

#15

EXECUTIVE SUMMARY

Date: February 6, 2025

To: Mayor Blad and Council Members

From: Anne Butler, Parks & Recreation Director

Re: Use Agreement – Casey Cleaves, Pocatello Hype Baseball

It is my recommendation that the City of Pocatello enter into a use agreement with Casey and Brittany Cleaves, Pocatello Hype Baseball, 1025 Gray Avenue, Pocatello, Idaho for use of the baseball field located at Scardino Park.

The proposed agreement designates Mr. Cleaves to maintain and schedule his teams along with other teams for use of the one field at Scardino Park for practices and scrimmages. Mr. Cleaves is hoping to skin the infield at Scardino Park with the assistance of sponsors and volunteers. Scardino Park is a grass infield with a backstop making it an ideal location for regular practices. Parks Department staff will be available to assist with irrigation work if needed. This agreement is proposed to go from April to August 2025.

The City Council may wish to authorize Mayor Blad to execute the necessary documentation to enter into an agreement with Case Cleaves, Pocatello Hype Baseball to maintain, schedule, prepare, and use the baseball field at Scardino Park.

#15

MEMORANDUM

TO: City Council and Mayor
FROM: Brian Trammell, Deputy City Attorney BT
DATE: January 24, 2025
RE: Use agreement for Scardino Park baseball field

I have reviewed the use agreement with Pocatello Hype Baseball. I have no legal concerns with the agreement. Please let me know if you have any questions or concerns.

USE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2025, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as the "CITY", and Brittany and Casey Cleaves, d/b/a Pocatello Hype Baseball, hereinafter referred to as the "USER".

WHEREAS, the City in its park system owns various baseball fields throughout the City;

WHEREAS, the User is conducting two summer baseball tournament teams in April 2025 and may wish to use the City baseball field in Scardino Park to conduct practices and games during the months of April, May, June, July and August 2025; and

WHEREAS, it is the parties' desire to enter into an agreement which sets forth their respective rights and responsibilities.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Purpose. The City shall allow the User to use the baseball field in Scardino Park for practices and games as needed.

2. Term. The term of this Agreement shall be from April 1, 2025 through August 31, 2025. Access to the fields will be allowed during regular park hours during the term of this Agreement.

3. Compensation to the City. The User agrees to maintain and schedule their teams along with other teams for field use for practices at Scardino Park in lieu of typical practice field rental charges. Field maintenance responsibilities are outlined below.

4. Care of the Facilities. There may be additional charges if additional garbage service and portable toilets are deemed necessary by the City. These charges will be billed directly to the User by the service provider or billed through the City. The City shall maintain and care for the grass/lawn areas within the facilities. The City agrees to maintain the irrigation, plumbing, and lighting. The User must maintain the playing fields in acceptable condition and provide its own bases and, as needed, additional pitching rubbers and/or pitching mounds, chalk, chalk applicators, rakes, shovels, etc. The User agrees that upon completion of events sponsored by the User, the User shall arrange to

have all facilities, including restrooms, bleachers, and dugouts, cleaned and restored to its previous condition prior to its use, ordinary wear and tear excepted. All garbage cans will be dumped into large dumpsters, recyclable materials placed in recycling containers, if available, and said cleaning and restoration shall be accomplished without unreasonable delay and prior to the next scheduled event at the facility. The User agrees to promptly make any needed repairs to the facilities should damage to said facilities occur during use by the User, or promptly notify the City of any needed repairs to the facilities should damage to said facilities occur during use by the User, and upon receipt of invoice, reimburse the City for the cost of materials and staff time needed to complete such repairs.

5. Compliance with Laws. The User shall strictly comply with all federal, state, and local laws, rules, regulations, and ordinances. Further, the User and all participants in their programs agree to abide by the rules and regulations regarding use of the City parks. Failure to comply with said rules and regulations may result in suspension or termination of privileges to use the City parks.

6. Indemnification and Hold Harmless. The User hereby agrees to fully indemnify, defend, and save the City, its officers, employees, agents, and public officials, harmless from and against any and all risks, suits, judgments, expenses, claims, settlements, or liabilities which the City, its officers, employees, agents, and public officials may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with activities of the User granted herein, or by any of User's employees, agents, invitees, or any other person acting on behalf of the User. The City hereby agrees to hold harmless, protect, and defend the User from and against any and all risks, suits, damages, judgments, expenses, claims, settlements, or liabilities which the User may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with the City's operation.

7. Insurance. In order to effectuate the foregoing indemnification provisions, the User shall maintain insurance coverage as follows:

A. The User shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify the City from any and all

public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. The City shall be named as an additional insured or be acknowledged by the User's insurance carrier as a covered entity under the terms of said policy. Moreover, the User is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with the User without first giving the City of Pocatello, at least thirty (30) days written notice.

B. The User shall purchase personal property insurance in an amount sufficient to insure any and all the User's personal property which might be used in the User's operation of the business or which might be present on the park's premises.

C. If applicable, the User shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 6 "Indemnification and Hold Harmless." The User's failure to maintain insurance shall be a basis for immediate termination of this Agreement.

8. Assignment. That no right or obligation of this Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by the User without written consent of the City.

9. Cost of Litigation. If suit or legal action is instituted by any party hereto to establish or enforce any right under this Agreement, to recover any amount due hereunder, to correct a breach of covenant, term, or condition hereto, or to litigate any other matter arising from the execution of this Agreement, the prevailing party in the trial court, or if appealed, the prevailing party on any appeal shall recover reasonable attorney's fees if awarded by the trial and/or appellate courts, in addition to costs and disbursements. The parties agree that a reasonable rate for awarded attorney's fees will be \$150.00 per hour. This provision shall survive any termination of this Agreement.

10. Merger Clause. This writing represents the entire Agreement between the parties. No promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

11. Construction. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of the Agreement shall be made in a court of competent jurisdiction against interest of any party to this Agreement on the basis that the party had primary responsibility for drafting the Agreement.

12. Captions for Convenience Only. The captions herein are for convenience only, and do not limit or amplify the language of the sections following.

13. Severability. If any provision or portion of any provision of this Agreement shall be deemed illegal or unenforceable by a court of competent jurisdiction, the unaffected provisions or portions thereof shall remain in full force and effect.

14. Jurisdiction and Venue. Any action or proceeding relative to this Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

15. Notice. All notices under this Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

City: Parks & Recreation Director
144 Wilson Ave.
P.O. Box 4169
Pocatello, ID 83205

USER: Brittany & Casey Cleaves
d/b/a Pocatello Hype Baseball
1025 Gray Avenue
Pocatello, ID 83201
Phone Number: 208-240-3398 Casey
Phone Number: 208-241-2403 Brittany
Email: PocatelloHypeBaseball@yahoo.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representative the day and year first-above written.

CITY OF POCA TELLO, a
municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

KONNI KENDELL, City Clerk

USER:

CASEY CLEAVES
d/b/a Pocatello Hype Baseball

STATE OF IDAHO)
 :ss
County of Bannock)

On this ____ day of _____, 2025, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Konni Kendell, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in:
My Commission Expires: _____

STATE OF UTAH)

County of _____)
ss:

On this _____ day of _____, 2025, before me, the undersigned, a Notary Public in and for the State, personally appeared Casey Cleaves, d/b/a Pocatello Hype Baseball, known or proved to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO

Residing in _____

My commission expires: _____