

AGREEMENT TO FUNDRAISE AND BUILD
PHASE THREE OF THE MANITOWOC FAMILY AQUATIC CENTER

This agreement is made and entered into this 21 day of Aug, 2019, by and between the Friends of the Manitowoc Family Aquatic Center, Inc., a Wisconsin non-profit with mailing address of 1 East Waldo Blvd, Suite 5, Manitowoc, WI 54220, and the City of Manitowoc, a Wisconsin municipal corporation located at 900 Quay Street, Manitowoc, WI 54220.

RECITALS

WHEREAS, the Manitowoc Family Aquatic Center within Citizen Park, a City of Manitowoc facility, constructed in 2010 with the second phase in 2014, attracts citizens and tourists for recreational activity including swimming and miniature golf; and,

WHEREAS, the Friends of the Manitowoc Family Aquatic Center (hereinafter "Friends") wish to construct Phase Three, the final phase of the Aquatic Center, which includes a hot springs cove, additional shelter, and a splash pad to donate to the City of Manitowoc to improve the recreational opportunities available at the Aquatic Center; and,

WHEREAS, the City will allow the Friends to construct Phase Three under the terms of this agreement, including the donation of excess funds to be used for Aquatic Center maintenance and repair.

NOW, THEREFORE, in consideration of the mutual covenants and representations of the parties hereinafter set forth, the undersigned parties hereby agree as follows:

1. **Recitals**. The above recitals are deemed to be true and correct.
2. **Fund Control**. The Friends agree that all funds raised by the Friends shall be held by the Friends until construction commences and that the Friends shall be responsible for providing any tax letters to donors. The Friends shall provide the City's Finance Director with quarterly updates on fundraising status. Upon completion of construction, the Friends shall turn over any remaining funds to the City to be held in a segregated account to fund ongoing pool operations, maintenance, repairs, marketing and improvements. Nothing in this agreement shall preclude the City from accepting donations to the Aquatic Center, to be held in a segregated fund and used as the Common Council directs for Aquatic Center operations and maintenance.
3. **Release of Funds**. The Friends will fundraise a minimum of \$2,200,000 to fund Phase Three of the Aquatic Center. Any funds in excess of the costs of Phase 3 shall be released to the City for maintenance, repairs, and improvements of the Aquatic Center, and said funds will be kept in a segregated account until used for the Aquatic Center.
4. **City Has No Obligation to Contribute to Construction Costs**. The City bears no responsibility for any costs of construction and the Friends are expected to contribute the full cost of construction.
5. **Construction**. Once the fundraising goal is reached, the Friends shall be responsible for all public bidding and construction, including design and scope of the project. The City Department of Public Infrastructure will have final approval rights over the

project. The Friends will coordinate construction with the Department of Public Infrastructure, to be done outside of the Aquatic Center's regular operating season. The Friends further agree that all construction will be done in accordance with Wisconsin law, including any public bidding laws that may apply. The Friends agree to carry appropriate insurance, as outlined in the City's construction specifications, during construction, and provide City with insurance certificates from all contractors, including additional insured endorsements, during the construction of Phase Three.

6. **As-Builts.** Once construction has been completed, the Friends agree to provide the City with three completed sets of as-built specifications for the improvements to the Aquatic Center.
7. **Ownership.** Upon completion of construction and receipt of as-builts, the City shall take ownership of the project and be responsible for insurance, maintenance, and operations.
8. **Final Improvements.** The parties agree that Phase Three shall be the final planned improvement to the Aquatic Center, and any future improvements shall begin with a discussion at the City's Public Infrastructure Committee.
9. **Termination.** Either party may terminate this Agreement with ten days written notice to the other party. This agreement will automatically terminate upon the City's receipt of as-builts.
10. **Notice and Demands.** A notice, demand or other communication under this Contract by any party to the other party shall be sufficiently given or delivered if it is sent by certified mail or personally delivered to:

Friends:
Amy Fricke-Weigel
2011 S 14th Street
Manitowoc, WI 54220

CITY:
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Notice and demand given shall be effective only if and when received by the party intended and acknowledged by receipt. The above addresses may be changed at any time by any party by giving written notice in the manner provided above.

11. **Choice of Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this Contract, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Contract hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.

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