

**TOURISM SERVICES AGREEMENT
BETWEEN
CITY OF MANITOWOC,
CITY OF TWO RIVERS,
AND
MANITOWOC AREA VISITOR AND CONVENTION
BUREAU, INC.**

For the Term January 1, 2012~~7~~ – December 31, 20~~1~~16

THIS SERVICES AGREEMENT (hereinafter referred to as the “AGREEMENT”) by and between the Room Tax Commission of the City of Manitowoc, Wisconsin, a municipal corporation, 900 Quay Street, Manitowoc, WI 54220-4543 (hereinafter referred to as “MANITOWOC”), the City of Two Rivers, WI, a municipal corporation, 1717 E. Park Street, P.O. Box 87, Two Rivers WI 54241-0087 (hereinafter referred to as “TWO RIVERS”), and the Manitowoc Area Visitor and Convention Bureau, Inc. f/k/a Manitowoc Visitors and Convention Bureau, Inc., a Wisconsin Nonstock Corporation with its principal offices at 4221 Calumet Avenue, P.O. Box 966, Manitowoc WI 54221-0966.

The undersigned parties may hereinafter be referred to collectively as the “PARTIES” or individually as a “PARTY.” The municipal corporations that are parties hereto may hereinafter be referred to collectively as the “MUNICIPALITIES” or individually as a “MUNICIPALITY.” Further, the governing bodies of said municipal corporations may hereinafter be referred to collectively as the “COUNCILS” or individually as a “COUNCIL,” and the Manitowoc Area Convention and Visitor Bureau Board of Directors may be referred to as the “MAVCB Board.”

RECITALS:

~~A. The Manitowoc Visitor and Convention Bureau, Inc. filed, with the Wisconsin Department of Financial Institutions (hereinafter referred to as “WDFI”), its original Articles of Incorporation on February 9, 1993, for the purposes of promoting tourism and economic development in MANITOWOC.~~

~~B.~~

~~C. The Manitowoc Visitor and Convention Bureau, Inc., pursuant to a WDFI filing dated November 15, 1999, amended its Articles of Incorporation to change its name to the Manitowoc Area Convention and Visitor Bureau, Inc. (hereinafter referred to as the “MAVCB”).~~

~~D. The Manitowoc Area Visitor and Convention Bureau, Inc. , formerly known as the Manitowoc Visitor and Convention Bureau, is a Wisconsin non-stock corporation initially created on February 9, 1993 for the purposes of promoting tourism and economic development in MANITOWOC, and is located in the Visitor Information Center at The 2,938 square foot Visitor Information Center at 4221 Calumet Avenue (hereinafter referred to as the “VIC”) was built in 1993 at a cost of \$468,000, and MANITOWOC purchased the initial personal property for the Manitowoc Visitor and Convention Bureau, Inc. and VIC in the amount of \$38,243.15.~~

~~E. MANITOWOC is the fee simple owner of the real property underlying the VIC that is legally described in a Quit Claim Deed recorded in the Manitowoc County Register of Deeds in Volume 682, Page 209, as Document No. 573516.~~ and

~~F.~~

G.A. MANITOWOC ~~rent~~rents the VIC to the MAVCB for \$1 per year pursuant to a “Lease Agreement” dated October 26, 1993 (hereinafter referred to as the “LEASE”); said LEASE, as amended from time to time, is incorporated herein by reference.

H.B. The MAVCB entered into a “Services Agreement” with MANITOWOC on May 24, 1993, and has further executed four (4) subsequent amendments related thereto (hereinafter said Agreement and amendments are referred to as the “SA”), most recently the SA which expires on December 31, 2016.

C. In accordance with the SA, ~~MANITOWOC~~ the MUNICIPALITIES collects room taxes pursuant to ~~Section 23.050 of the MANITOWOC~~ their respective Municipal Codes and Wis. Stat. § Section 66.0615. Each municipality currently imposes an 8% room tax, and has since January 1, 2013.

~~, Wisconsin Statutes, and remits 47.5 per cent of the first five (5) per cent of room taxes collected to the MAVCB to support MAVCB operations in MANITOWOC; said SA continues on a calendar year to calendar year basis unless either PARTY notifies the other prior to October 30th of any calendar year of its intent to terminate the SA.~~

~~On April 19, 1994, MANITOWOC increased its room tax from five (5) per cent to six (6) per cent, and beginning January 1, 1996, began remitting an additional 40 per cent of the additional one (1) per cent of room taxes collected to the MAVCB to further support MAVCB operations in MANITOWOC, for an overall room tax investment in the MAVCB equal to 46.25 per cent of room taxes collected.~~

~~During 2006, MANITOWOC and TWO RIVERS considered a collaborative effort with the MAVCB to deliver tourism and marketing services in the greater Manitowoc area.~~

~~On August 14, 2006, the COUNCILS, meeting in joint session along with the MAVCB BOARD, did each respectively and unanimously adopt a resolution endorsing the following: (1) TWO RIVERS and lodging establishments located therein which pay room tax pursuant to Section 6 11 1 of the TWO RIVERS Municipal Code and Section 66.0615, Wisconsin Statutes, joining the MAVCB and enjoying all benefits of membership; (2) TWO RIVERS would pay 46.25 per cent of its total room tax revenue to the MAVCB—a percentage equal to that portion of MANITOWOC room tax paid to the MAVCB; and (3) that together, MANITOWOC and TWO RIVERS would pursue a common objective of promoting, supporting and pursuing coordinated and jointly funded tourism and marketing services for the benefit of the greater Manitowoc area.~~

~~The PARTIES entered into a Services Agreement on November 7, 2006, for an initial term running through December 31, 2011. Said Services Agreement provides under Article I, Section 5, “Renewal of Agreement” that said Services Agreement “shall automatically renew for successive three (3) year terms and on the same terms and conditions contained in this AGREEMENT unless said renewal terms and conditions are amended or modified, and approved by the COUNCILS and the MAVCB Board.”~~

~~By action of the Two Rivers City Council on April 4, 2011, the MAVCB Board on April 14, 2011, and the Manitowoc Common Council on April 18, 2011, the PARTIES have each indicated their intent to modify the Services Agreement, to provide for an Agreement with a new, five (5) year term, commencing January 1, 2012. This document constitutes such a new Services Agreement, which shall repeal, replace and supersede the initial, 2007 Services Agreement between the PARTIES, effective January 1, 2012.~~

~~Both Cities agreed, at a joint council meeting held on July 30, 2012, to increase their room tax from six percent to eight percent effective January 1, 2013, and to disburse the increase in room tax as set forth in this agreement.~~

**ARTICLE I -
OBLIGATIONS OF PARTIES:**

1. Incorporation of Recitals. The foregoing Recitals are mutually acknowledged to be true, correct and incorporated into this AGREEMENT.

2. Funding of MAVCB by MANITOWOC. In order to fund the obligations of the MAVCB, MANITOWOC agrees to contribute to the MAVCB ~~47.5~~**52.19 percent** ~~per cent~~ of the room tax revenues which it collects pursuant to Resolution 13-351 ~~on the first five (5) per cent of room tax receipts collected, plus 40 per cent of the room tax revenues which it collects on the next one (1) per cent of room tax receipts collected, plus 70% of the room tax revenues which it collects on the next 2% of the room tax receipts collected.~~

~~3.~~

~~4.~~ Effective the date of this AGREEMENT, MANITOWOC shall, on a monthly basis, forward payment of room tax revenues to the MAVCB within 30 consecutive calendar days following the due date for the collection of such taxes.

~~5.~~

~~6.~~ The monthly payments for January 1st through November 1st of each calendar year shall be computed by taking the average MAVCB portion of room taxes collected for the 12 month period ending October 31st of the preceding year. The December 1st payment of each year shall be adjusted so that the total payments received by the MAVCB from January 1st through December 1st of each year equal its portion of room taxes collected for November of the preceding calendar year through October preceding the December 1st payment.

2.

Funding of MAVCB by TWO RIVERS. In order to fund the obligations of the MAVCB, TWO RIVERS agrees to contribute ~~46.25~~**52.19** per cent of its first 6% of room taxes collected pursuant to Sec. 6-11-1 of the TWO RIVERS Municipal Code and Section 66.0615 Wisconsin Statutes, to support MAVCB operations, and 70% of the next 2% of room tax collected. ~~All lodging establishments in TWO RIVERS shall enjoy all benefits of membership in the MAVCB, and shall receive full membership benefits from the MAVCB.~~

3.

Effective the date of this AGREEMENT, TWO RIVERS shall, on a monthly basis, forward payment of ~~46.25~~**52.19** percent of room tax revenues collected to the MAVCB within 30 consecutive calendar days following the due date for the collection of such taxes.

Lodging Establishment Memberships.

Comment [KM1]: MAVCB asked that we confirm this with Finance. The last paragraph was struck to be consistent with current practice.

Comment [KM2]: Requested by MAVCB Board, consistent with current practice

4. All lodging establishments located in the MUNICIPALITIES that are licensed, inspected, and collect room tax shall be afforded full membership in the MAVCB without a membership fee. This section is not intended to apply to short term property rentals such as airBNB, VRBO, or other short term rentals, such as the PGA tour and Packer game weekends.

Comment [KM3]: Requested by MAVCB to avoid inclusion of airBNB/VRBO properties

Comment [KM4]: See comment above.

~~7.5.~~ **Term.** This AGREEMENT shall take effect January 1, 2017~~2~~, and shall continue through December 31, 2021~~46~~. The PARTIES expressly acknowledge that this AGREEMENT shall be irrevocable, shall remain in full force and effect, and shall not be terminated on or before December 31, 2021~~46~~ unless terminated prior to that date by the mutual consent of the COUNCILS, and the MAVCB BOARD. Provided, however, that any of the PARTIES may terminate the Agreement for calendar years 2020~~45~~ and/or 2021~~46~~ by a three-quarters majority vote of the membership of its governing body (whether one of the COUNCILS or the MAVCB Board), and provided further that notice of such action must be delivered to the other PARTIES not later than June 1 prior to the year such termination is to become effective.

~~8.6.~~ **Renewal of AGREEMENT.** The PARTIES agree that the funding commitment to the MAVCB as detailed in ARTICLE I, Sections 2 and 3 of this AGREEMENT expires at midnight on December 31, 2021~~46~~. This AGREEMENT shall automatically renew for successive three (3) year terms and on the same terms and conditions contained in this AGREEMENT, unless said renewal terms and conditions are amended or modified, and approved by the COUNCILS and the MAVCB BOARD. Notice of intent by a non-renewing PARTY to not renew this AGREEMENT shall require the delivery of such notice by the non-renewing PARTY to all other PARTIES no later than June 1, 2021~~46~~ for the initial term of this AGREEMENT, and June 1st of the final year of each subsequent renewal term.

~~9.~~ **Data Processing and IT Expenses.** MANITOWOC will pay for the administrative costs of data

~~10.7.~~ **Processing for the MAVCB, but the** The MAVCB shall be responsible for the payment of outside services, including information technology services, ~~such as~~ preparation of tax returns and any expenses incurred by auditors for the audit of MAVCB records. The MAVCB shall have sole control over the selection of a financial institution or institutions and other control of its own accounts.

~~11.8.~~ **Occupancy.** The MAVCB occupancy of the facility at 4221 Calumet Avenue is pursuant to the terms and conditions of the LEASE, as may be amended from time to time by action of MANITOWOC and the MAVCB.

12.9. Services Provided. The MAVCB shall utilize the revenues which it receives from MANITOWOC, TWO RIVERS and from any other sources, to deliver tourism and marketing services as determined by the MAVCB and its BOARD which are designed to enhance the tourism industry in the greater Manitowoc area, based on policies and procedures as determined by the MAVCB and its BOARD. Examples of such services shall include, but not be limited to ~~participation with an 800 information telephone number,~~ tourism related services such as operation of the VIC, website development and management, database management, travel planners, print media, fulfillment services, public relations, niche marketing, conventions, group tours and other services typically performed by similar organizations.

13.10. Organization. On and after the effective date of this AGREEMENT, the MAVCB shall provide the COUNCILS with copies of any amendments or modifications to its corporate or organizational documents (By-Laws, Articles of Incorporation, and Corporate Borrowing Resolutions) that are adopted by the MAVCB BOARD, within 30 consecutive calendar days of adoption by the BOARD. Prior to execution of this agreement, the MAVCB shall provide the COUNCILS with a copy of the bylaws showing that the governing structure as required by th-is SA has been adopted.

14.11. -Composition of the BOARD; By-Laws. The MAVCB shall be governed by an ~~eleven (11)~~13 member BOARD, and shall conduct its day-to-day activities in accordance with its approved By-Laws and any statutes, laws and regulations governing the operation of a Wisconsin Nonstock Corporation under Wis. Stats. Chapter 181 of Wis. Stat. as amended or renumbered from time to times. The MAVCB and its BOARD are expressly and solely responsible for all hiring and contractual obligations of the MAVCB.

The BOARD shall be comprised of the following directors:

- a. One ~~(1)~~ director representing the MANITOWOC Common Council, which shall be appointed by the Mayor and confirmed by the MANITOWOC Common Council;
- b. One ~~(1)~~ director representing the TWO RIVERS City Council, which shall be elected by the TWO RIVERS City Council;
- c. ~~Three~~ Four ~~(3)~~ directors representing tourism-related businesses or organizations in MANITOWOC, which shall be nominated and elected by the MAVCB BOARD;
- d. ~~Three~~ Two ~~(3)~~ directors representing tourism-related businesses or organizations in TWO RIVERS, which shall be nominated and elected by the MAVCB BOARD;

- e. One (1) director representing the lodging establishment in MANITOWOC which has generated the largest amount of room tax revenue in MANITOWOC in the preceding calendar year;
- f. One (1) director representing ~~the a~~ lodging establishment in MANITOWOC which has generated ~~the second largest amount of~~ room tax revenue in MANITOWOC in the preceding calendar year; and
- g. One (1) director representing the lodging establishment in TWO RIVERS which has generated the largest amount of room tax revenue in TWO RIVERS the preceding calendar year;
- h. One citizen director from MANITOWOC, who shall be appointed by the Mayor and confirmed by the Manitowoc Common Council.
- i. One citizen director from TWO RIVERS, who shall be elected by the Two Rivers City Council.

The MAVCB shall change their bylaws to:

- a. Establish criteria for the election of the tourism-related businesses and organizations
- b. Clarify that the Executive Committee of the MAVCB does not have power to make decisions without a majority vote of the Board
- c. Require all meetings to be noticed to be in compliance with Wis. Stats. Ch. 19, as amended from time to time.
- d. Require all agendas be posted on the MAVCB website.
- e. Reflect that the Mayor of Manitowoc and the City Manager of Two Rivers are non-voting, ex officio members of the Board, who shall participate in performance reviews of the Executive Director
- a.f. Rename the President's position as Executive Director

Comment [KM5]: Changed to a majority vote from a full vote per the MAVCB's request.

15. The By Laws of the MAVCB shall be amended to:

- ~~a. Add the Mayor of MANITOWOC and the City Manager of TWO RIVERS as non-voting, ex officio members of the MAVCB Board;~~
- ~~b. Add other non voting, ex officio members. Said By Laws may not, however, be amended to modify the voting membership as described herein, without the express written agreement of MANITOWOC and TWO RIVERS;~~
- ~~c. Identify the functions of the MAVCB Executive Committee, which shall consist of the MAVCB Board Chairman, Vice Chairman, Treasurer, Secretary, Immediate Past Chairman, and the representatives of the MANITOWOC Common Council and TWO RIVERS City Council;~~
- ~~d. Provide that representatives of the MANITOWOC Common Council and TWO RIVERS City Council shall serve as voting members of all committees of the MAVCB Board at the discretion of those representatives.~~
- ~~e. Require that notice of all meetings of the MAVCB Board and its committees be given pursuant to the requirements of the Wisconsin Open Meetings Law; that all such meetings be held in open session, except to the extent that said Open Meetings Law~~

~~allows certain matters to be considered in closed executive session; and that copies of the agendas for such meetings be provided at least 48 hours in advance to the authorized agents of the two cities, as well as to the directors of the MAVCB and to the Herald Times Reporter;~~

~~f. Require that all records of the MAVCB be maintained and made available to the public, consistent with the requirements of Wisconsin's Public Records Law.~~

~~The MAVCB BOARD shall be fully responsible for amending or modifying its By-Laws and other corporate organizational documents as necessary to implement the provisions of this AGREEMENT, and shall endeavor to accomplish this task by December 31, 2011.~~

16.12. Staff. The MAVCB shall hire or contract for sufficient staff and volunteers to carry out its functions. The MAVCB shall utilize its in-house personnel to provide staff training to a visitor information center in Two Rivers as designated by TWO RIVERS, to the extent the MAVCB deems practicable. Examples of such training may include familiarization ("FAM") tours to provide better knowledge of tourism products in both MANITOWOC and TWO RIVERS, as well as other services approved by the MAVCB BOARD. Said training shall exclude any financial assistance contributed from the MAVCB annual operating budget to hire paid staff. The MAVCB shall not be responsible for staffing a Two Rivers visitor information center.

17.13. Reporting. The MAVCB shall present at least two (2) reports in each calendar year of this AGREEMENT to the COUNCILS – one (1) report shall be presented on or before May 31st and a second report shall be presented on or before December 31st of each calendar year. The report to be issued and presented by May 31st shall ~~(i)~~ summarize and highlight the actions and activities of the MAVCB during the previous calendar year; and ~~(ii)~~ detail the work program for the current calendar year. The report to be issued and presented by December 31st shall include a report on current actions and activities of the MAVCB, the approved operating budget and proposed work program for the succeeding calendar year. The MAVCB shall provide its annual audited financial statements to the COUNCILS within 30 consecutive calendar days from the date the audit is approved by the MAVCB BOARD. For presentation of any report as described herein, the PARTIES may elect to address the reporting requirement by requesting a joint meeting of the COUNCILS.

18.14. Insurance.—MANITOWOC shall provide liability insurance coverage for the MAVCB through its public entity liability insurance policy with the Cities and Village Mutual Insurance Company (hereinafter referred to as "CVMIC"), as long as CVMIC agrees that the MAVCB falls within the definition of an "Insured". MANITOWOC's obligation with respect to liability insurance shall be limited to

those items of coverage included within the policy. The PARTIES shall split the costs of the liability insurance premium for the MAVCB equally. As part of its obligation, MANITOWOC shall assume responsibility for covered losses which occur within MANITOWOC's applicable self-insured retention under the terms of the liability policy with CVMIC.

19.15. Property Insurance. Nothing herein shall obligate either MANITOWOC or the MAVCB to provide property insurance to the other. The VIC and its contents shall be insured through MANITOWOC's property insurance carrier. MAVCB shall be responsible for the payment of any applicable deductible. The MAVCB shall be solely responsible to purchase and continually maintain in effect during the term of this AGREEMENT, insurance against such risks, both generally and specifically with respect to the location and operation of the MAVCB, and shall be solely responsible for securing ~~liability,~~ workers compensation and unemployment insurance, and any other coverages it deems necessary in the conduct of its business. The PARTIES shall split the premium costs of insuring the MAVCB property equally.

16. Services to/from MANITOWOC AND TWO RIVERS. Other than room tax collections, the MAVCB agrees that there shall be no charge or fees imposed on MANITOWOC or TWO RIVERS for any MAVCB services rendered during the term of this AGREEMENT, unless such charges or fees are agreed to outside the scope of this AGREEMENT. The MUNICIPALITIES agree to provide limited assistance with legal and human resources issues.

20.17. Cooperation. While the general purpose of the MAVCB is to promote tourism development activities in the greater MANITOWOC area, the MAVCB is specifically authorized to enter into cooperative arrangements and contracts with persons or organizations which further tourism development.

21.18. Limitation of Authority. The MAVCB agrees that it shall not, without the prior written consent of the MANITOWOC Common Council and TWO RIVERS City Council:

- a. Sell, transfer, hypothecate, liquidate, pledge or otherwise encumber the assets of the MAVCB, provided however, that nothing herein shall prohibit the MAVCB from selling or disposing of assets valued at less than \$2,500 in the ordinary course of business;
- b. Acquire an ownership interest in any real estate;
- c. Acquire, consolidate or merge with or into any other organization or business entity; or

- d. Directly sponsor or operate any type of festival, celebration, business gathering or other event open to the general public at which more than 100 persons are likely to attend.

ARTICLE II - DEFAULT AND TERMINATION OF AGREEMENT

1. — **Default.** Upon execution of this AGREEMENT by the PARTIES and in the event any PARTY shall default in the performance of any of its obligations under the terms of this AGREEMENT, any non-defaulting PARTY may forward written notice to the defaulting PARTY outlining such default. The defaulting PARTY shall cure such default within 30 consecutive calendar days after the receipt of such notice pursuant to ARTICLE III, Section 3., except that the cure period shall be extended to a reasonable time to cure any default that cannot reasonably be cured within the 30 day period, provided that the defaulting PARTY has commenced to cure within the 30 day period and diligently pursues a cure at all times thereafter until the default is cured. If the defaulting PARTY shall fail or refuse to cure such default within the applicable cure period, this AGREEMENT shall automatically terminate effective midnight the last day of the cure period. The defaulting PARTY shall be responsible for the payment to the non-defaulting PARTY of any outstanding fees, charges or expenses that were incurred by the non-defaulting PARTY on behalf of the defaulting PARTY, regardless of whether paid or unpaid by the non-defaulting PARTY, while the defaulting PARTY was a member in good standing under this AGREEMENT. After the cure period has lapsed, any outstanding payments due, but unpaid from the defaulting PARTY to the non-defaulting PARTY, shall bear simple interest from the date of the initial default until paid in full, at a rate of twelve (12) per cent per annum computed on a basis of a 365 day year.

The non-defaulting PARTY may attempt to cure the default and shall be reimbursed by the defaulting PARTY for all reasonable, actual costs incurred in so doing, and the non-defaulting PARTY may take any action allowed by law or equity to enforce its rights, including, without limitation, obtaining injunctive relief, which the PARTIES recognize is an appropriate remedy since monetary damages may not be sufficient. In the event of any litigation between the defaulting and non-defaulting PARTIES regarding this AGREEMENT, the prevailing PARTY shall be entitled to recover reasonable attorney's fees from the non-prevailing PARTY.

2. **Termination of MAVCB and Disposition of Assets.** In the event the MAVCB ceases its operation for reasons including, but not limited to, the operation is no longer feasible, or the filing of a petition to take advantage of any insolvency law or a petition for reorganization, an assignment for the benefit of creditors, or for any other reason, then, prior to or concurrent with the date the MAVCB is no longer operational, all cash assets of the MAVCB shall be transferred to an account designated by MANITOWOC.

To the fullest extent possible, marketing partners in good standing shall be reimbursed for payments made to the MAVCB for yet-to-be-delivered services for which no services were rendered. After any reimbursements are issued to the marketing partners, all assets, ~~both tangible~~ tangible and intangible, real or personal, shall become the property of MANITOWOC.

ARTICLE III - OTHER PROVISIONS

1. **Approvals in Writing.** Whenever under this AGREEMENT approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer or agent of each of the PARTIES, and delivered to all other PARTIES to this AGREEMENT at the address specified in ARTICLE III, Section 3. Wherever any approval is required by the terms of this AGREEMENT, and request or application for such approval is duly made, such approval shall not be unreasonably withheld.

2. **Inspection of Records.** Pursuant to the LEASE and any amendments thereto, MANITOWOC retains the express right to inspect and copy any and all records, contracts, financial statements, ledgers or written or electronic documents which relate to and are generated by the responsibilities and obligations of the MAVCB under the terms of said LEASE. Pursuant to this AGREEMENT, MANITOWOC and TWO RIVERS reserve the right to inspect and copy any and all records, contracts, financial statements, ledgers or written or electronic documents which relate to and are generated by the responsibilities and obligations of the MAVCB under the terms of this AGREEMENT. This right of inspection shall apply to not only those records and documents that are within the physical control and custody of the MAVCB but also any records, statements and documents that may be within the custody and control of third parties, or generated by third parties in the performance of the obligations and responsibilities hereunder.

3. **Notices and Demands.** A notice, demand or other communication under this AGREEMENT by any PARTY to any other PARTY shall be sufficiently given or delivered and deemed delivered as of the date of such notice is delivered to the PARTY intended, if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and addressed to or delivered personally to:

——MANITOWOC, ATTN: ~~City Clerk~~, 900 Quay Street,
Manitowoc WI 54220-4543;

——TWO RIVERS, ATTN: City Manager, -1717 E. Park Street,
P.O. Box 87, Two Rivers WI 54241-0087; and

M——
C.——MAVCB, ATTN: ~~President~~Executive Director, 4221 Calumet
Avenue, P.O. Box 966, Manitowoc WI 54221-0966.

Notice or demand given or made in any other manner 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 the PARTIES by notice given in the manner provided above.

The PARTIES further agree that electronically reproduced signatures such as by facsimile transmission are valid for the original execution of this AGREEMENT, as well as any amendment or modification of this AGREEMENT, and that electronic transmission/facsimile is an authorized form of notice as that term is used in this AGREEMENT.

4. **No Liability.** Neither MANITOWOC nor TWO RIVERS shall have any obligation or liability to the MAVCB or any other party retained by the MAVCB in the performance of the MAVCB obligations and responsibilities under the terms and conditions of this AGREEMENT. The MAVCB specifically agrees that no representations, statements, assurances, or guarantees will be made by the MAVCB to any third party, or by any third party, which is contrary to this provision.

5. **Severability.** If any provisions of this AGREEMENT is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this AGREEMENT shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.

6. **Amendments.** This AGREEMENT is the entire agreement between the PARTIES with respect to the subject matter hereof, and can only be amended or modified in writing executed by MANITOWOC, TWO RIVERS and the MAVCB. Before any amendment or modification to this AGREEMENT shall become effective, it shall first require the approval by the COUNCILS, and the MAVCB BOARD.

7. **Successors and Assigns.** The terms of this AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto, as well as their respective transferees, successors and assigns. Any transfer of any party's interest in this AGREEMENT shall not release the transferor from its obligations hereunder.

8. **Time of Essence.** Time is of the essence of this AGREEMENT and of every term, condition, or covenant to be performed by the PARTIES.

9. **Assignment.** No party to this AGREEMENT shall assign this AGREEMENT or any part of it, or its interest therein, without the prior written consent of the COUNCILS, and the MAVCB BOARD.

10. **Applicable Law.** This AGREEMENT shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this AGREEMENT, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All PARTIES to this AGREEMENT hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.

11. **Headings.** The section titles have been inserted in this AGREEMENT primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.

12. **Pronouns.** Pronouns in this AGREEMENT (including, but not limited to, those referring to MANITOWOC, TWO RIVERS and the MAVCB), importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the PARTIES hereto, or the PARTIES herein referred to, may require. Pronouns, verbs, and/or other words in this AGREEMENT importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the PARTIES hereto, or the PARTIES or objects herein referred to, may require.

13. **Integration and Conflicts.** If any provision of this AGREEMENT conflicts with any provision of agreements between the MAVCB and any other third party, the provisions of this AGREEMENT shall control.

14. **Relationship of PARTIES.** Nothing in this AGREEMENT nor any act of any of the PARTIES shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the PARTIES hereto.

15. **Construction.** MANITOWOC, TWO RIVERS and the MAVCB have contributed to the drafting of this AGREEMENT. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this AGREEMENT or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any PARTY hereunder by virtue of that PARTY having drafted this AGREEMENT or any portion thereof.

16. **Representation and Warranties.** The PARTIES represent and warrant that at the time and date of execution of this AGREEMENT, the undersigned have the power, authority and legal right to execute and enter into this AGREEMENT, and to execute, enter into, and deliver all documents required to complete requirements contained in this AGREEMENT.

17. **Administrative Authority.** The following persons are designated as agents for MANITOWOC, TWO RIVERS and the MAVCB, and are expressly authorized to implement on behalf of their respective cities and organizations, all terms and conditions of this AGREEMENT, unless this AGREEMENT requires the action of a different PARTY:

- A. For MANITOWOC, its ~~Planner or said Planner's~~ Mayor or designee; and
- B. For TWO RIVERS, its City Manager or City Manager's designee; and
- C. For MAVCB, its ~~President~~ Executive Director or ~~President's~~ designee.

The above referenced agents may be changed at any time by the PARTIES by notice given in the manner provided in ARTICLE III, Section 3.

18. **Counterparts.** This AGREEMENT may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one-~~(1)~~ instrument.

19. **Date.** This AGREEMENT shall be dated, and effective and binding as of the date of the last execution.

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Date

By: _____
Jennifer Hudon, City Clerk

Date

CITY OF TWO RIVERS

By: _____
Gregory E. Buckley, City Manager

Date

By: _____

Kim Graves, City Clerk & Finance Date
Director

MANITOWOC AREA VISITOR AND CONVENTION BUREAU, INC.

By: _____
Jason P. Ring, ~~President~~ Executive Director Date

By: _____
Pat Reilly, Chairperson Date

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