

EXECUTIVE SUMMARY

Date: April 3, 2025

To: Mayor Blad and Council Members

From: Anne Butler, Parks & Recreation Director

Re: Use Agreement – Mason Holladay, SEI Volleyball LLC

It is my recommendation that the City of Pocatello enter into a use agreement with Mason Holladay, SEI Volleyball LLC, 705 Alpine Avenue, Chubbuck, Idaho for use of the greenspace north of the baseball fields located at Hawthorne Park. The proposed agreement designates Mr. Holladay to mark and schedule courts on Saturdays from approximately 8am to 6pm for adult volleyball tournaments. The number of courts marked will be determined by tournament demand.

The City Council may wish to authorize Mayor Blad to execute the necessary documentation to enter into an agreement with Mason Holladay, SEI Volleyball LLC to schedule, prepare, and use the green space at Hawthorne Park.

MEMORANDUM

TO: City Council and Mayor
FROM: Brian Trammell, Deputy City Attorney
DATE: March 21, 2025
RE: Use Agreement

I have reviewed the use agreement with SEI Volleyball. I have no legal concerns with the Council approving the use agreement and authorizing the Mayor to sign the use agreement.

Please let me know if you have any questions or concerns.

USE AGREEMENT

THIS AGREEMENT is 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 SEI Volleyball LLC, hereinafter referred to as the USER.

WHEREAS, the City, in its park system, owns various fields for sporting events throughout the City; and

WHEREAS, the USER conducts an adult, high school, and youth volleyball program and wishes to use Hawthorne Park greenspace to play weekend tournaments; and

WHEREAS, the City wishes to support the USER in providing these worthwhile adult recreation events; 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 Hawthorne Park greenspace for weekend tournament. Practices for the USER will be available on other City parks on a first-come first use basis with other park users and will not be reserved for their exclusive use.

2. Term. The term of this Agreement shall be May 1, 2025 through September 30, 2025. The City shall reserve the greenspace for USER during the times scheduled for tournaments. Access to the fields will be allowed during regular park hours during the term of this Agreement.

3. Compensation to City. The USER agrees to pay the City fifty dollars (\$50.00) per day for any scheduled events. USER shall provide the City with schedules of all game activities for purposes of billing by May 1, 2025.

4. Care of the Premises. There will be additional charges if additional garbage service and portable toilets are deemed necessary by the City and City ordinances. These charges will be billed directly to the USER by the service provider or 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 nets, field marking, and field marking equipment. The USER will be required to remove the volleyball nets immediately after any scheduled tournament(s), unless other arrangements are made with the Parks and Recreation Director. In the event the City determines that any scheduled game(s) could cause significant damage to the turf quality of the Park or be a safety issue to the participants, the City, at its sole discretion, may cancel or delay the scheduled game(s).

The USER agrees that upon completion of any scheduled game(s), the USER shall arrange to have all facilities, including restrooms, cleaned and restored to their previous condition prior to the USER's use, ordinary wear and tear excepted. The USER shall monitor parking at the event and shall prohibit participants, officials, and spectators from driving and/or parking on turf areas. Parking shall be prohibited outside of the designated parking areas. All garbage cans will be dumped into large dumpsters, recyclable materials shall be placed in recycle bins where available, and required cleaning and restoration shall be accomplished without unreasonable delay following the tournament. The USER agrees to promptly make any needed repairs to the facilities should damage to said facilities occur during use by the USER. The USER is responsible for securing the facilities after use, including but not limited to, locking doors and gates, turning off lights (if applicable), ensuring parking areas have been secured and patrons, players, and spectators have left the premises.

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 its event agree to abide by the rules and regulations as defined by the City's ordinances and the Facilities User Policy regarding use of the premises, and failure to comply with said rules and regulations may result in suspension or termination of privileges to use the premises.

6. Indemnification. The USER shall have the responsibility for the safety of persons and property during its occupancy and use of the premises. The USER agrees to indemnify and hold harmless, and agrees to protect and defend at its own cost and expense, the City, its officers, employees, agents, and successors, from and against any and all risks, suits, judgments, expenses, claims, settlements, or liabilities which the City and or the USER, their officers, employees, agents, and successors 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 the USER's employees, agents, invitees, or any other person acting on behalf of the USER.

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

A. 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 USER's insurance carrier as a covered entity under the terms of said policy. Moreover, USER is required to put its surety on notice, that said surety may not change or cancel the

existing insurance policy with USER without first giving the City of Pocatello, at least thirty (30) days written notice.

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

C. If applicable, the USER shall provide Worker's Compensation insurance in accordance with the applicable provisions of Idaho Code for his employees and furnish the City Clerk with satisfactory proof that such insurance is in effect.

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." USER's failure to maintain insurance shall be a basis for immediate termination of this Agreement.

8. Assignment. 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. Termination. If, in the judgment of the Parks & Recreation Director, the USER breaches or is in default of any terms of this Agreement, the City shall give the USER written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the USER fails or refuses to remedy such unsatisfactory performance or default immediately, the City may terminate this Agreement. The

parties agree that the Parks and Recreation Director has the full authority to act on such matters on behalf of the City.

10. Cost of Litigation.

A. If legal action is required 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 the Agreement, all parties involved agree to a mediation or arbitration before any legal action can be commenced.

B. If suit, legal action, mediation, or arbitration 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 the Agreement, the prevailing party in the trial court and the prevailing party on any appeal shall recover reasonable attorney's fees awarded by the trial and appellate courts, in addition to costs and disbursements. The parties agree that a reasonable rate for attorney's fees will be \$150.00 per hour, unless differently defined through mediation or arbitration. This provision shall survive any termination of this Agreement.

11. 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.

12. Destruction of the Premises. In the event the structures and facilities located on the premises, as defined in this Agreement, are destroyed or rendered unusable due to outside forces beyond the control of either party, including but not limited to, natural disasters (e.g. earthquakes, floods, hurricanes,), acts of war, terrorism, vandalism, or other unforeseen

circumstances (“Destructive Events”), this Agreement shall automatically terminate without any liability for either party.

A. Notification. Upon the occurrence of a Destructive Event, the party that is aware of the destruction must notify the other party in writing within five (5) business days of the event.

B. Inspection and Assessment. Following such notification, both parties shall have the right to jointly inspect the premises to assess the extent of the damage. Such inspection should occur within ten (10) business days of the notification.

C. Termination Process. Upon confirmation that the premises have been destroyed or rendered unusable, this Agreement shall be deemed terminated as of the date of the Destructive Event. Both parties shall be released from any further obligations under this Agreement, except for obligations arising from events occurring prior to the termination.

D. Liability Waiver. Neither party shall be held liable for any damages or loss of income resulting from the termination of this Agreement due to a Destructive Event.

E. Final Settlement. Within thirty (30) days of termination, both parties shall settle any outstanding obligations or claims arising out of this Agreement up to the date of termination.

13. 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 the interest of any party to this Agreement on the basis that the party had primary responsibility for drafting the Agreement.

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

15. 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 hereof shall remain in full force and effect.

16. 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.

17. Notice. That all notices under this Agreement shall be deemed to be properly served if sent by first class mail, postage prepaid, to the last known address furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

CITY: Parks & Recreation Director
City of Pocatello
P.O. Box 4169
Pocatello, ID 83205

USER: Mason Holladay
SEI Volleyball LLC
705 Alpine Avenue
Chubbuck, ID 83202
Email: masonion99@gmail.com
Phone: 208.242.6199

The date of service of such notice is hereby deemed to be the dated postmark of the United States Postal Service.

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 R. KENDELL, City Clerk

USER:

MASON HOLLADAY
d/b/a SEI Volleyball LLC

STATE OF IDAHO)
 ss:
County of Bannock)

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

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

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in _____
Commission Expires _____

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 Mason Holladay, d/b/a SEI Volleyball LLC, known or proved to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)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 _____
Commission Expires _____