

MAINTENANCE AGREEMENT BETWEEN

CITY OF MANITOWOC

AND

MANITOWOC YOUTH BASEBALL SOFTBALL LTD.

FOR USE OF SOFTBALL AND BASEBALL FIELDS

THIS MAINTENANCE AGREEMENT is made and entered into this ____ day of November, 2018, by and between the City of Manitowoc, Wisconsin, a municipal corporation, (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220, and the **MANITOWOC YOUTH BASEBALL SOFTBALL LTD.**, a Wisconsin corporation, (hereinafter "MYBA"), with its principal mailing address of 2002 Marshall Street, Manitowoc, WI 54220.

WITNESSETH,

WHEREAS, the City is the owner of the premises known as Dewey Street Park and Citizen Park softball and baseball fields located in the City of Manitowoc, Manitowoc County, Wisconsin; and

WHEREAS, MYBA has constructed a multiple-use, multiple-facility, baseball/softball complex in the City at Dewey Street Park and Citizen Park; and

WHEREAS, MYBA runs a youth softball and baseball program for the benefit of all of the community; and

WHEREAS, the City and MYBA wish to continue their long-standing relationship and establish contractual responsibilities for the use of the newly constructed fields.

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

1. **TRANSFER OF OWNERSHIP.** MYBA shall transfer ownership of the complex to the City upon execution of this contract MYBA will provide as-built plans and specifications to the City by March 1st. MYBA shall also transfer all warranties for purchased items to the City.
2. **MAINTENANCE.** The City is responsible for all maintenance the newly constructed field at Dewey Street Park. The City and MYBA will be sharing maintenance and operational responsibilities on the fields and diamonds at Citizen Park as follows:

A. City Responsibilities.

- i. All maintenance outside the complex to include weed control in immediate area**
- ii. Daily garbage pickup of garbage from agreed upon location**
- iii. Weekly restroom cleaning and stocking, April 1st – September 30th**
- iv. Providing all field maintenance materials, including sand, clay, diamond mix, diamond dry, chalk, paint, fertilizer**
- v. Layout and painting of outfield lines one time in spring at the start of the season**
- vi. Fence maintenance and maintenance of structure of batting cages**
- vii. Monthly maintenance of HVAC system**
- viii. Storage of nets and other equipment off season in maintenance garage**
- ix. Insurance of facilities**
- x. Lighting repairs**
- xi. Building repairs to include existing infrastructure, storm damage, vandalism, and normal maintenance**
- xii. Security cameras**
- xiii. Utility expenses**

B. MYBA Responsibilities.

- i. Providing and replacing bases and nets**
- ii. Field maintenance inside the fences, including long-term infield restoration**
- iii. All diamond maintenance inside the fences including**
 - 1. Lawn cutting**
 - 2. Chalking**
 - 3. Painting after first spring application**

4. Dragging fields

5. Watering

- iv. Annual maintenance of irrigation system, including winterization and replacement of any failing parts
- v. Operations and contracting of the concession stand during MYBA events
- vi. Seasonal net maintenance and replacement, to include backstop padding
- vii. Fertilizing diamonds and reporting usage to the City for DNR compliance
- viii. Maintenance and repair of scoreboards
- ix. Maintenance and repair of bleachers

3. **FIELD PRIORITY.** The parties agree to follow the Scheduling and Priority Policy (see separate policy), as amended from time to time, between the City, MYBA, and the Manitowoc Public School District. MYBA will have access to the City's scheduling software at no expense.
4. **USE OF CONCESSION STAND.** MYBA may use the concession stand at no cost during their scheduled games. The City retains ownership of the stand and may use it or lease it whenever MYBA does not have a game scheduled. The City or lessees may sell MYBA product or their own product. MYBA product can remain in the stand.
5. **MYBA TO PROVIDE LONG TERM MAINTENANCE FUND.** MYBA shall raise \$45,000 for a long-term maintenance fund, to be kept in a segregated account by the City, by December 31, 2022. If committed donors do not meet their obligations, MYBA may request one extension of the City. The Public Infrastructure Committee shall approve all expenditures out of the fund in excess of \$500 and MYBA shall be notified via email when an item is placed on the agenda.
6. **TERM.** This agreement shall last until December 31, 2021. After that, it will be automatically renewed for five year terms unless the City or MYBA gives the other party notice by August 1 of the year prior to which the contract will renew that they do not intend to renew the agreement. Notice shall be given to the addresses listed at the top of this agreement.

7. INDEMNIFICATION AND INSURANCE

- A. **Indemnification.** Except to the extent of City's reckless or willful misconduct, MYBA agrees to indemnify, hold harmless, and defend the City, its employees, officials, officers, and agents against all claims, demands, liabilities, losses, damages and expense of any kind or nature, on account of any injury, damage to, or death of any person arising from MYBA use of the premises, except to the extent of any insurance proceeds received from MYBA's insurer(s) by the City on account of any such item. Such indemnification shall not apply to acts of willful misconduct of the City. MYBA shall indemnify for property damage where not otherwise addressed in this agreement.
- B. **Insurance.** MYBA agrees that it shall provide to the City at its own cost and expense insurance as specified below with a company or companies authorized to do business in the State of Wisconsin. Each policy and certificate shall require a thirty calendar day advance written notice of cancellation, non-renewal or material change in the policy. All coverage required shall apply as primary with the City, its employees and agents named as additional insureds as their interests may appear. A Certificate of Insurance for all required insurance shall be filed with the City at or before MYBA signs this Agreement.
1. **General Liability.** Comprehensive general liability insurance including contractual liability, personal injury liability, products and completed operations with minimum limits of \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage. This insurance shall be required for the full term of the license and any renewal periods.
 2. **Statutory Insurance.** MYBA shall carry all insurance as required by Wisconsin Statutes. This includes, but is not limited to, workers' compensation.

8. DEFAULT AND TERMINATION.

- A. In the event MYBA shall not complete required maintenance as outlined in Exhibit A to the satisfaction of the City Parks Supervisor, the City shall give notice to MYBA giving MYBA five business days to cure the maintenance issue. Should MYBA fail to comply, they shall be charged standard field rental fees pursuant to the City's schedule until the defect is cured.
- B. In the event The City shall not complete required maintenance or repairs as outlined in Exhibit A to the satisfaction of the MYBA, the MYBA shall give notice to the city giving the city five business days to cure the maintenance or

repair issue. Should the city fail to comply, MYBA will cause the maintenance or repairs to take place and will pass the costs on to the city.

- C. In the event of lapse of insurance policies or coverage as required by this Agreement the City may, without notice, declare this Agreement terminated. MYBA shall have no access rights to or use of the any fields until all insurance policies are in place.**
- D. City or MYBA may terminate this Agreement at any time by giving 30 days written notice to the other party, so long as the effective date of termination does not occur during the regular softball or baseball season.**
- E. City agrees that the facility shall be operated, by the City or a private organization, as a baseball and softball complex until 2045. This provision shall survive the expiration or termination of this maintenance agreement.**

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IN WITNESS WHEREOF, the City of Manitowoc has cause this instrument to be signed by its Mayor and City Clerk/Deputy Treasurer, having been duly authorized to do so, and the Manitowoc Youth Baseball Association has caused this instrument to be signed by its Representatives, having been duly authorized, to do so this _____ day of November, 2018.

CITY OF MANITOWOC, WISCONSIN

ATTEST:

By: _____
Justin M. Nickels, Mayor

Deborah A. Neuser, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of November, 2018, the above named Justin M. Nickels and Deborah Neuser, known to me to be the Mayor and City Clerk of the City of Manitowoc and acknowledge they executed the foregoing instrument.

Notary Public, Manitowoc County, WI
My commission (expires)(is) _____

MANITOWOC YOUTH BASEBALL SOFTBALL LTD.

By: _____
Randall Heinzen, President/Treasurer

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of November, 2018, the above named Randall Heinzen, known to me to be the President/Treasurer of the Manitowoc Youth Baseball Softball Ltd., and acknowledge he executed the foregoing instrument.

Notary Public, Manitowoc County, WI
My commission (expires)(is) _____