

**CONCESSION AND FACILITY  
LICENSE AGREEMENT**

**THIS CONCESSION AND FACILITY LICENSE AGREEMENT** (hereinafter, the “Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of St. Joseph, Missouri, a Missouri municipal corporation, (hereinafter, the “City”), and Pony Express Baseball, Inc., a Missouri nonprofit corporation (hereinafter, the “Pony Express Baseball”).

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

A. License Grant. Subject to the terms and conditions set forth herein, the City hereby grants a revocable license to the Pony Express Baseball, and Pony Express Baseball accepts said license and the associated obligations, for the management and use of the City-owned concession stands located at Hyde Park Complex, Lions Field, and Eagles Fields (hereinafter, the “Concession Stands”) and the associated areas, excluding baseball fields (collectively, hereinafter, “Facilities”). Pony Express Baseball shall operate the Facilities and comply with the requirements stated herein for all events taking place at the Hyde Park Complex, Lions Field, and Eagles Fields, including, but not limited to, youth, high school, and organized community events for which another person or entity is not operating the Facilities.

Such license shall commence upon of execution of this Agreement and continue through October 15, 2025, subject to prior termination as described herein.

The license granted herein shall not be deemed an exclusive license. The City may utilize the Facilities or grant the right to third parties to utilize the Facilities.

B. License and Use Fees. Pony Express Baseball shall pay the City the sum of Five Hundred Dollars (\$500.00) annually for the term of this Agreement. Each amount due shall be paid by Pony Express Baseball to the City no later than thirty (30) days following the first day of each term during which either of the Facilities are used. Pony Express Baseball shall also pay the City a Seasonal Health Permit Fee in the amount of Fifty Dollars (\$50.00) per Concession Stand for each season during which Pony Express Baseball operates the Facilities and provides food service. Nothing agreed to herein shall relieve Pony Express Baseball from the obligation to submit any license, permit, or other fee required to be paid pursuant to the City’s Code of Ordinances. Nor shall any agreement stated herein be deemed to alleviate Pony Express Baseball from compliance with any other requirement of the Code of Ordinances.

C. Operation of Facilities. Pony Express Baseball shall comply with the following operational requirements while operating the Facilities:

1. Pony Express Baseball shall provide general maintenance of the Facilities at its own costs and expense. Such maintenance requirements shall include, but not be limited

to, maintaining the Facilities (a) in operating condition, (b) in a manner that prevents deterioration other than normal wear and tear, (c) in accordance with all laws, regulations, and ordinances, and (d) in a neat and orderly manner consistent with the nearby public property. In addition to the requirements specifically stated above, Pony Express Baseball shall maintain the Facilities in accordance with reasonable maintenance requirements established or imposed, from time-to-time, by the City.

2. Equipment. Pony Express Baseball shall provide all equipment necessary to perform operations of the Concession Stands and Facilities. In the event the City provides any such equipment, the City will retain ownership of that equipment.

3. Locks. Prior to operating the Facilities, Pony Express Baseball shall have all locking devices changed on the Facilities and provide the City's Parks Maintenance Division with a copy of each key required to access the Facilities. Pony Express Baseball shall ensure that locks remain functional and shall ensure that the Facilities and other enclosed structures are fully secured and inaccessible to the general public when not in use by Pony Express Baseball.

4. Access. The City, and other entities it may from time-to-time identify, shall have the right to use and operate the Facilities at any time during the term of this Agreement and for any purpose. Pony Express Baseball shall take reasonable steps to accommodate such access and use. The license granted herein shall not be deemed exclusive.

5. Compliance with Laws and Public Health Standards. Pony Express Baseball shall operate the Facilities in accordance with all statutes, regulations, ordinances, and other laws applicable to food services operations of their nature (hereinafter, collectively, "Laws"). In addition to any Laws, Pony Express Baseball shall properly clean and sanitize the Concession Stands and all utensils, and properly prepare, handle, and store all food items to avoid potential health risks.

6. Payment Acceptance. In addition to accepting cash payments for purchases at the Concession Stands, Pony Express Baseball shall accept credit and debit cards for all payment transactions.

7. Customer Service Standards. Pony Express Baseball shall ensure customer service standards established, and from time-to-time modified, by the City are met.

8. Complex Opening/Closure. Pony Express Baseball shall open and close the baseball complexes on a daily basis and properly secure scoreboard controllers to avoid damage, loss, or theft.

9. Cleaning. Pony Express Baseball shall maintain all areas in and around the Facilities in a clean and orderly fashion. Such areas shall include, but not be limited to, service areas, breezeway areas, storage areas, entrances to the buildings, restrooms, and surrounding areas. Pony Express Baseball shall further collect and dispose of food packaging, unconsumed foods, and other garbage in and near the Facilities, nearby seating areas, spectator areas (including bleacher areas and other open areas around ball fields),

parking areas, and area park grounds. Garbage shall be disposed of using heavy duty garbage bags provided by Pony Express Baseball which are securely tied and placed in garbage receptacles provided by the City. The City will remove such garbage bags from the Facilities on a regular basis.

10. Restroom Maintenance. Pony Express Baseball shall maintain the restrooms associated with the Facilities in a clean and orderly fashion with properly stocked supplies, including, but not limited to, soap, toilet paper, paper towels, garbage bags, and other disposable items. In operation of the Facilities, Pony Express Baseball shall use existing soap and paper product dispensers and supplies provided by Hillyard Company. Pony Express Baseball shall replace or repair damaged dispensers at its cost and expense.

11. Drain/Grease Trap Maintenance. Pony Express Baseball shall maintain the drains, grease traps, and other plumbing fixtures in the portions of the Concession Stands which are used for food preparation or disposal. Such maintenance shall include routine cleaning, grease trap pumping and scraping for fats, oils, and greases removal, and blockage removal.

D. Structural Maintenance of Facilities. The City will make any capital and other major repairs to the Facilities that result from natural disasters or failures, excluding ordinary wear and tear.

E. Subcontracting/Subleasing Prohibited. Pony Express Baseball shall not subcontract, sublease, or otherwise contract to have other compensated entities perform the services and obligations required by this Agreement. Pony Express Baseball shall perform all such services and obligations using its own employees and volunteers.

F. Operations Contact Information. At all times during the duration of this Agreement, Pony Express Baseball shall provide the City's Parks Maintenance Division with current contact information, including a contact name and phone number for the person primarily responsible for operating and maintaining the Facilities. Such person shall respond to the City's attempts to contact him or her within a reasonable amount of time.

G. Termination by the City. The City may terminate the license granted by this Agreement at any time by providing thirty (30) days' written notice of such termination. In addition to other termination rights of the City described herein, the City may, at its option, terminate this Agreement or the license granted by this Agreement, or the applicability of this Agreement to any individual structure if such structures are significantly damaged and must be removed or require extensive repair; such termination shall take effect immediately upon notification by the City.

H. Delivery of Control. Upon the expiration or earlier termination of this Agreement, Pony Express Baseball shall peaceably and quietly deliver control of the Facilities to the City.

I. Insurer Requirements. Pony Express Baseball's use of the Facilities shall comply with all requirements, rules, and regulations of any insurer under any policy of insurance carried on such Facilities.

J. Payment of Fines. Pony Express Baseball shall pay all costs, expenses, claims, fines,

penalties, and damages that may arise out of, or be imposed as a result of, its failure to comply with the provisions of this Agreement.

K. Alteration of Facilities. Pony Express Baseball shall not make additions, changes, or material alterations to the Facilities without the City's prior written approval, which may, in the City's sole discretion, be withheld. All approved additions, changes, and alterations made by Pony Express Baseball shall (i) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (ii) be completed in accordance with detailed plans and specifications submitted to and approved by the City, (iii) when commenced, be undertaken to completion with due diligence, and (iv) when completed, be deemed a part of the Facilities.

1. Securing of Permits and Authorizations. Pony Express Baseball shall not permit any work in or about the Facilities unless all requisite City, county, state, and other governmental permits and authorizations have first been obtained.

2. Mechanics' Liens. Pony Express Baseball shall not recklessly do anything whereby the premises on which the Facilities are located become encumbered by any mechanics' or other similar lien. If any mechanics' or other similar lien is filed against said premises purporting to be for or on account of any labor done or materials or services furnished, for or under the authority of Pony Express Baseball or anyone claiming by, through, or under Pony Express Baseball, Pony Express Baseball shall discharge the same of record within thirty (30) days after such lien is filed. Notice is hereby given that the City shall not be liable for any labor or materials furnished to Pony Express Baseball or anyone claiming by, through, or under Pony Express Baseball upon credit, and that no mechanics' or similar lien for any such labor, services, or materials shall attach to or affect the reversionary or other estate of the City in and to the premises, or any part thereof, on which the Facilities are located.

L. Utilities. All utilities and utility services associated with the Concession Stands shall be maintained and paid for by the City, provided Pony Express Baseball's use of such utilities is reasonable and substantially similar to the City's past use of utilities for the Concession Stands. In the event Pony Express Baseball's use of such utilities is unreasonable or not substantially similar to the City's past use of utilities for the Concession Stands, Pony Express Baseball shall reimburse the City in a reasonable amount based upon the discrepancy in usage and cost.

M. Indemnification and Claims.

1. Indemnification. Pony Express Baseball and its heirs, successors, and assigns promise to defend, hold harmless, and indemnify the City from and against any and all claims, whether legal or equitable, damages, causes of action, costs, attorneys' fees, expenses, and liabilities by or on behalf of any person or entity, including governmental bodies, directly resulting from the Pony Express Baseball's use of the Facilities or arising from Pony Express Baseball's conduct or management of, or from any work or thing done by Pony Express Baseball, or from any conditions of the Facilities or nearby premises; except, however, such obligations shall not extend to any actions or proceedings arising solely out of the gross negligence or willful act of the City or those acting on its behalf. In the event any action or proceeding is brought against the City by reason of such a claim that

Pony Express Baseball is responsible for, Pony Express Baseball, upon notice from the City, covenants to resist and defend such actions or proceedings.

N. Insurance Requirements.

1. Minimum Insurance Coverage Requirements. Pony Express Baseball shall comply with each and every condition contained herein. Pony Express Baseball shall provide and maintain the minimum insurance coverages set forth below during the term of this Agreement.

a. Commercial General Liability. Pony Express Baseball shall maintain Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per-occurrence and Two Million Dollars (\$2,000,000.00) general aggregate for bodily injury and property damage, which coverage shall include products-completed operations (\$1,000,000.00 products-completed operations aggregate), and Contractual Liability. Coverage for products-completed operations must be maintained for at least one (1) year after this Agreement and the license granted herein expires. Coverage must be written on an occurrence basis. In addition to all other obligations stated herein, such insurance shall include coverage for all of Pony Express Baseball's indemnification obligations contained in this Agreement.

b. Workers' Compensation. If Pony Express Baseball hires employees or if Pony Express Baseball is otherwise required to provide Workers' Compensation insurance, Pony Express Baseball shall maintain Workers' Compensation insurance with statutory limits, including Employers' Liability coverage with minimum limits of Five Hundred Thousand Dollars (\$500,000.00).

c. Other Property Insurance. Property insurance on the Facilities and Pony Express Baseball's personal property is the sole responsibility of Pony Express Baseball.

2. Structure Insurance. Pony Express Baseball shall, at its sole expense, maintain property insurance on the Concession Stands and other structures to which it has access pursuant to this Agreement and any other improvements now or hereafter associated therewith. Such property insurance shall be on an all-risk form and shall cover, on a replacement cost basis, physical loss or damage to said structures. Such coverage shall cover at least the following perils: theft, vandalism, malicious mischief, collapse, fire, lightning, earthquake, flooding, frost, water damage, freezing, extended coverage and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

3. Deductibles. Pony Express Baseball may maintain reasonable and customary deductibles, provided such deductibles are approved, in writing, by the City's Risk Manager.

4. Endorsements. With reference to the foregoing insurance requirements, Pony Express Baseball shall specifically endorse insurance policies required by this Agreement as follows:

a. Additional Insured. The City shall be named as an additional insured with respect to the Commercial General Liability and Commercial Automobile Liability coverages required or allowed by this Agreement.

b. Additional Insured Primary Coverage. All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

c. Exclusions. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

d. Waiver of Subrogation. A waiver of subrogation in favor of the City shall be contained in the Workers' Compensation and all liability policies.

e. Policy Changes. All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.

f. Notice of Cancellation. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' written notice prior to cancellation or nonrenewal of the insurance.

5. Policy Copies. Upon the City's request, Pony Express Baseball shall furnish the City with certified copies of all insurance policies.

6. Certificate of Insurance. Within ten (10) business days after execution of this Agreement, a valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City by Pony Express Baseball's insurance agent of record or insurance company. The certificate of insurance shall be sent to:

City of St. Joseph  
Risk Manager  
1100 Frederick Avenue, Room 307  
St. Joseph, Missouri 64501

In the event each certificate is not provided as required by this Agreement, the City may terminate this Agreement.

O. Default Provisions.

1. Events of Default. The following events shall constitute events of default hereunder:

a. Pony Express Baseball fails to observe or perform any other

covenant, agreement, obligation, or provision of this Agreement on Pony Express Baseball's part to be observed or performed, if such failure shall continue for twenty (20) days after the City has given Pony Express Baseball notice specifying the nature of such failure and Pony Express Baseball fails to commence any corrective action of such failure and complete any such corrective action within a reasonable time; or

b. Pony Express Baseball fails to maintain the Facilities as required by this Agreement or in accordance with the reasonable additional requirements imposed by the City; or

c. Pony Express Baseball fails to pay its debts as they become due; or

d. Pony Express Baseball, or its creditors, file a petition in bankruptcy under the Bankruptcy Code or files a pleading asking for relief, and, in the case of any such action by a creditor, the petition or other pleading is not dismissed or denied within sixty (60) days; or

e. Pony Express Baseball makes an assignment of this Agreement for the benefit of creditors; or

f. Pony Express Baseball consents to the appointment of a trustee or receiver for all, or a major portion of, its property; or

g. Pony Express Baseball is finally adjudicated as bankrupt or insolvent under any federal or state law; or

h. Pony Express Baseball suffers the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all, or substantially all, of its property or ordering the winding-up or liquidation of its affairs; or

i. Pony Express Baseball suffers a writ or warrant of attachment or any similar process to be issued by any court against all, or substantially all, of its property and such writ or warrant of attachment or any similar process is not contested, stayed, or released within sixty (60) days after the final entry, or levy, or after any contest is finally adjudicated; or

j. Pony Express Baseball causes or allows any other event that is described as an event of default herein to occur.

2. Remedies. Upon any default specified herein, the City may pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Agreement in which event Pony Express Baseball shall immediately surrender the license granted herein to the City, and if Pony Express Baseball fails to do so, the City may, without prejudice to any other remedy which it may have for possession, subject to all applicable laws, take possession and expel or remove Pony Express Baseball and any other person or persons who may be

using the structures that are the subject of this Agreement by force if necessary.

b. Subject to all applicable laws, take possession of the Facilities, by force if necessary.

3. Remedies not Exclusive. Pursuit of any of the foregoing remedies shall not preclude the City from pursuing any of the other remedies herein provided, or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages occurring to the City by reason of the violation of any of the terms, provisions, or covenants herein contained.

P. Attorneys' Fees. In case it should be necessary or proper for the City to bring any action under this Agreement or for the enforcement of its rights hereunder, then, to the extent allowed by law, Pony Express Baseball agrees to pay reasonable attorneys' fees incurred by the City.

Q. Notices. All notices required or desired to be given hereunder shall be in writing, and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes when delivered to the following by hand, or by certified or registered mail, postage prepaid, return receipt requested, as follows:

To the City:

City of St. Joseph  
Attn: Director of Parks, Recreation, and Civic Facilities  
1920 Grand Avenue  
St. Joseph, Missouri 64505

To Pony Express Baseball:

Pony Express Baseball  
Attn: President \_\_\_\_\_  
PO Box 1588 \_\_\_\_\_  
St. Joseph, Missouri 64502 \_\_\_\_\_

or to such other address as either party may designate by written notification to the other party.

R. Miscellaneous.

1. Rights and Remedies. The rights and remedies reserved by the City and Pony Express Baseball hereunder, and those provided by law, shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions.

2. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement, or undertaking; the nondefaulting party



may nevertheless accept from the other any payment or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

3. Abandonment by Pony Express Baseball. If Pony Express Baseball vacates or abandons the Facilities, the City shall have all the same rights and remedies against Pony Express Baseball by reason thereof as are herein granted to the City upon, and by reason of, a default of Pony Express Baseball.

4. Authority to Enter Into Agreement. The City covenants that it is a municipal corporation existing under the laws of the State of Missouri, with lawful power and authority to enter into this Agreement, acting by and through its duly authorized officials. Pony Express Baseball covenants that it is a nonprofit corporation lawfully organized and existing in the State of Missouri and that the person signing this Agreement has the power and authority to bind Pony Express Baseball, and Pony Express Baseball agrees to provide the City, upon the City's request, with appropriate resolutions to that effect.

5. Written Amendments. This Agreement may be amended, changed, or modified only by written agreement between the City and Pony Express Baseball.

6. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri. Any legal action brought hereunder shall be brought exclusively in the Circuit Court of Buchanan County, Missouri.

7. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

8. Section Headings. The section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

9. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the subject matter described herein as of the date upon which this Agreement is executed. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or undertakings whatsoever upon the respective parties in any way touching the subject matter of this Agreement which are not expressly contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

**PONY EXPRESS BASEBALL, INC.**  
**(“PONY EXPRESS BASEBALL”)**

**CITY OF ST. JOSEPH, MISSOURI**  
**(“CITY”)**

By: Michael Carter

\_\_\_\_\_  
Bryan Carter, City Manager

Its: President

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Paula Heyde, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney