

USE AGREEMENT FOR STEWART PARK PIRTZ FIELD

THIS USE AGREEMENT made and entered this _____ day of _____, 2022 by and between the following: THE CITY OF BILLINGS, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as “City”, and THE BILLINGS AMERICAN LEGION BASEBALL, a non-profit corporation, hereinafter designated as the “BALB”;

RECITALS

WHEREAS, the City owns the premises known as Stewart Park (54+ acres), which includes Pirtz Field, which has been developed as an open park space, multi-use trail, multi-use sports complex, and special events complex;

WHEREAS, the conception, construction, and maintenance of Stewart Park, excluding Pirtz Field has been funded by public funds provided by the City of Billings and through user fees and private donations;

WHEREAS, BALB has been established with its mission to promote youth baseball in Billings having won the state championship in 1930 and has raised funds for the construction of Pirtz Field in 1995;

WHEREAS, BALB has funded the costs of constructing (over \$250,000) and maintaining (approximately \$10,000/year since 1995) Pirtz Field as well as investing in any and all improvements such as batting cages (approximately \$30,000) and artificial turf (\$270,000 in 2019) on the infield since Pirtz Field was founded;

WHEREAS, the conception, construction, and maintenance of Pirtz Field have been funded by private funds provided by BALB, it’s alumni, youth baseball players, and community donations,

WHEREAS, BALB cooperates with and is supported by the Billings Parks and Recreation Department of the City of Billings,

WHEREAS, Pirtz Field is home to 6 different BALB teams that play at 3 different levels of legion baseball throughout the state of Montana.

WHEREAS, Within the Billings City Council approved Parks, Recreation and Public Lands Comprehensive Parks Recreation Master Plan from 2017, there is a requirement that agreements with all user groups, like BALB be formalized with a use agreement;

WHEREAS, the City has spent over \$1,000,000 on mowing, irrigation and trash removal at Stewart Park since Stewart Park was developed

WHEREAS, in 2016, the City spent \$19,680 on replacing the intake structure in the ditch in order to provide a consistent flow of irrigation water to the park;

WHEREAS, Stewart Park is a “multi-use” park that serves as the “home” for adult, youth and high school softball programs, BALB, and Little League programs;

WHEREAS, the BALB was established with its mission to promote and sponsor American Legion Baseball programs;

NOW, THEREFORE, the Parties agree as follows:

1. **Scope:** This agreement shall relate to the scheduling, maintenance, and further development of Pirtz field. Stewart Park and Pirtz Field shall at all times remain a public park available for public use consistent with this Agreement and City policies and regulations. All development and operation of Stewart Park will comply with all applicable provisions of the Land and Water Conservation Funds as set forth in Exhibit "A" attached hereto and incorporated by this reference and City ordinances and regulations including any future amendments thereto.
2. **Agreement Monitoring and Budget For Stewart Park Operations:** The management and operation of Pirtz Field by BALB will be subject to an annual review by City Staff. Such review will include financial statements of BALB as they relate to Pirtz Field, maintenance performance, park usage and activities, capital improvements, facilities maintenance, and future programs. On or before the last Monday before Thanksgiving of each year, BALB shall submit an annual budget to the City Council for approval, setting forth the anticipated expenditures for the operation of Pirtz Field at Stewart Park. The City Council shall review and consider approving the proposed budget on or before the last regularly scheduled meeting in December of each year.
3. **Term:** The term of this Agreement shall be for one calendar year commencing upon the date of its execution (Anniversary Date) by the parties. This Agreement shall renew automatically for additional one-year terms for up to five years upon the Anniversary Date unless terminated by one of the parties as specified herein. During these five one-year terms the agreement may be amended as mutually agreed. After the five-year period the parties will review this agreement and renew the agreement for up to five additional one-year terms.
4. **Premises:** The portion of Stewart Park covered by this Agreement shall include Pirtz Field, including the perimeter fence and all areas inside the fence, which includes the field, the batting cages, both bullpens, the bleachers, scorer's booth, outbuildings, field lights and concessions stand and the scoreboard which is located just outside the fence, as shown in **Exhibit "B"** attached hereto and incorporated herein by this reference. Stewart Park is located approximately south of Central Avenue, east of Stewart Park Road, in Billings, Montana.
5. **Termination:** Either party may terminate this agreement by providing the other notice of their intent to terminate at least ninety (90) days in advance of the Anniversary Date. Said notice shall be in writing and delivered to the other party in accordance with the notice provision hereof. Upon termination, BALB shall have a duty to leave the Premises in a condition similar to that of the Premises upon the execution of this agreement.
6. **Reports:** BALB shall submit an annual report and financial statement to the City on or before of the ensuing November meeting of the Parks Recreation and Cemetery Board for each year covered by this agreement, including a proposed operating budget for the coming fiscal year showing anticipated revenues and expenditures for review by the City. BALB's fiscal year is October 1-September 30.
7. **BALB'S RIGHTS & DUTIES:** In addition to the other provisions of this agreement, the BALB shall have the following rights and duties:

7.1. **Nonprofit:** BALA shall at all times remain recognized by the State of Montana as a nonprofit organization and provide the City proof of status:

7.2. **Schedule:** During the term of this agreement, the BALB shall have the exclusive right to schedule Pirtz Field and concession building located at Stewart Park including subletting the field to other users utilizing the use process described herein.:

7.3. **Maintenance Responsibilities:** BALB will at minimum ensure the following:

7.3.1. Maintain in good repair the buildings, fencing, and bleachers as identified in **Exhibit B**;

7.3.2. Maintain the signage, scoreboard, lights, provide infield maintenance pursuant to manufacturer's standards, playing field layout and marking, and the batting cages;

7.3.3. Provide for the playing field turf maintenance and horticultural practices including fertilization and aerification of the playing field under BALB control and the application of turf grass weed control and turf maintenance cultural treatments thereon as necessary to maintain healthy turf; and make repairs incidental to wear and tear on the playing fields;

7.3.4. Provide for the mowing of the field, as needed to maintain an acceptable playing height during scheduled Baseball use;

7.3.5. Provide regular cleanup of the premises following scheduled uses, including picking up litter within the fence and surrounding areas contiguous to the playing fields and depositing all litter into appropriate garbage receptacles provided by the City. If litter is not picked up in a timely manner after scheduled activities the City has the authority to pick up the litter and charge BALB;

7.3.6. BALB may contract with the City to perform any of its non-turf maintenance responsibilities described above and any additional non-turf maintenance that it should elect to undertake;

7.3.7. BALB shall contract only with the City to perform all turf-related responsibilities described in Section 7.3.2 above;

7.3.8. BALB may employ a facilities manager/director/or administrator whose responsibility, among others, will be to facilitate and coordinate BALB's duties under this agreement.

7.4. **Utilities:** BALB shall be responsible for all utility costs associated with the Pirtz Field Premises with the exception of water and electrical service related to the irrigation of Pirtz Field.

7.5. **Restroom Facilities:** When permanent restroom facilities are unavailable, BALB shall provide for the placement of adequate portable toilet units within the fence in **Exhibit B** except when no organized activities or events are scheduled.

7.6. **Fees and Charges:** BALB may establish and charge fees and expenses, including but not limited to:

7.6.1. Special event fee for all approved and scheduled uses, including sport camps and schools, and other sporting, cultural, recreational events, and special events;

7.6.2. A fee for each individual and/or organization for each approved use permit applied for based on the current schedule of uses approved by BALB. Any such fee shall be equally applied, charged and collected from all users, groups, organizations, or entities, public or private;

7.6.3. Events scheduled by the City must be approved by BALB and shall not be subject to any fee established by BALB, except for the costs incurred by BALB directly attributable to that event, including the costs of, field layout, chalking, and damage associated with any event.

7.7. **Improvements:** BALB shall have the right to improve Pirtz Field in accordance with the Stewart Park master plan as currently adopted or amended;

7.7.1. Improvements not contained in the Stewart Park Master Plan must first be added to the Stewart Park Master Plan through the Parks and Recreation Department's Park Master Plan policy. In all cases, BALB and the City mutually agree to notify each other of any proposed new improvement or development sufficiently in advance, fourteen calendar days minimum, to allow a reasonable time for each to review and approve preliminary plans or proposals.

7.7.2. Any project greater than \$10,000 that is not considered replacement of existing elements will be awarded and managed by the City. For all other projects under \$10,000, BALB must secure all applicable permits and authorizations under municipal, state, and federal law for any improvement under its control;

7.7.3. All improvements made to Pirtz Field in accordance herewith will become property of the City upon completion.

7.8. **Concessions:** BALB shall have the right and responsibility for operation of any and all concessions associated with Pirtz Field during BALB scheduled uses and events. The City will be required to operate its own concessions for City-sponsored events and will receive all revenue from City-sponsored events. Concessions shall include all food and beverage items as well as any other products or goods to be sold or served within Pirtz Field. With the City's written approval BALB shall have the right to:

7.8.1. Assign its right to operate any and all concessions to other groups, organizations, or entities with the City's written permission;

7.8.2. Enter into long-term written agreements of 12 months or more with vendors for concessions;

7.8.3. Contract in whole or in part any concession services associated with Pirtz Field or to operate through its own employees or members or users with the City's permission;

7.8.4. Long-term contracts or agreements of 12 months or more entered into between BALB and third parties under Section 7.6.2 above for concessions shall be in writing. All concessions shall comply with all applicable City or State of Montana Health, Fire and Building Codes, including signage and shall comply with all existing and/or future policies adopted by the City relating to the operations of concessions. Each concessionaire shall provide proof of liability insurance and indemnification as described in Section 15.

7.8.4. Long-term contracts or agreements of 12 months or more entered into between BALB and third parties under Section 7.6.2 shall include an advertised notice soliciting RFPs from interested vendors appearing at least one full week in the local paper with the highest circulation and at least once in the appropriate trade publication; be designed to solicit responses from multiple potential vendors; be free from specifications, qualifications, or requirements that bias the process toward or against a specific vendor:

7.8.5. All long-term agreements shall be reviewed and approved as to form by the City Attorney;

7.9. **Naming:** During each one-year term of agreement BALB shall submit naming and memorial contribution opportunity requests and recommendations to the City for its approval to name and designate field spaces, buildings, and other structures and amenities at Pirtz Field for review under the PRPL park naming policy;

7.9.1. BALB shall not submit a proposal to name any feature using the name of a corporation, organization, or product detrimental to the health and welfare of children, including but not limited to alcohol or tobacco products or producers, gaming organizations, or purveyors of pornography;

7.9.2. BALB shall be responsible for recognizing and maintaining those names and designations during the term of this agreement.

8. **Advertising Sales:** BALB has the exclusive right to sell advertising rights, space, and opportunities within the facility and retain all revenue from such sales, including but not limited to signage, banners, scoreboard advertising, displays, announcements, program advertisements, and product placements.

9. **CITY'S RIGHTS & DUTIES:** In addition to the other provisions of this agreement and those provided by law, the City shall have the following rights and duties:

9.1. **Maintenance Responsibilities:** The City will:

9.1.1. Provide for the timely and regular irrigation of Pirtz Field including trees, shrubs, and other plantings;

9.1.2. Control weed growth on fences, along curb lines, and walkways;

9.1.3. Maintain, all city sewer lines, water lines, and underground or overhead electrical lines, electrical services, curbs, gutters, and walkways;

9.1.4. Empty all dumpsters serving Stewart Park and Pirtz Field as needed;

9.1.5. Activate all water lines and plumbing at the earliest appropriate time in the spring, winterize and disconnect the same in the fall;

9.1.6. Be responsible for all tree care including; pruning, planting, removal, and inventory.

9.2. **Utilities:** The City shall be responsible for water service and electrical service, and all utilities related to irrigation of Stewart Park and Pirtz Field.

9.3. **Restroom Facilities:** The City shall be responsible for activating permanent restroom facilities in the Spring and winterizing them in the Fall at the Park restroom facilities.

9.4. **Cost Reimbursement:** Any expenses incurred by BALB attributable to an event scheduled by the City shall be reimbursed to BALB.

9.5. **Concessions:** The City shall honor all contracts or agreements entered into by BALB, including contracts for concessions, in existence at the time of any notice of termination provided hereunder; however, City is under no obligation to honor any changes to such agreements after the notice of termination.

8.1.6. **Naming:** Upon termination of this agreement, physical features named and designated by BALB during the agreement shall also terminate and shall no longer remain in effect and City shall not be responsible for recognizing and maintaining the names and designation assigned by BALB to physical features in the Park

9.7. **Right of Entry and Inspection:** Nothing herein shall interfere with the City's right to enter and inspect the premises for any purpose consistent with this agreement or with the City's operation and maintenance of public park facilities.

9.8. **Use Requests:** All requests for use by the City and any person or organization shall be submitted to BALB in writing for approval at least fourteen (14) days prior to the proposed event unless a shorter period is approved by BALB. Approval or disapproval of all proposed uses shall be the responsibility of BALB and communicated to the event requestor within seven (7) days of receiving the event request unless a shorter period is approved by the requestor and BALB. BALB shall provide the City Parks and Recreation Department with all approved use requests a minimum of seven (7) days prior to the approved use request. BALB will facilitate ALL non-City use of Pirtz Field.

10. **PROCEEDS:** The parties agree that the proceeds (defined as gross proceeds from all user fees, concession revenue, and any other payments, donations, grants, or contributions related to Pirtz Field or activities conducted at Stewart Park) from the operation of the Pirtz Field shall be applied according to the following priorities:

10.1. To BALB's administrative costs and expenses;

10.2. To fulfill BALB's maintenance responsibilities, under 7.2;

10.3. To the City's costs to fulfill its maintenance responsibilities under 8.1;

10.4. Finally, any remainder shall be provided to the City for future operation and maintenance costs of Pirtz Field. Funds provided to the City under this paragraph will be separately accounted for and tracked to ensure that they are expended in accordance herewith.

11. **NOTICE:** The BALB shall at all times maintain a mailing address, phone number, and designated agent accessible to the public and the City for resolution of issues relating to this agreement and to receive notices associated therewith. The BALB shall notice the City with any changes in contact information prior to the effective date of that change.

12. **ASSIGNMENT:** This Agreement is not assignable by the BALB in whole or in part without the prior written approval of the City.

12. **NON-DISCRIMINATION:** The undersigned, either as an individual or on behalf of a group or organization, hereby agrees that this facility shall not be used in any manner that would discriminate against any person or persons on the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.

13. **BREACH:** Should this Agreement be violated, a notice thereof in writing shall be issued by the party asserting a breach to the other party; and if said breach is not corrected within thirty (30) days of said notice (the cure period), or such other reasonable period of time as the parties may agree; then this Agreement may be terminated at the option of the party wronged through a written notice of such provided at the end of the thirty (30) day cure period. However, In the event of a dispute regarding any asserted breach, the parties agree to meet in a timely fashion to attempt resolution of the asserted breach. If the parties are not able to resolve said breach or reach agreement regarding such, the parties agree to mediate the dispute prior to initiating any proceeding to terminate this Agreement based upon the alleged breach. Each party will be responsible for the payment of one-half of the mediator's costs. If mediation fails to resolve the dispute, then either party may pursue termination and all other available remedies including but not limited to litigation.

14. **ATTORNEY'S FEES and COSTS:** In the event, it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms on conditions of the Agreement, then the prevailing party shall be entitled to a reasonable attorney's fee and costs, including in-house counsel.

15. **INDEMNIFICATION/INSURANCE:**

15.1. The BALB shall require that all organizations sign the agreement that will indemnify, defend and hold BALB and the CITY harmless from, and against all claims, liabilities, damages; losses and expenses arising out of or resulting from such organization's negligent or intentional acts or omissions or those of any sub-contractor, agent, or anyone directly or indirectly volunteering for or employed by them.

15.2. BALB shall provide proof of liability insurance for all of its own programs and events in the minimum amount of \$1,500,000 each occurrence naming the CITY as an additional, non-contributory insured. The BALB shall also require that each additional organization using the Stewart Park complex and/or providing concessions Premises carry minimum liability insurance in the amount of one million five hundred thousand and no/100 Dollars (\$ 1,500,000) each occurrence (Montana Code Annotated Section 2-9-108(1)). Each organization shall provide BALB a current Certificate of Insurance naming both BALB and the City of Billings as additional insured parties. BALB shall routinely provide a copy of said certificates to the City for each event.

16. **AMENDMENTS and ADJUSTMENTS:** The parties shall also have the right to mutually renegotiate the terms and conditions herein on an annual basis upon either party's request. The parties hereby agree that any amendments or modifications to this Agreement or any provisions herein 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this _____day of _____, 2022.

CITY: CITY OF BILLINGS, a Montana Municipal Corporation

By: _____
William Cole, Mayor

ATTEST:

By: _____
City Clerk

BALB: THE BILLINGS AMERICAN LEGION BASEBALL ASSOCIATION, a Montana Municipal Corporation

By: _____
President BALB