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**MANITOWOC YOUTH BASEBALL SOFTBALL LTD. FUND RAISING AGREEMENT**

This Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Manitowoc, ("City"), a Municipal Corporation located at 900 Quay Street in the City of Manitowoc, Manitowoc County, Wisconsin, 54220, and the Manitowoc Youth Baseball Softball Ltd. ("MYBA"), a non-profit, non-stock corporation with its principal office located at 2002 Marshall Street in the City of Manitowoc, Manitowoc County, Wisconsin, 54220. The City and MYBA agree as follows:

I. **Purpose.** The purpose of this Agreement is to provide an agreement for partial funding of a multiple-use, multi-facility baseball and softball complex in the City of Manitowoc at Citizen Park and Dewey Street Park.

II. **Fundraising**

- a. MYBA agrees to undertake a campaign to raise funds for the proposed baseball and softball complex. Fund raising shall be through individual, civic group foundations, business or corporations. MYBA shall endeavor to raise \$1,800,000 to provide solely for the costs of design, construction, completion and maintenance of the complex.
- b. The project shall be funded through money raised by the MYBA and a contingent Parkland Dedication commitment from the City of Manitowoc. The City shall donate \$50,000 from the Parkland Dedication Fund to MYBA with the understanding that if MYBA fails to raise \$1,800,000 by January 1, 2017, they may ask the City for one six-month extension to be granted at the discretion of the Common Council. If that extension is granted and fundraising is not complete by July 1, 2017, the \$50,000 commitment from the City shall be returned to the City no later than July 30, 2017.
- c. Construction of the facility shall not commence until 90% of the funds for the agreed upon project have been acquired by MYBA and the City and MYBA and City have entered into a successor agreement relating to the design, construction, completion, and maintenance of the complex.
- d. MYBA shall not directly or indirectly create or permit to be created or to remain, any liens or encumbrances on the project, and will immediately discharge any such lien, encumbrance or charge on or pledge of the project not consented to by the City in writing or any part thereof.

III. **Inspection of Records.** The City shall have the right to inspect any and all records, contracts, financial statements, ledgers or written documents which relate to or are generated by the responsibility and obligations of MYBA under the terms of this Agreement and which are related to verification or documentation of MYBA's investments in the project. This right of inspection shall apply not only to those records and documents within the physical control and custody of MYBA which shall include copies of any contracts, agreements or other documents that are necessary for the City to verify or document MYBA's progress or investment, but shall apply and include, but not necessarily be limited to, any lender, pledge or grant, contractor and all subcontractors, documents and records.

IV. **Insurance.** MYBA shall maintain the appropriate liability insurance. Insurance shall be written on an occurrence basis with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained for any such damages sustained by two or more persons in any one accident. Insurance shall be written on an occurrence basis with limit of liability of not less than \$250,000 for all property damage sustained by any one

person in any one accident; and a limit of liability of not less than \$500,000 for any such damage sustained by two or more persons in any one accident. All Certificates of Insurance shall name the City as an additional insured.

**V. Indemnification.**

- a. MYBA shall indemnify and hold harmless the City, its officers, agents, employees and assigns from and against any and all liability, claims, costs, damages, expenses, demands, lawsuits or disputes including all reasonable attorney fees and all other costs and expenses of litigation arising out of fundraising for the facility or MYBA's negligent performance or omission of its duties hereunder.
- b. The City shall have no obligation or liability to the lender, pledge or grantee or any other party retained, or any volunteer, for the benefit of MYBA in the performance of MYBA's obligations and responsibilities under the terms and conditions of this Agreement.

**VI. Notice.**

- a. All notice required or otherwise given hereunder shall be in writing and delivered personally or by registered or certified by United States mail. All delivery of notice shall require proof of acknowledgment of receipt of said notice and addressed to MYBA or City, as the case may be, at their respective addresses set forth below:

MYBA:  
Manitowoc Youth Baseball Softball Ltd.  
c/o Randy Heinzen, President/Treasurer  
2002 Marshall Street  
Manitowoc, WI 54220

City:  
City of Manitowoc  
c/o City Clerk/Deputy Treasurer  
900 Quay Street  
Manitowoc, WI 54220

Either party may change the address to which notice is to be given by notifying the other party in writing of such change.

**VII. Applicable Law.**

- a. 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 laws of the State of Wisconsin, except as otherwise provided herein. 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.
- b. MYBA and the City, including its officers, agents, employees and assigns shall at all times observe and comply with all federal, state and local laws, regulations, ordinances and park rules.

**VIII. Relationship of Parties.** Nothing in this Agreement nor any act of MYBA or City shall be deemed or construed to create any relationship of third party beneficiary, or principal or agent, of limited or general partners, or joint venture or of any association whatsoever between the parties hereto, nor shall such agreement create an employee/employer relationship between the City and MYBA or any of its volunteers, contractors, agents or assignees.

