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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

BIG SKY PROFESSIONAL  
BASEBALL, LLC,

Plaintiff,

v.

LOGJAM PRESENTS, LLC, and the  
CITY OF MISSOULA, MONTANA,

Defendants.

Dept. No.  
Cause No.

COMPLAINT AND  
DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, Big Sky Professional Baseball, LLC (“BSPB”), and presents the following Complaint against Logjam Presents, LLC (“Logjam”), and the City of Missoula, Montana (the “City”):

**I. PARTIES**

1. BSPB is a limited liability company organized under and by virtue of the laws of the State of Montana and is in good standing.

2. Logjam is a limited liability company organized under and by virtue of the laws of the State of Montana and is in good standing.

3. The City is a municipal corporation of the State of Montana, duly organized and existing under the Constitution and laws of the State of Montana. The City is a local government unit with self-government powers, authorized to exercise any power not prohibited by the Constitution, law, or charter.

## **II. LEASES**

4. The City of Missoula owns a Civic Stadium located at 700 Craig Lane, Missoula, Montana.

5. BSPB was not responsible for the construction of the Civic Stadium or playing field. Specifically, BSPB did not install nor is it responsible for the structural integrity, carrying capacity for equipment or crowds or drainage of the playing field.

6. BSPB and its predecessor entered into a series of leases of the Civic Stadium with the City. The most recent lease was executed on October 25, 2018. A copy of the current Missoula Civic Stadium Lease and Use Agreement (“Lease Agreement”) setting forth the terms and conditions of the lease is attached hereto as Exhibit 1 and incorporated by reference. The Lease Agreement supersedes the Missoula Civic Stadium Lease and Use Agreement between the City and the predecessor to BSPB dated February 12, 2012. BSPB was assigned and assumed

all rights incident to this prior lease agreement. The Lease Agreement was in full force and effect and in good standing at all times material to this action.

7. Under the terms of the Lease Agreement, BSPB has specified maintenance responsibilities in relation to the Civic Stadium but no capital improvement obligations. That responsibility rests with the City.

8. At all times material to this action, BSPB was in full compliance with all of its duties and responsibilities under the Lease Agreement.

9. BSPB's primary use of the Civic Stadium is to operate a minor league baseball club. However, BSPB conducts other events and activities at the Civic Stadium as allowed by the Lease Agreement.

10. Logjam entered into a lease agreement with the City for use of the Civic Stadium on or about July 20, 2018. (The written date of execution is not clear and the lease signature block incorrectly notes the execution date as February 17, 2012.) A copy of the Missoula Civic Stadium Lease and Use Agreement ("Subordinate Lease Agreement") setting forth the terms and conditions of the Logjam lease is attached hereto as Exhibit 2 and incorporated by reference. The Subordinate Lease Agreement was in full force and effect at all times material to this action.

11. The Subordinate Lease Agreement allowed Logjam to sponsor music, concerts and comedy events at the Civic Stadium pursuant to specific terms and

conditions. Specifically, Logjam was allowed to utilize the premises for suitable events consistent with the stadium's "ability to support public use" so as not to "unduly jeopardize the Civic Stadium."

12. The rights granted by the City to BSPB and its predecessor for use of the Civic Stadium in the Lease Agreement were superior to those granted to Logjam in the Subordinate Lease Agreement.

13. The rights granted to Logjam for use of the Civic Stadium in the Subordinate Lease Agreement were subject to the superior rights of BSPB to exercise its rights under the Lease Agreement, including but not limited to, the operation of a minor league professional baseball team.

14. BSPB was not meaningfully consulted by the City or Logjam prior to the execution of the Subordinate Lease Agreement in relation to considerations, specifications or limitations of the Civic Stadium in regard to its intended use by Logjam. In particular, BSPB was not given the opportunity to provide meaningful input regarding the use of the Civic Stadium for large concerts as Logjam announced to the public it intended to hold at the Civic Stadium. BSPB was not given the opportunity to provide meaningful input regarding any matters relating to the carrying capacity of the playing field for equipment or crowds or appropriate limitations on the use of the Civic Stadium playing field by Logjam.

15. In negotiating and entering into the Subordinate Lease Agreement and

its acts and omissions thereafter, the City failed to take into account its contractual, common law and other non-contractual duties to BSPB. These failures and the City's acts and omissions related to them caused significant damage to BSPB.

16. Specifically, the City's negotiating and entering into the Subordinate Lease Agreement and its acts and omissions thereafter violated contractual and common law duties owed to BSPB by, at a minimum:

- a. Failing to take into account the superior leasehold interests of BSPB;
- b. Failing to take into account the limited scope of the Civic Stadium and playing field to accommodate large concerts and other events allowed by the Subordinate Lease;
- c. Failing to consult with BSPB regarding the limitations on use of the Civic Stadium for large concerts and other major events allowed by the Subordinate Lease;
- d. Failing to consult with BSPB regarding the limitations on use of the Civic Stadium for the planned Mumford & Sons Concert on August 11, 2019 ("Mumford Concert");
- e. Failing to take all actions necessary to protect the playing field and BSPB's ability to operate a minor league professional baseball club in conjunction with the risk associated with the Mumford Concert;
- f. Not assessing and taking into account the load carrying capability of the playing field at the Civic Stadium for both equipment and crowds;
- g. Not assessing and taking into account the load carrying capability of the playing field at the Civic Stadium for both equipment and crowds expected for the Mumford Concert and other similar events;
- h. Not assessing and taking into account the load carrying capability of the playing field at the Civic Stadium in inclement and rainy weather preceding and during the Mumford Concert and other similar events;

i. Not assessing and taking into account the limitation on concerts and other events due to water drainage deficiencies of the playing field;

j. Not assessing and taking into account the limitation on concerts and other events due to water drainage deficiencies of the playing field preceding and during the Mumford Concert and other similar events;

k. Not requiring Logjam to conduct appropriate due diligence regarding intended use of the facility, including the carrying capacity of the field for attendance, stages, trucks and other equipment routinely involved in any production and drainage of water in the event of rain;

l. Not requiring Logjam to conduct appropriate due diligence regarding intended use of the facility, including the carrying capacity of the field for attendance, stages, trucks and other equipment routinely involved in any production and drainage of water in the event of rain in anticipation of the large Mumford Concert;

m. Not setting any standards in the Subordinate Lease for required installation of protective materials by Logjam on the field;

n. Not setting any standards in the Subordinate Lease for required installation of protective materials by Logjam on the field for the Mumford Concert;

o. Not setting any City inspection procedures in the Subordinate Lease in regard to required installation of protective materials on the field;

p. Not setting any City inspection procedures in the Subordinate Lease in regard to required installation of protective materials on the field for the Mumford Concert;

q. Failing to set up oversight, review and approval procedures for contemplated concerts to insure they were appropriate and consistent with capacity of the playing field;

r. Failing to set up oversight, review and approval procedures for the Mumford Concert to insure it was appropriate and consistent with the capacity of the playing field;

s. Failing to set up oversight, review and approval procedures for the Mumford Concert to insure it was appropriate and consistent with the capacity of the playing field in rainy conditions;

t. Failing to oversee the proper installation of the floor covering/field protectant panel system for the Mumford Concert;

u. Failing to properly inspect the floor covering/field protectant panel system for the Mumford Concert;

v. Allowing the Mumford Concert to proceed with insufficient protection to the playing field; and

w. Allowing the Mumford Concert to proceed given the rainy weather conditions which would damage the playing field.

Logjam wrongfully participated in and is responsible for some of the noted failures.

17. In entering into the Subordinate Lease Agreement and thereafter, Logjam failed to take into account its contractual duties to the City and its common law and other non-contractual duties to BSPB. In entering into the Subordinate Lease Agreement and planning for and putting on the Mumford Concert, Logjam also failed to take into account the Civic Stadium's use limitations and take appropriate steps to protect the playing field. These failures and Logjam's acts and omissions related to them caused significant damage to BSPB.

18. The Subordinate Lease Agreement defines "unsuitable events" at Section 1.01 as "those events which . . . exceed the Civic Stadium's ability to support public use during the event or unduly jeopardize the Civic Stadium."

19. The Subordinate Lease Agreement states, at Section 4.01:  
“Unsuitable Events will not be permitted at the Civic Stadium.”
20. The Mumford Concert was an unsuitable event as outlined in this Complaint.
21. Logjam breached the Subordinate Lease Agreement in putting on the Mumford Concert given its acts and omissions outlined in this Complaint resulting in the damage it caused to the Civic Stadium.
22. Logjam caused damage to BSPB by allowing an unsuitable event to be staged at the Civic Stadium.
23. The City caused damage to BSPB by allowing an unsuitable event to be staged at the Civic Stadium.
24. As outlined in this Complaint, the City has breached its duties under and inherent in the Lease Agreement to BSPB and has otherwise acted negligently and has caused it damage as a result.
25. As outlined in this Complaint, Logjam has breached its duties under the Subordinate Lease Agreement to the City and has otherwise acted negligently thereby causing damage to BSPB as a result.

### **III. BACKGROUND**

26. The Civic Stadium is the product of a long community-based project.
27. The City was fully apprised of the development efforts leading up to



the finalization of the Civic Stadium project and construction of the facility and its playing field. The City was well aware of the playing field drainage issues and that there were practical limitations and restrictions on public use capacity prior to its decision to enter into the Subordinate Lease Agreement. It was also well aware that the stadium was not designed as a concert venue, certainly not a large concert venue. It knew that the playing field was clearly capable of accommodating minor league baseball but was limited for other public uses.

28. Prior to the Logjam Subordinate Lease Agreement, several concerts were produced at the Civic Stadium by the predecessor and current staff of BSPB. The largest concert was attended by approximately 8,000 people. These concerts were two truck affairs with minimal supporting equipment on the field. As noted below, based on its own comments, Logjam's Mumford Concert involved in the present claim was a 13-truck operation with significantly more and substantial equipment on the field. There were no issues with damage to the Civic Stadium or playing field arising out of pre-Subordinate Lease events at the Civic Stadium produced by the predecessor and current staff of BSPB.

29. Prior to entering into the Subordinate Lease Agreement, Logjam had access to venues capable of providing attendance up to around 5,000 people and sought a site for much larger crowds. The original safe crowd capacity of the stadium per the Fire Marshal before the Subordinate Lease Agreement was entered

into was 8,000. This crowd capacity limitation had nothing to do with the ability of the playing field to accommodate people or machinery. The Fire Marshal's safe crowd capacity was based on safe access and exits.

30. The City allowed Logjam to take steps to secure approval from the Fire Marshal for a larger crowd capacity for the Civic Stadium. Logjam installed a gate and some paving allowing better equipment access and some additional exit support. BSPB was advised this increased the attendance capacity to 10,000 persons and that was the goal for the Mumford Concert. Again, such efforts do not relate to the capacity of the playing field to accommodate crowds or equipment. In fact, the measures allowed for easier access of equipment to the playing field in excess of its weight carrying capacity, especially in inclement and rainy weather.

31. The City was negligent and violated its duties to BSPB in not setting any standards in the lease for required installation of protective materials on the field and inspection of such requirements.

32. The City was negligent and violated its duties to BSPB in failing to set up oversight procedures for projects in advance to insure they were appropriate, and for specific to the field load issues of planned events.

33. The City was negligent and violated its duties to BSPB in not requiring Logjam to take appropriate steps in anticipation of the Mumford Concert to consider and properly protect the Civic Stadium and playing field from damage

caused by concentrated loads on the field during large concerts.

34. Logjam was negligent and violated its duties to BSPB in not taking appropriate steps in anticipation of the Mumford Concert to consider and properly protect the Civic Stadium and playing field from damage caused by concentrated loads on the field during large concerts.

35. Logjam knew that special efforts, including special efforts to protect the playing field, were necessary to produce large concerts at the Civic Stadium, specifically the sold-out Mumford Concert, in the Civic Stadium which was not designed for that purpose. Logjam stated:

“The ballpark is not designed for concerts, it’s designed for baseball,” Checota said. “So, it’s like building a concert venue from scratch. It’s a huge undertaking.”

*The stadium was built to seat 3,500 baseball fans. The existing entrance gates, concession stands, bathrooms, office space and parking can’t accommodate a band with 13-semi trucks of equipment, 10 tour buses, a 90-person tour staff and 13,000 fans.*

“It’s a lot of logistics,” Checota said, “and requires a lot of infrastructure.”

<https://missoulacurrent.com/business/2019/08/logjam-mumford/> (emphasis added).

“This is not what you’ve seen in Ogren,” Logjam owner Nick Checota said Wednesday during a tour of the facility. “You could put this (show) in Washington-Grizzly stadium.”

. . . .

“It doesn’t have the infrastructure to do a 13-semi, 10-tour bus tour,” he said. “A lot of the infrastructure we have to bring in.”

[https://missoulain.com/entertainment/out-and-about/logjam-brings-first-arena-caliber-show-to-ogren-park/article\\_05de27a6-4413-5845-b409-ce3ccc691f16.html](https://missoulain.com/entertainment/out-and-about/logjam-brings-first-arena-caliber-show-to-ogren-park/article_05de27a6-4413-5845-b409-ce3ccc691f16.html).

36. The failures, breach of duties and negligence noted, and more, all came to a head with the lead up to and production of the Mumford Concert to the unnecessary detriment and damage of BSPB and the Civic Stadium.

#### **IV. THE MUMFORD CONCERT**

37. As noted, Logjam provided certain capital improvements to the Civic Stadium allowing for approved crowd sizes of up to 10,000 people. This was initially reported to be Logjam's goal for attendance at the Mumford Concert.

[https://missoulain.com/entertainment/music/logjam-aims-to-produce-concerts-at-missoula-ballpark-next-year/article\\_10e60164-946b-52d0-b3a3-](https://missoulain.com/entertainment/music/logjam-aims-to-produce-concerts-at-missoula-ballpark-next-year/article_10e60164-946b-52d0-b3a3-bd8cd02d03c1.html)

[bd8cd02d03c1.html](https://www.abcfoxmontana.com/missoula/logjam-presents-hosts-a-special-missoula-ticket-sale-for-mumford/article_eb0f394e-4769-11e9-a808-0397c63459ee.html). It was confirmed by advertised ticket sales information. *See*

[https://www.abcfoxmontana.com/missoula/logjam-presents-hosts-a-special-](https://www.abcfoxmontana.com/missoula/logjam-presents-hosts-a-special-missoula-ticket-sale-for-mumford/article_eb0f394e-4769-11e9-a808-0397c63459ee.html)

[missoula-ticket-sale-for-mumford/article\\_eb0f394e-4769-11e9-a808-](https://www.abcfoxmontana.com/missoula/logjam-presents-hosts-a-special-missoula-ticket-sale-for-mumford/article_eb0f394e-4769-11e9-a808-0397c63459ee.html)

[0397c63459ee.html](https://www.abcfoxmontana.com/missoula/logjam-presents-hosts-a-special-missoula-ticket-sale-for-mumford/article_eb0f394e-4769-11e9-a808-0397c63459ee.html).

38. Tickets went on sale March 22, 2019, and were reported to have been sold out within two hours. It was clear that the concert attendance was expected to be *well* over 10,000 for months before the event.

39. Because it had been represented to BSPB that the Mumford Concert attendance would not exceed 10,000, BSPB expressed its concern to the City before the concert that the event was exceeding the capability of the Civic Stadium

to accommodate it. The City subsequently verified the increased, but previously unexpected crowd size of over 13,000 but stated it was acceptable.

40. Based upon information and belief, the City did not inquire about, much less require Logjam to conduct any appropriate due diligence to assess or alleviate the potential of damage to the Civic Stadium given the unexpected increased size of the crowd to be on hand. The same is true for the preparations by Logjam for the Mumford Concert.

41. The Mumford Concert was the first of its kind effort by Logjam at the Civic Stadium. On site, Logjam and their stage set up contractor selected insufficient grounds protection and installed it improperly. No survey was done prior to the Mumford Concert to determine the ability of the field to handle the weight being brought on by the Mumford Concert crowd, stage and support vehicles (far more than ever before). After the fact geo-tech survey analysis showed that the sub-grade of the playing field did not have the bearing capacity required by the system set down to “protect” the field. Such an analysis by the City and Logjam should have preceded the Subordinate Lease Agreement and certainly should have been accomplished before the Mumford Concert. Logjam was negligent in failing to do so.

42. The City was also negligent in not requiring such a study.

43. The protective panels installed by Logjam and its contractors on the

playing field were never string aligned and were not checked for quality of alignment. There was clear, excessive deflection between many panels. Most of these panels were covered with plywood as opposed to the panels being replaced. The crews of Logjam and their contractors drove on the initial portion of the set up long before it was complete with forklifts and telehandlers.

44. The efforts to install protective panels on the playing field of the Civic Stadium by Logjam and its contractors were negligent and did not meet product installation standards.

45. Logjam publicly admitted that it had to “learn” from its mistakes in setting up for the Mumford Concert:

Checota said Logjam spent \$72,000 to rent a floor covering to protect the field, including the area under the stands, *and the flooring system did not protect the field “as anticipated.”*

. . .

Checota said he’s going to evaluate floor companies to see how to “mitigate” the problem in the future and improve it.

. . .

“This was more of a learning process and we’ll try to adjust.”

[https://missoulain.com/news/local/mumford-sons-businesses-report-big-boost-but-rain-causes-headaches/article\\_f9a41057-486b-5ee0-92ef-d82b29bb56ba.html](https://missoulain.com/news/local/mumford-sons-businesses-report-big-boost-but-rain-causes-headaches/article_f9a41057-486b-5ee0-92ef-d82b29bb56ba.html)  
(emphasis added).

46. It was hot and dry in the days leading up to the set up for the Mumford Concert, which began inside the Civic Stadium on August 8, 2019. *See*

<https://www.wunderground.com/history/monthly/us/mt/missoula/KMSO/date/2019>.

Reported pre-concert temperatures were:

August:

Date	Temp. Far.
1	93
2	95
3	88
4	92
5	94
6	96
7	95
8	96

See <https://www.wrh.noaa.gov/climate/monthdisp.php?stn=KMSO&year=2019&mon=8&wfo=mso>.

47. It rained before the concert. Proper selection and installation of fielded protection by Logjam would have alleviated some or all of the damage suffered to the playing field.

48. The City and Logjam now claim that BSPB saturated the field with its irrigation system before the concert set up and is responsible for the damage caused by the Mumford Concert.

49. In fact, the grass outfield was watered in the regular course of grounds upkeep on Tuesday, August 7, 2019, a day before the set up began in the Civic Stadium for the Mumford Concert. It is a proper and accepted practice to water the outfield grass before it is going to be covered for multiple days. The watering cycle in advance of the concert set up was normal, one which allows for baseball to

be played on the surface a short time later. Pictures taken at the time of the set up clearly demonstrate the playing field was not saturated as a result of the routine watering of the playing field by BSPB.

50. The playing field was not saturated by actions taken by BSPB at the time the set up for the Mumford Concert began.

51. Neither Logjam nor the City advised BSPB before or during the time of the set up for the Mumford Concert that the playing field was saturated or otherwise not in a condition for the proper installation of field protection systems. This position was not presented to BSPB until long after the damage was caused by the Mumford Concert and BSPB presented its claim to Logjam and the City.

52. This position (that BSPB over saturated the playing field before the concert set up) was not presented to BSPB until long after Logjam admitted responsibility for the damage to the Civic Stadium caused by the Mumford Concert and further acknowledged its obligation to repair the playing field.

53. After admitting responsibility for the damages suffered to BSPB's leasehold, the playing field and baseball operation, the City and Logjam also claimed they were not at fault because heavy rain fell in the late stages of concert set up and during the event.

54. In the period before the Mumford Concert, the City and Logjam had the opportunity to assess the situation, take additional steps to protect the



conditions of the Civic Stadium and playing field or cancel the concert. A proper review at that time by the City and Logjam would have revealed necessary concerns regarding the condition of the field due to the rain and the insufficiency of Logjam's preparations and installation of playing field coverings. They chose to proceed with the concert in the face of any apparent or known dangers to the Civic Stadium and playing field due to their negligence preceding the concert as outlined in this Complaint.

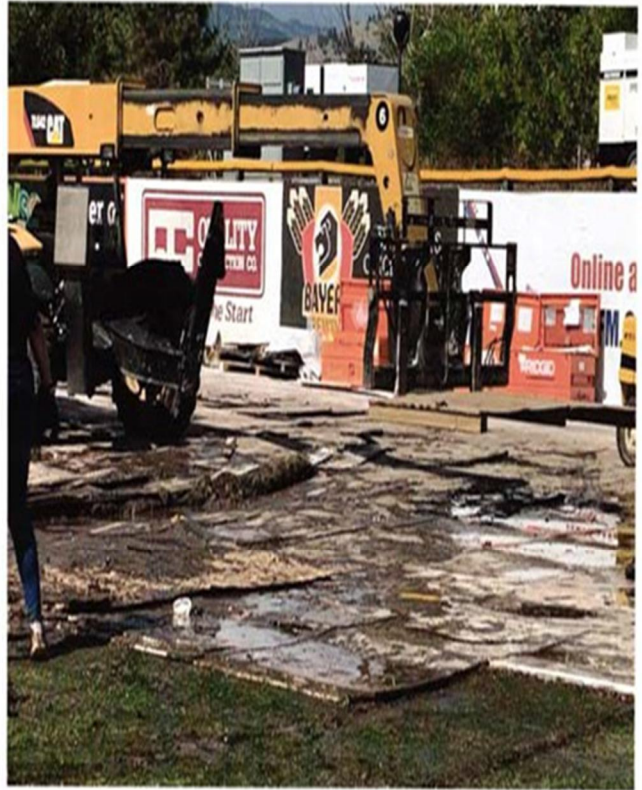
55. The playing field and Civic Stadium were severely damaged as a result of the equipment and crowd presence on the playing field incident to the Mumford Concert.

56. The playing field and Civic Stadium were severely damaged in the Mumford Concert production as a result of the acts and omissions of the City and Logjam outlined in this Complaint.

57. BSPB suffered significant damage as a result of the violations of the Lease Agreement by the City and Subordinate Lease by Logjam and negligence of both as outlined in this Complaint.

## **V. POST-CONCERT ADMISSIONS**

58. The following photographs provide graphic verification of the post-concert scene on the playing field of the Civic Stadium:



59. Logjam admitted its liability for damaging the field post-Mumford Concert and represented it would pay the damages to BSPB caused by it. In comments on the local newspaper internet site Logjam's spokesperson stated:

Logjam is obligated for the cost to repair the field. ... Once the time is right, the area causing problems will be re-sodded at Logjam's expense.

This admission was repeated several times in press interviews. For instance:

"It was a lot of wear and tear on the field, for sure," Checota said. "But we have a financial responsibility to help get the field back in good shape and will do whatever it takes."

<https://missoulacurrent.com/business/2019/08/logjam-mumford/>.

According to Logjam's agreement with the city, they have to pay for the field to be fixed before the Osprey game Friday.

Checota emphasized that it wasn't going to be an issue, and that this is a learning experience.

"We did one this year. We wanted to go through it and learn everything we needed to learn and make all our adjustments, and we'll continue to. But there are a lot of lessons here that we'll apply to the next show," he said. "I think, hopefully for Missoula, we only do a better job every time we put a show on here."

<https://nbcmontana.com/news/local/missoula-baseball-field-roughed-up-after-rock-concert>.

It's the first stage setup that Log Jam presents has put together for a show at Ogren Park which means there might be a steep learning curve for the crew but hopefully those lessons can translate into more shows at the ball park next year.

"Oh yeah, we hope to do maybe anywhere from three-to-four of three-to-five of these next year. Yeah, I wanted to do one kind of learn it figure out or mistakes -- correct those mistakes and then move

on and do more next year that [sic] why we just did one this year to kind of get our learning curve figured out,” Logjam Presents owner Nic Checota said.

<https://www.krtv.com/news/montana-and-regional-news/mumford-and-sons-concert-will-be-a-first-for-a-missoula-stadium>.

60. Having admitted liability for damaging the playing field of the Civic Stadium and its obligation to repair it, Logjam is held to have admitted liability for the consequences to BSPB of the playing field being unusable for a period of time discussed below.

61. No act or omission of BSPB caused the damage to the playing field during the Mumford Concert production activities.

62. The City and Logjam had the obligation to properly set up the playing field and concert venue to protect it from known risks including crowd size and the elements (heavy rain). The City and Logjam had the obligation and last chance to protect the playing field from damages due to any cause, including the elements (heavy rain).

63. If the field was saturated from any cause or otherwise in jeopardy of significant damage as a result of the impending Mumford Concert, the City and Logjam should have taken appropriate steps to alleviate the risk of damage, including cancelling the concert. The choice to proceed with the very profitable event carries with it the obligation to remediate all damages caused by it.

## VI. DAMAGES

64. As a result of the damage to the playing field at the Civic Stadium, BSPB suffered significant financial detriment.

65. Numerous staff and management hours were consumed in dealing with the issues raised post-concert as a result of the damage caused by it, including, but not limited to, assessing and estimating damage, dealing with the parties to this action and contractors regarding remediation and attempting to operate its baseball franchise in the throes of a title run without a field to play on. The cost of such staff hours should be borne by the City and Logjam.

66. Six Missoula Osprey professional baseball games were forced to be cancelled by BSPB as a result of the damage to the playing field. BSPB has repeatedly provided detailed verification to the City and Logjam of a list of damages associated with the cancellation of these games that total \$232,936.01.

67. The City reviewed the documentation submitted by BSPB for the noted damage figure and agreed that it was appropriate and caused directly by the damage to the Civic Stadium playing field by the Mumford Concert.

68. The damage to the playing field, cancellation of games and rescheduling negatively impacted the Missoula Osprey's ability to win or share the regular season title in their professional baseball league, thereby causing BSPB additional damages associated with the lost opportunity to participate in playoff

games and related revenue.

69. BSPB has suffered other damages as a result of the wrongful conduct of the City and Logjam.

70. The playing field repair to date has been costly. Interim repairs have been arranged for by BSPB in cooperation with the City and have been accomplished with funding arranged by the City. Permanent damage to the playing field has been assessed. The City is responsible for capital improvements and is expected to arrange permanent necessary upgrades to the playing field again shown to be necessary as a result of the Mumford Concert. (However, as noted above, Logjam and the City were aware of such issues with the playing field well in advance of the Mumford Concert.)

71. The City accepted liability for the damages noted above and claims made in this matter by arranging an advance payment to BSPB toward such damages totaling \$35,000.00.

72. Logjam admitted liability for the damages noted above and claims made in this matter by agreeing to contribute \$10,000 toward the advance payment to BSPB arranged by the City. It is not known if the payment has been made. (“We talked to Nick Checota. His company hosted the concert. He said he agreed to pay all expenses and is waiting for an invoice from the city.”)

<https://nbcmontana.com/news/local/missoula-city-council-approves-insurance-claim-over-damaged-baseball-field.>)

73. BSPB has taken numerous steps in the year following the Mumford Concert to resolve the claims outlined in this Complaint with the City and Logjam. Notwithstanding their admission of liability and agreement to compensate BSPB for their clear damages, the positions of the City and Logjam have been inconsistent and fluid. At one point, the City and Logjam agreed to resolve the claims and BSPB compromised its significant loss in order to avoid litigation. After agreeing to a resolution, Logjam refused to proceed. This filing is a last resort by BSPB due to the severe economic damage it suffered at the hands of the City and Logjam.

74. Logjam should not be allowed to conduct any further concerts at the Civic Stadium pending a resolution of the issues in this matter and the appropriate and necessary remediation/reconstruction of the Civic Stadium playing field to properly conduct concerts without violating BSPB's superior rights at law and under the Lease Agreement.

## **VII. CLAIMS**

### **COUNT 1 – BREACH OF CONTRACT (City of Missoula)**

75. BSPB restates and incorporates by reference the allegations of Paragraphs 1 through 74 hereof.

76. The City breached the Lease Agreement causing damage to BSPB as outlined in this Complaint.

77. In addition, Section 11.02 of the Lease Agreement, the City:

“shall . . . indemnify . . . the Team, . . . from . . . any and all claims resulting from or arising out of any act, activity . . . on the part of the City, its agents, contractors, . . . and guests or invitees . . . .”

Ex. A at 13, § 11.02.

78. The City is obligated to indemnify BSPB under the lease and the common law as a result of the damage caused it by Logjam as outlined in this Complaint.

79. Pursuant to Section 13.04 of the Lease Agreement, BSPB is entitled to recover its attorney’s fees and costs of litigation in this proceeding.

**COUNT 2 – BREACH OF THE COVENANT OF GOOD FAITH  
AND FAIR DEALING  
(City of Missoula)**

80. BSPB restates and incorporates by reference the allegations of Paragraphs 1 through 79 hereof.

81. The City’s acts and omissions in relation to its negligence and breach of the Lease Agreement separately violated the common law covenant of good faith and fair dealing inherent in the Lease Agreement. The violation of such covenant caused damage to BSPB.



**COUNT 3 – NEGLIGENCE  
(Logjam and the City of Missoula)**

82. BSPB restates and incorporates by reference the allegations of Paragraphs 1 through 81 hereof.

83. The City and Logjam breached their duties to BSPB as outlined in this Complaint.

84. The City and Logjam’s breach of duties to BSPB caused it damage as outlined in this Complaint and to be proven in this proceeding.

**PRAYER FOR RELIEF**

BSPB seeks judgment on its behalf against Logjam and the City for all its general, compensatory and special damages recoverable under Montana law based on the claims set forth herein, interest as allowed by law for its economic damages, its attorney’s fees and recoverable costs and such other relief as to the Court deems just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 11th day of August, 2020.

/s/ Bradley J. Luck  
Attorneys for Plaintiff

## MISSOULA CIVIC STADIUM LEASE AND USE AGREEMENT

THIS LEASE AND USE AGREEMENT is made and entered into as of the 25<sup>th</sup> day of October, 2018, by and between the CITY OF MISSOULA, a municipal corporation and political subdivision of the State of Montana (the "City") and BIG SKY PROFESSIONAL BASEBALL LLC as successors in interest (the "Team") (each a "Party" and, collectively, the "Parties").

### WITNESSETH:

WHEREAS, pursuant to a certain Missoula Civic Stadium Development Agreement dated as of May 17, 2000 (the "Development Agreement"), and a related Missoula Civic Stadium Use Agreement dated as of May 10, 2000 (the "Use Agreement") between the City and Play Ball Missoula, a Montana nonprofit corporation ("Play Ball"), Play Ball agreed to finance and construct a civic stadium for the operation and play of Minor League professional baseball and for other events in the community (the "Civic Stadium") on land owned by the City (the "Land"); and

WHEREAS, pursuant to the Civic Stadium Agreement dated as of February 17, 2012, between the City and Play Ball, and Ordinance No. 3468, adopted by the City Council of the City on August 15, 2011, the City has agreed to issue tax increment subordinate lien notes and revenue bonds to purchase certain secured lenders' interests in the Civic Stadium and the Land; and

WHEREAS, the City's Civic Stadium Revenue Bonds (the "Bonds") are to be paid from lease payments received by the City for the use of the Civic Stadium; and

WHEREAS, the Team is a Minor League professional baseball club and a member of the National Association of Professional Baseball Leagues, Inc. and is currently using the Civic Stadium under a lease arrangement with the City of Missoula that terminates on February 16, 2037; and

WHEREAS, the Team has invested in substantial improvements to the Civic Stadium; and

WHEREAS, the Team desires to modify the Lease and Use Agreement with City for the operation and play of professional baseball as well as other events and activities to be conducted at the Civic Stadium; and

WHEREAS, this Lease and Use Agreement has been approved by the National Association of Professional Baseball Leagues, Inc.; and

WHEREAS, the City desires to enter into this Lease and Use Agreement with the Team to permit the Team to use the Civic Stadium for the operation and play of professional baseball as well as other events and activities to be conducted at the Civic Stadium; and

WHEREAS, the Parties desire in this Lease and Use Agreement to set forth all rights, responsibilities and certain specific duties of each Party regarding the lease and use of the Civic Stadium; and

WHEREAS, the Team and the City desire to provide for adequate parking and traffic control measures for attendants at events and activities to be conducted at the Civic Stadium; and

WHEREAS, the Team and the City desire to provide for adequate security to ensure public health and safety for attendants at events and activities to be conducted at the Civic Stadium; and

WHEREAS, the Team and the City desire that quality food, beverage and other concession services be available through concession operations located at the Civic Stadium; and

WHEREAS, the Team and the City desire that the Civic Stadium provide wholesome recreational and entertainment opportunities for Missoula and surrounding area residents; and

WHEREAS, the Team and the City desire that the Civic Stadium will provide residents and visitors from surrounding areas with an opportunity to attend professional baseball games and other community events, without the need to travel extended distances and will thus increase the attractiveness of Missoula as a place in which to reside and work; and

WHEREAS, the Team and the City desire that the Civic Stadium be a community asset and acknowledge the need for the City to retain the right to use it for events other than professional baseball; and

WHEREAS, the City desires to support the Team and reasonably assist the Team's promotional activities.

NOW THEREFORE, in consideration of the Civic Stadium, 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:

**Section 1. Definitions and Exhibits.**

**Section 1.01. Definitions.** The terms defined in this Section 1.01 shall for all purposes of this Lease and Use Agreement have the meanings herein specified, unless the context clearly otherwise requires:

Baseball Game means Professional 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.

Bonds shall mean the \$1,555,000 City of Missoula Civic Stadium Revenue Bonds to be issued by the City of Missoula pursuant to Resolution No. 7643 adopted by the City Council on August 15, 2011.

Bond Holders shall mean the Missoula Federal Credit Union and MoFI.

City Use means use of the Civic Stadium by the City in accordance with the terms of this Lease and Use Agreement.

Civic Stadium means the Land together with the Improvements.

Commencement Date means May 19, 2019, the date the term of this Lease and Use Agreement commences.

Commissioner of Baseball means the chief executive of Major League Baseball and Minor League Baseball.

Equipment shall have the meaning given in Section 2.01.

Existing Naming Rights shall have the meaning given in Section 9.01.

Expiration Date has the meaning given in 2.04.

Extension Term means each of two (2) additional periods of five (5) years that the Team may, at its option, extend the Lease Term, pursuant to Section 2.05.

Improvements means all buildings, structures, facilities, utilities, installations and other improvements now or hereafter located on the Land and all fixtures attached thereto.

Land means that parcel of land legally described on Exhibit A attached hereto, together with all easements, rights-of-way and appurtenances thereto.

Lease Term means the term of this Lease and Use Agreement.

Logjam Events means music, concerts, and comedy events.

Major League Baseball means the organization which oversees the governing and organization of major league baseball in North America.

Mid-size Events means events with potential, expected or planned attendance at any one time of more than 500 persons.

MiLB Agreements has the meaning given in Section 2.02.

Minor League means that classification of professional baseball leagues that competes below the level of major league baseball and provides opportunities for player development.

Minor League Baseball means the organization which oversees the governing and organization of Minor League baseball in North America.

Non-Routine Repair and Replacement Projects has the meaning given in Section 10.02.

Playing Field has the meaning given in Section 2.03.

Professional Baseball means Minor League professional baseball.

Professional Baseball Standards means those standards adopted by the National Association of Professional Baseball Leagues, Inc. and reflected in the Professional Baseball Agreement, to which the Team is a party, including but not limited to standards for the operation and play of Minor League professional baseball.

Removables has the meaning given in Section 10.11, as more fully inventoried in Exhibit D.

Rent has the meaning given in Section 2.06.

Rules has the meaning given in Section 2.02.

Season means the Professional Baseball season, which shall commence on or about June 1st and conclude on or about September 30th of each calendar year, and be extended to include any play-off games held in the City during the Lease Term and any extensions thereof.

Silver Park Parking Lot has the meaning given in Section 5.01.

Special Event means public or private use of the Civic Stadium by the Team or a Sub-Lessee of the Team for cultural, social, sporting and political events and entertainment consistent with the use of a City park. The term does not include concerts, music, or comedy events.

State means the State of Montana.

Sub-Lessee means any person or entity that subleases the Civic Stadium from the Team.

Unsuitable Events are those events which endanger the public, exceed the Civic Stadium's ability to support public use during the event or unduly jeopardize the Civic Stadium, or cause undue hardship on the surrounding neighborhood.

**Section 1.02. Exhibits.** There is attached to this Lease and Use Agreement and hereby made a part hereof the following Exhibits:

- a) Exhibit A: Legal Description of the Land
- b) Exhibit B: Minor League Civic Stadium Survey
- c) Exhibit C: Wire Transfer Instructions
- d) Exhibit D: Inventory of Removables
- e) Exhibit E: Non-Discrimination and Affirmative Action Statement
- f) Exhibit F: Representative Maintenance Plan

## **Section 2. Civic Stadium.**

**Section 2.01. Lease of Civic Stadium.** For and in consideration of the rents and covenants herein stipulated to be paid and performed by the Team, and upon the terms and conditions herein specified, the City hereby leases to the Team, and the Team hereby leases from the City, the following: (i) the Land, as described in Exhibit A attached hereto and (ii) the Improvements, which are substantially described in Exhibit B attached hereto and also includes those pieces of equipment deeded to the City by Play Ball (the "Equipment"). The Land and the Improvements are collectively referred to herein as the "Civic Stadium." The Team shall have control over the management and operation of the Civic Stadium as provided in this Lease and Use Agreement; provided, however, that the City shall have no obligation to replace or maintain the Equipment.

### **Section 2.02. Subservience to Baseball Rules.**

- a) The City acknowledges that the Team and its operation and activities are subject in all respects to the Team's various agreements related to its Minor League affiliation, including, without limitation, the Professional Baseball Agreement, the National Association Agreement, the Major League Rules, the governing documents for the Teams league, each agency agreement and operating guidelines among the Baseball teams and Minor League Baseball or Major League Baseball (the "MiLB Agreements"); and any rules issued or adopted either by the Commissioner of Baseball, the President of Minor League Baseball or its Board of Trustees, the Team's league, or otherwise pursuant to applicable baseball rules (the "Rules").
- b) The Team represents that as of the effective date of this Lease and Use Agreement, the terms of this Lease and Use Agreement comply with the requirements of the MiLB Agreements and the Rules. The Team shall notify the City as soon as reasonably possible of any changes in the terms of the MiLB Agreements and/or the Rules which would or could affect the City's rights hereunder.

**Section 2.03. Professional Baseball Standards.** The Civic Stadium shall have a natural grass Professional Baseball field and playing surface (the "Playing Field") and be maintained to meet or exceed Professional Baseball Standards for Professional Baseball clubs. Upon executing this Lease, the Team accepts the Civic Stadium as is and acknowledges that the Civic Stadium meets Professional Baseball Standards with the exception of the Minor League Civic Stadium Survey done by Major League Baseball in 2010, attached hereto as Exhibit B. The Team acknowledges that the City has made no representations to the Team about the suitability of the Civic Stadium for Professional Baseball. The Team shall be responsible for ensuring that the Civic Stadium continues to meet Professional Baseball Standards, and the City shall not be obligated to ensure that the Civic Stadium continues to meet Professional Baseball Standards.

**Section 2.04. Term, Possession.** The Lease Term commences on the Commencement Date and expires at midnight on February 16, 2037 (the "Expiration Date") or such earlier date as this Lease and Use Agreement is terminated pursuant to its terms or by law.

**Section 2.05. Options to Extend.** The Team has the option to extend the Lease Term with respect to all of the Civic Stadium, for two (2) additional periods of five (5) years each (each an "Extension Term") provided an Event of Default does not exist as of the date of exercise of the extension option and as of commencement date of the applicable Extension Term. Each extension option is exercisable by written notice to the City given at least 12 months prior to the Expiration Date or the expiration of then applicable Extension Term, as the case may be. The extension of the Lease and Use Agreement shall be on the same covenants, agreements, provisions, and conditions as set forth in the Lease and Use Agreement for the initial term, except for an adjustment in the Rent, as the Parties may mutually agree at the time of the extension.

**Section 2.06. Rent.**

- a) **Rent.** The Team shall pay to the City annual Rent in the amount of \$40,000 per year, payable in equal \$10,000 installments on the June 30, July 31, August 31, and September 30 of each year, commencing June 30, 2019, throughout the term of the Lease and Use Agreement and any extension thereof. The Team acknowledges that the annual Rent will be used by the City to pay the annual principal and interest due on the Bonds.
- b) **Payment of Rent.** The Team will pay Rent to U.S. Bank, as the City's agent, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit C. The Team shall perform all its obligations under this Lease and Use Agreement at its sole cost and expense, and shall pay all Rent, additional charges and any other sum payable hereunder without notice, demand, setoff, counterclaim, abatement, suspension, deduction or defense, except as expressly provided in this Lease and Use Agreement.
- c) **Taxes.** As City property, the Civic Stadium should be exempt from state and local property taxes. The City covenants to do all things in its power to maintain the property tax-exemption of the Civic Stadium. The Team shall pay to the appropriate governing authority, prior to delinquency, any personal property or similar taxes levied or imposed upon the Team's trade fixtures, leasehold improvements or personal property located within the Civic Stadium.
- d) **Utilities.** The Team shall obtain in its own name and pay directly to the appropriate supplier prior to delinquency the cost of all utilities and services serving the Civic Stadium, including but not limited to electricity, sewage, water, garbage, trash removal, natural gas, culinary and irrigation water and telephone charges. Without limiting the foregoing, the Team shall heat the

Civic Stadium as necessary to prevent any freeze damage to the Civic Stadium or any portion thereof. The Team's use of electric current shall at no time exceed the capacity of the feeders or lines to the Civic Stadium or the risers or wiring installation of the Civic Stadium. The City shall in no event be liable for any interruption or failure of, and the Team shall not be entitled to any abatement or reduction of rent by reason of, any interruption or failure of utilities or other services to the Civic Stadium, nor shall any such interruption or failure in any such utility or service be construed as an eviction (constructive or actual) of the Team or as a breach of the implied warranty of suitability, or relieve the Team from the obligation to perform any covenant or agreement herein, and in no event shall the City be liable for damage to persons or property (including, without limitation, business interruption), or in default hereunder, as a result of any such interruption or failure.

- e) **Absolute Net Provision.** It is the intention of the City and the Team that the Rent herein specified shall be net to the City and that all costs, expenses and obligations relating to the Civic Stadium during the Lease Term shall be paid by the Team except as otherwise expressly provided in this Lease and Use Agreement.

### **Section 3. Uses of Civic Stadium.**

**Section 3.01. Exclusive Use Rights.** With the exception of City Use, as described hereinafter, and Logjam events, the Team shall have the exclusive right to use the Civic Stadium (including the Equipment) during the term of this Lease and Use Agreement, including any extensions thereof. The Team has the exclusive use of those areas of the Civic Stadium designated as Team administrative offices, the Home Clubhouse, and related areas.

**Section 3.02. Special Events.** The Team shall be entitled to rent the Civic Stadium or portions thereof to persons and entities for Special Events. The Team shall be responsible for all costs and expenses associated with such rentals. The Team shall be entitled to set rental rates for use of the Civic Stadium or specific portions of the Civic Stadium and retain all rents paid for such use for operation, management and maintenance of the Civic Stadium.

**Section 3.03. City Use of the Civic Stadium.** The City and the Team agree that the Civic Stadium shall be available at no rental charge for City-sponsored events ("City Use") a total of four times during the course of the calendar year. Two of these four times may, at the option of the City, occur during the course of the Season when such use will not interfere with Baseball Games. Any costs specifically associated with the City Use of the Civic Stadium borne by the Team will be reimbursed by the City. Such expenses include, but are not limited to, staffing, utilities and materials. The Team maintains full concession rights for all City Use of the Civic Stadium as provided in Section 7.02. City Use shall not interfere with the Team's exclusive use of those areas of the Civic Stadium designated as Team administrative offices, the Home Clubhouse, and related areas. Nothing herein shall preclude the City and the Team from agreeing to additional City Use on terms and conditions agreeable to both Parties.

### **Section 4. Limitations on Use.**

**Section 4.01. Unsuitable Events.** Unsuitable Events will not be permitted in the Civic Stadium. The Team agrees that its usage will never exceed allowed capacities pursuant to applicable uniform City fire codes and City building codes, and both Parties agree that events with such use would constitute Unsuitable Events.

**Section 4.02. Noise Ordinance.** The Team acknowledges the City has adopted a noise ordinance that prohibits excessive noise within the City (the "Noise Ordinance"). The Team agrees to comply with the City's Noise Ordinance as part of this Lease and Use Agreement. The City recognizes that Baseball Games may, on occasion, exceed permitted levels of noise. The City Council specifically grants a Permit For Relief from Noise Levels for Baseball Games as stipulated in Section 9.30.070(B), Missoula Municipal Code. All other events and activities shall abide by the City's Noise Ordinance. The Team shall maintain control of the Civic Stadium sound system at all times, except during Logjam events, and shall reduce or eliminate the sound in the event of a verified violation of the Noise Ordinance.

**Section 4.03. Lights.** Lighting of the Silver Park Parking Lot and the additional Civic Stadium parking to be provided by the City shall be in conformance with City ordinances governing such issues.

**Section 4.04. Fireworks.** The Team shall be permitted to use fireworks up to three times per year, provided that:

- a. Fireworks shall not be used on consecutive nights;
- b. The Team shall use a licensed fireworks operator;
- c. The Team shall be responsible for repairing any fireworks- related damage to the Civic Stadium and for paying costs of any fireworks- related injuries;
- d. Any fireworks utilized must be legal under federal and State law; and
- e. The Team shall obtain approval from the Fire Department

**Section 4.05. Other Personnel and Services.** Except as otherwise provided herein, the Team shall provide at its sole expense all personnel reasonably necessary for the operation of the Civic Stadium for all Baseball Games and events, except Logjam events, at the Civic Stadium, including, without limitation, ticket sellers, ticket takers, ushers, janitors, medical persons, switchboard persons, sound and scoreboard persons and other supervisory personnel. The Team has the right to charge rent for or provide for the reimbursement of such items from Sub-Lessees. The Team shall have the sole, exclusive and absolute authority to fix the prices for such services.

## **Section 5. Parking and Traffic Control.**

**Section 5.01. Parking.** The City and the Team agree to work together to make available adequate parking for the Civic Stadium. The City has constructed a City parking lot (the "Silver Park Parking Lot"), located on the west side of the Civic Stadium.

- a. The Team shall have the right to exclusive use and control of the Silver Park Parking Lot during Baseball Games and events with potential, expected or planned attendance at any one time of more than 500 persons at the Civic Stadium ("Mid-size Events"), excluding Logjam events, beginning two hours before the start- time of the event and ending two hours after the end time of the event. The Team's exclusive rights include the ability to charge for parking and to control access. Cars legally parked in the Parking Lot prior to the beginning of the Team's exclusive rights to the Silver Park Parking Lot will be allowed to remain without being subject to charge. Upon completion of the event, the Team is responsible for cleaning up the Silver Park Parking Lot to return it to its original condition.



- b. The Team shall have the right to manage parking for events other than Baseball Games and Mid-size Events. The right to manage parking does not include the right to charge for parking or to control access. The right to manage parking does include the right to direct the flow of traffic into and out of the Silver Park Parking Lot and to direct cars to available parking spaces.
- c. The Team shall have the right to reserve parking along the side of the access road for its employees, provided however that the access road cannot be blocked at any time. The Team shall cooperate with the Missoula Redevelopment Agency regarding appropriate signage for this parking area.

**Section 5.02. Other Parking Lot Uses.** The Silver Park Parking Lot is owned and managed by the City, and the public is entitled to use the Silver Park Parking Lot for other purposes except during periods when Baseball Games and Mid-size Events, as described above.

**Section 5.03. Completion of Additional Parking Lots.** The City will work to develop additional parking for the Civic Stadium at locations mutually agreed upon by the Parties. Upon completion of the additional parking lots (the "New Parking Lots"), the Team will gain access to approximately 100 additional parking spaces under the same working agreement as described in Sections 5.01 and 5.02.

**Section 5.04. Traffic Control.** In order to mitigate and control the impacts of parking and traffic generated by the Civic Stadium on the neighborhood and other public facilities, the Parties agree to the following multi-part strategy:

- a) The Team shall ensure that incentives are offered to encourage alternative transportation to all Baseball Games.
- b) With the approval of the City, the Team will be responsible for street closures and parking and traffic control during events. Other than for City Use, at each event, including Baseball Games, the Team shall provide the necessary parking and traffic control by use of barricades, signs, and trained traffic controllers.
- c) Sub-Lessees renting the Civic Stadium from the Team shall agree to specific requirements for parking and traffic control in writing as a condition for using the Civic Stadium.
- d) In order to preserve parking for users of McCormick Park, the City will place signage at the entrance to McCormick Park parking lot Limiting use to McCormick Park users only.
- e) The Team shall provide outdoor bicycle facilities for 100 bicycles during the Season until such time as the City provides permanent, equivalent bicycle facilities for more than 100 bicycles in Silver Park that are reasonably accessible to the Civic Stadium. The Team shall provide secure bicycle parking for a minimum of twenty percent of full time staff members at the Civic Stadium at a location to be determined by the Team.

**Section 6. Security.** The Team shall provide all security at the Civic Stadium for all events or activities held therein sponsored by Team, and will require all Sub-Lessees to provide security as determined by the Team. The Team shall have the exclusive right to determine what security forces are necessary.

**Section 7. Concessions, Novelties and Souvenirs.**

**Section 7.01. Vendor Selection.** The Team shall have the sole, exclusive and absolute right to select the food, drink and catering concessionaire(s) for all activities or events at the Civic Stadium, except for alcoholic beverages at Logjam events.

**Section 7.02. Concessionaire Services.** The Team has sole, exclusive and absolute right to provide food, drink and catering concessionaire services for Civic Stadium events at the Team's expense, except as specified in Section 7.03(b) with respect to Logjam events. The Team has the right to decline to provide any services for Civic Stadium events the Team reasonably deems not profitable. If the Team declines to provide food, drink and catering concessionaire services, Sub-Lessees of the Civic Stadium cannot provide such service without written approval from the Team. In the event the Team declines to or is unable to provide concessions for any City Use, the City shall have the right to operate, or contract for the operation of, food, drink and catering concessionaire services at the Civic Stadium during such event. However, the City is not entitled to use concession equipment without the Team's approval, and the Team may charge the City any costs associated with such use.

**Section 7.03. Alcoholic Beverages.** Consistent with the laws of the State and the provisions of this agreement, the Team has exclusive rights to sell alcoholic beverages, except as listed in Section 7.03(b).

- a. After obtaining all appropriate licenses and permits, or otherwise arranging for the legal sale of alcohol at the Civic Stadium for all Civic Stadium events. If the Team chooses to use an outside caterer for the sale of alcohol, only Department of Revenue-licensed caterers will be allowed to serve alcohol. With respect to Baseball Use, the Team and the City agree that the use of alcohol in the Civic Stadium shall be in accordance with State and federal laws and Professional Baseball Standards. The Team is given specific permission for the sale and consumption of beer and table wine during Baseball Games subject to the following limitations:
  - i. no beer or wine is to be sold after the seventh inning;
  - ii. no more than two servings of beer or wine may be sold to one person at one time; and
  - iii. beer and wine may be served or sold to special groups (as designated by the Team) for a period beginning 2 hours before the start of a Baseball Game.
- b. Logjam has exclusive rights to sell alcoholic beverages at all Logjam events.

**Section 7.04. Prices.** The Team shall have the sole, exclusive and absolute authority to fix the prices of all items to be sold by the Team or their concessionaires. The Team shall post in a conspicuous place at each concession stand (permanent or temporary) a list of prices of all items or services offered for sale.

**Section 7.05. Quality.** All concession and concession services permitted under this Lease and Use Agreement shall be of first quality and commensurate with industry standards prevailing in stadiums similar to the Civic Stadium. The Team shall provide and require concessions and concession services to be in a sufficient number, involving properly trained concession personnel. The Team shall maintain high standards of cleanliness and all food, drinks, confections and other items sold or kept for sale will conform in all respects to applicable federal, State, and Missoula City-County Health Department regulations and laws.

**Section 7.06. Concession Equipment.** It shall be the responsibility of the Team to purchase the equipment necessary for the operation and sale of concession items. Concession facilities not affixed to

the Civic Stadium and provided by the Team shall be considered temporary and remain the property of the Team at the termination of this Lease and Use Agreement. The Team shall have the right to remove all such temporary concession equipment or facilities placed in the Civic Stadium; provided, the Team shall leave the Civic Stadium in its original condition, reasonable wear and tear expected.

**Section 7.07. Novelties and Souvenirs.** The Team shall have the sole and exclusive concession for the sale or distribution of baseball-related novelty and souvenir items, which: concession includes but is not limited to organized baseball souvenirs, caps, equipment, wearing apparel and programs. The Team shall retain all revenues generated from the sale of such novelty or souvenir items.

**Section 8. Revenues.**

**Section 8.01. Parking Revenue.** The Team shall be entitled to one hundred percent (100%) of the revenue generated from parking for the events authorized in Section 5.01 as provided in Section 5.01.

**Section 8.02. Concession Revenue.** The Team shall be entitled to one hundred percent (100%) of the revenue generated from concessions at all events held at the stadium, excluding alcoholic beverages at Logjam events.

**Section 8.03. Ticket and Admission Prices.** The Team shall be entitled to all revenues generated by Baseball Games and Special Events, with the exception of alcoholic beverage revenue for Logjam events as specified in section 7.03, and shall have the sole, exclusive and absolute authority to fix the ticket prices and to fix admission or participation fees and charges to be assessed at the Civic Stadium for such events.

**Section 9. Promotion and Advertising.**

**Section 9.01. Naming Rights, Team Control of Promotion.** Both Parties acknowledge that the Civic Stadium is subject to naming rights agreements entered into by Play Ball with Allegiance Benefit Plan Management, Inc. for Allegiance Field and Kathy Ogren for Ogren Park ("Existing Naming Rights"). In the event that the Existing Naming Rights terminate, the City shall have the ability to name or sell naming rights to the Civic Stadium and to place appropriate signage and name identification at the City's sole and exclusive right and expense. Except for naming rights, the Team shall have the sole, exclusive and absolute right to erect, install or fix signs, banners and advertising materials or information at the Civic Stadium, provided structural changes or modifications are not made to the Civic Stadium. Except for naming rights, the Team shall have the ability to sell advertising space at the Civic Stadium, including the right to place signs, banners and advertising materials on the interior surface of any outfield fence and as well as other locations at, upon or within the Civic Stadium, subject to the terms of this Lease and Use Agreement. Notwithstanding the above provisions, no tobacco or political advertising, or advertising for gaming enterprises that permit betting on professional sports, shall be permitted to be erected, installed or fixed at the Civic Stadium.

**Section 9.02. Scoreboard.** The Team has provided and installed, at its sole cost and expense, a permanent scoreboard (the "Scoreboard") at the Civic Stadium that meets or exceeds Professional Baseball Standards. The Scoreboard is part of the Civic Stadium. The Civic Stadium name appears on the Scoreboard, and the Team shall have the right to sell all advertising on the face (the side of the Scoreboard facing the interior of the Civic Stadium) to offset the cost of Scoreboard acquisition and maintenance. No advertising will be allowed on the back (reverse side of the Scoreboard facing away

from the interior of the Civic Stadium). The Parties acknowledge that the Scoreboard is visible from some points outside the Civic-Stadium at all times.

**Section 9.03. Signs and Advertising.** The Parties acknowledge that advertising and signage are a part of the anticipated revenue of the Team. Nothing in this Lease and Use Agreement shall preclude placement of advertising within the confines of the Civic Stadium. The Team shall have the sole, exclusive and absolute authority to fix the prices for all advertising and promotion as authorized by this Section.

**Section 10. Operation, Maintenance, and Capital Improvements.**

**Section 10.01. Maintenance Fund.** Through a separate agreement, the City and Logjam Presents have established a maintenance fund. Big Sky Professional Baseball will participate in decisions regarding the use of the maintenance fund.

**Section 10.02. Non-Routine Repair and Maintenance Projects.** The City, at its cost, shall maintain the structural integrity of the following:

- a. The structural parts of the Civic Stadium and permanent fixtures and other improvements that are a part of the Civic Stadium, including, without limitation, the foundations, bearing walls, flooring, sub-flooring, ceiling, roof, window frames, gutters and down spouts, fences, light poles, grandstands and bleachers; and
- b. The unexposed electrical, plumbing and sewage systems, including, without limitation, those portions of the systems lying outside the Civic Stadium.

**Section 10.03. Repair and Replacement of the Scoreboard.** In the event that the scoreboard requires non-routine repair or must be replaced entirely, the Team will work with the City to sell advertising and/or naming rights to the scoreboard to raise the capital for such repair or replacement.

**Section 10.04. Team Repair of Damage.** The Team agrees to repair, at its sole cost and expense, any material damage done to the Civic Stadium as a result of any act or omission to act by the Team, its assigns, Sub-Lessees, agents, officers, employees, contractors, guests, invitees, customers, visiting teams and/or patrons and to pay the City the cost of such repair to the extent that the City is not compensated therefore by insurance.

**Section 10.05. Operation and Routine Maintenance.** The Team agrees to maintain the Civic Stadium in good, clean and safe condition at its sole expense; including payment of all salaries and benefits of those employed by the Team for maintenance purposes, utilities (including gas, water, electricity, telephone and sewer), maintenance, insurance, professional fees and costs, advertising, garbage collection service, and all normal, routine and necessary costs of operation. Operating, repair and maintenance costs shall be those ordinary and recurring expenses for the current repair and maintenance of the Civic Stadium. A representative maintenance plan for the Civic Stadium is attached hereto as Exhibit F. Operating, repair and maintenance costs shall not include equipment, property or assets owned by the Team or its concessionaires. Notwithstanding the foregoing, the Team shall be responsible for the following routine maintenance and operation:

- a. Removal of all debris from the Playing Field, concourses, grandstand and bleachers and cleaning the restroom facilities after each use of the Civic Stadium by the Team or Sub-Lessees;

- b. Cleaning, housekeeping and sanitation services for all Team administration areas, all Team and visiting team facilities, including, but not limited to, club house, dressing rooms, shower and toilet facilities, and all concession facilities;
- c. Replacing light bulbs, including flood lights and scoreboard lamps during the Season; and,
- d. Maintenance of the Playing Field as provided in Section 10.07 below.

**Section 10.06.** Nothing in this provision shall require or preclude Team from contracting with the City or its departments for maintenance services at the Civic Stadium.

**Section 10.07. Maintenance of Playing Field.** Except as otherwise provided herein, the Team shall maintain and prepare the Playing Field at the Civic Stadium at its sole cost and expense, consistent with Professional Baseball Standards. The Team's obligations hereunder shall include but are not limited to the following:

- a. Initial pre-season preparation of the field, including grading and filling non-turf areas (such as base paths, pitcher's mound, home plate area and warning track) to bring the field to Professional Baseball Standards, including the installation of appropriate lights and scoreboard and performance of any backstop and scoreboard repair;
- b. Regular mowing, fertilizing and irrigating during the off-season;
- c. Dragging, raking and edging non-turf areas and any necessary trimming of the field;
- d. Chalking boundary lines; and
- e. Installing bases and appropriate placement of the batting cage.

**Section 10.08. Maintenance of the Land.** The Team shall maintain the land surrounding the Civic Stadium to the standards agreed upon by the Team and the Missoula Redevelopment Agency.

**Section 10.09. Notice of Non-Routine Repair and Maintenance Projects.** The Team shall, at the end of each Season, notify the City of any Non-Routine Repair and Replacement Projects that it deems necessary or desirable. The City shall determine when and if to undertake the Non-Routine Repair and Replacement Projects, unless failure to make such repairs would result in dangerous conditions or impair the Team's ability to conduct Baseball Games or Special Events. If the Team certifies to the City that failure to undertake a Non-Routine Repair and Replacement Project will result in dangerous conditions or impair the Team's ability to conduct Baseball Games or Special Events, the City will undertake to make such repairs as soon as is possible and practicable. The City will provide written notice to the Team at least fourteen (14) days prior to any scheduled significant structural restoration and repair activity, in order to assist the Team in planning any events at the Civic Stadium. The City will coordinate any Non-Routine Repair and Replacement Projects with the objective of causing a minimum of interruption with the Team's activities provided for under this Lease and Use Agreement.

**Section 10.10. Team Improvements.** The Team may from time to time, at its own expense, make such alterations and improvements to the interior of the Civic Stadium as it may deem advisable for the conduct of its business. However, prior to the commencement of any such alteration or improvement, the Team shall first submit in writing the plans and specifications therefor and obtain approval therefor by the City. Such approval by the City shall not be withheld unreasonably.

**Section 10.11. Removal of Team Improvements and Fixtures.** Any permanent additions, improvements or fixtures which are made, installed or fixed to the Civic Stadium by the Team, in a manner that renders them removable only with material physical damage to the Civic Stadium, shall become the property of the City. Any additions, improvements or fixtures made, installed or fixed to the Civic Stadium by the Team in a manner that they may be removed without material physical damage to the Civic Stadium and all trade fixtures, machinery and equipment installed by the Team (collectively, the "Removables") shall remain the property of the Team and may be removed or replaced by the Team at any time during the term of this Lease and Use Agreement. Removables are more fully inventoried in Exhibit D attached hereto. Any damage to the Civic Stadium occasioned in the course of such removal shall be repaired by the Team, at its own cost and expense.

**Section 10.12. Title of Improvements at Termination.** Upon expiration of the Lease Term of this Lease and Use Agreement or upon any termination whatsoever, all permanent or fixed repairs, alterations, additions or improvements made by the Team to any structure on the Civic Stadium shall become the property of the City, without further action or payment on its part. All Removables shall remain property of the Team.

**Section 11. Hold Harmless Indemnity and Insurance.**

**Section 11.01. Indemnification of the City.** The Team shall defend, indemnify, and hold harmless the City, its officers, employees, agents, and contractors from and against any and all claims made against the City for which the City may hereafter be liable, suffer, incur or pay and which have arisen out of any act, activity, omission, or violation of any applicable law on the part of the Team, its assigns, Sub-Lessees, agents, officers, employees, contractors, guests, invitees, customers and/or patrons, or as a result of Team Use. The foregoing notwithstanding, the Team shall not be liable for damage due to (i) negligent acts of the City, its agents, contractors, employees or officers, which are committed in the performance by the City of any work or activity at the Civic Stadium, or (ii) the failure of the City to perform necessary Non- Routine Repair and Replacement Projects.

**Section 11.02. Indemnification of the Team.** The City shall defend, indemnify and hold harmless the Team, its officers, employees, agents, and contractors from and against any and all claims resulting from or arising out of any act, activity or violation of any applicable law on the part of the City, its agents, contractors, employees, officers, and guests or invitees participating in any City Use of the Civic Stadium. The City shall provide the Team with information concerning its existing insurance coverages.

**Section 11.03. Definition of Claims.** For purposes of this Lease and Use Agreement, "claims" includes and means all actions, causes of action, whether common-law or statutory, remedies, demands, out-of-pocket costs, liability charges, suits, judgment, expenses, damage incidental (or consequential), cleanup costs, civil penalties, attorney's fees both at trial and upon appeal, litigation expenses, abatement cost, abatement and corrective injunctive relief requiring the removal and/or remedial action and all costs of removal or remedial action and damages to natural resources.

**Section 11.04. Assumption of Risk.** The Team undertakes and assumes for its officers, agents and employees all risk of dangerous conditions, if any, on or about the Civic Stadium.

**Section 11.05. Insurance.** The Team shall, at its own expense, procure and at all times during the term of this Lease and Use Agreement or any extension thereof, maintain with reputable insurance

companies or underwriters authorized to do business in the State, in a form satisfactory to the City the following insurance coverages:

- a. **Worker's Compensation.** The Team shall maintain insurance covering all employees meeting statutory limits and in compliance with all applicable State and federal laws.
- b. **Commercial General Liability.** The Team shall maintain commercial general liability coverage to include the Civic Stadium and operations, broad form property damage, ECU coverage, independent contractors, product and completed operations, and contractual liability. This commercial general liability coverage policy shall be endorsed to include and cover the consumption of alcoholic beverages. Such coverage shall be provided on an occurrence basis not on a claims-made basis, assuming occurrence coverage is available at a reasonable price. Insurance coverage shall be maintained that has minimum limits of Two Million Dollars (\$2,000,000) per occurrence, combined single limit for bodily injury, personal injury and property damage.
- c. **Business Interruption Insurance.** The Team shall purchase and maintain insurance coverage covering the loss of revenues from the Civic Stadium by reason of necessary interruption, total or partial, in the use thereof, resulting from damage thereto, or destruction thereof, however, caused in such amount as shall be estimated by the Team in consultation with an insurance consultant to be sufficient to provide normal revenues, including revenues sufficient for the Team to perform and honor its obligations hereunder, during the period of suspension subject to certain conditions. The Team shall name the City as an Additional Insured under the policy.
- d. **Property Insurance.** The City will insure the Civic Stadium against loss or damage by fire and such other hazards and risks as are ordinarily insured against in such amounts as are ordinarily insured against by public corporations owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain such insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. It is understood that the City will not insure against damage or destruction by fire or other casualty to any furnishings, equipment or personal items belonging to the City, its assigns, sub-lessees, agents, contractors or subcontractors, officers, employees, guests, invitees, customers and/or patrons. The Team shall be responsible for purchasing and maintaining any property insurance covering the contents of the Civic Stadium, and for purpose of this paragraph, "contents" shall be furnishings, equipment and personal property owned by the Team, its agents, employees or officers, which are not fixtures of the Civic Stadium.

**Section 11.06. Sub-Lessees.** The Team shall require all Sub-Lessees to purchase commercial general liability coverage to include the Civic Stadium and operations, broad form property damage, ECU coverage, independent contractors, product and completed operations, and contractual liability, and to name the Team and the City as Additional Insureds.

**Section 11.07. Insurance Certificates.** Certificates of insurance with original endorsement evidencing the coverage required by this Article and in the form specified shall be provided to the City not less than ten (10) days prior to the commencement of any Team use provided in this Lease and Use Agreement. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt

requested, has been given to the City. If a policy expires during any period of use by the Team contemplated by this Lease and Use Agreement, a renewal certificate must be sent to the City within fifteen (15) days prior to said expiration date. If the certificates are not filed as required, such will constitute a material breach of this Lease and Use Agreement and entitle the City to all remedies provided by law. The City, in its sole discretion, may purchase insurance similar to that secured by the Team prior to expiration following the notice set forth above. In such event, the Team shall be responsible to reimburse the City for all costs and expenses incident to placing such insurance.

**Section 11.08. Additional Insured.** The policies required herein, shall contain, or be endorsed to contain provisions which list the City its officers, officials, agents and employees as Additional Insureds. The insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the City or its officers, officials, agents or employees shall be excess of the Team's insurance. Any deductibles or self-insured retentions must be declared to and approved by the City.

**Section 11.09. Mutual Waiver of Insured Losses.** The Team and the City mutually waive as against each other any claim or cause of action for any loss, cost, damage or expense as a result of the occurrence of perils covered on the City's or the Team's property insurance policies.

**Section 11.10. Casualty Loss.** If all or any significant portion of the Civic Stadium is damaged or destroyed by fire or other casualty, the City, in the event such loss is covered by insurance to the extent of ninety percent (90%) or more of the value of such portion(s), shall repair and rebuild the Civic Stadium with reasonable diligence to the condition immediately before the loss, the condition required by law, or Professional Baseball Standards, at the sole option of the City, with such repair or rebuilding to be completed as soon as it is reasonably possible. If in the good faith judgment of the Parties, there is substantial interference with the operation of the Team's use of the Civic Stadium that required the Team to temporarily use another stadium, there will be an abatement of all monies due under the terms of this Lease and Use Agreement from the Team to the City for the period of such interference. It is specifically understood by and between the Parties that during the period of such interference, the Team shall have the right to schedule home games at another stadium. If, at the sole option of the City, the Civic Stadium is not, cannot or will not be restored to the conditions immediately before such casualty or fire loss, the condition required by law, or to Professional Baseball Standards, within three hundred fifty (350) days following said loss, this Lease and Use Agreement may be voided by the Team and shall be of no further force and effect. Under such termination, neither Party shall have claim whatsoever against the other Party as the result of such termination.

## **Section 12. Continuation of Professional Baseball Activity.**

**Section 12.01. Team Duty to Operate Professional Baseball in the City.** During the term of this Lease and Use Agreement, the Team agrees to maintain and operate a Professional Baseball team or team of equivalent level and quality in the City and to use the Civic Stadium for this purpose. In the event that the Team does not use the Civic Stadium for the operation of Professional Baseball on a regular basis during any calendar year, Team shall be deemed to have breached this Lease and Use Agreement. However, the Team shall not be deemed to have breached this Lease and Use Agreement if its failure to operate a Professional Baseball team during a season is caused by reasons beyond its control, such as: strikes, acts of God, war or civil disobedience.



**Section 12.02. Team Duty To Maintain Membership in National Association of Professional Baseball Leagues, Inc.** During the Lease Term, the Team covenants to use all reasonable and financial feasible means to maintain its membership in the National Association of Professional Baseball Leagues, Inc. ("NAPBL") and its status as a Professional Baseball club. In the event of the dissolution of the NAPBL, or in the event of the Team's loss of membership therein through no fault of its own, the Team agrees to use all reasonable and financially feasible means to obtain membership in another such organization and maintain the status of equivalent to a Professional Baseball club. In the event the Team fails to use all such reasonable and financially feasible means to maintain its membership in the NAPBL or to maintain its status as a Professional Baseball club, or in the event the Team fails to use all reasonable and financial means to obtain a membership in another such association and to obtain status therein equivalent to a Professional Baseball club, then in such event, the Team shall be deemed to have breached this Lease and Use Agreement

**Section 13. Default.**

**Section 13.01. Specific Events of Default.** The Team shall be considered in default of the terms of this Lease and Use Agreement if:

- a. The Civic Stadium is deserted or vacated by the Team; or
- b. Proceedings are commenced against the Team by any court under a bankruptcy act or for the appointment of a trustee or receiver of the Team's property, either before or after the commencement of the term of this Lease and Use Agreement; or
- c. The Team fails to perform any of its material obligations under this Lease and Use Agreement; or
- d. A rule, regulation or policy is imposed by Major League Baseball which would preclude the Team from operating a Professional Baseball team in the City.

**Section 13.02. Notices.** If either Party shall default in any of its material obligations under this Lease and Use Agreement, the non-defaulting Party shall provide notice of default to the defaulting Party and afford it a grace period of thirty (30) days to cure such default; provided, however, that if a non-monetary default occurs which cannot be remedied within said thirty (30) day period, the other shall afford such additional time as may reasonably be required to cure such default, providing the defaulting Party proceeds with reasonable diligence.

**Section 13.03. Remedies.** The Parties shall be entitled, in addition to any other remedy provided under this Lease and Use Agreement, to remedy any default following the expiration of the above stated notice permitted by law and shall include, without limitation the following:

- a. Recovery of monies due and owing, together with interest thereon at the highest legal rate from the date such monies were due;
- b. A right of specific performance of non-monetary covenants and agreements;
- c. Cancel and terminate this Lease and Use Agreement immediately or at any date elected by the non-defaulting Party;
- d. If this Lease and Use Agreement is terminated for any reason, the amount to be paid by the Team shall be equal to the principal amount of the Bond then outstanding plus accrued interest thereon to the next payment date of the Bonds.

**Section 13.04. Attorney's Fees and Costs.** In the event of a default by either Party, the prevailing Party shall be entitled to recover its costs, expenses (including, without limitation, reasonable litigation expenses and reasonable attorney's fees), whether incurred at trial or in any proceeding to review by appeal or by certiorari such default.

**Section 14. Termination.**

**Section 14.01. Lease and Use Agreement Termination.** This Lease and Use Agreement shall terminate at the end of its term or earlier, as specifically provided in this Lease and Use Agreement.

**Section 14.02. Surrender of Civic Stadium at Termination.** The Team agrees that upon termination of this Lease and Use Agreement, it will surrender, yield up and deliver the Civic Stadium, including those fixtures installed by the Team as provided in Section 10.11, in good, clean condition, excepting for the effects of ordinary wear and tear and depreciation arising from the lapse of time, or for damage without fault or liability to the Team. As described in Section 10.11, all Removables remain property of the Team and may be removed by the Team at any time, including upon termination of this Lease and Use Agreement.

**Section 15. Financial Statements.** Upon written request to the City by one or both Bond Holders, the Team agrees to provide to the requesting Bond Holder(s) copies of financial statements in substance and form as deemed necessary by the requesting Bond Holder(s).

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**Section 16. General.**

**Section 16.01. Application of Laws.** The Team shall comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the property or to any business-conducted upon the property, including, but not limited to, rules, regulations, and policies relating to use by the public and the Team.

**Section 16.02. Non-Discrimination.** The Team recognizes that it is unlawful to discriminate in violation of State or federal laws and the Team agrees that it shall not discriminate in either employment matters or in the provision of any public services or public accommodations because of, or on the basis of race, creed, religion, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, age, physical or mental disability, political ideas, unless with respect to employment positions the genuine reasonable demands of the employment position require a bona fide occupational qualification pertaining to an age, physical or mental disability, marital status or sex distinction. The Team adopts the statement of non-discrimination used by the City and attached hereto as Exhibit E.

**Section 16.03. Financial Statements.** The Team recognizes that its payments of Rent under this Lease and Use Agreement will be used to pay debt service on the Bonds. The Team agrees to provide the Bond Holders with annual financial statements in substantially the same form and at substantially the same time that the Team submits this information to the National Association of Professional Baseball Leagues, Inc.

**Section 16.04. Right to Enter.** City officials may enter the Civic Stadium at any reasonable time to conduct inspections of the condition of the Civic Stadium and to ascertain that cleaning and maintenance are being performed in a satisfactory manner.

**Section 16.05. Status of Team as Independent Contractor.** The Team is and shall be deemed an independent contractor and operator. The City shall in no way be responsible to any person, firm or corporation for any acts or omissions of the Team or any of its employees, agents or servants. The Team will pay any and all claims as a result of its operations and will indemnify the City against the same.

**Section 16.06. Prohibition on Liens.** Neither the Team nor anyone claiming by, through or under the Team shall have the right to file or place any mechanic, materialmen or other lien of any kind or character whatsoever upon the Civic Stadium, the Land or upon any building or improvement thereon. Notice is hereby given that no contractor, subcontractor or anyone else who may furnish any material, service, or labor for any building improvements, alterations, repairs or part thereof at any time may be or become entitled to any lien thereon. For further security of the City, the Team covenants and agrees to fully comply with State statutory law requiring a mechanic and materialmen's bond in advance of any and all contractors and subcontractors performing work on the Civic Stadium during the Lease Term and to provide a copy thereof to the City in advance to any and all contractors or subcontractors performing work, material, service or labor on said Civic Stadium.

**Section 16.07. Assignment.** The Team may not assign this Lease and Use Agreement without first obtaining the written approval of the City, and the Bond Holders which approval will not be unreasonably withheld. However, the Team may sublease or assign all or a portion of the Civic Stadium, without first obtaining the approval of the City, to a corporation which is a wholly-owned subsidiary of the Team or of a corporation which owns all of the voting stock of the Team. As provided in Sections 3 and 6, the Team may sublease all or a portion of the Civic Stadium and authorize concessionaires to operate in the Civic Stadium without first obtaining the approval of the City.

**Section 16.08. Notices.** Any notices required to be given hereunder shall be in writing and mailed, postage prepaid, by United States certified mail, return receipt requested, and addressed to the Parties as follows, unless a different address is later designated by either Party in writing:

Notices to the Team:

Big Sky Professional Baseball LLC Attn:  
Pete Davis  
140 N. Higgins, Suite 201  
Missoula, Montana 59802

Notices to the City:

Missoula Redevelopment Agency  
140 West Pine Street  
Missoula, MT 59802

With a copy to be sent to:

Mayor of Missoula  
435 Ryman Street  
Missoula, MT 59802

**Section 17. Construction of Agreement.**

**Section 17.01. Binding on Successors.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successor, heirs, administrators and assigns of the Parties hereto.

**Section 17.02. Entire Agreement.** This Lease and Use Agreement constitutes the entire understanding of the Parties and no representation or agreements, oral or written, made prior to the execution hereof shall vary or modify the terms herein.

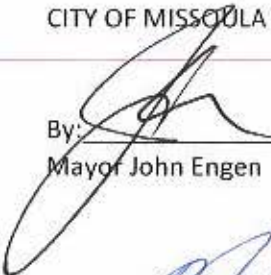
**Section 17.03. Amendments.** Any amendment or variation from the terms of this Lease and Use Agreement shall be in writing and shall be effective only after approval of all Parties signing the original Lease and Use Agreement.

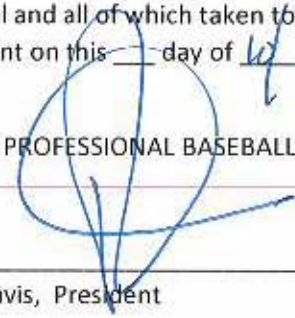
**Section 17.04. Applicable Law.** This Lease and Use Agreement shall be construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have hereunto caused this Lease and Use Agreement to be executed in several counterparts, each of which shall constitute an original and all of which taken together shall constitute a single instrument and to be legally binding agreement on this 14<sup>th</sup> 25<sup>th</sup> 18 day of 10/25/18, 2018.

CITY OF MISSOULA

BIG SKY PROFESSIONAL BASEBALL, LLC

By:   
Mayor John Engen

By:   
Pete Davis, President

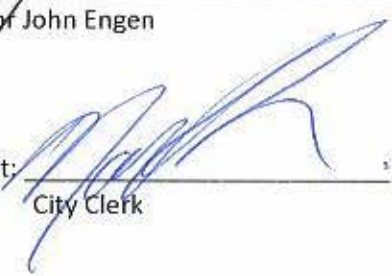
Attest:   
City Clerk



EXHIBIT A

Legal Description of the Land

A tract of land comprising the Lots of Blocks 1, 2, 3 (except Lot 5), 7 and 8 of the Sunnyside Addition lying West of the Bitterroot Branch Line of Montana Rail Link railroad right-of-way in the County of Missoula, State of Montana.



EXHIBIT B

Minor League Civic Stadium Survey

EXHIBIT C

Wire Transfer Instructions

U.S. Bank National Association 60 Livingston Avenue  
St. Paul, MN 55107 ABA: 091000022  
FFC: U.S. Bank Trust ACCT: 180121167365  
ATTN: [Name to be provided once account is established]

EXHIBIT D

Inventory of Removables

Inventory List of Removable Items at Ogren Park Allegiance Field Owned by Big Sky Professional Baseball LLC



EXHIBIT E

**Affirmative Action/EEO Policy**

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

**AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

**The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Human Resource staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

## EXHIBIT F

### Representative Maintenance Plan

#### Ogren Park Allegiance Field Maintenance Plan

March - Depending on weather as well as schedule of events to be held at the park we will get the park de-winterized using Plumbing Contractor (Garden City Plumbing has done all of our stadium work to this date). This includes getting the main water line turned back on and then connecting the water back up to all of the buildings in the park (Restrooms, concessions, clubhouses, dugouts, maintenance garage, etc.). This is normally a two day process.

Mid-March - We will have all four pieces of our major John Deere Equipment (Field Mower, push mower, Gator, and Bunker Rake) serviced to be ready to go for the season. This includes standard tune up, oil change, and complete lookover of the equipment.

April- Mid to late part of the month or sometimes even early May we will have the Sprinklers turned back on for the season. We have a contractor (Rainmaker has done all stadium sprinkler work to this date) come out and get things turned on and make sure there is not any major issues. Most of the upkeep throughout the season is performed by Grounds Crew and Director of Stadium Operations. Rolling of the infield will take place no later than end of month.

May - Edging of Field will take place in the later part of the month or in June depending on how the Field is.

June - HVAC Units checked out, filters changed, belts checked and systems set for the season by contractor (Currently use Missoula Sheet Metal). Contractor (Currently use TW Enterprises) will come in and perform an annual maintenance for the backup generator.

October and November -After all cleanup is done we will call Garden City Plumbing to come in and winterized the park for us. This includes draining all hot water tanks, pulling parts from sinks, showers, and toilets to prevent from cracking and freezing and add antifreeze to the traps, this is normally a two day process. Sprinklers are blown out sometime near end of September or early October depending on the weather. If the grass is still growing then we will keep watering. Pruning of trees and shrubs around the facility needs to happen around this time.

Fertilizing/Weed Control/Field Aeration Plan- We contract annually with a landscaper contractor who is licensed to use field chemicals for fertilization and weed control. Currently we use TruGreen. They apply multiple fertilizer applications to the field during the year. Up to five applications are put on the field between April and October. TruGreen will also apply weed killer around the park where needed: Field aeration will take place in early October, this is an important part to keeping the field in good shape.

Concessions Hood System - We hire a contractor to clean our hood system (Currently use AI Hood Cleaning). This is done either semi -annually or annually depending on use levels.

Stadium Cleaning Plan - The stadium is cleaned after each event. Power Washing of the concourse is done on a regular need basis. Restrooms are cleaned after each event. Full deep cleaning of restrooms, clubhouses, and concessions are contracted out and done twice a year. Concessions are cleaned before and after each event. Clubhouses are cleaned and maintained by Clubhouse Manager hired by Osprey.

Landscaping Maintenance - We have contracted with a landscaping company to do major landscaping maintenance. Our stadium groundskeeper does routine landscape maintenance and complete field maintenance throughout the year. An agreement has been reached with Missoula Parks and Recreation on who is responsible for stadium landscape maintenance. The stadium maintains all landscaping on the stadium side of the trails around stadium. Parks and Recreation maintains all landscaping on the trail and out from the stadium including the parking lot.

Stadium Operating Season - We are closed normally from Late October to Early March with exceptions for winter events.

**MISSOULA CIVIC STADIUM LEASE AND USE AGREEMENT**

THIS LEASE AND USE AGREEMENT is made and entered into as of the 28<sup>th</sup> day of July, 2018, by and between the CITY OF MISSOULA, a municipal corporation and political subdivision of the State of Montana (the "City") and LOGJAM PRESENTS, a Montana limited liability company ("Logjam") (each a "Party" and, collectively, the "Parties").

**WITNESSETH:**

WHEREAS, Logjam desires to enter into this Lease and Use Agreement with City for events and activities to be conducted at the Civic Stadium; and

WHEREAS, the Parties desire in this Lease and Use Agreement to set forth all rights, responsibilities and certain specific duties of each Party regarding the lease and use of the Civic Stadium; and

WHEREAS, Logjam and the City desire to provide for adequate parking and traffic control measures for attendants at events and activities to be conducted at the Civic Stadium; and

WHEREAS, Logjam and the City desire to provide for adequate security to ensure public health and safety for attendants at events and activities to be conducted at the Civic Stadium; and

WHEREAS, Logjam and the City desire that quality food, beverage and other concession services be available through concession operations located at the Civic Stadium; and

WHEREAS, Logjam and the City desire that the Civic Stadium provide recreational and entertainment opportunities for Missoula and surrounding area residents; and

WHEREAS, Logjam and the City desire that the Civic Stadium will provide residents and visitors from surrounding areas with an opportunity to attend community events, without the need to travel extended distances and will thus increase the attractiveness of Missoula as a place in which to reside and work; and

NOW THEREFORE, in consideration of the Civic Stadium, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the Parties mutually agree and covenant as follows:

**Section 1. Definitions and Exhibits.**

**Section 1.01. Definitions.** The terms defined in this Section 1.01 shall for all purposes of this Lease and Use Agreement have the meanings herein specified, unless the context clearly otherwise requires:

Civic Stadium means the Land together with the Improvements located at 700 Cregg Lane, Missoula, MT.

Commencement Date means May 19, 2019, the date the term of this Lease and Use Agreement commences.

Expiration Date has the meaning given in 2.04.

Extension Term means each of two (2) additional periods of five (5) years that Logjam may, at its option, extend the Lease Term, pursuant to Section 2.02.

Improvements means all buildings, structures, facilities, utilities, installations and other improvements now or hereafter located on the Land and all fixtures attached thereto.

Lease Term means the term of this Lease and Use Agreement.

Logjam Events means music, concerts, and comedy events.

Non-Routine Repair and Replacement Projects has the meaning given in Section 10.02.

Rent has the meaning given in Section 2.03.

Season means the Professional Baseball season, which shall commence on or about June 1st and conclude on or about September 30th of each calendar year, and be extended to include any play-off games held in the City during the Lease Term and any extensions thereof.

Silver Park Parking Lot has the meaning given in Section 5.01.

State means the State of Montana.

Unsuitable Events are those events which endanger the public, exceed the Civic Stadium's ability to support public use during the event or unduly jeopardize the Civic Stadium.

**Section 1.02. Exhibits.** There is attached to this Lease and Use Agreement and hereby made a part hereof the following Exhibits:

- a) Exhibit A: Wire Transfer Instructions
- b) Exhibit B: Non-Discrimination and Affirmative Action Statement

**Section 2. Civic Stadium.**

**Section 2.01. Term, Possession.** The Lease Term commences on the Commencement Date and expires at midnight on the date immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date (as such date may be extended pursuant to Section 2.02, the "Expiration Date"), or such earlier date as this Lease and Use Agreement is terminated pursuant to its terms or by law.

**Section 2.02. Options to Extend.** Logjam has the option to extend the Lease Term with respect to all of the Civic Stadium at the same terms herein, for two (2) additional periods of five (5) years each (each an "Extension Term") provided an Event of Default does not exist as of the date of exercise of the option and as of commencement date of the applicable Extension. Each extension option is exercisable by written notice to the City given at least 12 months prior to the Expiration Date or the expiration of then applicable Extension Term, as the case may be.

**Section 2.03. Rent.**

- a) Rent. Logjam shall pay to the City annual Rent in the amount of \$70,000 per year, payable in full by May 19, 2019 for a lease commencing on that date and by May 19 each year throughout the term of the Lease and Use Agreement and any extension thereof.
- b) Payment of Rent. Logjam will pay Rent to U.S. Bank, as the City's agent, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit A. Logjam shall perform all its obligations under this Lease and Use Agreement at its sole cost and expense, and shall pay all Rent, additional charges and any other sum payable hereunder without notice,

demand, setoff, counterclaim, abatement, suspension, deduction or defense, except as expressly provided in this Lease and Use Agreement.

- c) **Utilities.** Logjam's use of electric current shall at no time exceed the capacity of the feeders or lines to the Civic Stadium or the risers or wiring installation of the Civic Stadium. The City shall in no event be liable for any interruption or failure of, and Logjam shall not be entitled to any abatement or reduction of rent by reason of, any interruption or failure of utilities or other services to the Civic Stadium, nor shall any such interruption or failure in any such utility or service be construed as an eviction (constructive or actual) of Logjam or as a breach of the implied warranty of suitability, or relieve Logjam from the obligation to perform any covenant or agreement herein, and in no event shall the City be liable for damage to persons or property (including, without limitation, business interruption), or in default hereunder, as a result of any such interruption or failure.

### **Section 3. Uses of Civic Stadium.**

**Section 3.01. Exclusive Use Rights.** The baseball schedule will be presented in cooperation with Logjam Presents and will be final by November 15. Logjam has first right to schedule prior to and after the conclusion of the regular baseball season. Logjam has first right to schedule available dates once the baseball schedule has been published.

**Section 3.03** Logjam will have exclusive rights to ticket sales, alcohol vending, promotion, security, production, and parking at the stadium during Logjam events.

### **Section 4. Limitations on Use.**

**Section 4.01. Unsuitable Events.** Unsuitable Events will not be permitted in the Civic Stadium. Logjam agrees that its usage will never exceed allowed capacities pursuant to applicable uniform City fire codes and City building codes, and both Parties agree that events with such use would constitute Unsuitable Events.

**Section 4.02. Noise Ordinance.** Logjam acknowledges the City has adopted a noise ordinance that prohibits excessive noise within the City (the "Noise Ordinance"). Logjam agrees to comply with the City's Noise Ordinance as part of this Lease and Use Agreement. Logjam shall maintain control of the Civic Stadium sound system at all times and shall reduce or eliminate the sound in the event of a verified violation of the Noise Ordinance.

**Section 4.03. Lights.** Lighting of the Silver Park Parking Lot and the additional Civic Stadium parking to be provided by the City shall be in conformance with City ordinances governing such issues.

**Section 4.04. Other Personnel and Services.** Except as otherwise provided herein, Logjam shall provide at its sole expense all personnel reasonably necessary for the operation of the Civic Stadium for all Logjam events at the Civic Stadium, including, without limitation, ticket sellers, ticket takers, ushers, janitors, medical persons, switchboard persons, sound persons and other supervisory personnel.

### **Section 5. Parking and Traffic Control.**

**Section 5.01. Parking.** The City and Logjam agree to work together to make available adequate parking for the Civic Stadium. The City has constructed a City parking lot (the "Silver Park Parking Lot"), located on the west side of the Civic Stadium.

- a. Logjam shall have the right to exclusive use and control of the Silver Park Parking Lot during Logjam's events beginning two hours before the start- time of the event and ending two hours after the end time of the event. Logjam's exclusive rights include the ability to charge for parking and to control access. Cars legally parked in the Parking Lot prior to the beginning of Logjam's exclusive rights to the Silver Park Parking Lot will be allowed to remain without being subject to charge. Upon completion of the event, Logjam is responsible for cleaning up the Silver Park Parking Lot to return it to its original condition.
- b. Logjam shall have the right to reserve parking along the side of the access road for its employees, provided however that the access road cannot be blocked at any time. Logjam shall cooperate with the Missoula Redevelopment Agency regarding appropriate signage for this parking area.

**Section 5.02. Other Parking Lot Uses.** The Silver Park Parking Lot is owned and managed by the City, and the public is entitled to use the Silver Park Parking Lot for other purposes except during periods for Logjam Events, as described above.

**Section 5.03. Traffic Control.** In order to mitigate and control the impacts of parking and traffic generated by the Civic Stadium on the neighborhood and other public facilities, the Parties agree to the following multi-part strategy:

- a) Logjam shall ensure that incentives are offered to encourage alternative transportation to all events.
- b) With the approval of the City, Logjam will be responsible for street closures and parking and traffic control during Logjam events. At each Logjam event, Logjam shall provide the necessary parking and traffic control by use of barricades, signs, and trained traffic controllers.
- c) In order to preserve parking for users of McCormick Park, the City will place signage at the entrance to McCormick Park parking lot Limiting use to McCormick Park users only.

**Section 6. Security.** Logjam shall provide all security at the Civic Stadium for all events or activities held therein sponsored by Logjam. Logjam shall have the exclusive right to determine what security forces are necessary.

**Section 7. Concessions, Novelties and Souvenirs.**

**Section 7.01. Vendor Selection.** Logjam shall have the sole, exclusive and absolute right to select the drink and catering concessionaire(s) for all of Logjam's events at the Civic Stadium.

**Section 7.02. Concessionaire Services.** Logjam has sole, exclusive and absolute right to provide, beverage catering for Logjam's events at Logjam's expense.

**Section 7.03. Alcoholic Beverages.** Consistent with the laws of the State and the provisions of this agreement, Logjam has exclusive rights to sell alcoholic beverages after obtaining all appropriate licenses and permits, or otherwise arranging for the legal sale of alcohol at the Civic Stadium for all

Logjam events. If Logjam chooses to use an outside caterer for the sale of alcohol, only Department of Revenue-licensed caterers will be allowed to serve alcohol.

**Section 7.04. Prices.** Logjam shall have the sole, exclusive and absolute authority to fix the prices of all items to be sold by Logjam or their concessionaires. Logjam shall post in a conspicuous place at each concession stand (permanent or temporary) a list of prices of all items or services offered for sale.

**Section 7.05. Quality.** All concession and concession services permitted under this Lease and Use Agreement shall be of first quality and commensurate with industry standards prevailing in stadiums similar to the Civic Stadium. Logjam shall provide and require concessions and concession services to be in a sufficient number, involving properly trained concession personnel. Logjam shall maintain high standards of cleanliness and all drinks, confections and other items sold or kept for sale will conform in all respects to applicable federal, State, and Missoula City-County Health Department regulations and laws.

## **Section 8. Revenues.**

**Section 8.01. Parking Revenue.** Logjam shall be entitled to one hundred percent (100%) of the revenue generated from parking for the events authorized in Section 5.01 as provided in Section 5.01.

**Section 8.02. Concession Revenue.** Logjam shall be entitled to one hundred percent (100%) of the revenue generated from alcohol sales at Logjam events held at the stadium.

**Section 8.03. Ticket and Admission Prices.** Logjam shall be entitled to 100% of revenues generated by Logjam's Events, and shall have the sole, exclusive and absolute authority to fix the ticket prices and to fix admission or participation fees and charges to be assessed at the Civic Stadium for such events.

**Section 8.04 Maintenance Fund Established.** Logjam Presents will establish a maintenance fund through tickets sales of \$1 per ticket during 2019, \$1.50 per ticket in 2020 and \$2 per ticket in 2021 and through the remainder of the lease term and any extensions. Maintenance fund fees are in addition to the rent in Section 2.03.

**Section 8.05 Maintenance Fund Usage.** The first \$10,000 of proceeds from the maintenance fund will support debt payments on the stadium. The remainder will be set aside for stadium improvements that benefit lessees and maintain the facility. Logjam Presents may be reimbursed from the fund for expenses related to field protection. The Parties will meet at least once each year to discuss use of maintenance funds.

**Section 9. Promotion and Advertising.** Logjam has rights to advertise all of Logjam's events within the confines other Missoula City Ordinances, State Statutes, and other applicable City regulations.

## **Section 10. Operation, Maintenance, and Capital Improvements.**

**Section 10.01. Non-Routine Repair and Maintenance Projects.** The City, at its cost, shall maintain the structural integrity of the following:

- a. The structural parts of the Civic Stadium and permanent fixtures and other improvements that are a part of the Civic Stadium, including, without limitation, the foundations, bearing walls, flooring, sub-flooring, ceiling, roof, window frames, gutters and down spouts, fences, light poles, grandstands and bleachers; and



- b. The unexposed electrical, plumbing and sewage systems, including, without limitation, those portions of the systems lying outside the Civic Stadium.

**Section 10.02. Protection of Facility.** Logjam will take precautions as agreed upon by MRA, Mountain Baseball, and Logjam, to protect the facility during staging.

**Section 10.03. Repair of Damage.** Logjam agrees to repair, at its sole cost and expense, any material damage done to the Civic Stadium as a result of any act or omission to act by Logjam, its assigns, Sub-Lessees, agents, officers, employees, contractors, guests, invitees, customers, visiting patrons and to pay the City the cost of such repair to the extent that the City is not compensated therefore by insurance.

**Section 10.04. Operation and Routine Maintenance.** Logjam shall be responsible for the following routine maintenance and operation:

- a. Removal of all debris from the Silver Park parking lot, Playing Field, concourses, grandstand and bleachers and cleaning the restroom facilities after each use of the Civic Stadium by Logjam;
- b. Cleaning, housekeeping and sanitation services for all shower and toilet facilities, and all concession facilities after each use of the Civic Stadium by Logjam;

**Section 10.05.** Nothing in this provision shall require or preclude Logjam from contracting with the City or its departments for maintenance services at the Civic Stadium.

**Section 11. Hold Harmless Indemnity and Insurance.**

**Section 11.01. Indemnification of the City.** Logjam shall defend, indemnify, and hold harmless the City, its officers, employees, agents, and contractors from and against any and all claims made against the City for which the City may hereafter be liable, suffer, incur or pay and which have arisen out of any act, activity, omission, or violation of any applicable law on the part of Logjam, its assigns, Sub-Lessees, agents, officers, employees, contractors, guest, invitees, customers and/or patrons, or as a result of Logjam Use. The foregoing notwithstanding, Logjam shall not be liable for damage due to (i) negligent acts of the City, its agents, contractors, employees or officers, which are committed in the performance by the City of any work or activity at the Civic Stadium, or (ii) the failure of the City to perform necessary Non- Routine Repair and Replacement Projects.

**Section 11.02. Indemnification of Logjam.** The City shall defend, indemnify and hold harmless Logjam, its officers, employees, agents, and contractors from and against any and all claims resulting from or arising out of any act, activity or violation of any applicable law on the part of the City, its agents, contractors, employees, officers, and guests or invitees participating in any City Use of the Civic Stadium. The City shall provide Logjam with information concerning its existing insurance coverages.

**Section 11.03. Definition of Claims.** For purposes of this Lease and Use Agreement, "claims" includes and means all actions, causes of action, whether common-law or statutory, remedies, demands, out of pocket costs, liability charges, suits, judgment, expenses, damage incidental (or consequential), cleanup costs, civil penalties, attorney's fees both at trial and upon appeal, litigation expenses, abatement cost, abatement and corrective injunctive relief requiring the removal and/or remedial action and all costs of removal or remedial action and damages to natural resources.

**Section 11.04. Assumption of Risk.** Logjam undertakes and assumes for its officers, agents and employees all risk of dangerous conditions, if any, on or about the Civic Stadium.

**Section 11.05. Insurance.** Logjam shall, at its own expense, procure and at all times during the term of this Lease and Use Agreement or any extension thereof, maintain with reputable insurance companies or underwriters authorized to do business in the State, in a form satisfactory to the City the following insurance coverages:

- a. **Worker's Compensation.** Logjam shall maintain insurance covering all employees meeting statutory limits and in compliance with all applicable State and federal laws.
- b. **Commercial General Liability.** Logjam shall maintain commercial general liability coverage to include the Civic Stadium and operations, broad form property damage, ECU coverage, independent contractors, product and completed operations, and contractual liability. This commercial general liability coverage policy shall be endorsed to include and cover the consumption of alcoholic beverages. Such coverage shall be provided on an occurrence basis not on a claims-made basis, assuming occurrence coverage is available at a reasonable price. Insurance coverage shall be maintained that has minimum limits of Two Million Dollars (\$2,000,000) per occurrence, combined single limit for bodily injury, personal injury and property damage.
- c. **Business Interruption Insurance.** Logjam shall purchase and maintain insurance coverage covering the loss of revenues from the Civic Stadium by reason of necessary interruption, total or partial, in the use thereof, resulting from damage thereto, or destruction thereof, however, caused in such amount as shall be estimated by Logjam in consultation with an insurance consultant to be sufficient to provide normal revenues, including revenues sufficient for Logjam to perform and honor its obligations hereunder, during the period of suspension subject to certain conditions. Logjam shall name the City as an Additional Insured under the policy.
- d. **Property Insurance.** The City will insure the Civic Stadium against loss or damage by fire and such other hazards and risks as are ordinarily insured against in such amounts as are ordinarily insured against by public corporations owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain such insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. It is understood that the City will not insure against damage or destruction by fire or other casualty to any furnishings, equipment or personal items belonging to the City, its assigns, sub-lessees, agents, contractors or subcontractors, officers, employees, guests, invitees, customers and/or patrons. Logjam shall be responsible for purchasing and maintaining any personal property insurance coverage.

**Section 11.06. Insurance Certificates.** Certificates of insurance with original endorsement evidencing the coverage required by this Article and in the form specified shall be provided to the City not less than ten (10) days prior to the commencement of any Logjam use provided in this Lease and Use Agreement. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. If a policy expires during any period of use by Logjam contemplated by this Lease and Use Agreement, a renewal certificate must be sent to the City within fifteen (15) days prior to said expiration date. If the certificates are not filed as required, such will

constitute a material breach of this Lease and Use Agreement and entitle the City to all remedies provided by law. The City, in its sole discretion, may purchase insurance similar to that secured by Logjam prior to expiration following the notice set forth above. In such event, Logjam shall be responsible to reimburse the City for all costs and expenses incident to placing such insurance.

**Section 11.07. Additional Insured.** The policies required herein, shall contain, or be endorsed to contain provisions which list the City as Additional Insureds. The insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the City or its officers, officials, agents or employees shall be excess of Logjam's insurance. Any deductibles or self-insured retentions must be declared to and approved by the City, which approval will not be unreasonably withheld or delayed.

**Section 11.08. Mutual Waiver of Insured Losses.** Logjam and the City mutually waive as against each other any claim or cause of action for any loss, cost, damage or expense as a result of the occurrence of perils covered on the City's or Logjam's property insurance policies.

**Section 11.9. Casualty Loss.** If all or any significant portion of the Civic Stadium is damaged or destroyed by fire or other casualty, the City, in the event such loss is covered by insurance to the extent of ninety percent (90%) or more of the value of such portion(s), shall repair and rebuild the Civic Stadium with reasonable diligence to the condition immediately before the loss, or the condition required by law, at the sole option of the City, with such repair or rebuilding to be completed as soon as it is reasonably possible. If in the good faith judgment of the Parties, there is substantial interference with the operation of Logjam's use of the Civic Stadium that required Logjam to temporarily use another stadium, there will be an abatement of all monies due under the terms of this Lease and Use Agreement from Logjam to the City for the period of such interference. It is specifically understood by and between the Parties that during the period of such interference, Logjam shall have the right to schedule home games at another stadium. If, at the sole option of the City, the Civic Stadium is not, cannot or will not be restored to the conditions immediately before such casualty or fire loss, the condition required by law within three hundred fifty (350) days following said loss, this Lease and Use Agreement may be voided by Logjam and shall be of no further force and effect. Under such termination, neither Party shall have claim whatsoever against the other Party as the result of such termination.

## **Section 12. Default.**

**Section 12.01. Specific Events of Default.** Logjam shall be considered in default of the terms of this Lease and Use Agreement if:

- a. Proceedings are commenced against Logjam by any court under a bankruptcy act or for the appointment of a trustee or receiver of Logjam's property, either before or after the commencement of the term of this Lease and Use Agreement; or
- b. Logjam fails to perform any of its material obligations under this Lease and Use Agreement.

**Section 12.02. Notices.** If either Party shall default in any of its material obligations under this Lease and Use Agreement, the non-defaulting Party shall provide notice of default to the defaulting Party and afford it a grace period of thirty (30) days to cure such default; provided, however, that if a non-monetary default occurs which cannot be remedied within said thirty (30) day period, the other shall

afford such additional time as may reasonably be required to cure such default, providing the defaulting Party proceeds with reasonable diligence.

**Section 12.03. Remedies.** The Parties shall be entitled, in addition to any other remedy provided under this Lease and Use Agreement, to remedy any default following the expiration of the above stated notice permitted by law and shall include, without limitation the following:

- a. Recovery of monies due and owing, together with interest thereon at the highest legal rate from the date such monies were due;
- b. A right of specific performance of non-monetary covenants and agreements;
- c. Cancel and terminate this Lease and Use Agreement immediately or at any date elected by the non-defaulting Party.

**Section 12.04. Attorney's Fees and Costs.** In the event of a default by either Party, the prevailing Party shall be entitled to recover its costs, expenses (including, without limitation, reasonable litigation expenses and reasonable attorney's fees), whether incurred at trial or in any proceeding to review by appeal or by certiorari such default.

### **Section 13. Termination.**

**Section 13.01. Lease and Use Agreement Termination.** This Lease and Use Agreement shall terminate at the end of its term or earlier, as specifically provided in this Lease and Use Agreement.

**Section 13.02. No-penalty termination.** Logjam may terminate this Agreement with no penalties after year two of the lease with 30 days notice to the Mayor's Office. After two years, the lease would remain in effect through the term and be renewable for two, five-year extensions.

**Section 14. Financial Statements.** Upon written request to the City by one or both Bond Holders, Logjam agrees to provide to the requesting Bond Holder(s) copies of financial statements in substance and form as deemed necessary by the requesting Bond Holder(s).

### **Section 15. General.**

**Section 15.01. Application of Laws.** Logjam shall comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the property or to any business-conducted upon the property, including, but not limited to, rules, regulations, and policies relating to use by the public and Logjam.

**Section 15.02. Non-Discrimination.** Logjam recognizes that it is unlawful to discriminate in violation of State or federal laws and Logjam agrees that it shall not discriminate in either employment matters or in the provision of any public services or public accommodations because of, or on the basis of race, creed, religion, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, age, physical or mental disability, political ideas, unless with respect to employment positions the genuine reasonable demands of the employment position require a bona fide occupational qualification pertaining to an age, physical or mental disability, marital status or sex distinction. For purposes of this lease, Logjam adopts the statement of non-discrimination used by the City and attached hereto as Exhibit B.

**Section 15.03. Status of Logjam as Independent Contractor.** Logjam is and shall be deemed an independent contractor and operator. The City shall in no way be responsible to any person, firm or corporation for any acts or omissions of Logjam or any of its employees, agents or servants. Logjam will pay any and all claims as a result of its operations and will indemnify the City against the same.

**Section 15.05. Assignment.** Logjam may not assign this Lease and Use Agreement without first obtaining the written approval of the City, which approval will not be unreasonably withheld. However, Logjam may sublease or assign all or a portion of the Civic Stadium, without first obtaining the approval of the City, to a corporation which is a wholly-owned subsidiary of Logjam or of a corporation which owns all of the voting stock of Logjam.

**Section 15.06. Notices.** Any notices required to be given hereunder shall be in writing and mailed, postage prepaid, by United States certified mail, return receipt requested, and addressed to the Parties as follows, unless a different address is later designated by either Party in writing:

Notices to Logjam Presents:

Logjam Presents  
Attn: Nick Checota  
134 W Front St  
Missoula, MT 59802

Notices to the City:

Missoula Redevelopment Agency  
140 West Pine Street  
Missoula, MT 59802

With a copy to be sent to:

Mayor's Office  
435 Ryman Street  
Missoula, MT 59802

**Section 16. Construction of Agreement.**

**Section 16.01. Binding on Successors.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successor, heirs, administrators and assigns of the Parties hereto.

**Section 16.02. Entire Agreement.** This Lease and Use Agreement constitutes the entire understanding of the Parties and no representation or agreements, oral or written, made prior to the execution hereof shall vary or modify the terms herein.

**Section 16.03. Amendments.** Any amendment or variation from the terms of this Lease and Use Agreement shall be in writing and shall be effective only after approval of all Parties signing the original Lease and Use Agreement.

**Section 16.04. Applicable Law.** This Lease and Use Agreement shall be construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have hereunto caused this Lease and Use Agreement to be executed in several counterparts, each of which shall constitute an original and all of which taken together shall constitute a single instrument and to be legally binding agreement on this 17th day of February, 2012.

CITY OF MISSOULA

LOGJAM PRESENTS

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

By: Robin Checota  
Robin Checota

Attest: \_\_\_\_\_  
City Clerk



**EXHIBIT A**

**Wire Transfer Instructions**

**Forthcoming**

## EXHIBIT B

### Affirmative Action/EEO Policy

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

**AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

#### The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Human Resource staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.