

RESOLUTION NO. R14-86

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE
MAYOR TO EXECUTE A LEASE AGREEMENT WITH
AMERICAN LEGION BASEBALL FOR THE LAUREL DODGERS
BASEBALL'S USE OF CITY OWNED PROPERTY.**

BE IT RESOLVED by the City Council of the City of Laurel, Montana:

Section 1: Approval. The Lease Agreement between the City of Laurel and the American Legion Baseball-Laurel Dodgers Baseball negotiated by City Staff is accepted and hereby approved. A copy is attached hereto for convenience.

Section 2: Execution. The Mayor and City Clerk/Treasurer of the City of Laurel are hereby given authority to accept and execute the Lease Agreement on behalf of the City.

Introduced at a regular meeting of the City Council on December 2, 2014, by Council Member Nelson.

PASSED and APPROVED by the City Council of the City of Laurel this 2nd day of December, 2014.

APPROVED by the Mayor this 2nd day of December, 2014.

CITY OF LAUREL

Mark A. Mace, Mayor

ATTEST:

Shirley Ewan, Clerk/Treasurer

Approved as to form:

Sam S. Painter, Civil City Attorney

Did not
pass

3-11-14

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CITY OF LAUREL

Mark A. Mace, Mayor

ATTEST:

Shirley Ewan, Clerk/Treasurer

Approved as to form:

Sam S. Painter, Civil City Attorney

LEASE AGREEMENT

This Lease Agreement is entered into this 2nd day of December, 2014, by and between the City of Laurel, Montana, a municipal corporation organized and existing under the laws of the State of Montana, whose business address is P.O. Box 10, Laurel, Montana 59044, hereinafter referred to as "City" (Lessor), and American Legion Baseball, whose business address is PO Box 144, Laurel, Montana 59044, hereinafter referred to as "Lessee".

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree and covenant as follows:

ARTICLE I

Purpose of Lease

The purpose of this Agreement is to lease the Lessee certain and specific City facilities or property in order that the Lessee may conduct its baseball activities, including but not limited to, practice, games, and other baseball related events, so long as such activity is not prohibited by City ordinance, resolution or regulation.

ARTICLE II

Property Leased

The City hereby leases and permits the use to Lessee and the Lessee hereby leases from the City the following-described property and improvements located in Thomson Park, Yellowstone County, Montana, hereinafter referred to as "the premises", as identified on Exhibit A attached hereto and part of this Lease Agreement. The premises include the concession stand and three baseball fields and common areas marked on Exhibit A. Lessee shall have full access and control over the premises and shall maintain and utilize the premises in a clean and safe condition.

ARTICLE III

Parties

City: Office of the Mayor (City Clerk)
PO Box 10
Laurel, Montana 59044
Phone: (406) 628-7431
Fax: (406) 628-2289

Lessee: American Legion Baseball Laurel Dodgers Baseball
PO Box 144
Laurel, MT 59044
Phone: (406) 850-9305
Fax: (406) _____

ARTICLE IV

Term of lease

The term of this lease shall commence on approval by the City Council and execution by the Parties and run for a period of five (5) years, with the option to renew for an additional 5-year term thereafter. If this lease is terminated during either 5-year term, the City agrees that Lessee may remove from the premises all equipment, materials and products owned and utilized by Lessee, including, but not limited to, all baseball equipment, concession equipment and remaining concession items, etc.

ARTICLE V

Lessee Obligations and Covenants

Lessee hereby covenants and agrees with the City that Lessee shall:

1. Use and occupy the premises in a careful and proper manner and not commit any waste therein;
2. Not use or occupy the premises for any unlawful purpose, and will conform to and obey all present and future laws, ordinances, and all rules and regulations of all governmental

authorities or agencies, respecting the use and occupation of the premises;

3. Lessee may obtain a permit to serve beer and wine on the premises upon completing and securing the necessary licenses/permits and additional liquor liability insurance or endorsement;
4. Not assign the lease, nor sublet the premises, nor any part thereof, without prior written consent of the City. The City shall require no more than thirty (30) days for such approval upon written request by the Lessee and shall not unreasonably withhold such approval;
5. Not use or occupy said premises, or permit the same to be used or occupied, for any purpose deemed extra hazardous on account of fire or otherwise;
6. Lessee shall make no alterations, changes or revamping, remodeling or capital improvement in or to the premises, without prior written permission approved by the Public Works Director and in addition thereto, Lessee shall obtain all approvals and permits required for such work under City ordinance. Approvals for any improvements/changes must be granted or rejected by the City within thirty (30) days of written notice by Lessee or the work may proceed the same as if such approval was received. Approval for such proposed work shall not be unreasonably withheld. Any such alterations or additions shall be the sole responsibility of the Teams inclusive of any and all financial, material, or labor considerations and will become the property of the City upon termination of this or any subsequent lease;
7. Permit the City to enter upon the said premises at all reasonable times to examine the condition of same;
8. Indemnify and save the City, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against any loss,

damage and liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortuous or negligent act on the part of the Teams, its members, agents or employees. For such purpose, the Teams shall procure and maintain in full force and effect during the term of this agreement, commercial general liability, including product liability, in a reliable company or companies with minimum policy limit \$1,000,000 combined single limit per occurrence, and \$2,000,000 aggregate single limit per occurrence; and \$1,000,000 Liquor Liability. The City shall be named as an additional insured part on the policy to be evidenced by a certificate of insurance presented to the City Clerk/Treasurer on or before April 1 of each year. The City and the Teams hereby grant to each other, on behalf of any insurance company providing insurance under this agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy;

9. Pay for the use and maintenance of utility services on the premises, including but not limited to gas, electricity, sanitation, and telephone;
10. Conduct ordinary day-to-day maintenance and repair necessary to keep both the interior and exterior of the premises in a good state of repair and acceptable condition. Maintain field in a playable condition, inspect field and facilities on a regular basis to determine any hazardous conditions which may exist, and take immediate action to correct such conditions if they exist;
11. Provide for necessary janitorial and maintenance services to insure the grandstand, bleachers, restrooms, concession stand and other areas of the leased premises are in a sanitary and orderly condition;
12. Keep parking space adjacent to the premises in a clean and safe condition;

13. All groundskeeping and cleanup to be provided by the Teams. Each team further agrees to assist with groundskeeping after practice and games.
14. Be responsible for all damage to property, public or private, that may be caused by this operation in the performance of this agreement;
15. The Teams shall allow participation in the American Legion baseball program for all interested persons regardless of race, creed, sexual gender, economic or social status and will encourage such participation without the discrimination of any kind or nature;
16. Leave premises, at the expiration or prior to termination of this lease and any extension thereof, in as good condition as received, reasonable wear and tear alone accepted.
17. There shall be a Concession Board, consisting of members from both the American Legion Baseball and the Laurel Little League.
18. Lessee shall provide a Food Handling Safety Certificate to the City Clerk/Treasurer prior to the beginning of the season and use of the concession stand.

ARTICLE VI

Rent

1. Lessee shall pay the City rent in the amount of \$1,200.00 per year as consideration for the use of the premises. Lessee shall pay annually on or before the anniversary date of his/her signature on the agreement.
2. Rent includes the following: Use and lawful possession of the premises.
3. Lessee shall pay the following charges each and every month: water, garbage, and electrical charges for the premises.

ARTICLE VII

Repairs and Maintenance

City's obligation under this Agreement is limited to mowing the outfield of the Legion/Senior League field, as needed, and major repairs. Major repairs are defined as non-

recurring structural, electrical, plumbing and mechanical repair. Lessee is responsible for all other maintenance and upkeep of the premises. The City's obligation to undertake major repairs does not include major repairs necessitated by any acts of Lessee, its agents, employees, officers, or invitees.

ARTICLE VIII

Condition

Neither the City nor any of its agency have made any representations with respect to the above-described property except as expressly set forth herein, and no rights, easements or licenses are acquired by Lessee by implication or otherwise, except as expressly set forth herein. Acceptance of possession of the above-described property by Lessee shall be conclusive evidence that Lessee accepts the same "as is" and that the property was and is in good condition at the time possession was accepted.

ARTICLE IX

Right to Inspect Premises

The City has a right, at all times during the term of this lease, through its agents and employees, to enter upon the leased premises for the purpose of examining and inspecting the same to determine whether Lessee has complied with its obligations hereunder with respect to the care and maintenance of the premises, and the repair or rebuilding of the improvements therein when necessary. This right of inspection may only be exercised after 24 hours' notice to Lessee of City's desire to inspect the premises. This 24-hour notice is necessary to insure that a representative of Lessee will be available to accompany City's representative at the time of inspection.

ARTICLE X

Assignment/Cancellation/Termination/Negotiation

1. **Assignment.** Neither City nor Lessee may assign, transfer or sublet its rights under this Lease to any party without prior written consent of the other party.
2. **Cancellation.** In the event the premises leased hereunder or any portion thereof is not available for occupancy or use upon commencement of or during the term of this Lease

due to fire, casualty, acts of God, strikes, national emergency or some other cause beyond the control of the City, this Lease and the obligations of the Parties hereunder shall terminate and the Lessee hereby waives any claim against the City, its employees or agents for damages by reason of such cancellation. Any notice of cancellation must be in writing and sent by certified mail, as noted.

3. Termination. The City may terminate this Lease if the Lessee fails to make its rental payment, obtain and maintain liability insurance, or perform any other condition or obligation required herein. Notice of termination must be in writing and sent by certified mail, as noted.
4. Lessee may rent or sublet the premises for periods not to exceed 72 consecutive hours. However, lessee and/or the renter/subletor must obtain and provide liability insurance that names the City as an additional insured on the policy during the event. If alcohol is available or sold, the policy must include an alcohol endorsement with limits provided in Article XII.

ARTICLE XI

Compliance With Ordinances and Regulations

Lessee, at its sole expense, shall comply with all laws, orders and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to law, which imposes any duty upon Lessee or the City with respect to the leased premises. Lessee, at its sole expense shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this agreement, or for making repairs, alterations, improvements, or additions. The City, when necessary, will join with Lessee in applying for all such permits or licenses.

ARTICLE XII

Liability Insurance

Lessee shall obtain and maintain at all times during the term hereof, with a responsible insurer, for the benefit of the City and the Lessee as their respective interest may appear, comprehensive general liability insurance in the amount of One Million dollars (\$1,000,000.00)

per occurrence with an aggregate value of Two Million dollars (\$2,000,000.00), to protect against any loss, claims, lawsuits or liability for damages, property damage, personal injury or death, and any expenses of the parties against any claim for such damages which might result from use or occupation or condition of the premises. Simultaneously with and as a prerequisite of executing of this lease, Lessee shall furnish a copy of such insurance policy(ies) to the City Clerk/Treasurer and such policy(ies) shall contain an endorsement that it shall not be canceled or altered without at least thirty (30) days prior written notice to the City from the insurer. The City and Lessee shall be specifically named as insured under said policy.

ARTICLE XIII

Indemnification

Lessee hereby indemnifies and agrees to hold the City free and harmless from and against any and all actions, claims and demands arising out of the use or occupancy of the premises by Lessee or the failure of the Lessee to maintain the premises as herein provided, including, but without limitation, any carelessness, negligence, improper conduct, wrongful or intentional act or breach of this Lease by the Lessee or its agents, employees, patrons, invitees, suppliers or licensees, and any and all costs, expenses and fees, including attorneys' fees, incurred by the City incident thereto. The City hereby indemnifies and agrees to hold the Lessee free and harmless from any and all actions caused by the sole negligence of the City.

ARTICLE XIV

Use/Right of Entry and Inspection/Damage/Repairs

1. Use. Lessee shall not use or permit the use of the leased premises for any purpose prohibited by law, shall comply with all requirements and demands of all governmental agencies or officials with respect to the condition, use and occupancy of the premises as such may appear from time to time during the term of this Lease and shall not commit nor suffer to be committed any nuisance on or waste of the premises.
2. Right of Entry and Inspection. Lessee shall permit the City or the City's duly authorized

agents, employees or representatives to enter upon the leased premises at all reasonable times for the purpose of inspection.

3. Damage. It is specifically understood that any damage caused by Lessee or its guests to the premises during the term of this Lease shall be promptly corrected or replaced at the Lessee's expense.
4. Repairs. All repairs to the premises during the terms of this Lease shall be the sole responsibility of the Lessees.

ARTICLE XV

Time of the Essence

Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

ARTICLE XVI

Mortgages and Subleases

Lessee may not assign its rights under this agreement or assign or encumber the described premises without the prior written consent of the City hereof.

ARTICLE XVII

Surrender Upon Termination

Upon the termination or cancellation of this Lease, Lessee, as its sole expense, shall remove from the premises all merchandise, furniture, furnishings, equipment or any other personal property belonging to it, and shall quietly and peaceably surrender possession of the leased premises in a similar or an improved condition as when received. There shall not be any holding-over by Lessee beyond the termination or cancellation of this Lease. Any such holding-over by Lessee shall incur to the City a penalty fee of \$100.00 per day.

ARTICLE XVIII

Entire Agreement

This Lease and Exhibit A shall be deemed to include the entire agreement between the

parties hereto and no waiver of any right, agreement or condition herein and no modification of any term or condition herein shall be binding upon either party unless in writing and signed by both parties.

ARTICLE XIX

Partial Invalidity

In the event any provision of this Lease or part thereof shall be determined by any court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

ARTICLE XX

Notices/Demands

Notices or demands required hereunder shall be in writing and shall be sent by certified mail (return receipt requested) to those persons at the addresses noted herein. The address of either party hereinabove set forth may be changed from time to time by giving written notice in that regard. All payments required to be made hereunder shall be made at the appropriate address hereinabove set forth or to such address as either of the parties may from time to time specify.

CITY OF LAUREL

LESSEE:

By: _____
Mayor

By _____
American Legion Baseball

By _____
City Clerk/Treasurer

By _____

