

PERFORMANCE AND FACILITY USAGE AGREEMENT BETWEEN

CITY OF MANITOWOC

AND

MANITOWOC MARINE BAND

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of February, 2023, by and between the City of Manitowoc, Wisconsin, a municipal corporation, (“City”), located at 900 Quay Street, Manitowoc, Wisconsin 54220, and the **MANITOWOC MARINE BAND**, a Wisconsin Non-profit 501(c)(3) organization, (“MMB”), with its principal mailing address of PO Box 2224, Manitowoc, WI 54220 (collectively, the “Parties”).

WITNESSETH

WHEREAS, the City provides funding for band operations and is the owner of the premises known as Lincoln Park Fieldhouse and Washington Park Bandshell, among others, located in the City of Manitowoc, Manitowoc County, Wisconsin; and

WHEREAS, MMB is a band that services the City, originally established in 1898, and has accumulated a number of assets including, but not limited to, band equipment and one utility trailer that are stored on City property or in City facilities; and

WHEREAS, MMB organizes all band member recruitment, rehearsals, and performances throughout the City of Manitowoc for various public events; and

WHEREAS, the City and MMB wish to continue their long-standing relationship and establish contractual responsibilities and obligations concerning City facility usage, compensation, liability and band performance obligations, among others.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth, the parties agree as follows:

1. **COMPENSATION:** The City will provide MMB a lump sum of \$15,000.00 on an annual basis (“Funding”) to act as the unofficial “City of Manitowoc Marine Band” and to fund the execution of the musical services, as further outlined in the Agreement. MMB shall provide the City a summary of the forthcoming calendar year performances, budgetary needs and expected expenditures before the City releases Funding. The City funds may be used for the following purposes; insurance policy premiums, performance expenses, band essentials, staff wages and stipends, marketing, advertising and promotions.
2. **EFFECTIVE DATE:** This Agreement is effective January 31, 2023.

3. **SCOPE OF WORK:** MMB will perform a minimum of 5 public performances for all residents and visitors to enjoy. MMB will also participate in a minimum of 3 City of Manitowoc parades.
4. **FACILITY USAGE:** The City is responsible for all maintenance of City facilities utilized by MMB. The City of Manitowoc Parks and Recreation Division (“Parks”) will be the primary point of contact for MMB facility use coordination. MMB is authorized to use facilities designated by Parks for rehearsal and performances pursuant to the following terms and conditions.

A. City Responsibilities.

- i. The City shall provide MMB an amenable location for band rehearsals and equipment storage at no cost to MMB. This includes storage for band instruments and utility trailer. Currently the location used for equipment storage and rehearsals is Lincoln Park Fieldhouse located at 1218 North 8th Street. The utility trailer is stored at Parks’ maintenance shop located at 1105 Fleetwood Drive.
- ii. The City shall provide MMB with facility to host musical performances. A majority of the performances will be outdoors at the Washington Park Bandshell, in a parade, or at the Fourth on the Shore event. Indoor performances may be scheduled at the Manitowoc Senior Center for holiday performances or in the event of inclement weather.

B. MMB Responsibilities. MMB must identify one point of contact for management of facility usage and reservation-related communications. This person shall understand and abide by the following terms and conditions.

- i. MMB shall contact the Parks to confirm availability of City facilities and reserve said facilities as needed.
- ii. MMB shall coordinate with the Parks to develop an annual performance schedule.
- iii. MMB shall return City facilities to “as is” condition following each use. This includes conditions outlined in the City rental facility contract, which includes, but is not limited to, sweeping, mopping and repair of damaged facility and/or facility fixtures. If a facility requires additional cleaning or maintenance by the City following MMB use,

MMB will be billed for time and materials for all services provided by the City to restore the facility to “as is” condition.

5. **OFFSITE PERFORMANCES:** Offsite performances are allowable. Nothing in this Agreement is meant to restrict MMB’s ability to perform on non-City property.
6. **SPECIAL EVENTS AND SUBCONTRACTOR AGREEMENTS:** MMB may organize public performances and events. MMB must follow all existing and future special events policies, including, but not limited to, the submission of special event requests for all public events where more than 50 people are anticipated to attend. All contractors hired by MMB must contract with MMB directly, as MMB is a not a City-owned entity. All third party vendors providing concessions or entertainment at MMB events must meet all related City Special Events requirements. Please see “Special Event Guidelines” for the City of Manitowoc for further details.
7. **TERM:** This Agreement shall terminate 3 years from the effective date and automatically renew for an additional 3-year term unless a party provides written notice to terminate the Agreement giving six months written notice. This provision does not sunset and will continue in perpetuity until one or both parties terminate the Agreement pursuant to this paragraph or paragraph 9(B).
8. **INDEMNIFICATION AND INSURANCE:**
 - A. **Indemnification.** Except to the extent of City’s reckless or willful misconduct, MMB shall indemnify, hold harmless, and defend the City, its employees, officials, officers, and agents against all liability, damage, loss, claims, demands, and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission, or operation arising from MMB’s use of the City facilities. MMB shall save and hold the City, its employees, officials, officers, and agents harmless from and against all liability for property damages if not determined to be otherwise addressed in this paragraph.
 - B. **Insurance.** MMB agrees that it shall maintain, at its own cost and expense, a comprehensive general liability policy with minimum limits of \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage. MMB shall ensure that the City and its officers, agents, and employees are named as additional insureds under the policy or policies. MMB shall cause to be furnished to City evidence satisfactory to City of the comprehensive general liability policy coverage satisfactory to City. In the event of suspended coverage, any modification in terms of this coverage or insurance cancellation, both the insurance carrier and MMB shall provide City with written notification of such

suspension, modification, or cancellation no less than ten (10) days prior to the suspension, modification, or cancellation. If, upon receipt of such notice, MMB shall desire to continue this Agreement in effect, MMB shall purchase, at its own cost and expense, such insurance as City shall deem necessary in its reasonable judgment. Failure to have and to maintain the requisite insurance coverage in full accord with this section is grounds for the immediate termination of this Agreement by the City. Such termination, however, shall not impair any other right of action to the City against MMB under this Agreement or as otherwise provided by law.

- C. Statutory Insurance. MMB shall carry all insurance as required by Wisconsin Statutes, including, but not limited to, all applicable worker's compensation and vehicle insurance.

9. DEFAULT AND TERMINATION:

- A. In the event of lapse of insurance policies or coverage as required by this Agreement, the City may, without notice, declare this Agreement terminated. MMB shall have no access rights to or use of the any City facilities until all required insurance policies are effective and in place.
- B. City may terminate this Agreement at any time by providing 30 days written notice to the other party.

- 10. AUTHORITY:** The undersigned hereby represents and warrants that it has the authority to enter into this Contract. If the party(ies) entering into this Contract is (are) not an individual, the person(s) signing on behalf of the entity represents and warrants that they have been duly authorized to bind the entity and sign this Contract on the entity's behalf.

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