fee and costs, including such fees and costs for in-house counsel.

9.15 Amendment and modification. The Parties hereby agree that any amendments or modifications to this Agreement or any provisions herein may be requested at any time during the term of this Agreement and, if mutually agreed upon, shall be made in writing and executed in the same manner as the original document and shall, after execution, become a part of this Agreement. Negotiations for amendments or modifications of this Agreement shall be conducted in good faith and in a manner consistent with the spirit and purpose of this Agreement.

9.16 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this day of

CITY OF BILLINGS, a Montana Municipal Corporation

BY: \_\_\_\_\_  
Mayor

Seal

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED:

  
\_\_\_\_\_  
CITY ATTORNEY

BALL CLUB:

Mustangs Baseball LLC, a Montana Corporation

BY:

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ATTEST:

(Seal)