

**FACILITIES USE AGREEMENT BETWEEN
THE CITY OF LARAMIE, WYOMING AND
ABC FAMILY ENTERTAINMENT, LLC**

1. Parties. This Agreement is made and entered into this 18th day of 2022, by and between the City of Laramie, Wyoming, a municipal corporation (hereinafter referred to as “City”) whose address is 406 Iverson Avenue, Laramie, Wyoming 82070 and ABC Family Entertainment, Inc., DBA Laramie Bison (hereinafter referred to as “User”) whose address is, C/O Todd Cabrera, 2116 Lexington Ave, Casper, WY, 82609 (hereinafter collectively referred to as “Parties”).

2. Purpose of Contract. The purpose of this Contract is to permit User to utilize Cowboy Field for practices and games through a twelve-week period scheduled during the months of (April 15 to August 15) each year.

3. Term of Contract and Required Approvals. This Contract is effective when all parties have executed it and all required approvals have been granted. No services shall be performed prior to the contract effective date. The term of the Contract is from the date of execution through August 15, 2022, unless otherwise terminated or extended as outlined herein.

4. Payment.

A. User agrees to pay the City a field maintenance fee of One Hundred and Fifty Dollars and no cents (\$150.00) per game for a twelve week practice and game season and at a rate of One Hundred and Fifty Dollars and no cents (\$150.00) per day for special events such as youth clinics or public activities that are not a part of a game.

B. Invoices shall be paid on a monthly basis based on scheduled use invoiced one month in advance, any invoices 45 days or more past due shall result in revocation of this Agreement and cancellation of the remaining schedule. Reconciliation of fees paid will be made at the conclusion of the season to adjust for cancellations and weather-related schedule changes.

5. Responsibilities of User.

A. User shall provide a tentative practice and game schedule by March 15 each year and shall also provide notice for any cancellations due to inclement weather to the City designated contact listed below. Failure to provide notice will result in billing for field maintenance fee to be assessed as indicated above. Provision of this schedule does not guarantee practices and games as requested. The City will work with all user groups to mitigate conflicts and provide final schedules.

B. User’s staff, volunteers and baseball players will be permitted access to Cowboy Field approximately four (4) hours prior, as scheduling allows, to each scheduled home game for the purpose of set up and infield practice for baseball players. User is also permitted access at any other time as scheduled with the City to complete any other necessary work in preparation of a scheduled home game.

C. User agrees that when scheduling home games they will coordinate with other Cowboy Field Users through the City Representative as outlined in the Agreement under **8. E.** and

should User need to reschedule any home game, User agrees to inform the City of such with 24 hours' notice.

D. User shall obtain any required permits with local or state authorities as well as approval from the University of Wyoming Director of Athletic Concessions Operations for desired activities which are not outlined specifically herein, such as pyrotechnics and food or alcohol service.

E. User shall be permitted to hang temporary advertising facing the infield of Cowboy field during scheduled home games and upon approval of City. Advertisements associated with any tobacco related business or products are not permitted. All temporary advertising will be removed after each game. User agrees to coordinate advertising with other Cowboy Field Users through the City Representative for advertising that may be allowed to remain for the full season. User shall be responsible for the maintenance of all temporary advertising, upon written approval from City and the University of Wyoming.

F. User shall be permitted to hang temporary advertising for the scheduled season on the grandstands, press box, and score board of Cowboy Field, upon written approval from City and the University of Wyoming. All temporary signs will be removed within thirty (30) days of the conclusion of the baseball season unless permission is granted by City and the University of Wyoming. User shall be responsible for the maintenance of all temporary advertising.

G. User shall be permitted to have picnic tables for the season located at Cowboy Field. User shall be responsible to provide and move picnic tables as necessary to permit City to maintain City's Cowboy Field. User is responsible for any maintenance or repairs to the picnic tables.

H. User will have access to the ticket office of Cowboy Field for scheduled home games to sell tickets.

I. The User shall be permitted to have a storage shed for the season at Cowboy Field at a location to be determined by the City. User shall be responsible for the maintenance of the permitted storage shed.

J. User shall inform the City of Laramie within 24 hours of noticing any hazards, damage, or other safety concerns at the above- mentioned facilities that could compromise the integrity of the structures or overall safety of the facility for public use.

K. User shall maintain the original state of the fields and accompanying facilities as the City has prepared them, unless previously arranged with the City.

L. Any significant modifications or improvements to the facility shall be requested and authorized by the City and University of Wyoming in advance of the changes. Any request for shared costs to said improvements shall be mutually agreed upon by the City, University of Wyoming and the User.

M. User shall assume responsibility for the conduct of players, coaches, staff and fans during all scheduled activities and agrees to abide by any policies in effect, including but not limited to public health and safety.

6. Responsibilities of City.

A. City agrees to provide User with access to Cowboy Field as outlined in Paragraph 5.B. and upon payment conditions in Paragraph 4.

B. City will work with User regarding the scheduling of games and practices. The days and times of such uses shall continue to be scheduled by mutual agreement of the contacts identified in paragraph 8. L. This agreement between the City and User is not exclusive and the City reserves the right to schedule the use of Cowboy Field as it deems necessary for the public use.

C. Nothing in this agreement nor any act or failure to act on the part of City shall be construed as a waiver of a claim by the City for any defects of the use of Cowboy Field.

D. The City reserves the right to waive fees for games that are cancelled due to unforeseen or uncontrollable circumstances by the City.

7. Special Provisions.

A. **Monitor Activities.** City shall have the right to monitor all activities related to this Contract, including activities of User and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, and to observe all personnel in every phase of performance of work related to this Contract.

B. **Nondiscrimination.** User shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), and the Americans With Disabilities Act (hereinafter referred to as "ADA"), 42 U.S.C. 12101, et seq. User shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Contract. User shall include the provisions of this section in every subcontract awarded so that such provisions are binding on each subcontractor.

8. General Provisions.

A. **Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

B. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Second Judicial District, Albany County, Wyoming.

C. **Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the

prior written consent of the other party. User shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

D. Award of Related Contracts. City may undertake or award supplemental or successor contracts for activities related to this Contract. User shall cooperate fully with other users and City in all such cases.

E. Confidentiality. To the extent allowed under the Wyoming Public Records Act, all documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Parties in the performance of this Contract shall be kept confidential by Parties. User shall have similar agreements with any sub-consultants to maintain the confidentiality of information specifically designated as confidential by City.

F. Entirety of Contract. This Contract, consisting of seven (7) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

G. Ethics. User shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat §9-13-101, et seq.), and any and all ethical standards governing User's profession.

H. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in availability of Cowboy Field facilities to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

I. Indemnification. To the extent of its obligations and abilities under Wyoming law and its applicable insurance, User shall indemnify, defend and hold harmless the City, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of User's failure to perform any of User's duties and obligations under this contract or in connection with the negligent performance of User's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of User's performance under this Contract.

J. Debts and Liabilities. User shall assume sole responsibility for any debts or liabilities that may be incurred by User in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing User or its agents and/or employees to act as an agent or representative for or on behalf of the City, or to incur any obligation of any kind on the behalf of the City. User agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of User or the User's agents and/or employees as a result of this Contract.

K. Notices. All notices arising out of, or from, the provisions of this contract

shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

L. Liaison and Notice City's and User's Designated Representatives.

(i) City's designated representative is Laura Tangeman, Recreation Coordinator telephone number: (307) 721- 5290, email: ltangeman@cityoflaramie.org.

(ii) The User's representative is Austin Byler, Co-Owner, telephone number: (623) 606-8120, email: abylermlu@gmail.com.

(iii) All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Services are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

M. Prior Approval. This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, until this Contract has been reduced to writing, approved by the Laramie City Council.

N. Termination of Contract.

(i). Both parties reserve and have the right and privilege of canceling, suspending, or abandoning the execution of all or any services in connection with this Contract at any time upon one (1) month written notice to the other party.

(ii). In the event of termination, User shall pay to City, as full payment for all services performed and all expenses incurred under this Contract, which shall have become payable because of the progress in the services. In ascertaining the services actually rendered hereunder up to the date of termination of this Contract, consideration shall be given to both completed services and services in progress.

O. Insurance. User shall maintain the following insurance:

(i). **Workers' Compensation and Employers Liability Insurance:** User shall provide City proof of workers' compensation coverage for all of it's employees who are to work on the project described in this Contract. User's coverage shall be under the Wyoming Workers' Safety and Compensation program, if statutorily required, or such workers' compensation insurance, as appropriate. User's insurance shall include Employer's Liability "Stop Gap" coverage, in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident or disease.

(ii). **Commercial General Liability Insurance.** User shall provide coverage, during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate.

(iii). **Coverage.** All policies required under this Contract shall be in effect for the duration of this Contract and projects. The User agrees to provide the City with notice of cancellation, revocation, amendment, or lapse of insurance.

(iv). **Additional Insured.** All insurance policies required by this Contract, except workers' compensation, shall name City as an additional insured. User shall provide, upon request a copy of an endorsement providing this coverage.

P. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this contract, or to bring an action for the breach of this Contract.

Q. Extension. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be requested by User and following approval by City shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

R. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

S. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

T. Waiver. The waiver or any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

U. Time is of the Essence. Time is of the essence in all provisions of the Contract.

V. Energy Efficiency. The City of Laramie seeks to integrate energy efficiency practices into all aspects of day-to-day operations, from capital construction specifications to staff behaviors, to ensure economic and environmental sustainability. The City encourages that user groups, 1) enhance the efficiency of projects and ongoing operations that

are performed in conjunction with the City and/or 2) consider all energy types, including traditional and renewable sources.

W. Wyoming Preference Act. In accordance with State Statutes and as applicable, preference is hereby given to materials, supplies, equipment, machinery and provisions produced, manufactured, supplied or grown in Wyoming, quality being equal to articles offered by competitors outside the State, as provided in W. S. §§ 16-6-101 through 16-6-119.

IN WITNESS WHEREOF, the Laramie City Council has caused this Agreement to be signed and executed in its behalf by its City Manager, and User has signed and executed this Agreement, the day and year first written above.

CITY OF LARAMIE, WYOMING:

By: _____
Janine Jordan, City Manager

Attest: _____
Witness

USER REPRESENTATIVE:

By: _____
Austin Byler, Co-Owner

Witness: _____