

**City of Portage  
Park and Recreation Board Meeting  
March 10, 2015  
6:30 pm - Regular Meeting  
Municipal Building, 115 West Pleasant Street  
Conference Room One  
Agenda**

Members: Brian Zirbes Chairperson, Larry Messer, Rita Maass, Mike Charles, Todd Kreckman

1. Roll Call
2. Approval of February 10, 2015 meeting minutes.
3. Discussion and possible action on Musky Club Memorial Bench for Silver Lake Beach.
4. Discussion and possible recommendation on agreement with Portage Youth Fast Pitch Softball.
5. Discussion and possible recommendation on agreement with Baraboo Area Lacrosse Association.
6. Discussion and possible action on renting procedure of Silver Lake Beach and Riverside Park shelters.
7. Discussion on Intergovernmental Agreement between the City and Portage School District for Varsity soccer field at Veteran's Memorial Fields.
8. Old Business Update(s)
  - a. Silver Lake Beach Swim Area Retaining Wall
9. Manager's Report
10. Adjournment

**City of Portage  
Park and Recreation Board Meeting  
Tuesday, February 10, 2015 - 6:30 p.m.  
Municipal Building Room #1**

Members present: Brian Zirbes, Chairperson, Larry Messer, Mike Charles and Rita Maass.

Members Excused: Todd Kreckman

Also Present: Manager, Dan Kremer, Leslie Hawkinson , Craig Sauer, Jeff Garetson, Mayor Bill Tierney, City Administrator Shawn Murphy and Columbia County Fair Board President Paul Becker.

**1. Roll Call**

The meeting called to order at 6:30 pm by Chairperson Zirbes.

**2. Approval of minutes of January 13, 2015 meeting**

Motion was made by Charles and seconded by Maass to approve the minutes, as submitted, from the January 13th, 2015 meeting. The motion carried 4-0.

**3. Discussion and possible recommendation on bids for Park and Rec Vehicles #95 replacement.**

Kremer presented the proposals from Ewald Automotive Group and Hill Ford of Portage on the Ford, F-250 truck designated as the #95 replacement truck. Kremer also noted, while the Tommy Gate on #95 was still useable, a new one was advised by City mechanics due to poor condition. Kremer recommended keeping the current #95 vehicle as a spare truck for seasonal maintenance staff to be used between the Park and Rec and the DPW departments and list the 1998 Dodge that is currently being used between departments on the Wisconsin Surplus Auction website.

Kremer presented a memo (attached) and recommended awarding the Ford, F-250 bid to Hill Ford of Portage for a purchase price of \$22,984 and awarding the tommy gate purchase to Monroe Truck Equipment for the bid price of \$2,984. A motion was made by Charles to accept the Hill Ford bid of \$22,984 and the addition of a tommy gate from Monroe Truck Equipment for \$2,984 for a total of \$25,968 and was seconded by Messer. The motion carried 4-0.

**4. Discussion and possible recommendation for 2015 Columbia County Fair Board facility usage agreement.**

Kremer provided a visual of the Veterans Memorial Field Facilities grandstand and Soccer field area that is most in question by the Park and Rec board members.

Maass noted in point 5 of the agreement that any damage to the youth soccer fields

during the Columbia County Fair usage could not possibly be reversed in a 5 day time period as stated in the agreement. A plan for blocking off the soccer field area would be respected by the Fair Board. It was also noted that the Fair would have exclusive use of the facilities during fair week, but that watering of the soccer fields during that time was a necessary priority. Columbia County Fair Board President Becker assured the Park and Rec board that a compromise could be reached by allowing watering the fields during their use at agreed upon times and days. A motion was made by Maass to accept the Columbia County Fair Board's 2015 Agreement for use of Veterans Memorial Field Facilities with additional language to include an agreement for watering of the youth soccer fields during their time of use. Second by Charles. The motion carried 4-0.

**5. Discussion and possible recommendations on Fee Schedules update.**

Kremer presented updated changes to rental fees for the Veterans Memorial Fields building and area usage and noted the previously discussed Metal Detecting permit fee would now be activated. A motion to accept the updated fee schedule was made by Charles and second by Maass. The motion carried 4-0

**6. Discussion and possible action on bids for Professional Engineering Services for Silver Lake Beach Parking Lot Retaining Wall.**

Kremer stated only one bid was received from the General Engineering Company for the Silver Lake Beach Parking Lot Retaining Wall project. The preliminary design options and estimates acquired from GEC in early 2014 were estimated at \$11,000 for complete replacement of the parking lot retaining wall. Kremer recommended awarding the bid to General Engineering Company for a bid amount of \$7,750. A motion was made by Maass to accept the bid from General Engineering Company for the Silver Lake Beach Parking Lot Retaining Wall project and not to exceed their bid amount of \$7,750. Second by Messer. The motion carried 4-0.

**7. Old Business Update(s)**

Manager Kremer discussed these updates:

Capital project status update

The plans for updating the Veterans Memorial Fields were progressing forward; a new UTV replacement was being considered for sidewalk sand and salting since the last purchase was in 2000.

Food Pantry updates

The Food Pantry agreement has been finalized and signed with a meeting being planned in the near future to have the group ready for operating out of Building 8 by March.

## **8. Manager Kremer's Report**

Kremer reported work on summer programming is underway and that the department will again be partnering with the school district with a few of the programs. Summer School will run late July and August with our programs running before and after their specified dates. Spring Flag Football is already generating an interest with daily registrations; last year reached 120 participants which we are hoping to match or exceed. The Warming House will be closing two weeks early due to the shelter not realizing much use during ice skating hours. The bathrooms will remain open for participants. A meeting is scheduled with the Horse Council to discuss an agreement for upcoming changes to the Veterans Memorial Fields area.

## **9. Adjournment**

Zirbes asked all in favor to adjourn say Aye. Motion Passed. Meeting adjourned at 7:00 pm.

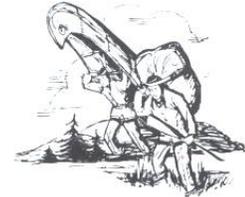
Respectfully submitted

Leslie Hawkinson

Park & Recreation Department

# CITY OF PORTAGE

115 West Pleasant Street  
Portage, Wisconsin 53901  
Telephone: (608) 742-2176 • Fax: (608) 742-8623



"Where the North Begins"

To: Parks and Recreation Board  
From: Dan Kremer, Manager of Parks and Recreation  
Date: February 2, 2015  
Subject: Park and Rec Truck Replacement

Two bids were received for the replacement of truck 95 (2000 Chevrolet 2500). The bids are as follows:

## Proposals

	<b>Ewald Automotive Group (State Bid) Oconomowoc, WI</b>	<b>Hill Ford Portage, WI</b>
<b>Ford, F-250(specs attached)</b>		
A. Truck	\$22,615	\$22,984
B. Break Controller	\$270	Included
C. Delivery	\$115	Included
<b>Total</b>	<b>\$23,000</b>	<b>\$22,984</b>
	<b>Monroe Truck Equipment Monroe, WI</b>	<b>Madison Truck Madison, WI</b>
<b>Tommy Gate</b>	\$2984	\$3271

*Copies of bid documents below*

## Summary:

The City has budgeted \$25,000 for this truck purchase. With the current truck being a 2500, replacement is being recommended with an F-250. The change in brand recommendation is based on state bid being with Ford at the present time. In addition, the current vehicle is equipped with a tommy gate that has been inspected by City mechanics and is being recommended for replacement on the new truck due to poor condition.

I am also recommending keeping the current vehicle as a spare truck for seasonal maintenance staff between Park and Rec and DPW, and listing the 1998 Dodge that is currently used as a spare between departments on the Wisconsin Surplus Auction website.

**Recommendation:**

I recommend awarding the Park and Rec truck bid to Hill Ford, Portage WI for the bid purchase price of \$22,984. I also recommend purchasing one (1) new tommy gate from Monroe Truck Equipment, Monroe, WI for the bid price of \$2,984.

This recommendation brings the complete purchase price to a total of \$25,968.

Dan Kremer  
Manager of Parks and Recreation





Phone 608.643.8105 800.953.8700

www.millersaukprairie.com

Fax 608.643.7932

## QUOTATION

**Date:** March 4, 2015  
**To:** City of Portage  
**Attn:** Dan Kremer  


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**Project:** Portage Area Musky Club- Bench

QTY.	MODEL/DESCRIPTION	AMOUNT
-1-	(1402) ForeSite Designs Park Scapes Series 96" Bench without Arms In-Ground Mount With Engraved Slat as Noted Below: Portage Area Musky Club	\$ 668.00
	Engraving	\$ 110.00
	Freight	\$ 140.00
	Total	\$ 918.00

<b>Terms:</b> Net 15 From Invoice Date	<b>FOB:</b> Portage, WI
<b>Est. Ship:</b> 3-5 Weeks ARO	<b>Quote Valid:</b> 30 Days

**\*\*\*\*NOTE\*\*\*\***

- **Pricing DOES NOT INCLUDE any applicable tax.**
- Installation of the materials is the responsibility of the purchaser.
- Materials will be shipped via common carrier. The purchaser is responsible for receiving (off loading) and storage of all materials. This may require the use of a fork lift or skid steer with forks.
- Any damages or shortages must be noted on the bill of lading at the time of receiving the materials.

Steve Barritt  
 President

cc: Ty Calkins, Sales Representative



PORTAGE AREA MUSKY CLUB



Silver Lake Dr

Silver Lake Dr

Agreement with Portage Girls Youth Fast Pitch Softball  
For the use of  
Veteran's Memorial Fields  
T-ball Fields

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_, 2015 by  
and between the City of Portage WI, a municipal corporation located In Columbia County, (hereinafter referred to as "the City") and Portage Girls Youth Fast Pitch Softball, a non-profit charitable, community service chapter organized under IRS Section 501©(3) and registered as a Wisconsin Non-stock corporation under the Portage Greater Youth Foundation, (hereinafter referred to as "the Renter").

**WHEREAS**, THE City owns property and facilities known as Veterans Memorial Fields and is desirous of providing the t-ball facility for the Renter to hold their events for (1) one year; and

**WHEREAS**, the initial term of this agreement shall begin on the agreement date above and end on July 15<sup>th</sup>, 2015. Either party may terminate the agreement by providing written notice to the other with a (30) thirty day notice of termination, and

**WHEREAS**, because of the long history of cooperation between the City and other groups within the country and State, and

**WHEREAS**, the City and the Renter acknowledge that this agreement is not intended to be comprehensive, but serve as a framework for how they will work together.

**NOW, THEREFORE**, in consideration of the terms and covenants set forth herein, it is agreed as follow:

1. This Agreement shall be for one (1) year, beginning on the date the Agreement was executed and end on July 15<sup>th</sup>, 2015. Either party to this Agreement may terminate the agreement prior to July 15<sup>th</sup>, 2015 by providing written notice to the other party at least (30) thirty days prior to termination. The renter will provide written notice to the City, at the earliest possible date of specific dates needed for the use of the facilities & grounds (Dates of Use). The City shall review and approve the Dates of Use no later than April 15 of each year of the Agreement. Renter shall not be permitted to use fields on Monday and Wednesday evenings from 3 pm – 7 pm (May 15 – June 30) of each agreement year. The City reserves the right to modify the Dates of Use if weather conditions, grounds and facilities conditions, construction activities or similar conditions exist that may interfere with the safe use and full enjoyment of the Bruce A. Smith Little League Complex. Such City approval/modification shall be mutually agreeable.
2. During the Dates of Use the Renter shall have exclusive use of Veteran's Memorial Fields t-ball facility and surrounding green space. The renter shall be allowed to utilize overhead lights on both fields as needed.

3. At all other times the City shall have exclusive control of the Veteran's Memorial Fields t-ball fields and shall use it as it deems appropriate.
4. The Renter will pay the City a facility usage fee of \$15.00 per participant no later than (10) ten days prior to agreement end date.
5. The City will drag ball fields each day during rental period. If lines are requested, the City will invoice the Renter for all costs associated with line painting (labor and materials).
6. The Renter, at no time may alter any of the buildings and grounds at the complex, without written permission from the City. Such permission will not be unreasonably denied. Written request may come via email from board president(s) or via letter to Park and Rec office.
7. The City and the Renter further acknowledge that there are many issues, including but not limited to the provision of insurance, and in-kind services that will be subject to regular discussion, agreement and approvals so that the Renter will have successful event(s) for the Renter and the City.
8. The Renter shall provide the City of Portage a Certificate of Insurance no later than April 1<sup>st</sup> each year of the Agreement with the City listed as an additional insured for the following minimum coverage limits.

General Liability (per occurrence):	\$1,000,000
Personal & Advertising Injury:	\$1,000,000
Products-Completed Operations Aggregate:	\$1,000,000
Damage to Premises Rented:	\$ 250,000
Medical Expense:	\$ 10,000
General Aggregate:	\$2,000,000

A copy of the Certificate of Insurance issued by the Renter's Insurance Provider is attached and made part of this Agreement. The Renter shall annually provide a replacement Certificate of Insurance no later than 10 days from the expiration date of the previous Certificate for the duration of this Agreement.

9. The City and the Renter shall walk through the grounds and sign a pre-event review of the grounds, which shall include photographs of the condition prior to Renter's use. This review shall be used for comparison for the post event walk through of the grounds to determine if any damage occurred, caused directly by misuse of the Renter above and beyond normal wear and tear. The City shall notify the Renter within 7 days from the walk through of any damage or other conditions observed and grant the Renter an opportunity to repair or otherwise resolve the unsatisfactory conditions. If the Renter is unable to resolve said damages, the City will fix issues and invoice the Renter for any such repairs.

10. The Renter has the right to appeal, in writing, this decision within 14 calendar days. Such appeal request shall be heard by the Parks and Recreation Board at the next regular scheduled meeting.

IN WITNESS WHEREOF, the parties have executed this agreement at the City of Portage, Columbia County, Wisconsin

Dated this \_\_\_\_\_ day of January, 2015

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Portage Girls Youth Fast Pitch President

\_\_\_\_\_  
City Clerk

Agreement with Baraboo Area La Crosse Association  
For the use of  
Sanborn Park

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_, 2015 by and between the City of Portage WI, a municipal corporation located In Columbia County, (hereinafter referred to as “the City”) and the Baraboo Area La Crosse Association, a non-profit charitable, community service chapter organized under IRS Section 501©(3) (hereinafter referred to as “the Renter”).

**WHEREAS**, THE City owns property and facilities known as Sanborn Park and is desirous of providing the facility for the Renter to hold their events for (1) year., and

**WHEREAS**, the initial term of this agreement shall begin on the agreement date above and end on September 1<sup>st</sup>, 2015. Either party may terminate the agreement by providing written notice to the other with a (30) thirty day termination notice.

**WHEREAS**, because of the long history of cooperation between the City and other groups within the country and State, and

**WHEREAS**, the City and the Renter acknowledge that this agreement is not intended to be comprehensive, but serve as a framework for how they will work together.

**NOW, THEREFORE**, in consideration of the terms and covenants set forth herein, it is agreed as follow:

1. This Agreement shall be for one (1) year, beginning on the date the Agreement was executed and end on September 1, 2015. Either party to this Agreement may terminate the agreement prior to September 1, 2015 by providing written notice to the other party at least (30) days prior to termination. Such early termination shall not relieve the either party from their respective obligations as stated within this agreement unless mutually agreed in writing. The City shall review and approve the Dates of Use no later than April 1 of each year of the Agreement. The City reserves the right to modify the Dates of Use if weather conditions, grounds and facilities conditions, construction activities or similar conditions exist that may interfere with the safe use and full enjoyment of Sanborn Park. Such City approval/modification shall be mutually agreeable.
2. During the Dates of Use the Renter shall have exclusive use of Sanborn Park; including the surrounding green space to hold their events. The Renter shall be responsible for all costs associated with the operation of their events.
3. At all other times the City shall have exclusive control of Sanborn Park and shall use it as it deems appropriate.

4. The City agrees to waive usage fee of \$15.00 per participant for this agreement term as a sign of support for the program's inaugural year in Portage. Usage fee will be negotiated for succeeding agreements.
5. The Renter, at no time may alter any of the buildings and grounds at the park, without written permission from the City. Such permission will not be unreasonably denied. Written request may come via email from board president(s) or via letter to Park and Rec office.
6. The City shall be solely responsible for the maintenance, upkeep and repair of the buildings and grounds at Sanborn Park with the exception that the Renter shall be responsible for playing field preparation (line marking and field marking). The City will provide lawn mowing on its regular rotation for the park. Any new items requested by the renter must be approved by the City prior to installation. The grounds cannot be altered at any time by the Renter without approval by the City and shall be returned in the condition that it was prior granted to the Renter's use.
7. The City and the Renter further acknowledge that there are many issues, including but not limited to the provision of insurance, and in-kind services that will be subject to regular discussion, agreement and approvals so that the Renter will have successful event(s) for the Renter and the City.
8. The Renter shall provide the City of Portage a Certificate of Insurance no later than April 1st each year of the Agreement with the City listed as an additional insured for the following minimum coverage limits.

General Liability (per occurrence):	\$1,000,000
Personal & Advertising Injury:	\$1,000,000
Products-Completed Operations Aggregate:	\$1,000,000
Damage to Premises Rented:	\$ 250,000
Medical Expense:	\$ 10,000
General Aggregate:	\$2,000,000

A copy of the Certificate of Insurance issued by the Renter's Insurance Provider is attached and made part of this Agreement.

9. The City and the Renter shall walk through the grounds and sign a pre-event review of the grounds, which shall include photographs of the condition prior to Renter's use. This review shall be used for comparison for the post event walk through of the grounds to determine if any damage occurred, caused directly by misuse of the Renter above and beyond normal wear and tear. The City shall notify the Renter within 7 days from the walk through of any damage or other conditions observed and grant the Renter an opportunity to repair or otherwise resolve the unsatisfactory conditions. If the Renter is unable to resolve said damages, the City will fix issues and invoice the Renter for any such repairs.

10. The Renter has the right to appeal, in writing, this decision within 14 calendar days. Such appeal request shall be heard by the Parks and Recreation Board at the next regular scheduled meeting.

IN WITNESS WHEREOF, the parties have executed this agreement at the City of Portage, Columbia County, Wisconsin

Dated this \_\_\_\_\_ day of March, 2015

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Baraboo Area La Crosse Association

\_\_\_\_\_  
City Clerk

DRAFT

**INTERGOVERNMENTAL AGREEMENT**  
**Between the City of Portage and the Portage Area School District**  
**On the Development & Use of an Athletic Facility**

This Intergovernmental Agreement (the "Agreement") is made and entered into, by and between the **CITY OF PORTAGE**, a Wisconsin municipal corporation located in Columbia County, with its offices at City Hall, 115 W. Pleasant Street, Portage, WI 53901 (the "City") and **PORTAGE AREA SCHOOL DISTRICT**, a public body corporate, with principal offices located at 305 E. Slifer Street, Portage, WI 53901 (the "District").

**THE PARTIES RECITE THAT:**

**WHEREAS**, the City is a municipal corporation organized and existing under and pursuant to Chapter 66 of Wis. State Statutes; and

**WHEREAS**, the District is a common school district organized under and pursuant Chapter 120 Wis. Stats., and exercising all of the powers provided for therein; and

**WHEREAS**, the City owns and maintains the Veteran's Memorial Field Complex (VMFC), more commonly known as the "Fairgrounds" located in an area of the City bounded by Wauona Trail to the east, Morgan Street to the north, Superior Street to the west and Thompson Street to the south. In 2014, the City implemented a Master Plan for the redevelopment of VMFC; and

**WHEREAS**, the District has utilized and participated in the maintenance of a Soccer field located in front of the Grandstand area for hosting interscholastic soccer events which has been scheduled for relocation and replacement, pursuant to the City's Master Plan; and

**WHEREAS**, the process to relocate and construct the Soccer facility entails the relocation and construction of other facilities at VMFC and improvements to District facilities prior to moving the Soccer facility; and

**WHEREAS**, the City and District agree that the orderly implementation of the Master Plan which results in permanently locating District's soccer facilities at VMFC is beneficial to both entities and results in the establishment of a facility that will be reserved for Soccer use only and not intended for other uses that may result in the infringement upon and degradation of the playing surface. Therefore the City and District have entered into this Agreement specifying each party's responsibilities prior to the start of construction and subsequent responsibilities after construction is completed.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereto covenant and agree as follows:

**1) GENERAL COMMITMENTS OF THE DISTRICT.** The District agrees that, subject to the terms of this Agreement, it shall:

- A. Provide to the City, reserved access to ball diamonds on District property for purposes of operating City sponsored adult softball league games during their regular seasons from May through August annually in 2016, 2017 and 2018. Generally, the City shall have exclusive use of the playing fields on Mondays and Tuesday evenings from 6:00 p.m. to 10:00 p.m. and on mutually agreed dates and times for practice on weekends. A specific schedule of games and practices will be mutually agreed to by separate arrangement between the Manager of Parks & Recreation for the City and the Athletic Director for the District for purposes of reserving the District's ball field facility. During these specified games, the District shall grant the City the right of exclusive use of the ball field facility for the adult softball league.
- B. Purchase, install and maintain Field lighting at the School District ball diamonds no later than May, 2016 for use by the City in the operation of the Adult Softball league. City shall reimburse District for Field Lighting utility expense associated with operation of lights during Adult Softball activities located on District ball diamonds.
- C. Purchase, install Field Lighting (subject to site plan review and approval by Park & Recreation Board) and restore disturbed areas at the relocated soccer facility constructed by the City in the area of Lawton & Siegel Fields and transfer ownership to the City upon completion and acceptance by the City. Such approved site plan for Field Lighting is attached as Exhibit A and made part of this Agreement.
- D. Be responsible for turf maintenance activities for soccer fields (including but not limited to: fertilizing, herbicide treatment, aeration, etc.) with the exception of those activities the City is responsible for under Section 2.E. The City shall be responsible for light fixture and pole maintenance and repair subsequent to completion and acceptance by the City. The District and City shall equally share in the cost for subsequent light fixture and pole replacement or upgrades.
- E. Be responsible for procurement and maintenance of equipment necessary to responsibly and safely locate soccer games at this location pursuant to District and Wisconsin Interscholastic Athletic Association requirements. These include, but are not limited to bleachers, public address systems, goals, field markings, etc. Any improvements resulting in seasonal or permanent structures shall require review and approval by City. Such review and approval shall not be unreasonably withheld.

**2) GENERAL COMMITMENTS OF THE CITY.** The City agrees to that, subject to the terms of this Agreement, it shall:

- A. The City agrees to de-construct existing ball diamonds, re-grade and re-seed area to create one Wisconsin Interscholastic Athletic Association regulation sized soccer facility

and one adjacent practice soccer facility in 2016. Said fields shall remain as constructed and not modified in size or location unless mutually agreed to in writing by the District and City.

- B. Provide and pay for casualty/property insurance and utility costs associated with field light operation the at newly constructed soccer field.
- C. Coordinate use of School District ball diamonds for City softball program so as not to interfere with school use and require participants in City sponsored events to indemnify school district from liability for their use of the ball diamonds. City will inform all participants in Adult Softball League program of Chap. 125.09(2) Wis. Stats., prohibiting possession of alcohol on school property and Chap. 120.12(20) Wis. Stats., prohibiting tobacco use on school premises and enforce same.
- D. During period City utilizes school district ball diamonds; City shall provide routine facility maintenance and repair any damage by use of said facilities. Pursuant to Section 1.A of this Agreement, City shall have exclusive use of the School's ball diamonds for the Adult Softball League Recreation Program. It is understood however, that the School District reserves the right with reasonable notification to request a modification to the schedule of use or cancellation of the City's use of the School District's ball diamond due to school sponsored athletic event, weather, vandalism or other conditions which render the playing surfaces unsafe to use in the sole opinion of the school district. Such request shall not unreasonably be denied by the City.
- E. Agree to irrigate and mow the relocated soccer fields and provide routine maintenance and repairs to the light fixtures and poles subsequent to completion and acceptance by the City. The District and City shall equally share in the cost for subsequent light fixture and pole replacement or upgrades.

**3) FINANCIAL GUARANTEES.** At the time of the execution of this Agreement, the District and the City agree to waive performance and financial security measures to insure the fulfillment of each other's commitments as outlined in Sections 1 and 2 of this Agreement.

**4) ABSOLUTE OBLIGATION/INDEMNIFICATION.** Except as expressly stated herein, the obligations of the City and District under this Agreement shall be absolute and unconditional, and such obligations shall not be affected, modified or impaired, upon the happening from time to time of any event, including, without limitation, any of the following:

- A. The failure to give notice of default to the District under the terms of this Agreement;
- B. The purported assignment or mortgaging of all or any portion of the Project and Property;
- C. A waiver of the payment of performance of any of the obligations contained in this Agreement;

**D. The extension of time for payment of any amount under this Agreement;**

During the term of this Agreement for purposes of the School's permission to the City for the City's use of the ball diamonds, the City, its employees, representatives, agents and assigns, shall indemnify, hold harmless and defend the School, its officials, officers, agents and employees from any and all liability, suits, actions, causes of action, claims, demands, losses, costs, damages and expenses of any kind whatsoever, including but not limited to liability, damages and expenses in connection with the loss of life, personal injury or damage to property, or any of them brought because of injury or damages received or sustained by any person, persons or property on account of or arising out of the use of the School's ball diamonds for purposes of participating in the Adult Softball Recreation Program, to the extent of any act or omission, whether intentional or unintentional, of the District, its agents, employees, partners, tenants, contractors, subcontractors or invitees.

During the term of this Agreement for purposes of installing the Field Lights at relocated soccer field, the District, and its successors and assigns, shall indemnify, hold harmless and defend the City, its officials, officers, agents and employees from any and all liability, suits, actions, causes of action, claims, demands, losses, costs, damages and expenses of any kind whatsoever, including but not limited to liability, damages and expenses in connection with the loss of life, personal injury or damage to property, or any of them brought because of injury or damages received or sustained by any person, persons or property on account of or arising out of the construction of the Field Lights, to the extent caused by any act or omission of the District, its agents, employees, partners, tenants, contractors, subcontractors or invitees.

- 5) **SEVERABILITY.** If any part, term, or condition of this Agreement is held by the courts to be illegal or otherwise enforceable, such illegibility or unenforceability shall not affect the validity of any other part, term, or provision, and rights of the parties will be construed as if the illegal and/or unenforceable part, term, or provision was never part of this Agreement.
- 6) **ASSIGNMENT.** No party may assign its rights or obligations under this Agreement without the written consent of the other party. This paragraph shall not apply to any mortgage given by the District for financing of the Project.
- 7) **THIRD PARTIES.** Except as specifically set forth herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or assigns any rights or remedies under or by reason of this Agreement. No party to this Agreement shall be deemed to be the agent of the other, except as expressly stated herein.
- 8) **RIGHTS AND REMEDIES.** The rights and remedies of the parties to the Agreement, whether provided by law or provided by the Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same

or different times of any other such remedies for the same event or default or breach or any of its remedies for any other event of default or breach by any of the parties.

Any delay or failure by any party in instituting or prosecuting any action or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights or deprive it of or limit such rights in any way, nor shall any waiver in fact made by any party with respect to any specific default by the other party under this Agreement be considered or treated as the waiver of the rights of the non-defaulting party with respect to the particular default except to the extent specifically waived in writing.

**9) NO WAIVER.** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. No waiver of any default under this Agreement shall be deemed a waiver of any subsequent default or defaults of the same type.

**10) NOTICES.** Any notice provided for herein shall be in writing and shall be deemed to have been given if and when delivered personally or when deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

**To the District:** District Superintendent  
Portage Community School District  
305 E. Slifer Street  
Portage, WI 53901

**To the City:** City Clerk  
City of Portage  
115 W. Pleasant Street  
Portage, WI 53901

**11) ENTIRE AGREEMENT.** This Agreement and other documents to be made and delivered pursuant hereto set forth the entire Agreement and understanding of the parties hereto in respect to the subject matter hereof, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, either oral or written, by any officer, agent, employee or representative of either party hereto.

**12) PARTIES BOUND.** This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal and legal representatives, successors, and assigns.

**13) TERM OF AGREEMENT.** This Agreement shall expire upon fulfillment of all obligations described herein.

**14) AMENDMENTS.** This Agreement may be supplemented or amended only by written instrument executed by the parties affected by such supplement or amendment. Such approval of amendments shall not be unreasonably withheld by either party to this Agreement.

**15) CONTRACTORS ENGAGED BY DISTRICT.**

- A. Notification. Prior to the commencement of construction of construction of the Field Lights, the District shall furnish to the Manager of Parks & Recreation the names of all contractors and subcontractors, together with a classification of the work performed by each.
- B. Indemnity. The District shall require all contractors engaged in the construction of the Field Lights to indemnify and hold the City, and its agents and consultants harmless from and against any and all claims, losses, damages, costs and expenses which such contractors may or might incur in connection with the construction of or completion of the Field Lights. Such indemnification and hold harmless clause shall be in form and in content acceptable to the City's attorney and shall be included in each contract which the District has with a contractor.

**16) CONSTRUCTION RELATED ACTIVITIES.** In connection with the construction of the Field Lights, it is hereby agreed as follows:

- A. Scheduling. The District agrees that no work shall be scheduled for construction of the Field Lights without the City's approval of the starting date(s) and construction schedule.

- B. Costs. The District further agrees that the City shall not be responsible for any costs or charges related to the construction of the Field Lights, except those specifically enumerated herein; and that the District is responsible for all such costs, except as otherwise expressly provided for herein.
  
- C. Construction Related Activities. The construction of the Field Lights shall be completed by a mutually agreed upon date. The District shall retain the services of an electrical contractor or similarly certified contractor to design and install the field lighting in compliance with all relevant building, electric and fire codes in place at the date of the installation. The City shall have the right to inspect the construction of the Field Lighting as and when they are completed. The District shall provide at least ten (10) days prior written notice to the City and its Manager of Parks & Recreation prior to commencement of actual construction of the Field Lights. Prior to any inspection and certification, if appropriate, the District shall present to the City valid lien waivers from all persons providing materials and/or performing work on the Field Lights. Upon completion of the field lighting installation and acceptance of the same by the City, ownership and control shall be turned over without any restrictions to the City, free and clear of all liens and encumbrances.
  
- D. Guarantee. The District agrees to guarantee and warrant all work performed under this Agreement with respect to the Field Lights for a period of one (1) year from the date of final written acceptance by the City, against defects in workmanship or materials. If any defect should arise during the guarantee period, the District agrees to make the required replacement or acceptable repairs of the defective work at its own expense. This expense includes total and complete restoration of any disturbed surface or component of the Field Lights, regardless of improvements on land where the repairs or replacement is required. All guaranties or warranties for materials or workmanship which extend beyond the aforesaid one (1) year guarantee period shall be assigned by the District to the City as beneficiary.
  
- E. Compliance. The District shall comply with all applicable laws, the Ordinances, rules and regulations in effect, as promulgated by all governmental bodies having appropriate jurisdiction thereof.

**17) INDEMNIFICATION AND INSURANCE REQUIRED OF PRIVATE CONTRACTORS.** The District hereby expressly agrees to indemnify, save and hold harmless the City, its employees, officers and agents, including its consultants, (collectively the “Indemnitees”) from and against all claims, costs, suits, causes of actions, demands and liability of every kind and nature, for injury or damage received or sustained by any person or persons or property, whomsoever and whatsoever, in connection with, or on account of the performance of the work contemplated hereby and the construction of the Field Lights. The District further agrees to defend the Indemnitees in the event the Indemnitees are named as a defendant(s) in any action concerning the performance of the work pursuant to this Agreement, except where such suit is brought by the District. It is hereby agreed that the

District is not an agent or employee of the City. The District shall also require contractors engaged in the construction of the Field to maintain a current certificate of insurance on file with the City. The Contractor(s) so engaged should be required to furnish comprehensive general liability insurance of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident. The City shall be named as additional insureds under the aforesaid comprehensive general liability policy.

**18) SPECIFICATIONS FOR FIELD LIGHTS.** The District agrees to install the Field Lights as specified in Exhibit A of this Agreement in strict accordance with the plans and specifications approved by the City and subject to the following further conditions:

- A. The installation of the Field Lights shall be done in strict accordance with the City's Ordinances, orders, rules and regulations in effect as of the date of commencement of construction.
- B. The District shall install and maintain during the course of construction and until the Field Lights have been finally accepted by the City, such grading, erosion control and barricades as may be required by the City to insure the integrity and safety of the worksite(s).
- C. Such Field lighting shall conform to the illumination levels as stated in Section 90-119 of the Zoning Code.

**19) EFFECTIVE DATE.** This Agreement shall be effective as of the date of its execution by all parties.

**City of Portage, Wisconsin**

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

W.F. "Bill" Tierney, Mayor

Dated: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Marie A. Moe, City Clerk

STATE OF WISCONSIN )

) ss.

COLUMBIA COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above-named W.F. "Bill" Tierney, Mayor and Marie A. Moe, Clerk of the City of Portage, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the City's authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission is permanent/expires \_\_\_\_\_

**Portage Community School District**

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

Mathew Foster, School Board President

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

STATE OF WISCONSIN )

) ss.

\_\_\_\_\_ COUNTY)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above-named \_\_\_\_\_, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the School Board's authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission is permanent/expires \_\_\_\_\_

**EXHIBIT A**

**Plans and Specifications for Installation of Field Lights**