



EVENT CENTER

DATE: September 6, 2016
FROM:  Charlie Jeske, Director
ITEM: Indoor Football Contract

REQUEST

Please place on the September 13 Commission agenda the request to accept the attached user agreement with Dakota Pro Football, LLC.

BACKGROUND INFORMATION

The attached user agreement between the Bismarck Event Center and Dakota Pro Football, LLC is for five (5) years with an option for an extension of two (2) one (1) year terms if mutually accepted.

RECOMMENDED CITY COMMISSION ACTION

Accept the attached user agreement with Dakota Pro Football, LLC.

STAFF CONTACT INFORMATION

I will be present at the City Commission meeting so please contact me at 355-1370 or cjeske@bismarcknd.gov if you have any questions or require additional information prior to the meeting.

USER AGREEMENT

THIS Agreement, Made and entered into this ^{6th} day of September 2016, by and between the City of Bismarck, a municipal corporation of the State of North Dakota, hereinafter referred to as the "CITY" and Dakota Pro Football, LLC., a North Dakota Corporation, authorized to do business in North Dakota, hereafter referred to as the "FOOTBALL TEAM."

WITNESSETH:

WHEREAS, the CITY owns a civic and events complex in Bismarck, North Dakota, known as "Bismarck Event Center" for use for public purposes and gatherings, including but not limited to the exhibition of sports contests such as professional football and whereas the Football Team is a professional football franchise in the Champions Indoor Football (CIF), hereafter referred to as the "League", which will be operating within the boundaries of the CITY.

Now, therefore, in consideration of mutual covenants herein contained, the parties do mutually agree as follows:

1. DEFINITIONS. As used in this Agreement, the terms defined in this paragraph shall have the following meaning unless the context otherwise requires:

a. "League" means Champions Indoor Football, a league of professional football teams of which FOOTBALL TEAM is now a member, presently known as the CIF or any equivalent league.

b. "Home Game" means any Pre-Season Game, Regular Season Game or Play Off Game scheduled by the League as a home game to be played by the FOOTBALL TEAM in the Arena Premises during the football season and excluding Exhibition Games promoted by FOOTBALL TEAM and played at the Arena. The "Football Season" shall begin with the first Pre-Season Game and end with the FOOTBALL TEAM's final Playoff Game, if any.

c. "Exhibition Game" means any game played in the Arena as an exhibition or charity game but not as a part of the pre, regular or post season.

d. "Pre-Season Game" means any football game (except intra-squad games) played by FOOTBALL TEAM prior to the first regularly scheduled game during the Football Season. "Pre-Season Schedule" means the schedule established by the League and the FOOTBALL TEAM for the playing of Pre-Season Games.

e. "Regular Season Game" means any football game played during the period from the opening of the regular season games to and including the last regularly scheduled game of FOOTBALL TEAM in the Arena Premises as set forth in the annual schedule established by the League, but exclusive of any pre-season or play-off games and championship games after the close of each regular football season.

f. "Play-Off Game" means any one of a series of games, including a championship game, scheduled by the

League after the close of the Regular Season Game schedule to determine the participants in the play-off and championship games.

g. "Concessions" means the business of selling, renting, and/or furnishing goods and/or services, food, drinks, parking, souvenirs, novelties, and cushions (the latter for purpose of illustration only and without limitation of the generality of the term "goods and services"). Concessions shall not include team or novelty items sold by the FOOTBALL TEAM pursuant to section 4(c) of this Agreement.

h. "Net income from sale of tickets and trade-outs" or "gross gate receipts after tax" means the total of all amounts of cash in trade or its equivalent paid or payable to FOOTBALL TEAM or to any person or entity authorized to receive the same on behalf of FOOTBALL TEAM for admission to home games, less: the sum of Federal, State, City taxes, fee, admission or service charges (including any service charge or users' fee imposed by the City by ordinance or by the terms of this Agreement), except the consideration specified and imposed by paragraph 6(a), collected (through FOOTBALL TEAM, as vendor or otherwise) as taxes, fees, admission, or service charges from any ticket purchases.

i. "Parking Facilities" means that area operated by the City for the use of the patrons for parking purposes for which a charge will be made by the CITY or its authorized agents to park automotive transportation.

j. "Arena Premises" means that part of the Event Center Arena necessary for the proper exhibition of professional football including the seating and access thereto, the playing surface, locker rooms, ticket sales facilities, offices and storage space generally as shown on Exhibit 1 (both levels) which is attached to and made a part of this Agreement, as available.

k. "Franchises" means and includes all of the rights, privileges and powers granted by the League to FOOTBALL TEAM, including, without limitation, the right to conduct League professional football games in and about the City of Bismarck and County of Burleigh, State of North Dakota, in accordance with the Constitution and By-Laws of the League now in effect or as charged during the term of this agreement.

l. "Fiscal Year" means and includes the period of time from August 1 through July 31 each year.

2. **Premises.**

a. For the consideration as stated in this Agreement, The CITY hereby grants to FOOTBALL TEAM the right to use and occupy the Arena Premises, for the purposes, and at the times during each fiscal year and upon the terms and conditions, hereafter expressed. The CITY warrants and represents that it has the authority and power to grant the rights herein referred to.

3. **Term and Termination.** This Agreement shall be for a term of five (5) years commencing as of the date hereof, extending to and including the 2021 League season. After the initial term of five (5) years, the term of this Agreement may be extended for an addition two (2) one (1) year terms at the mutual agreement of the parties provided that FOOTBALL TEAM is not in breach of this Agreement. The date of ending of the initial or extended term shall be extended to the date after the final game of the Final Championship Schedule for the final season of the term, if FOOTBALL TEAM is participant in a Final Championship Schedule in the final season.

4. **Use and Occupancy.** FOOTBALL TEAM (subject to all terms and conditions of this Agreement), shall have:

a. Scheduling of Games. The exclusive right in the Arena premises to play League football games during the annual period including Pre-Season Games, Regular Season Games and Playoff Games, if any, during the term covered by this Agreement. FOOTBALL TEAM shall not be entitled to possession or use of the Arena Premises on any dates except those scheduled for pre, regular and playoff football games. Exhibition games, if any, shall be negotiated by the parties in good faith and subject to the availability of the Arena Premises. Upon receipt of the annual schedule established by the League pursuant to this subparagraph, the provisions of sub-paragraph (c) of paragraph 7 will apply, and tentative dates not utilized for Homes Games shall be dropped and no longer held for the FOOTBALL TEAM. The CITY has the sole discretion in setting the booking calendar for the Event Center and will reasonably attempt to accommodate

the League schedule of games while retaining the right to give first priority to events that have had a reoccurring and long standing history of booking dates or events at the Event Center.

b. Prior to each August 1 during the term of this Agreement, CITY shall submit to FOOTBALL TEAM a list of up to ten (10) dates fairly spaced throughout the duration of the anticipated upcoming Football Season that are available for FOOTBALL TEAM to reserve for Home Games ("Arena List of Available Dates"). The Arena List of Available Dates shall include at least eighty percent (80%) of the Friday and Saturday night dates during the anticipated Football Season. Prior to each October 31 during the Term of this Agreement, the League shall select dates from the Arena List of Available Dates and submit to CITY a list of such selected League Game Dates for the upcoming Football Season. The CITY shall promptly reserve those Home Game dates for the FOOTBALL TEAM and shall not schedule any other events for those dates. FOOTBALL TEAM shall notify CITY of the possible Playoff Game dates during which the League playoffs may occur promptly after such dates are determined by the League. Within ten (10) days after FOOTBALL TEAM notifies CITY of the possible League Playoff Game dates, CITY shall submit to FOOTBALL TEAM a list of at least three (3) dates that are available for FOOTBALL TEAM to reserve for Playoff Game Dates during that period (the "Arena List of Available Playoff Game Dates"), and no further conflicting events not previously scheduled shall be scheduled by CITY for the dates included on the Arena List of Available Playoff Game Dates until the specific dates of such Playoff Games are

determined by the League or until FOOTBALL TEAM is mathematically eliminated from the postseason. In addition, CITY shall use commercially reasonable efforts to not schedule events in the Arena during the period that the League playoffs customarily occur (approximately mid-July) until after the playoff schedule is determined by the League. If, after FOOTBALL TEAM submits the lists for Home Games and Playoff Games in accordance with the foregoing, the selection of additional or different playing dates is required by the League, the CITY shall use commercially reasonable efforts (but shall not be required to make any payment to any other party) to make such additional or different dates available for the playing of Home Games. Notwithstanding the foregoing, if the format of the League's playoffs changes during the Term, CITY and FOOTBALL TEAM shall negotiate in good faith an increase to the number of additional dates to be included in the Arena List of Available Playoff Game Dates for each League season remaining in the Term.

c. Merchandise, Novelties and Souvenirs. FOOTBALL TEAM shall have the right to sell and to retain all revenues generated from all FOOTBALL TEAM related merchandise, novelties, souvenirs and the souvenir game program at all of its Home Football Games in the Arena. These items shall not be considered Concessions as defined under paragraph 1(g). FOOTBALL TEAM shall be responsible for all expenses, including payroll, worker's compensation, taxes, shipping and other expenses related to the sale of all items contemplated by this section.

d. Subject to the League franchise, the exclusive rights with respect to radio and television, are as follows: (1) to broadcast and disseminate, by radio or television, or other method of transmission or communication of all or any part of professional football games played by the FOOTBALL TEAM during the period covered by the Football Season; (2) to broadcast and disseminate by means of VHS or VHF or any other method of free television, FOOTBALL TEAM Home Games; and (3) to authorize exhibition of any of the professional football Home Games of FOOTBALL TEAM by means of cable, satellite, subscription, pay television or other media. It is agreed with respect to any radio or free, pay cable, or satellite of any Home Game of the FOOTBALL TEAM and of any special radio or television programs originating from the Arena Premises prior to or subsequent to any of such games, that FOOTBALL TEAM shall have the right to authorize commercial sponsorships of such programs. It is further agreed that nothing herein is intended to limit the right of FOOTBALL TEAM to authorize broadcasts or dissemination by radio or television or otherwise of professional football games played away from home by the FOOTBALL TEAM. The CITY shall make available without additional cost to FOOTBALL TEAM, reasonable and adequate space in the Arena for working members of the press or media covering each game and reasonable Arena Premises facilities in the press room adjacent to the locker rooms for media purposes, including interviews of athletes, officials and others. The locker room area will remain open for a maximum of two (2) hours after each game.

The CITY, at its sole cost and expense shall maintain

or cause to be maintained facilities such that all Home Games are capable of being broadcast and distributed by telecast, radio broadcast and over the internet. The CITY shall not assess the FOOTBALL TEAM or the League (or any of their licensees) any television, radio or internet hookup charge except as otherwise provided for in this Agreement. The CITY shall not be responsible for any other costs of broadcast or dissemination.

Nothing in this Agreement shall be deemed to grant CITY any rights to use or exploit the intellectual property or other rights of the FOOTBALL TEAM or the League pertaining to the League or its teams; any such use or exploitation shall be subject to the prior written consent of the League.

f. The right, at no cost to FOOTBALL TEAM, during the period covered by the Home Games, to use and occupy not more than ten (10) parking spaces designated by the CITY for FOOTBALL TEAM's directors, officers, employees and football players. FOOTBALL TEAM shall also submit a list to the CITY, to be approved by the CITY, for additional parking spaces for members of the press, radio, and television. Media parking spaces shall not be charged against the ten (10) spaces provided for the FOOTBALL TEAM.

g. The non-exclusive right to occupy a limited space of the ticket vendor booths, and the right to ingress and egress thereto at all reasonable hours during the Football Season. If the Arena Premises are secured, the FOOTBALL TEAM will abide by all Event Center security procedures.

h. The exclusive right, without additional rental charge, to use the playing surface in the Arena Premises on days of Home Games for the playing of Home Games. Any extraordinary out of pocket expenses incurred by the CITY as result of the use of the field by the FOOTBALL TEAM will be billed by the CITY to the FOOTBALL TEAM at actual cost and will be paid by the FOOTBALL TEAM.

i. The exclusive right to use the playing surface after installation in the Arena Premises on days of Home Games for practice by the FOOTBALL TEAM and visiting teams at no additional charge, and the non-exclusive right on non-Home Games days to use the playing surface for practice when available and as approved by the Event Center Director.. For practices open to the public, the FOOTBALL TEAM will pay the CITY a charge of \$45.00 per hour for Event Center staffing for the time the Arena Premises are open to the public. The FOOTBALL TEAM shall pay a set-up and take-down fee, set at the actual labor cost to the CITY, for each time the playing surface is set up and taken down for practices.

j. The right, without additional charge, to use the Arena Premise's public address system during Home Games; and the right to stage such intermission entertainment or other entertainment and promotions in connection with such Home Games as the FOOTBALL TEAM deems appropriate, at the expense of FOOTBALL TEAM.

k. No advertising shall be sold beyond the term of this User Agreement and all such advertising contracts and advertising copy shall not conflict with the Event Center's

existing advertising and shall be subject to the prior written approval of the Event Center Director. The Bismarck Event Center shall provide marketing services, as described in the attached Addendum 1, which is made a part of this agreement. In exchange, FOOTBALL TEAM will pay an annual fee of \$25,000, to be paid by January 31st of each year of the term. The services contemplated by this section will be provided by experienced marketing personnel who are employees of the Bismarck Event Center.

l. The non-exclusive right to occupy available space in the Arena Premises for locker room facilities for visiting teams.

m. The right to occupy locker rooms in the Arena Premises for Home Games as designated by the CITY. Any improvements by FOOTBALL TEAM to the locker rooms or office space that the FOOTBALL TEAM is allowed to occupy under this Agreement shall be made at FOOTBALL TEAM's expense and only after securing the written permission of the Event Center Director, except as set forth in subparagraph C of paragraph 15 hereof.

5. **Football Team's Covenants.** FOOTBALL TEAM shall use Arena Premises only for the purpose of exhibiting football games as herein defined and related uses. FOOTBALL TEAM covenants and agrees that during the term hereof, it will:

a. Play and cause to be played football games at the Arena Premises under and strict accordance with League rules, with all such games to be exhibited by FOOTBALL TEAM

under any name as may be approved by the League in advance in writing.

b. Maintain its membership in the League or an equivalent league in good standing.

c. Hold and maintain any and all rights and franchises to play League football in the City of Bismarck in accordance with League rules, and do nothing or suffer anything to be done which will cause such right and franchise to be lost or impaired or diminished in any respect or moved from the CITY during the term of this Agreement.

d. Maintain a League football team of the character and standing required by the League rules for the conduct of professional football that will insure the maximum occupancy of the Arena Premises by the public.

e. Except as otherwise specifically provided herein, the FOOTBALL TEAM may not assign or otherwise transfer its rights under this Agreement or any portion hereof without the written consent of the CITY acting by and through its Event Center Director, which consent shall not be unreasonably withheld or denied. Any assignee or transferee approved by the CITY shall: (1) assume the obligations of FOOTBALL TEAM under this Agreement and shall agree to be bound by all of the terms, covenants, and conditions on the part of FOOTBALL TEAM herein contained with like force and effect as though the assignee or transferee had been originally named hereunder; (2) obtain the written approval

of the League. Prior to granting approval of an assignment or transfer, the League shall review the character and financial responsibility of the proposed assignees; and (3) all payments due the CITY from FOOTBALL TEAM as certified by Event Center Director must have been made.

f. Play all of the Home Games in the Arena Premises or at other CITY facilities unless the CITY cannot accommodate the date. FOOTBALL TEAM covenants to use commercially reasonable efforts to assure maximum occupancy during its entire Home Game schedule at the Arena Premises. The FOOTBALL TEAM will not play any of its Football Season schedule in the Bismarck service area other than in the Arena Premises, if the Arena Premises is available for games during such schedule (it is understood that if the Arena Premises is not available, FOOTBALL TEAM may play such games at any location permitted by the League). It is understood that the FOOTBALL TEAM may schedule exhibition games at any location it deems appropriate to promote the FOOTBALL TEAM and thereby increase attendance at Home Games.

6. **Consideration.**

a. FOOTBALL TEAM shall pay the CITY the amount of \$6750.00 as rental for its use and occupancy of the Arena Premises for each home game played under this Agreement as further explained in Addendum 1 to this Agreement. The CITY shall prepare a settlement report for FOOTBALL TEAM on a per game basis within five business days following each Home Game which report shall show the gross and net ticket sales revenue, expenses and rent due to CITY. Any monies due to

FOOTBALL TEAM as indicated by such report shall be rendered to FOOTBALL TEAM within ten business days of the Home Game.

b. FOOTBALL TEAM shall be required to provide, at the time of FOOTBALL TEAM's signing of this Agreement, and by each January 31st for each year of the Term, a rental advance deposit in the amount of \$54,000. If this Agreement is terminated for any reason not the fault of the CITY, the CITY shall be entitled to keep any and all rental advance deposit as liquidated damages for its expenses and opportunity lost under this Agreement. If all terms and conditions of this Agreement are fulfilled by the FOOTBALL TEAM, the CITY may draw the amount owing the CITY after settlement for each game from the rental advance deposit. The rental advance deposit, less any amounts paid to the CITY for use of the Arena Premises or outstanding amounts owed to the CITY, shall be returned to the FOOTBALL TEAM at the end of the Agreement.

c. The CITY shall receive and collect all income from the sales of concessions, alcohol beverage sales and parking lots during all FOOTBALL TEAM'S Home Games at the Arena Premises.

d. FOOTBALL TEAM shall retain all of the income from the Home Game sales of items referred to in paragraph 4(c) as determined by Agreement between the FOOTBALL TEAM and the Event Center Director. FOOTBALL TEAM shall retain all income from the sale of items referred to in paragraph 4(c) that are sold from FOOTBALL TEAM'S offices.

e. All income received from the sale of temporary banner advertising, dasher pads, program advertising, player uniforms advertising, field advertising and temporary signage on approved areas, shall be retained by the FOOTBALL TEAM. The FOOTBALL TEAM shall not sell any advertising that conflicts with existing Event Center advertising commitments and all advertising sold by FOOTBALL TEAM shall first be approved by the Event Center Director or Event Center Marketing and Sales Manager prior to placement in the Arena Premises.

f. All payments to the CITY shall be made to the Bismarck Event Center at 315 S 5th Street, Bismarck, North Dakota, 58504, or at such other place as the CITY has notified FOOTBALL TEAM in writing. Each such payment shall be accompanied by a report detailing the preceding month's game revenue and sources thereof including such information as may reasonably be required by the Event Center Director. If payments are not received by the CITY by the date due as set forth above and there is no rental advance deposit available, FOOTBALL TEAM shall be liable for interest at seven percent (7%) or the prime rate plus two percent (2%), whichever is greater, per year on the amount of the delinquent payment from the due date until paid.

7. **Use and Occupancy by the CITY.**

a. The CITY reserves, and shall have the exclusive right to the use and occupancy of the Arena Premises and to the possession thereof at all times during the term of this Agreement except during the dates that the use and occupancy

is granted to FOOTBALL TEAM, as provided in the preceding paragraphs 4 and 5 of this Agreement. The CITY shall have the right to permit the use and occupancy of the facility on other dates for any purpose or purposes it deems appropriate.

b. Following any use of the Arena Premises by FOOTBALL TEAM or anyone other than FOOTBALL TEAM, it shall be the duty of the CITY to restore the Arena Premises playing surface within a reasonable time to the best possible condition for use by the FOOTBALL TEAM.

c. FOOTBALL TEAM, as soon as possible after preparation of the League schedule, and not later than five (5) days after the League schedule has been approved and adopted, shall notify the CITY in writing of the dates scheduled for the playing of Home Games during the pre-season and regular football seasons. FOOTBALL TEAM shall also promptly notify the CITY in writing of the date of any home Play-Off Games or Championship Games, as soon as possible.

d. FOOTBALL TEAM shall not, during the term of this Agreement, permit any advertising or promotions in the Arena Premises at any time other than on FOOTBALL TEAM Home Game dates.

8. **Operating Costs.** FOOTBALL TEAM shall not be liable for any costs with respect to the operation and maintenance of the Arena Premises, except for damage caused by the FOOTBALL TEAM or its employees or agents.

9. Scoreboard. The CITY agrees to maintain the present scoreboard in the Arena Premises suitable for football, subject to the provisions of that certain agreement between the CITY and the Bismarck Event Center relating to scoreboard advertising and the advertising messages on the display system.

10. Arena and Playing Surface. The FOOTBALL TEAM shall, at its own expense, purchase and maintain the playing surface at the Arena Premises during the term of this Agreement. The CITY shall, at its expense, furnish all labor, material, supplies, and equipment necessary to maintain and clean the Arena Premises and keep it in an orderly condition, including the prompt removal and disposal of all rubbish, trash and garbage in the Arena Premises prior to the next scheduled FOOTBALL TEAM Home Game in the Arena Premises. The FOOTBALL TEAM shall maintain, mark, and equip the playing surface to the satisfaction of the League subject to the terms and conditions of paragraph 7(b).

It is agreed that CITY, shall provide sufficient ushers, ticket sellers, event security, doorguards, and other event personnel for the proper conduct and supervision of all Home Games played by the FOOTBALL TEAM in the Arena Premises for the reasonable protection of players, officials, and those in attendance. The management of the Arena Premises shall at all times be the responsibility of the CITY. If applicable League rules and regulations require that the FOOTBALL TEAM provide paramedics, security and sufficient other personnel for adequate liaison with the Event Center Director, those shall be at the sole cost of the FOOTBALL TEAM. It is further mutually agreed that admission to all FOOTBALL TEAM games played in the Arena

Premises shall be on a basis which is non-discriminatory as to race, color, religion, national origin, gender, age, physical or mental disability of any individual.

11. Entry and Inspection. The CITY reserves, and shall always have the right at all reasonable times to enter the Arena Premises and any FOOTBALL TEAM space for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the premises or to inspect the operations conducted thereon. In the event that entry or inspection by the CITY discloses that the Arena Premises or other space occupied by the FOOTBALL TEAM are not in a safe or satisfactory condition, the CITY shall have the right to cause FOOTBALL TEAM to correct any unsafe or unsatisfactory condition created by the FOOTBALL TEAM or by the FOOTBALL TEAM'S occupancy of the Arena Premises or other FOOTBALL TEAM space. FOOTBALL TEAM shall be responsible to immediately repair any damage done by FOOTBALL TEAM players, agents or employees to the Arena Premises, offices, storage and locker rooms.

12. Utilities and Services. The CITY shall furnish, without costs to FOOTBALL TEAM, electric power, water and sewer services.

13. Indemnification. FOOTBALL TEAM hereby indemnifies and agrees to hold free and harmless, and to defend the CITY, its commissioners and officers and employees, and each of them, from and against any and all claims, demands, liens, judgments, or otherwise for death of or injury to any person or damage to any property whatsoever that may happen or occur as the result of FOOTBALL TEAM'S use and occupancy, or failure to use and occupy Arena Premises for the purpose herein contemplated, and will pay

and discharge all final judgments that may be rendered in such suit or action, including but not limited to all claims against the CITY from third parties due to injuries as a result of the FOOTBALL TEAM'S use of any CITY property, the Arena Premises or any other space occupied by the FOOTBALL TEAM. Notwithstanding the foregoing terms of this paragraph 13, it is specifically understood and agreed that this indemnity shall not extend to any incident that occurs solely as the result of any negligent act or activity of the CITY or any person acting for the CITY or under its control or direction.

14. **Insurance.**

a. FOOTBALL TEAM agrees to obtain the maintain public liability insurance with an insurance carrier satisfactory to the CITY to protect against loss from liability imposed by law for damages on account of bodily injury, including death, resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of FOOTBALL TEAM or any person acting for FOOTBALL TEAM under FOOTBALL TEAM'S control or direction and also to protect against loss from liability imposed by law for damages to any property of any person acting for FOOTBALL TEAM under FOOTBALL TEAM'S control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement in the amount of not less than one million dollars (\$1,000,000.00) for one person injured in one accident and not less than three million dollars (\$3,000,000.00) for more than one person injured in one accident, and in the amount

of not less than one hundred thousand dollars (\$100,000.00) with respect to any property damage and shall also name the CITY as an additional insured. Proof of such insurance shall be filed with the City and shall be satisfactory in form to the CITY. Said policies shall have a "Non-cancellation-without-notice-to the CITY" clause on thirty (30) days notice and shall provide that copies of all cancellation notices shall be sent to the CITY. If FOOTBALL TEAM does not keep such insurance in full force and effect, the CITY may procure the necessary insurance and pay the premium and the repayment thereof shall be deemed to be in addition to the consideration reserved hereunder and paid on the next day upon which any portion of said consideration becomes due.

Provisions of the paragraph as to maintenance of insurance shall not be construed as limiting FOOTBALL TEAM from obtaining more coverage or limiting in any way the extent to which FOOTBALL TEAM may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible. FOOTBALL TEAM should independently insure for the value of any property left on CITY property including any property stored in the Arena Premises or in offices provided by the CITY as it deems appropriate. The CITY shall not provide coverage for the FOOTBALL TEAM's contents, nor shall it reimburse FOOTBALL TEAM for any loss that might occur.

b. It is understood that the CITY shall either adequately insure against its liability for damages on account of bodily injury, including death, resulting from

ownership, operation, and maintenance of the Arena Premises hereunder by the CITY. In the event the CITY'S said liability shall be covered by a policy of insurance, the CITY shall furnish FOOTBALL TEAM, upon request, with a certificate issued by the insurance carrier to that effect.

15. Maintenance, Repairs, Alternation, and Improvements. The CITY shall be obligated through the term of the Agreement to:

a. Keep the Arena Premises (except the interior of FOOTBALL TEAM'S offices, if provided) and all parking facilities in good order and repair, inside and out, including all equipment, machinery, pipes plumbing, wiring, gas and electric fittings, and all permanent and temporary seats and seating arrangements.

b. Make such renewals and replacements of equipment including seats and seating arrangements, as may be necessary so that at all times the Arena Premises, concession stands, parking facilities, and all equipment incidental thereto shall be in good order, condition, and repair; Provided, however, that the CITY shall not be obligated to keep in good order and repair any improvements, betterments, or additions, or to make any renewals or replacements of any equipment made or installed in the Arena Premises or office space by or at the direction of, FOOTBALL TEAM.

c. FOOTBALL TEAM shall not make any alterations or improvements to the Arena Premises or any other space the FOOTBALL TEAM is allowed to utilize or occupy except in

accordance with plans previously approved in writing by the Event Center Director. Approval shall not be unreasonably withheld or denied by the CITY and improvements must be made in accordance with the provisions of the Ordinances of the CITY. The FOOTBALL TEAM shall defend, indemnify, and hold the CITY harmless from any claims, demands or liens asserted by others on account of any alterations made by FOOTBALL TEAM. It is agreed and understood that the cost of all alternations or improvements made to any space occupied by the FOOTBALL TEAM shall be the responsibility of the FOOTBALL TEAM. FOOTBALL TEAM shall reimburse the CITY for all damage to the Arena Premises or other space occupied by the FOOTBALL TEAM caused by FOOTBALL TEAM'S use and occupancy, except ordinary wear and tear. By entry into the use and occupancy of the Arena Premises and other allowed space, FOOTBALL TEAM accepts the Arena Premises and other allowed space as being in good and sanitary order, condition, and repair. At the end of the term, FOOTBALL TEAM agrees to remove any improvements if installed, if requested to do so by the Event Center Director, at FOOTBALL TEAM'S expense.

16. **Waiver**. The Waiver by the CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of consideration hereunder by the CITY shall not be deemed to be a waiver of any preceding breach by FOOTBALL TEAM of any term, covenant, or condition of this Agreement. Any failure on the part of the CITY to require or exact full and complete compliance with any of the

covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof or to stop the CITY from enforcing the full provisions hereof. The terms of this Agreement shall not be changed or altered in any manner whatsoever other than by written agreement of the CITY and FOOTBALL TEAM.

17. **Remedies.** In the event that FOOTBALL TEAM shall default in the performance or fulfillment of any covenant or condition herein contained and shall fail to cure such default within thirty (30) days following the service on it of a written notice from the CITY specifying the default or defaults complained of and the date on which its rights hereunder will be terminated, this Agreement shall be terminated. If the default cannot be cured within thirty (30) days and cure has commenced and is being diligently prosecuted, the CITY may grant the FOOTBALL TEAM additional time to cure. If FOOTBALL TEAM makes a general assignment for the benefit of creditors, the CITY may, at its option, without further notice or demand upon FOOTBALL TEAM, immediately cancel and terminate this Agreement and terminate each, every, and all of the rights of FOOTBALL TEAM and of any and all persons claiming by, through, or under FOOTBALL TEAM in or to the premises in or to the further possession thereof. In addition, the CITY may, by written notice to the FOOTBALL TEAM which shall be effective upon receipt, terminate the whole or any part of this Agreement in the event FOOTBALL TEAM or any of its officers are convicted, plead nolo contendere, enter or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bidrigging, antitrust, fraud, undue influence, theft, racketeering, extortion, gambling or any offense of a similar nature, in connection with FOOTBALL TEAM'S business.

In addition to the foregoing, either party hereto shall have the right to enjoin any substantial breach or threatened breach of this Agreement by the other.

Any election on the part of the CITY to terminate this Agreement must be in writing, properly executed by the CITY, and served upon FOOTBALL TEAM. No termination of this Agreement on account of default by FOOTBALL TEAM shall be or become effective by operation of law or otherwise, unless and until the CITY shall have given such notice to FOOTBALL TEAM. Notice to pay any consideration or portion thereof due and payable or to deliver up possession of the premises given pursuant to the laws of North Dakota or any proceeding in the nature of unlawful detainer taken by the CITY shall not, of itself, and in the absence of such written notice as above provided, operate to terminate this Agreement.

At no time shall the CITY be deemed to be in default under this Agreement unless and until FOOTBALL TEAM shall have given to the CITY notice in writing, specifying such default and the CITY shall have failed to cure the default so specified within such reasonable time specified in the notice as may be necessary by reason of the nature of the default.

18. **Notice and Options.** Any notice provided for by this Agreement or by law to be given, served, or exercised by or upon FOOTBALL TEAM may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to FOOTBALL TEAM at such address as FOOTBALL TEAM shall designate in writing or may be personally served upon said FOOTBALL TEAM, or any person

hereinafter authorized by FOOTBALL TEAM to receive such notice. Any notice or option provided for by this Agreement to be given, served, or exercised by or upon the CITY may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to the Mayor, City and County Building, Box 5503, Bismarck, North Dakota, or may be personally served upon the Event Center Director or any person hereafter authorized by the CITY to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

19. **Construction of this Agreement.**

a. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of North Dakota.

b. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope of intent of this Agreement or the particular paragraphs hereof to which they refer.

c. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

d. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof, and any breach by the CITY or FOOTBALL TEAM shall be deemed to be of the very substance of this Agreement.

e. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the CITY, and to such successors and assigns of FOOTBALL TEAM as are permitted to succeed the FOOTBALL TEAM'S right upon and subject to the terms hereof.

f. Nothing herein contained shall make, or be construed to make, the CITY or FOOTBALL TEAM a partner of one another nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

g. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

h. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

i. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder except as provided for in

Paragraph 24 hereof.

j. Venue. Any and all actions at law or in equity which may be brought by the CITY or by FOOTBALL TEAM shall be brought only in the North Dakota State District Court in the City and County of Bismarck, North Dakota.

20. **Delays, Etc.** The rights and obligations of the parties to this Agreement shall be subject to delays or cancellations caused by strikes, fire, accident, acts of God, orders of any military, civil, or governmental authority or other cause beyond the control of the parties (provided that strikes of FOOTBALL TEAM'S player-employees shall not be considered a "strike" for the purposes of this sentence), and should such event or events occur from time to time the rights or obligations of the parties affected thereby, if any, shall be continued for a period equal to the period resulting from such delay or suspended or excused pro rata.

21. **No Discrimination in Employment.** In connection with the performance of work under this contract, FOOTBALL TEAM agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, marital status, or physical or mental disability; and the FOOTBALL TEAM further agrees to insert the foregoing provision in all subcontracts hereunder.

22. **Payment of Taxes.** FOOTBALL TEAM shall pay and discharge as they become due, promptly and before delinquency, all taxes,

assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charges or imposed or which may become a lien or charge against this Agreement or on the Arena or Arena Premises or any part thereof, or any other improvements now or hereafter thereon.

23. **No Encumbrance of Interest by FOOTBALL TEAM.** FOOTBALL TEAM shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of the CITY.

24. **Rights of the League.**

a. If CITY gives notice to FOOTBALL TEAM alleging FOOTBALL TEAM is in breach or default of any provision of this Agreement, a copy of such notice shall be given simultaneously by overnight delivery to the League at:

Champions Indoor Football
1320 Austin Street
San Angelo, Texas 76903
Attention Commissioner

The League shall have the right to change such address by written notice given to the CITY at its address listed herein.

b. If any at time FOOTBALL TEAM's right of occupancy

and use of the Arena Premises hereunder is terminated for any reason whatsoever , including, for example, by agreement of the parties, as a result of breach by FOOTBALL TEAM or as a result of cessation of operations by or bankruptcy of FOOTBALL TEAM, the League shall have the right, at its election, to succeed to the rights of the FOOTBALL TEAM hereunder for the balance of the then current Football Season or for all or a portion of the remainder of the term of the Agreement as the League shall elect. The League shall have the ability to designate another party that operates an CIF team to succeed to such rights. Any party succeeding to the rights of FOOTBALL TEAM hereunder shall be bound by and entitled to the benefits of all of the terms and conditions of this Agreement for the term as elected by the League.

c. This Section shall prevail over any language in this Agreement that is contrary to the provisions of this section. In the event of any non-compliance by CITY with the provisions of this section, the League shall have the right as a third party beneficiary to enforce this section.

IN WITNESS WHEREOF, this Agreement is executed by the CITY, acting by and through its Event Center Director, and by FOOTBALL TEAM, and both have caused this Agreement to be executed as of the day and year first above written.

BISMARCK EVENT CENTER

Charlie Jeske

DATE



DAKOTA PRO FOOTBALL, LLC
D/B/A BADLANDERS



DATE

ADDENDUM #1- Consideration and Services Provided.

1. FOOTBALL TEAM shall pay the CITY the amount of \$6750.00 as rental for its use and occupancy of the Arena Premises for each home game played in the Arena Premises as per this Agreement. The entire rental advance amount of \$54,000.00 will be paid prior to January 31 of each contract year. In return and in consideration of the payment of the \$6750.00 as rental, the CITY agrees to provide the use of the Arena Premises and all of the following listed services;

- The football field with dasher boards set-up as per League specifications.
- Floor box set up.
- Scoreboard system, including a score clock and twenty five second clocks (Score table operators furnished by the FOOTBALL TEAM).
- Necessary ticket sellers, ticket takers, door-guards, ushers, and building security that meets building specifications.
- Internet Access
- Home and Visitors locker rooms and Referees locker room.
- A public address sound system.
- All monies collected on behalf of the FOOTBALL TEAM

through advance and day of the event sales will be paid at settlement, which shall be within five working days of game. The CITY will deduct and pay the appropriate state and local sales tax, facility fees, credit card charges, ticket cost and game day costs.

2. Ticketing. It is agreed that the FOOTBALL TEAM will abide by the contract between the Bismarck Event Center and E-Tix. At no time shall processed tickets be re-sold without prior permission from E-Tix and the Bismarck Event Center.

In the event of credit card chargeback's the Bismarck Event Center will make reasonable effort to work with the FOOTBALL TEAM and other parties involved. If there is not a final resolution the chargeback amount is subject to deduction by the Bismarck Event Center on the next available settlement.

All orders (complimentary/paid) must be turned in at least twenty-four (24) hours in advance of event. These orders should be in writing and noted "Attention Box Office". This is the standard, however the Bismarck Event Center notes this may not always be possible. In the event orders will be delayed notice should be given to the Bismarck Event Center management.

The FOOTBALL TEAM will be allowed to conduct its autograph session within the Arena Premises following each game. The FOOTBALL TEAM acknowledges that special consideration will need to be given if the field needs to be torn down immediately following the game. (Over-night crew needs to set-up for the next event.)

3. Special Considerations

- a. A \$2.00 facility fee will be placed on all purchased tickets and retained 100%, less sales tax, by the Bismarck Event Center.
- b. A \$2.00 promoter fee will be placed on all purchased tickets and retained 100%, less sales tax, by the FOOTBALL TEAM.
- c. The Bismarck Civic Center will eliminate the facility fee on all promotional tickets where there is no sponsor or financial consideration.
- d. The CITY will give the FOOTBALL TEAM an incentive amount of 10% of the CITY's net receipts from alcohol sales at Home Games during the first two years of this Agreement, a 15% split the third, fourth and fifth year plus any additional option years under this Agreement.
- e. The Bismarck Football Team will have the right to sell advertising on the football field. All advertising and actual dimensions will be determined prior to the beginning of the season and must be approved by the Bismarck Event Center management.
- f. The Bismarck Football Team will have the right to sell advertising on all the dasher pads. All advertising must be approved by Bismarck Event Center Management. The Bismarck Football Team will be responsible prior and immediately following each game to place and remove dasher pads.
- g. The Bismarck Football Team may sell banner advertising per game but must have approval from Bismarck Event Center Management.

- h. The Bismarck Football Team will pay for all floor box/suite improvements with all improvements mutually agreed upon between Bismarck Football Team and Bismarck Event Center. The Event Center will provide a minimum of 120 tall chairs for use in the box suites at Event Center expense. In return, the FOOTBALL TEAM will pay the Event Center rental of \$5 per chair per Home Game, for the duration of the Agreement. The chair rental will be included in the per game settlement statement.
- i. The Bismarck Football Team may bring vehicles onto the football field during game nights but must have prior Bismarck Event Center Management.
- j. In exchange for an annual marketing fee of \$25,000 paid to the Bismarck Event Center by the FOOTBALL TEAM, the Bismarck Event Center marketing staff will provide the following marketing services:
- Sell sponsorship opportunities on the dasher boards, banners and game day items (Team apparel, helmets, turf logo, etc.) for the FOOTBALL TEAM.
 - Sell sponsorships and organize game day operations for the FOOTBALL TEAM.
 - Assist with public relation opportunities for the FOOTBALL TEAM.
 - Help update and maintain the FOOTBALL TEAM website and social sites.
 - Assist in development and implementation of marketing and advertising campaigns for the FOOTBALL TEAM.

- Assist in the design and layout of sales aids and promotional items such as banners and posters and update marketing materials for the FOOTBALL TEAM.