


January 3, 2023

MEMO TO: J. Carter Napier, City Manager 

FROM: Zulima Lopez, Director of Parks, Recreation and Public Facilities
Phil Moya, Recreation Manager

SUBJECT: Authorizing an Agreement with Spuds Baseball Club LLC
for the operation of concessions at Mike Lansing Baseball Stadium

Meeting Type & Date

Regular Council Meeting
January 17, 2023

Action type

Resolution

Recommendation

That Council authorize, by resolution, an Agreement between the City of Casper and Spuds Baseball Club LLC for the operation of concessions and the sale of malt beverages at Mike Lansing Baseball Stadium.

Summary

The City of Casper was notified on December 2, 2022 that HA Baseball LLC, DBA. Casper Horseheads would be ceasing baseball operations in Casper as well as the operation of the concessions stand at Mike Lansing Baseball Stadium. Casper Horsehead owners introduced City staff to owners of The Spuds Baseball Club LLC upon notice of their team dissolution. The Spuds were established in 2020 out of Canyon City, Idaho. The team is part of the Independence League Baseball Association which has teams from Wyoming, North Dakota, South Dakota, and Nebraska. The Spuds Baseball Club LLC owners are interested in relocating their baseball club to Casper, Wyoming and taking over the concession operation at Mike Lansing Field.

The Parks, Recreation and Public Facilities Department requests approval for a lease agreement between the City of Casper and the Spuds Baseball Club LLC for the use and operation of Mike Lansing Stadium concessions stand for the sale of food and beverages, including beer/malt liquor. Spuds Baseball Club LLC is seeking a special malt liquor license, which requires this Agreement. The lease includes non-exclusive use of the bleachers, seating platforms, restrooms, and egress pathways to seating areas to allow individuals who purchase beer or other malt liquor from concessions to move freely through these areas with their beverages.

The term of this agreement is from April 1, 2023, through March 31, 2024, to coincide with the requirements of the desired liquor licensing and the associated statutes. Spuds Baseball Club LLC will provide concession sales as well as the sale of malt beverages for all scheduled baseball games through the term of the Agreement and will be available for special events per request.

Spuds Baseball Club LLC will be responsible for normal facility upkeep and minor repairs totaling \$750 or less during the term of the Agreement. Spuds Baseball LLC will also be responsible for litter control, trash receptacle garbage removal, trash bag replacement, maintaining, cleaning, and re-stocking of toilet paper, paper towels and hand soap of restrooms and portable restrooms for the areas within the metes and bounds legal description provided in Exhibit “A” under the terms of the lease agreement.

The City of Casper will be responsible for utilities, major repairs over \$750, as well as normal stadium turf and related ground maintenance and roadway and parking lot repairs.

Financial Considerations

Through this lease, Spuds Baseball Club LLC will pay the City of Casper at total of \$1000 in rental fees and 5% of gross receipts from all concession and malt beverage sales, as well as from any advertising. Staff estimates revenue for the 2023 lease term will be just over \$4,000.

Oversight/Project Responsibility

Phil Moya, Recreation Manager

Paul Zowada, Recreation Supervisor

Attachments

Resolution

Lease Agreement



LEASE AGREEMENT

THIS LEASE AGREEMENT, hereafter **Agreement** or **Contract**, entered into this ____ day of _____, 2023, between the City of Casper, Wyoming, a municipal corporation, hereinafter referred to as "**City or Lessor**," and Spuds Baseball Club LLC, a Wyoming Corporation, hereinafter referred to as "**Lessee**." This Agreement supersedes and replaces any previous agreements between the parties.

IN CONSIDERATION of the Lease, covenants, and conditions herein set forth, the **Lessor** and **Lessee** hereby covenant, promise, and agree as follows:

RECITALS:

- A. The **Lessor** owns and operates the Mike Lansing Stadium, Concessions Stand at 330 Kati Lane, Casper Wyoming; and
- B. **Lessee** desires to enter into a non-exclusive lease of the Mike Lansing Stadium concessions stand, bleachers, seating platforms, restrooms and egress pathways to seating areas and to reach other accommodations with the **Lessor**, and the **Lessor** is willing to enter a nonexclusive lease with the Spuds Baseball Club, LLC, and to define associated obligations of the parties as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, it is agreed:

1. PREMISES:

- A. **Lessor** hereby agrees to lease to **Lessee**, and **Lessee** hereby agrees to lease from **Lessor**, for the term hereinafter provided, and any extensions thereafter, and upon the terms and conditions set forth in this Agreement, the property described as Mike Lansing Stadium concessions stand, bleachers, seating platforms, restrooms and egress pathways to seating areas as described in Exhibit A, attached hereto and by reference made part of this Agreement, hereinafter referred to as the "Mike Lansing Stadium Concession Areas", or "Leased Premises".
- B. "Mike Lansing Stadium Concession Areas" will be used only for conducting concessions sales and for the sale of malt beverages, all in accordance with this Agreement (as set forth in Sections 4 and 6, and Exhibit A), subject to availability, and will need to be scheduled and approved by the responsible, appropriate City Department Director or designee.
- C. The "Mike Lansing Stadium Concession Areas" is leased to **Lessee** in an AS IS CONDITION, WITHOUT WARRANTY, and EXPRESSED OR IMPLIED. By signing this Agreement, **Lessee** agrees it has inspected the premises and accepts the property in its present condition.

2. PURPOSE:

- A. The demised premises are leased to **Lessee** for the purpose of conducting concessions sales and for the sale of malt beverages. Such sales activities and or services and related activities shall be conducted in a safe manner and shall conform to all federal, state, and municipal laws, and all regulations relating to possession, use, or maintenance of the property.

3. **TERM:**

- A. The term of this Agreement shall be from April 1, 2023, through March 31, 2024 ("**Lease Term**").

4. **FEES:**

- A. **Rental Fee:** During the Lease Term, the **Lessee** will pay a monthly rental fee to the **Lessor** for use of the Mike Lansing Stadium concessions stand, bleachers, seating platforms, restrooms and egress pathways to seating areas in the amount of Two Hundred Dollars (\$200.00) per month during the baseball season from April 1st through August 31st for a total of One Thousand Dollars (\$1,000.00) for the term of the Agreement.

1. **Payment:** The **Lessor** shall invoice **Lessee**, on a monthly basis, during the preceding month, in accordance with the rates established in this Lease. **Lessee** shall pay rent to the **Lessor** within thirty (30) business days after the date on the invoice. Rent not received on time is subject to a one and one half percent (1.5 %) per month late fee due the **Lessor** if the rental fee payment is not paid to the **Lessor** by the 15th day of the overdue month of this Lease. **Lessee's** failure to pay **Lessor** the above described rent on or before the 15th day of any month of this Lease shall be considered a default by the **Lessee** of the terms and conditions of this Lease. **Lessee** also has the option to pay the total annual rental fee for the Mike Lansing Stadium concessions stand, bleachers, seating platforms, restrooms and egress pathways to seating areas within thirty (30) days of execution of this Lease as a payment option.

5. **ASSIGNMENT/SUBLEASING:**

- A. **Lessee** may not assign, sell, or transfer this Agreement in whole or part and may not sublet or otherwise assign all or any part of the leased premises without the prior written consent of the **Lessor**. **Lessee** shall not allow another group or entity to use or share the rental space without written consent of the **Lessor**.

6. **CONCESSIONS / RETAIL SALES:**

- A. **Lessee** shall pay the **Lessor** a fee of 5% of gross receipts from all sales which shall be due and payable to the **Lessor** on or before the 15th day of each month of this Agreement. A late fee of an additional 1.5% of the gross receipts shall be due to the **Lessor** if the monthly fee payment is not paid to the **Lessor** by the 15th day of each month of this Agreement. **Lessee's** failure to pay **Lessor** the above-described fee on or before the 15th day of any month of this Agreement shall be considered a default by the **Lessee** of the terms and conditions of this Agreement.
- B. The **Lessee** must obtain all pertinent kitchen, food, beverage, liquor, concession, catering and dining area facility operational permits and licenses and pay all associated local, county, state, and federal fees, registrations, and taxes as required at its sole cost and expense.
- C. **Lessee** agrees to operate the "Mike Lansing Stadium Concession Areas" on dates, and at the hours listed in accordance with the facility schedule to be provided by the **Lessor**

prior to the season. Generally, the **Lessee** must be available to be open on weekday evenings and on most weekends from April 1st to August 31st.

1. If the **Lessee** desires to close the "Mike Lansing Stadium Concession Areas" during days or hours specified on the schedule as described, the **Lessee** must provide a written or electronic communication with a documentation of cause at least 48 hours in advance of its requested closing to the responsible appropriate City Department Director or their assigned designee.

D. **Lessee** agrees that Mike Lansing Stadium bleachers, seating platforms, restrooms and egress pathways to seating areas are available to renters of Mike Lansing Stadium on dates, and at the hours listed in accordance with the facility schedule to be provided by the **Lessor** from April 1, 2023, through March 31, 2024.

7. **INVENTORY:**

- A. Within thirty (30) days of the execution of this Agreement by all parties hereto, and on or before May 1 of each term of this Agreement, the **Lessor** and the **Lessee** shall jointly prepare and maintain an updated annual inventory of equipment and fixtures (which shall be signed off by both parties), separately listing those items, number of items, and approximate value(s) of items belonging to the **Lessor** and those belonging to the **Lessee** on the leased premises. **Lessee** shall not remove any **Lessor** owned equipment from the facilities without express written permission from the responsible appropriate City Department Director or their assigned designee.

8. **TAXES AND ASSESSMENTS:**

- A. **Lessee** agrees to pay to the Natrona County Treasurer, on behalf of the **Lessor**, any and all taxes and assessments which may be assessed against the property, upon fifteen (15) day's notice by the **Lessor**, as to the amounts due and owing as a result of Lessee's performance and activities under this Agreement.

9. **NON-DISCRIMINATION:**

- A. The **Lessee** agrees that neither it nor its' subcontractors will discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment because of his or her race, color, creed, religion, national origin, age, sex, or ancestry.

10. **SCHEDULING:**

- A. **Lessee** shall be responsible for the scheduling of the "Mike Lansing Stadium Concession Areas" for all concessions sales and for the sale of malt beverage related activities. **Lessor** shall schedule any concessions sales and for the sale of malt beverages and special events based on the availability of the facility.
- B. For any events that deviate from the master schedule, the **Lessee** must notify the **Lessor** of such changes at least fourteen (14) days in advance for the **Lessor** to bill accordingly.

11. **LAWS AND REGULATIONS:**

- A. **Lessee** shall be solely responsible for compliance with all laws, orders, and regulations of federal, state, and municipal authorities and with any direction of any public officer, pursuant to law, which shall impose any duty upon **Lessee** with respect to the real property and fixed assets. **Lessee** shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Agreement, or for the making of repairs, additions, alterations, or improvements.

12. **INSURANCE, INDEMNIFICATION AND IMMUNITY:**

- A. **Prior to the commencement of the Lease Term**, **Lessee** shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the **Lessee's** operation and use of the leased premises. The cost of such insurance shall be borne by the **Lessee**.

- B. Minimum Scope and Limit of Insurance.
Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. The CGL policy shall be endorsed to contain Employers Liability/Stop Gap Coverage.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than Five Hundred Thousand (\$500,000) per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of Wyoming with Statutory Limits.

- C. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

- D. Higher Limits: If the **Lessee** maintains broader coverage and/or higher limits than required under this Agreement, then the **Lessor** shall be entitled to coverage for the higher limits maintained by the **Lessee**. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the **Lessor**.

- E. Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. *Additional Insured Status*

The **Lessor**, its officers, officials, employees, and volunteers are to be covered as

additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the **Lessee's** insurance at least as broad as ISO Form CG 20 10.

2. *Primary Coverage*

For any claims related to this contract, the **Lessee's** insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the **Lessor**, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the **Lessor**, its officers, officials, employees, or volunteers shall be excess of the **Lessee's** insurance and shall not contribute with it.

3. *Notice of Cancellation*

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the **Lessor**. Such notice to the City shall be provided in a commercially reasonable time.

4. *Waiver of Subrogation*

Lessee hereby grants to the **Lessor** a waiver of any right to subrogation which any insurer of said **Lessee** may acquire against the **Lessor** by virtue of the payment of any loss under such insurance. **Lessee** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the **Lessor** has received a waiver of subrogation endorsement from the insurer.

5. *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the **Lessor**.

6. *Self-Insured Retentions*

Self-insured retentions must be declared to and approved by the **Lessor**. At the option of the **Lessor**, either: the **Lessee** shall obtain coverage to reduce or eliminate such self-insured retentions as respects the **Lessor**, its officers, officials, employees, and volunteers; or the **Lessee** shall provide a financial guarantee satisfactory to the **Lessor** guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or **Lessor**.

7. *Claims Made Policies*

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
- b. Insurance must be maintained, and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work*. However, Consultant's liabilities under this Contract shall not be deemed limited in any way by the insurance coverage required.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the

Lessee must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work and at all times thereafter until the applicable statute of limitations runs.

8. *Verification of Coverage*

Lessee shall furnish the **Lessor** with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the **Lessor** before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the **Lessee's** obligation to provide them. The **Lessor** reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

9. *Special Risks or Circumstances*

Lessor reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. *Subcontractors*

Lessee shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and **Lessee** shall ensure that the **Lessor** is an additional insured on insurance required from Subcontractors.

F. Indemnification:

Lessee agrees to indemnify the **Lessor**, the **Lessor's** employees, elected officials, appointed officials, agents, and volunteers, and all additional insured and hold them harmless from all liability for damages to property or injury to or death to persons, including all reasonable costs, expenses, and attorney's fees incurred related thereto, to the extent arising from negligence, fault or willful and wanton conduct of the **Lessee** and/or any subcontractor thereof.

G. Liquor Liability:

If **Lessee** will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If **Lessee** is using a caterer or other vendor to supply alcohol, that vendor must have liquor liability coverage. If **Lessee** intends to sell alcohol either the **Lessee** or vendor providing the alcohol for sale must have a valid liquor license and liquor liability insurance covering the sale of alcohol.

13. **USE OPERATIONS PLAN:**

- A. The **Lessee**, prior to the execution of this Agreement, shall submit a Use Operations Plan to the responsible, appropriate City Department Director or the Director's designee. The plan shall specify months, days, and hours of operation for those months, the responsible organizational contact(s) and the contact's telephone number(s), during which the subject property shall be available to the public for related property use activities. The plan shall pertain to the time period of the Lease, in the event the responsible appropriate City Department Director or their assigned designee does not disapprove of the plan within thirty (30) days from the date of its submission, it shall be considered approved.

14. **ADVERTISING:**

- A. **Lessee** shall have the right to procure and to install, affix, maintain, and replace appropriate signs/banners displaying advertising matter at the leased premise, but only at locations approved by the appropriate City Department Director or assigned designee at their sole discretion. All advertising shall be subject to the **Lessor's** right to accept or reject the same, including the right to accept or reject sponsors and advertising content, to ensure that any advertising placed at the facility and/or on the property is appropriate in connection with the intended use of the property and its related facilities. **Lessee** shall not, in procuring, installing, displaying, or replacing any advertising material, violate any person's right to privacy or infringe upon trademarks, trade names, copyrights, or proprietary rights of any person. Advertisement(s) cannot be pre-sold beyond the time periods or terms of the Agreement. It is understood that any approval by the **Lessor** of advertising material shall not constitute a waiver of **Lessee** obligations concerning such violations or infringement. **Lessee** agrees to indemnify and hold the **Lessor** harmless with respect to all such claims without cost to the **Lessor**.
- B. The **Lessor** will be entitled to five percent (5%) of the agreed upon advertising value. If the **Lessee** plans to post an advertisement on the premises as an in-kind trade, then the **Lessee** must provide the **Lessor** with a reasonable assessed value of the in-kind trade based on a good-faith, written estimate for the in-kind work or service performed. **Lessee** shall pay the **Lessor** five percent (5%) of the assessed value of the in-kind trade. If the **Lessee** fails to pay **Lessor** within seven (7) days of the end of this Agreement, the **Lessee's** shall be considered in default of this Agreement and in breach of the terms and conditions of this Agreement. The terms of any advertising agreement must be approved by the responsible appropriate City Department Director or their assigned designee before it becomes effective.
- C. The parties agree that all advertising placed at the facility and/or on the property is owned by the **Lessee** and shall remain the property of **Lessee**, and shall be subject to removal by **Lessee** at any time.

15. **RIGHT TO ENTRY:**

- A. The **Lessor** reserves the right to enter the leased premises for the purposes of maintenance, public safety, and other general inspections. **Lessee** will be notified 24 hours in advance of any non-routine, non-emergency inspections, and may accompany **Lessor's** representative during such inspections.

16. **MAINTENANCE:**

- A. **Lessee** shall, during the term of this Agreement, keep the leased premises in good order and repair commensurate with the operation of the **Lessee's** intended use of those premises and facilities, and as necessary to adequately protect spectators, guests, invitees, and participants, and shall at its sole cost and expense, make any repairs necessary to the leased premises for these purposes. The **Lessee** must receive consent of the **Lessor** prior to the scheduled repairs. **Lessor** shall, during the term of this Agreement, provide services commensurate with the lease fee identified in this Agreement. Those services are related to normal facility upkeep including, but not limited to, plumbing, electrical and mechanical repairs to existing equipment that exceed Seven Hundred Fifty Dollars (\$750) per repair.

The **Lessee** will be responsible for all repairs Seven Hundred Fifty Dollars (\$750) per repair or less. The **Lessee** will report all repairs over Seven Hundred Fifty Dollars (\$750) to the Recreation Supervisor (Athletics). The Supervisor will report the repairs to the appropriate City department to address repairs. The **Lessee** is liable for all damages that occur to the facility during the Lease Term. The **Lessor** will be responsible for normal turf and related ground maintenance, and roadway repairs and parking lot repairs.

- B. Services in addition to the normal maintenance referred to above shall be the responsibility of the **Lessee**. **Lessee** will be responsible for maintaining, cleaning and re-stocking of toilet paper, paper towels and hand soap of restrooms and portable restrooms provided during the term of the Agreement. The **Lessee** will be responsible for maintaining the Leased area with trash receptacle garbage removal and trash bag replacement during the term of the Agreement. The **Lessee** will also be responsible for litter collection within the bleachers and grounds in the Leased area that accumulates during the term of the Lease. **Lessee** will be responsible for paying **Lessor** for additional services needed for special events or tournaments. The **Lessee** will need to request the additional services from the **Lessor** and least fourteen (14) days prior to the rental/event. Additional services will only be provided based on availability of City staff. Fees for additional services shall be as shown in Exhibit B, attached hereto and made part of this agreement.

17. **ADDITIONS, ALTERATIONS, AND IMPROVEMENTS:**

- A. The **Lessee**, at its sole cost, risk, and expense, may construct temporary facilities and fixtures for its benefit and the benefit of participants and spectators. Such facilities and fixtures shall meet all applicable city, state, federal regulations and requirements, and such other requirements as may be prescribed by the **Lessor**.
- B. The plans and specifications for any additional temporary facilities and fixtures shall first be submitted to the **Lessor's** authorized representative for approval in accordance with existing City codes, prior to the construction. At the time of submission, the **Lessee** shall designate in writing whether the facility or fixture is temporary, and for what period of time it will remain in use. The appropriate responsible City Department Director or their assigned designee shall, in addition, have authority to approve or disapprove of all additional facilities or fixtures placed upon the leased premises.
- C. **Lessee** may, upon termination of this Agreement, remove all facilities or fixtures which it constructed, and which are of a temporary nature, but must restore property and/or premises to conditions as they were prior to installation of the removed improvements.
- D. The **Lessor** reserves the right to make such improvements to the property, facilities, or fixtures as it may desire, upon reasonable notice to **Lessee**, provided the improvements do not substantially conflict with the use of the premises described herein, as determined by the appropriate responsible City Department Director or their assigned designee.

18. **UTILITIES:**

- A. **Lessor** is responsible for all charges for electricity and natural gas for the Mike Lansing Stadium concessions stand, bleachers, seating platforms, restrooms and egress pathways to seating areas.

19. DEFAULT:

- A. In the event **Lessee** shall fail to make any payment called for within fifteen (15) days after the same shall fall due, then **Lessor** may terminate this Agreement by giving **Lessee** written notice of such termination; or, in the event the **Lessee** fails to perform any other obligations called for herein on its part to be performed, and upon notice duly given of such deficiency by **Lessor**, and upon **Lessee's** failure to cure such deficiency within fifteen (15) days after such notice, then **Lessor** may, by written notice to **Lessee**, terminate this Agreement, effective upon proper delivery or mailing of said written termination notice by **Lessor**.
- B. Upon such termination, **Lessor** shall be entitled to possession of the leased premises and all permanent improvements therein made by **Lessee** without any further notice or demand, and **Lessee** shall peacefully surrender the leased premises and all other permanent improvements therein made by **Lessee**. If **Lessee** shall refuse to surrender and deliver upon the possession of the premises, then **Lessor** without further notice or demand, may re-enter the premises and repossess by force, summary proceedings, ejectment, or otherwise using such help, assistance, and force, in doing so that may be equal and proper without being liable for prosecution of damages therefor, and without prejudice to any remedy allowed by law or equity.

20. REIMBURSEMENT OF DEFAULT AND EVICTION ACTION EXPENSES:

- A. **Lessee** shall pay and indemnify **Lessor** against all legal costs and charges, including attorney's fees, in obtaining possession of the leased premises after a default of **Lessee** or after **Lessee's** default in surrendering possession upon the expiration or early termination of the term of this Agreement or enforcing any covenant of the **Lessee** herein contained. **Lessee** shall also be responsible for all costs required to either remove any temporary facility/fixture improvements or costs for **Lessor** to restore the property and premises to the original condition.

21. DESTRUCTION OF REAL PROPERTY OR FIXED ASSETS:

- A. If the real property or fixed assets should be destroyed totally by fire or other cause, the tenancy created hereby shall be thereafter terminated.

22. SURRENDER OF REAL PROPERTY AND FIXED ASSETS:

- A. **Lessee** shall, at the expiration of the Lease Term or any renewal thereof, or on termination thereof, surrender the leased premises free of sub tenancies, liens, or other encumbrances, together with alterations and improvements which may have been made thereon, except for temporary facilities or fixtures put in at the expense of the **Lessee** or at the expense of any subtenants, subject, however, to the subsequent provisions hereof. All the property removable, pursuant to the provisions of this paragraph, shall be removed by the **Lessee** at the expiration of the Lease Term, or any extension thereof, and all property not so removed shall be deemed abandoned by **Lessee**, and becomes the **Lessor's** at its option.

23. OPERATIONS:

- A. **Lessee** shall have the right to solicit offerings and contributions from spectators and charge for concessions sales for **Lessee**-sponsored events. The details of its plan for same shall be

submitted by the **Lessee** as part of the Annual Operations Plan and at such other times as may be convenient for the parties. All funds collected by the **Lessee**, by way of contributions or concessions sales, shall be used solely for the purpose of promoting, maintaining, and continuing operations for the purposes of this Agreement including, but not limited to, defraying operating expenses, purchasing equipment, and improvement of the facilities. **Lessee** shall keep and maintain proper records reflecting all revenues and expenditures and shall make an Annual Financial Report to the **Lessor** following the close of each year as part of the Annual Operations Plan.

24. **NOTICE:**

- A. Any notice by either party shall be in writing and shall be considered to be duly given if delivered personally or if mailed by certified mail, postage prepaid, addressed as follows:

City of Casper Recreation Division	Spuds Baseball Club LLC
1801 East Fourth Street	4251 Gramin Dr.
Casper, Wyoming 82601	Casper, WY 82609

25. **WAIVER:**

- A. No failure by **Lessor** to insist upon the strict performance of any terms or conditions of this Lease, or to exercise any right or remedy available on a breach thereof, and no acceptance of full or a partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any term or condition of this Agreement. No term or condition of this Agreement required to be performed by **Lessee**, and no breach thereof, shall be waived, altered, or modified, except by a written instrument executed by **Lessor**. No waiver of any breach shall affect or alter any term or condition of this Agreement, and such term or condition shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

26. **ENVIRONMENTAL COMPLIANCE:**

- A. **Lessee** shall conduct its operation on the property in compliance with and shall not permit the property to be in violation of any applicable local, state, or federal environmental laws. **Lessee** shall obtain and maintain in effect all permits required by any environmental laws for the property, and its uses, and shall furnish to **Lessor** copies of the permits upon request. **Lessee** shall comply with all reporting requirements of 42 U.S.C. 11001, et seq. (Emergency Planning and Community Right to Know Act). **Lessee** shall not handle, store, dispose of, or allow the handling, storage, or disposal of any hazardous waste as defined in 42 U.S.C. 6903(5), or hazardous substance as defined in 42 U.S.C. 9601(14), on the property, and shall not discharge any waste onto lands or any surface water or ground water at or near the property. **Lessee** shall manage all hazardous substances and chemicals which it handles off-site, but in proximity to the subject property in accordance with all applicable laws and regulations. **Lessee** shall not bring onto the property any substances known to cause human injury, including, without limitation, cancer or reproductive toxicity, except those which are necessary for the prudent and necessary management of **Lessee's** lawful operations on the property. In addition, **Lessee** shall comply with all laws, regulations, and standards applicable to those substances.
- B. **Lessee** shall immediately advise **Lessor** in writing of: (1) any and all governmental

agencies regulatory proceedings or enforcement actions instituted or threatened, which require or could require investigation, mitigation, clean-up, alteration, or abatement of any conditions on the property; (2) all claims made or threatened by any party against **Lessee** or the property, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any pollutant, or hazardous substance; and, (3) **Lessee's** discovery of any occurrence or condition on the property which might subject **Lessee**, **Lessor**, or the property to any restrictions on ownership, occupancy, transferability, or use of the property under any local, state, or federal environmental law.

- C. **Lessee** shall make and conduct regular investigations of the property to determine the presence thereon of any hazardous substance which may have been deposited on the property by any party, including third parties, and shall report any condition which indicates the presence of such substances immediately to **Lessor** and to the proper authorities. **Lessee** shall advise **Lessor**, upon request of all such investigations which had been made, the dates of such investigations, and the method of investigation. These investigations shall be made by **Lessee** not less than on a monthly basis. **Lessee**, in addition, shall take all reasonable precaution to prevent the dumping, discharge, or threatened discharge of any hazardous substance on the property by any third persons, and shall advise the **Lessor** in writing, upon request, of all such precautions which have been taken.

27. GOVERNING LAW:

- A. This Contract, including all exhibits, schedules, attachments, and appendices attached hereto, and all matters arising out of or relating to this Contract, are governed by, and construed in accordance with, the laws of the State of Wyoming, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Wyoming.

28. CHOICE OF FORUM AND STATUTE OF LIMITATIONS:

- A. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the courts of the State of Wyoming sitting in Casper, Wyoming. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. To the extent allowable, Wyoming's statute of limitations also applies.

29. MISCELLANEOUS COVENANTS:

- A. Time is of the essence in this Agreement and all obligations shall be performed in a timely manner.
- B. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

30. TERMINATION OF LEASE AGREEMENT:

- A. The **Lessor** or the **Lessee** may terminate this Agreement anytime by providing thirty (30)

days written notice to other party of intent to terminate said Agreement. Notwithstanding the above, the **Lessee** shall not be relieved of liability to the **Lessor** for damages sustained by the **Lessor**, by virtue of termination of the Agreement by the **Lessee** or any breach of the Agreement by the **Lessee**.

31. **WYOMING GOVERNMENTAL CLAIMS ACT:**

- A. **The Lessor** does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statutes Section 1-39-101 *et seq.*, and **the Lessor** specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

32. **NO THIRD PARTY BENEFICIARY RIGHTS:**

- A. The parties to this Agreement do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

33. **ENTIRE AGREEMENT:**

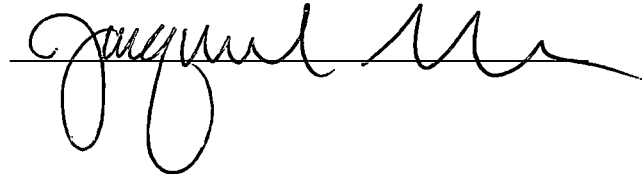
- A. This Agreement contains the entire agreement between the parties and it is agreed that neither **Lessor** or anyone acting on its behalf has made any statements, promise, or agreement, or taken upon itself any engagement whatever, orally, or in writing, in conflict with the terms of this Agreement of that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, and that no obligation of **Lessor** shall be implied in addition to the obligations herein expressed.

34. **LIMITATION OF LIABILITY:**

- A. In no event shall the **Lessor**, the **Lessor's** employees, elected officials, appointed officials, or agents be liable under this Agreement to **Lessee** or any third party for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages or lost profits or revenues, or diminution in value, arising out of, relating to, or in connection with any breach of this Agreement, regardless of (a) whether such damages were foreseeable (b) whether or not the **Lessor** was advised of the possibility of such damages and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written.

APPROVED AS TO FORM:



ATTEST:

LESSOR:

CITY OF CASPER, WYOMING
A Municipal Corporation

Fleur Tremel
City Clerk

Bruce Knell
Mayor

LESSEE:

Spuds Baseball Club LLC
4251 Gramin Dr.
Casper, WY 82609

Phone:
307-258-8556

E-mail
Paul@spudsbaseball.com

WITNESS:

Phil Moya
By: [Signature]

Paul Heck
By: [Signature]

Title: Manager/Partner/owner

EXHIBIT "A"

LEGAL DESCRIPTION

A Parcel located in and being a portion of the E ½ NW ¼, Section 4, Township 33 North, Range 79 West of the Sixth Principal Meridian, Natrona County, Wyoming and more particularly described by metes and bounds as follows:

Commencing at the Northwest corner of Lot 53 of the C K T Addition and being the Point of Beginning; thence from the Point of Beginning N. 31°55'52" W. a distance of 22.028' to a point; thence S. 66°52'57" W. a distance of 48.562' to a point; thence N. 31°33'57" W. a distance of 83.000' to a point; thence N. 16°8'52" W. a distance of 104.000' to a point; thence N. 3°24'42" W. a distance of 140.000' to a point; thence N. 9°58'11" E. a distance of 180.000' to a point; thence N. 10°44'23" E. a distance of 68.000' to a point; thence N. 40°24'22" E. a distance of 17.000' to a point; thence N. 88°49'31" E. a distance of 31.000' to a point; thence S. 48°27'51" E. a distance of 15.000' to a point; thence S. 88°18'55" E. a distance of 9.000' to a point; thence S. 5°9'1" W. a distance of 49.717' to a point; thence S. 80°47'20" E. a distance of 19.523' to a point; thence S. 6°19'9" W. a distance of 156.157' to a point; thence S. 3°41'29" E. a distance of 64.718' to a point; thence S. 38°39'33" E. a distance of 6.670' to a point; thence S. 2°39'15" E. a distance of 78.730' to a point; thence S. 45°33'21" E. a distance of 37.935' to a point; thence N. 86°41'31" E. a distance of 90.255' to a point; thence N. 86°31'0" E. a distance of 60.007' to a point; thence N. 77°28'16" E. a distance of 117.717' to a point; thence S. 12°56'13" E. a distance of 31.704' to the point of a non-tangent curve; thence continuing along the arc of non-tangent curve to the right having a radius 37.92', and through a central angle of 50°23'24", southwesterly, 33.347', and the chord of which bears S. 10°13'19" W. a distance of 32.283' to a point; thence S. 38°13'22" W. a distance of 63.976' to a point; thence S. 43°58'4" W. a distance of 81.773' to a point; thence S. 47°14'45" E. a distance of 18.797' to a point; thence S. 66°53'45" W. a distance of 66.670' to a point; thence N. 30°3'2" W. a distance of 65.766' to a point; thence S. 59°53'20" W. a distance of 110.064' to the Point of Beginning.

The above described parcel contains 2.13 acres, more or less.

EXHIBIT "A"(Map)

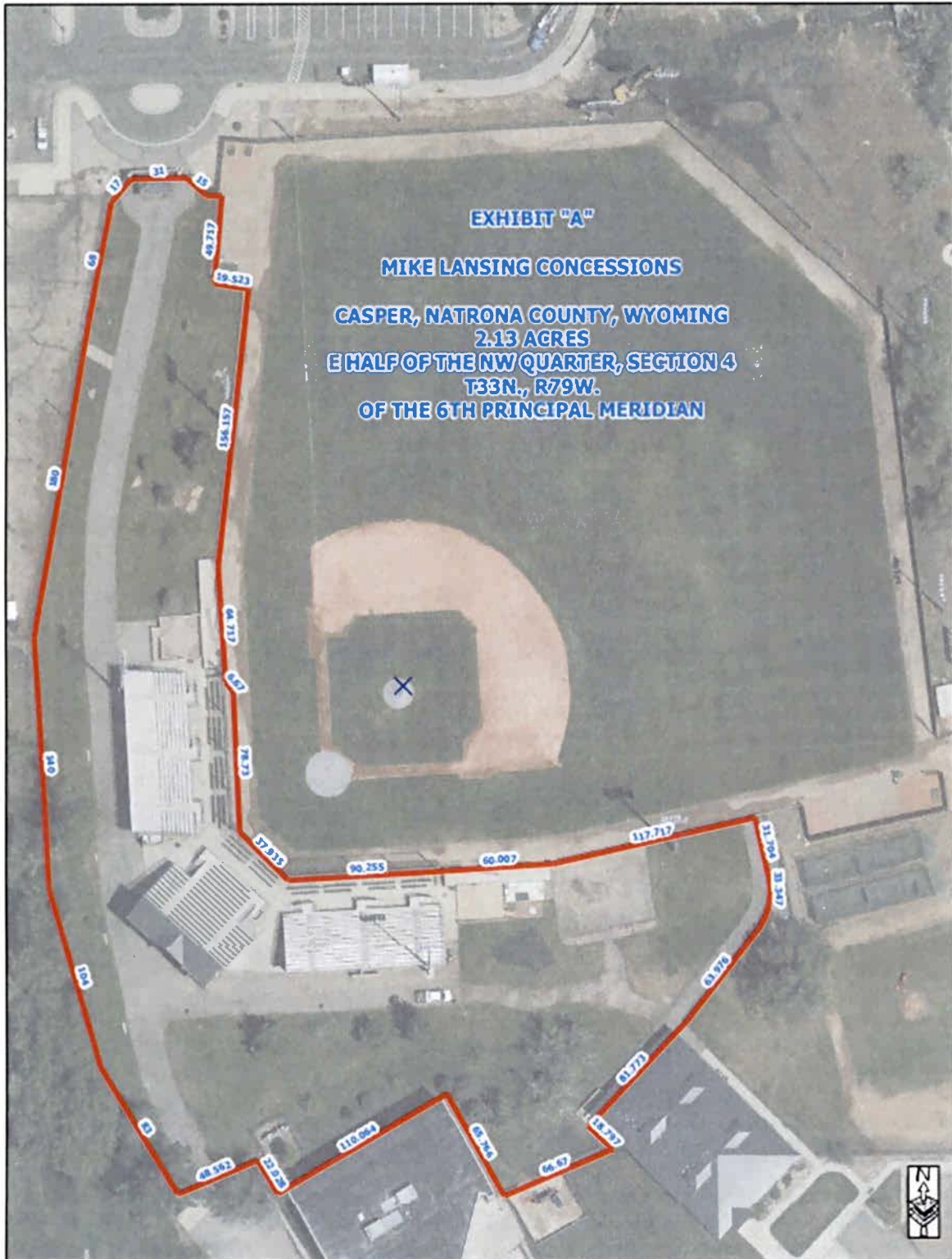


EXHIBIT "B"

City of Casper
Parks, Recreation and Public Facilities Department
Mike Lansing Stadium

Rates and Fees

City of Casper	Rates and Fees
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Concessions

Seasonal - Mike Lansing	Per Month		\$200.00
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Lessee shall also pay the Lessor a fee of 5% of gross receipts from all sales which shall be due and payable to the Lessor on or before the 15th day of each month of this lease.

Cleaning Fee

Per staff member, and supplies	Per Hour		\$25.00
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Facility (building) lease will require the Lessee to pay for all utilities expenses.
This includes Water, Sewer, Gas and Electricity.

RESOLUTION NO. 23-7

A RESOLUTION AUTHORIZING A LEASE AGREEMENT
WITH THE SPUDS BASEBALL CLUB, LLC, FOR USE OF THE
MIKE LANSING CONCESSIONS STAND.

WHEREAS, the City is the owner of the Mike Lansing Concessions Stand; and,

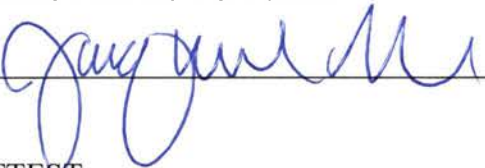
WHEREAS, Spuds Baseball Club, LLC, provides concessions sales and the sale of
malt beverages, and desires to utilize City-owned facilities for said services; and,

WHEREAS, the City of Casper and the Spuds Baseball Club, LLC, have agreed to
the terms and conditions of the Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF
THE CITY OF CASPER, WYOMING: That the Mayor is hereby authorized and directed to
execute, and the City Clerk to attest, the Lease Agreement between the City of Casper and Spuds
Baseball Club, LLC, for the use of the Mike Lansing Stadium concessions stand, bleachers, seating
platforms, restrooms and egress pathways to seating areas.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2022.

APPROVED AS TO FORM:



ATTEST:

CITY OF CASPER, WYOMING
A Municipal Corporation

Fleur Tremel
City Clerk

Bruce Knell
Mayor