

**MANITOWOC FAMILY AQUATIC CENTER
SUPPORT AGREEMENT**

This Manitowoc Family Aquatic Center Support Agreement (the "Agreement") is made effective this ___ day of ____, 2015 (the "Effective Date") by and between the City of Manitowoc, a Municipal Corporation with principal offices at 900 Quay Street, Manitowoc, WI 54220 (the "City") and The Friends of the Manitowoc Family Aquatic Center ("Friends"), a non-profit, non-stock corporation with registered office located at 1 East Waldo Blvd, Suite 5, Manitowoc, WI 54220.

WHEREAS, the parties are parties to a prior Manitowoc Family Aquatic Center Fund Raising Agreement dated November 27, 2006, as amended, (the "Fund Raising Agreement");

WHEREAS, the Fund Raising Agreement was intended to govern the initial campaign to raise funds for the construction of the Manitowoc Family Aquatic Center located on City-owned park property at Citizen Park, 930 North 18th Street in Manitowoc, WI (the "Center" which, for purposes of this Agreement shall refer collectively to the original facility and all capital improvements as have been or are subsequently made, such as the miniature golf course and other features of the Center) and, through amendment, was intended to address certain possible special funding needs during the initial five (5) years of the operation of the Center;

WHEREAS, the Center has been constructed and operated successfully for its first five (5) years as contemplated by the Fund Raising Agreement; and

WHEREAS, the City and the Friends desire to establish a new agreement on terms as set forth herein to govern the relationship between the City and the Friends as related to the ongoing improvement of the Center;

NOW THEREFORE, the City and the Friends, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. The Fund Raising Agreement. The parties acknowledge and agree that the Fund Raising Agreement is hereby terminated and superseded in its entirety by this Agreement as of the Effective Date, with no further obligation or liability of either party to the other pursuant to the Fund Raising Agreement.

2. Operation of the Center. The parties acknowledge and agree that as between the parties the City shall have the sole responsibility and authority to operate the Center, including, without limitation, the authority to determine the services offered, hours of operation, staffing, and all other matters associated with the operation of the Center.

2.1 Opportunity for Input. Notwithstanding that, pursuant to Section 2, above, the City will have final authority and discretion regarding the operation of the Center, the City agrees to meet with representatives of the Friends at least once per calendar year, but as often as the parties may desire and agree, at a mutually acceptable time and place to be determined by the

parties for the purpose of allowing the Friends to suggest alterations or additions to the operation of the Center.

3. Capital Improvements. The parties acknowledge that a primary purpose of the Friends is to develop and maintain privately donated funds for the purpose of the ongoing improvement of the Center for the benefit of the residents of the City of Manitowoc and the users of the Center. In furtherance of this purpose, the Friends shall be entitled to present to the City, at any time, and its discretion, proposals for improvements to the Center to be funded, in full or in part, by funds maintained by the Friends. Such improvements may take the form of proposed capital improvements, improvements or additions to services or features, upgrades or replacements to equipment, or other improvements distinct from the routine maintenance and operation of the Center (the "Improvements").

3.1 Form. Proposals for Improvements shall be in writing, signed by the Friends, and include at least the following information: (a) a description of the Improvement; (b) a non-binding estimate of the cost to construct or perform the Improvement; (c) a non-binding estimate of the impact of the Improvement, if any, on ongoing operation of the Center; (d) any specifications or requirements for the Improvement that are material to the Friends' offer to grant funds; and (e) the amount of funds the Friends would agree to grant to the City to construct or perform the Improvement as specified. A proposal may include such additional information or documentation as the Friends deems appropriate, including, as applicable, bids, quotes, or estimates from contractors, engineering or other studies, or background materials regarding the nature or benefits of the Improvement. The City may request additional information related to any proposed Improvement, but it is understood that any additional collection or submission of information by the Friends shall be strictly voluntary.

3.2 Authority and Agreement. The City shall have final responsibility and authority to approve or deny any proposal for an Improvement brought by the Friends. Notwithstanding the foregoing, the Friends shall have the option, as described above, of performing a operational feasibility study acceptable to the City in connection with any proposed Improvement. In the event the Friends provides such a study demonstrating the feasibility of the Improvement, the City shall thereafter only refuse to approve the proposed Improvement if it provides a good faith basis for why the Improvement would create a material detriment to the City or the Center. In the event the City approves a proposal for an Improvement, such approval shall be in writing and constitutes agreement by the City to perform or construct the Improvement at least in a manner consistent with the description set forth in the Friends' proposal, including any specifications or requirements expressly set forth in the Friends' proposal. Such approval also constitutes agreement by the Friends to grant funds for the Improvement as set forth in the proposal. Any purported approval that modifies the terms of the proposal shall not be effective unless and until subsequently approved in writing by the Friends.

3.3 Ongoing Impact. As between the parties, the City shall have the sole responsibility and authority to evaluate the ongoing impact on the Center of any Improvement, and shall have the sole responsibility and authority to construct or perform any Improvement. The Friends shall have no responsibility regarding the construction or performance of any Improvement other than the granting of funds as set forth in Section 3.2.

4. Grants. Notwithstanding the provisions of Section 3, above, the City shall be entitled, at any time and in its sole discretion, to submit to the Friends requests for the grant of funds for any purpose associated with the Center.

4.1 Form. Each grant request from the City shall be in writing and shall include at least the following information: (a) the requested amount of funds to be granted; and (b) a description of the purpose and use to which the funds will be put if granted. A grant request may include such additional information or documentation as the City deems appropriate. The Friends may request that the City provide additional information related to any grant request, but it is understood that any additional collection or submission of information by the City shall be strictly voluntary.

4.2 Authority and Agreement. The Friends shall have the authority, in its sole discretion, to approve or deny and grant request from the City. In the event the Friends approves a grant request, such approval shall be in writing and constitutes agreement by the Friends to grant the funds request to the City. Such approval also constitutes agreement by the City to use the funds only for the purposes and use set forth in the grant request. Any purported approval of a grant request that imposes additional conditions, alters the amount of funds granted, or alters the purpose or use set forth in the grant request shall not be effective unless and until subsequently approved in writing by the City.

5. Term and Termination. This Agreement shall be effective as of the Effective Date and shall continue in force for a period of three (3) years unless earlier terminated as set forth herein. Thereafter, this Agreement shall automatically renew for additional one (1) year periods (all such periods, together with the initial three (3) year period collectively the "Term") unless either party notifies the other of its intent not to so renew at least sixty (60) days prior to the end of the then-current Term. This Agreement may be terminated by either party on one-hundred and twenty (120) days' notice to the other party. Any responsibilities, liabilities, and obligations of a party that arise under this Agreement prior to the termination of this Agreement shall survive such termination.

6. Notice. All notice required hereunder shall be in writing and delivered personally or by certified United States mail. All delivery of notice shall require proof of delivery. Notice shall be addressed to the City or Friends, respectively, at the following address:

If to the City:

City of Manitowoc
City Clerk / Deputy Treasurer
900 Quay Street
Manitowoc, WI 54220-4543

If to the Friends:

Friends of the Manitowoc Family Aquatic Center

Registered Agent
1 East Waldo Blvd, Suite 5
Manitowoc, WI 54220

7. Severability. If any paragraph, section, sentence, clause, or phrase of this Agreement is for any reason held to be invalid or unlawful by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of the other paragraphs, sections, sentences, clauses, or phrases of this Agreement or any other portion thereof, provided, however, that if the removal of the portion found invalid or unlawful would materially change the nature of the bargain between the parties as set forth in this Agreement, this Agreement shall be deemed void *ab initio*.

8. 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 laws of the State of Wisconsin, except for any applicable choice of law rules. All actions or proceedings relating directly or indirectly to this Agreement, whether sounding in contract or tort, shall be litigated only in the Wisconsin State Circuit Court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby consent to the personal jurisdiction of the Wisconsin State Circuit Court for Manitowoc County of each of them for such purposes.

9. Headings. The section and subsection headings have been inserted in this Agreement for convenience and do not define, limit or construe the contents of such sections or subsections. In the event of any conflict between any heading and any text of the Agreement, the text shall control.

10. Relationship of the Parties. The parties are independent contractors with respect to each other. Nothing in this Agreement nor any act of a party is intended or shall be deemed or construed to create any relationship of principal or agent, limited or general partner, joint venturer, or any other relationship or association whatsoever between the parties, or otherwise create an employee/employer relationship between the City and Friends or any of its volunteers, contractors, agents, board members, or assignees.

11. Assignment. Neither party may assign this Agreement, in whole or in part, or any obligation hereunder, without the prior written consent of the other party. Any purported assignment in violation of this section shall be null and void.

12. Modification. This Agreement contains and sets forth the entire agreement between the parties regarding the subject matter hereof and no statements, communications, or agreements, oral or written made prior to the signing of this Agreement shall vary or modify the written terms hereof. No amendment or modification of this Agreement or waiver of any of the provisions hereof shall be valid unless made in writing and signed by the parties.

13. Drafting and Construction. All parties have contributed to the drafting of this Agreement and have had the opportunity to consult with legal counsel. In the event of a controversy, dispute, or contest over the meaning, interpretation, validity, or enforcement of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn

whatsoever against any party by virtue of that party having drafted this Agreement or any portion hereof.

CITY OF MANITOWOC, WISCONSIN

By: _____
Justin M. Nickels, Mayor

ATTEST:

Jennifer Hudon, City Clerk

FRIENDS OF THE MANITOWOC FAMILY
AQUATIC CENTER

By: _____
Amy Fricke-Weigel, President

STATE OF WISCONSIN)
)
MANITOWOC COUNTY)

Personally came before me this ____ day of _____, 2015, the above-named Justin M. Nickels and Jennifer Hudon, known to me to be the Mayor and City Clerk of the City of Manitowoc and acknowledge they executed the foregoing instrument.

Printed: _____
Notary Public, Manitowoc County, WI
My commission expires _____