

**ARNOLD KLENTZ PARK
USE AGREEMENT**

This Use Agreement (“Agreement”) is made this day of _____, 2018 (the “Effective Date”), by and between the City of West Allis, a Wisconsin Municipal Corporation (hereinafter the “City”), and the School District of West Allis-West Milwaukee, et al., a unified school district organized and existing under Chapter 120, Subchapter II, of the Wisconsin Statutes (hereinafter the “District”).

RECITALS

A. The City is the owner of Arnold Klentz Park located at 2601 South 72nd Street, West Allis, Wisconsin (the “Park”).

B. Together with the common areas, the Park contains a baseball field and certain improvements related to the baseball field, including fencing, team benches and a spectator viewing stand (the “Baseball Field”).

C. The District desires to utilize the Baseball Field and the Park’s common areas for use by the West Allis Central Girls’ High School varsity softball team known as the Lady Bulldogs (hereinafter the “Team”) during the girls’ high school softball season, which commences on March 1 and ends on or about May 20 of each year (the “Season”) for practices and games, and the City desires to allow the District and the Team to use the Baseball Field and the Park’s common areas during the Season during the Term (defined below) for the Team’s practices and games.

D. The City and the District desire to enter into this Agreement to set forth their agreement with regard to the District’s and the Team’s use of the Baseball Field and the Park’s common areas.

NOW, THEREFORE, in consideration of the foregoing and the provisions, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The parties acknowledge and agree that the above recitals are true and correct and are incorporated into this Agreement by reference.

2. Consideration. The parties acknowledge and agree that the District’s compliance with the provisions, covenants and agreements contained in this Agreement applicable to it will require it to expend significant personnel and financial resources, and that the expenditure of such resources is good, valuable and adequate consideration for the City’s provisions, covenants and agreements contained herein.

3. Use. The City hereby agrees to provide the District and the Team exclusive use of the Baseball Field, together with use in common with others of the common areas located in and about the Park during the Team’s regularly scheduled practices and games, and for one (1) hour before and one (1) hour after each such practice and game during each Season during the

Term. The District will also have access to and use of the Baseball Field, together with use in common with others of the common areas located in and about the Park, in order to make the improvements described in Section 5 below.

4. Term. The Term of this Agreement shall commence on the Effective Date and shall continue through the end of the Season occurring during the fourth (4th) full calendar year following the Effective Date (the “Initial Term”) unless earlier terminated or extended as provided for herein. This Agreement shall automatically renew for successive one (1) year periods (each a “Renewal Term”) unless one party gives the other party written notice that it is not renewing the Agreement no later than August 1 of the current term.

As used herein, “Term” means the Initial Term and any Renewal Term(s).

5. Baseball Field Improvements. Immediately following the Effective Date and the Districts providing the City with the certificate of insurance provided for in Section 8.a. below, the City will allow the District exclusive access to and use of the Baseball Field to make improvements to the Baseball Field which include the installation of chain-link fence and benches (to be provided by the City), and dugouts along the west baseball diamond on the Baseball Field. Prior to making such improvements the District will (a) notify Diggers Hotline at least three (3) days prior to the start of any construction for purposes of having underground utilities and other underground installations designated and marked, (b) receive approval of the District’s plans applicable to installation of the chain-link fence, benches and Team dugouts and (c) apply for and obtain permits which may be required for installation of the improvements aforementioned. The exclusivity provided for in this Section 5 shall terminate the earlier of (aa) the date the District finishes making improvements to the Baseball Field, or (bb) December 20, 2018.

6. Maintenance and Repair.

a. District’s Responsibilities. The District shall, during each Season during the Term:

(i) Provide the City with restroom cleaning assistance once a week during weeks it uses the Baseball Field for practices during the Season. The District will also assist in restroom cleaning after each Team game held on the baseball field.

(ii) Provide a portable outfield fence on the Baseball Field during the Season as required by the Wisconsin Independent Athletic Association (the “WIAA”). Prior to installation of the portable outfield fence, the District will (a) to the extent legally necessary, receive approval by the City’s Director of Public Works of such fence, and (b) be issued any permits which may be required for the placement of such portable outfield fence on the Baseball Field.

(iii) Subject to Section b.(iii) below, be responsible for preparation and maintenance of the Baseball Field for the Team’s practices and games.

(iv) Remove trash and recyclables on and adjacent to the Baseball Field after each Team practice and game, and place any such trash and recyclables in appropriate receptacles provided by the City.

(v) Use its best efforts to prevent vehicular parking on any sodded area within the Park.

(vi) Be responsible for restoration of any damage to the Baseball Field that results from the District's making of improvements to the Baseball Field including but not limited to restoration of damaged sod resulting from parked vehicles or vehicular traffic.

(vii) Hang a temporary banner during each Season identifying the Baseball Field as the home of the "Lady Bulldogs Girls' Varsity Softball Team."

(viii) Use its best efforts to prevent the use of the Baseball Field by the general public during periods of time that the District and/or the Team are utilizing the Baseball Field.

b. City's Responsibilities. The City shall, during each Season during the Term:

(i) Make the common area restrooms at the Park available for use by the District and the Team in common with others from mid-April through the end of each Season during the Term.

(ii) Provide restroom cleaning services outside of the times established in D.6.a.(i).

(iii) Be responsible for maintenance and repair of the Baseball Field other than maintenance and repair of the Baseball Field as provided in Section a.(iii) above.

(iv) Remove trash and recyclables on and about the Baseball Field and the Park prior to each Team practice and game and deposit any such trash and recyclables into receptacles the City has placed at the Park.

(v) Enforce no parking on any sodded area that comprises the Baseball Field or the Park.

(vi) Be responsible for restoration of any sod or other damage to the Baseball Field that results from vehicle traffic, use and/or construction not caused by or resulting from the District's improvements to or the Team's use of the Baseball Field.

(vii) Assess no fees and require no permit for the District to use the Park and/or the Baseball Field and the common areas of the Park during each Season during the Term.

(viii) Maintain its current grass cutting schedule which is once per week.

(ix) Ensure that the District and the Team have the sole and exclusive use of the Baseball Field during the Team's regularly scheduled practices and games, and for one (1) hour before and one (1) hour after each such practice and game during each Season during the Term.

7. Scheduling. The District shall have exclusive control over the scheduling of all Team practices, games and activities ancillary thereto.

8. Insurance.

a. District's Liability Insurance. The District shall maintain, or cause to be maintained, from and after the Effective Date and throughout the Term of this Agreement, commercial general liability insurance on an occurrence basis against claims on account of bodily injury, death or property damage incurred or resulting from the District's and the Team's activities on the Baseball Field, but not incurred or resulting from activities arising directly or indirectly from the City's or the City's invitees', constituents', licensees' or other third parties' activities on or about the Baseball Field or elsewhere in the Park. Such insurance policy shall name the City as an additional insured and shall include a severability of interest endorsement, having combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The insurance required hereby shall be written by a company authorized to do business in the State of Wisconsin. The District's insurance shall also contain an endorsement requiring not less than thirty (30) days' prior written notice to the City before the amendment, termination or expiration of the District's insurance policy. The District shall provide the City with a certificate evidencing such insurance prior to or on the Effective Date.

b. City's Liability Insurance. The City shall maintain, or cause to be maintained, from and after the Effective Date and throughout the term of this Agreement, commercial general liability insurance on an occurrence basis against claims on account of bodily injury, death or property damage incurred upon any part of the Park, unless incurred or resulting from activities arising directly or indirectly from the District or the Team, or the District's or the Team's invitees, on or about the Baseball Field or elsewhere in the Park. Such insurance policy will name the District as an additional insured and include a severability of interest endorsement, having combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The insurance required hereby shall be written by a company authorized to do business in the State of Wisconsin. The City's insurance shall also contain an endorsement requiring not less than thirty (30) days' prior written notice to the District before the amendment, termination or expiration of the City's insurance policy. The City shall provide the District with a certificate evidencing such insurance prior to or on the Effective Date.

c. During the period of time the District is making improvements to the Baseball Field as provided in Section 5 above the District shall, at its own cost and expense, require its general contractor to obtain and maintain throughout the applicable period of said improvements, with companies qualified to do business in Wisconsin,

reasonably acceptable to the City, for the benefit of the District and the City, as additional insureds, as their interests may appear, the following liability insurance policies:

(i) Workers' Compensation Coverage in the amount required by law.

(ii) Contractor's Comprehensive or Commercial General Liability Insurance for bodily injury and property damage in the amount of Two Million Dollars (\$2,000,000.00). These insurance policies shall also be subject to the following requirements:

(A) Wherever applicable, including, but not limited to Contractor's Comprehensive General Liability Insurance, all insurance coverage shall be on an "occurrence basis" and not a "claims-made basis."

(B) Certificates of insurance acceptable to the City shall be addressed to and filed with the City prior to commencement of the work. Renewal certificates shall be filed with the City at least thirty (30) days prior to the expiration date of required policies.

(C) No insurance coverage shall be subject to cancellation or non-renewal without at least thirty (30) days' prior written notice forwarded by registered or certified mail to the City. The City shall also be notified of the attachment of any restrictive amendments, material changes or impairment to the policies.

(D) The City shall be named as an additional insured on all of the Contractor's insurance policies.

d. Waiver of Subrogation. The City and the District shall each procure from their respective insurers under the policies required under this Agreement, a waiver of all rights of subrogation which the insurer might otherwise have, as against the other party, the waiver to be in writing and for the express benefit of the other. The City and the District hereby release each other and waive any claim against the other to the extent the releasing party recovers or would have recovered under the insurance required to be maintained under the provisions of this Section 8. If, at any time, either the City or the District is unable, after good faith efforts, to obtain such waiver of subrogation from its insurer, the provisions of this Section 8 shall be null and void and of no effect. If either party fails to maintain in force any insurance required by this Agreement to be carried, or is self-insured, then, for purposes of this waiver of subrogation, said party shall be deemed to be fully insured and to have recovered the entire amount of its loss.

9. Indemnification.

a. The District agrees to indemnify, defend and hold the City harmless from and against any and all injury, loss, damage or liability, costs or expenses incurred by the City arising directly from the improvements the District is making to the Baseball Field or from the use of the Baseball Field during each Season during the Term by the District, the Team or their invitees, except to the extent attributable in whole or in part to the

negligent or intentional act or omission of the City, its employees, agents or independent contractors or other users of the Baseball Field or the Park.

b. The City agrees to indemnify, defend and hold the District harmless from and against all injury, loss, damage or liability, costs or expenses arising directly or indirectly from the City's or the City's invitees', constituents', licensees' and others' activities on or about the Baseball Field or elsewhere in the Park, except to the extent attributable to the negligent or intentional act or omission of the District, its employees, agents or independent contractors or the Team.

10. Notices. All notices, requests, demands and communications hereunder will be given by electronic mail (i.e. email) or by first-class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to the District: School District of West Allis-West Milwaukee, et al.
1205 South 70th Street
West Allis, WI 53214
Attn: Superintendent
Email: lexmondm@wawmsd.org

If to the City City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Administrator
Email: rgrill@westalliswi.gov

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

11. Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement or the District's and the Team's intended use of the Baseball Field then the Agreement may be terminated by either party on ten (10) business days' prior written notice to the other party hereto.

12. Miscellaneous.

a. Assignment. Neither party to this Agreement shall assign, sublet or transfer any of its obligations, responsibilities, rights or interests under this Agreement without the written consent of the other party. Any assignment, subletting or transfer by a party to this Agreement in violation of this Section 12.a. shall be void and without force or effect.

b. Amendment/Waiver. This Agreement shall not be amended, modified or revised unless done in writing and signed by an authorized agent of the City and an

authorized agent of the District. No provision contained in this Agreement may be waived except in a writing signed by both parties.

c. Bind and Benefit. The terms and conditions contained in this Agreement will run with the Park and be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

d. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

e. Governing Law. This Agreement will be governed by the laws of the State of Wisconsin.

f. Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to be “including but not limited to;” (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) use of the terms “termination” or “expiration” are interchangeable; and (v) reference to a default will take into consideration any applicable notice, grace and cure periods.

g. Default and Waiver. In the event of default by either party, the sole and exclusive remedies of the aggrieved party shall be an action for specific performance of this Agreement and/or an action for actual damages only, and not for special, indirect, incidental or consequential damages. No waiver by either party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

h. Further Action. If at any time after the Effective Date any further action is necessary or desirable to carry out the purposes of this Agreement, each party will take such further action (including the execution and delivery of such further instruments and documents) as the other party reasonably may request, all at the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefor under this Agreement).

i. Execution. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one Agreement. Electronically transmitted copies of signatures on this Agreement shall have the same force and effect as original signatures.

j. Each provision herein shall be binding upon and inure to the benefit of the City and the District and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**SCHOOL DISTRICT OF WEST ALLIS-
WEST MILWAUKEE, et al.**

By: Dr. Martin G. Lexmond, Superintendent

CITY OF WEST ALLIS

By: Daniel Devine, Mayor

ATTEST:

By: Steven A. Braatz, Jr., City Clerk