



## OFFICIAL NOTICE AND AGENDA

of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or Sub-unit thereof.

*Meeting of the:* **PARK & RECREATION COMMITTEE**  
*Date/Time:* Monday, April 6, 2015 @ 5:15pm  
*Location:* City Hall (407 Grant Street) – Board Room  
*Members:* Gisselman, Mielke, Neal, Nutting, Oberbeck (c)

### AGENDA ITEMS FOR CONSIDERATION (All items listed may be acted upon)

1. Call Regular Meeting to Order
2. Public Comment on Matters Appearing on the Agenda
3. Approve Minutes – March 2, 2015
4. Athletic Park Development and Use Agreements – Discussion and Possible Action on Entering Into a Development Agreement and Amending the Existing Athletic Park Use Agreement Related to Proposed Athletic Park Improvements
5. Athletic Park Parking – Discussion and Possible Action on Renewing a Temporary Easement Agreement with Wilson – Hurd for Athletic Park Parking
6. Playground Equipment Renovation Plan – Discussion and Possible Action on Multi-Year Plan to Bring City Parks Playground Equipment Into Compliance With Recently Modified Accessibility and Safety Standards
7. Animals in Parks – Discussion and Possible Action to Revise Existing Ordinance to Not Allow Animals In the Marathon County Sports Complex or Marathon Park Amphitheater
8. Emerald Ash Borer – Report on the Current Status of Emerald Ash Borer in Wisconsin and City of Wausau Planned Response Needs
9. Project Update
10. Future Agenda Items
11. Next Regular Meeting – Monday, May 4, 2015 at 5:15pm
12. Adjourn

David Oberbeck - Committee Chairperson

Questions regarding this agenda may be directed to Jodi Luebbe (Park Office) @ (715) 261-1560.

This Notice was posted at City Hall and faxed to the Wausau Daily Herald newsroom on \_\_\_\_\_ @ \_\_\_\_\_ M

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids & services. For information or to request this service, contact the City Clerk, at 407 Grant Street, Wausau WI 54403 or Ph# (715) 261-6620.

Others Distribution: Media, WSD-Admin, Alderpersons, Mayor, Duncanson, Knotek, Maryanne Groat, Brad Lenz, Brad Karger, Wisconsin Woodchucks, A. Werth, Wausau Events

**DRAFT**

**CITY OF WAUSAU – PARK AND RECREATION COMMITTEE MEETING MINUTES**

Date/Time: March 2, 2015 at 5:15pm

Location: Board Room, City Hall

Members Present: Gary Gisselman, David Nutting, Tom Neal, David Oberbeck (c)

Excused: Robert Mielke

Others Present: William Duncanson–Director, Dan Fiorenza–Operations Superintendent, Pat Peckham – City Pages, Nora Hertel – Wausau Daily Herald, Patrick Hoerter

In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner. It was noted that there was a quorum present and the meeting was called to order by Oberbeck at 5:15pm.

Public comments – Hoerter said that last month his 2 ½ year old son Josiah passed away. Josiah had a rare genetic disorder and was extremely disabled. In memory of Josiah, Hoerter was interested in building a fully accessible playground in Wausau similar to the KASH Playground in Stevens Point. The KASH Playground was built through donations and a matching DNR grant. Hoerter thought a playground like this would be a good thing for the Wausau area and he is interested in doing whatever he can to help this project. He thought Brockmeyer Park would be a good location.

Accessible Playground Equipment – Report on Developing an Action Plan to Bring City Park Playground Equipment Into Compliance With Recent Revisions to the Federal Americans With Disabilities Act (ADA) – Duncanson said staff and CVMIC had done an assessment of the play facilities to see where they are in compliance with the ADA. Over the years the Department has been providing accommodations for disabled individuals in our facilities. The requirements have increased and some facilities need to be improved. They don't have to get into compliance immediately but the City has to put together a plan of how they will be complying with the new ADA standards. Fiorenza said this plan is needed because there no longer is a clause grandfathering the facilities in. Safety surfacing for fall protection is another aspect that needs consideration. Sand used to be rated with a fall height of eight to ten feet. The Consumer Products Safety Commission (CPSC) guidelines have downgraded sand to a four foot fall height. Every couple years the CPSC makes adjustments and sets new regulations and there are other elements that are no longer compliant. Some things can be retrofitted to make them compliant but others would need replacement. Duncanson said not every playground has to be completely accessible. There does have to be "reasonable accommodation" which means there are enough playgrounds distributed around the City with enough accessible features to provide opportunities to handicapped individuals. Fiorenza said staff will bring information and provide an action plan of how this will be addressed in the next couple years.

Gisselman questioned what something like the KASH playground would cost. Hoerter said it took four years to construct it and both construction and maintenance funds were raised. It was built in 2007 with donations of \$272,000 and a matching DNR grant. Duncanson said the KASH playground is a phenomenal facility that is popular for everyone. The group that took on the fundraising effort is equivalent to Leadership Wausau. There is an endowment set up for the maintenance costs of the KASH playground. Gisselman thought the Park Foundation could be involved or help manage the funding for a project like this. Duncanson said this is beyond what the City needs to do. It would be a very unique feature and a destination playground. Something like the KASH playground would have to go into a community park like Brockmeyer because support facilities like parking, restrooms and a shelter would be needed. Hoerter said he would volunteer any time he could, he had intended to spearhead it and has a lot of vested interest in seeing it happen. He also had thoughts about Marathon Park but it closes to the public for a week in summer every year.

Oberbeck said the Committee could direct staff to look into possibilities. Duncanson did not want this as a staff project as he did not think it was appropriate for staff to raise the money when it is well beyond the City's current significant needs in providing safe and accessible playground facilities. However, the City should be wide open to working in collaboration with people that want to make this happen. Neal agreed that it should be a community project and sponsorship based. Oberbeck questioned what the difference was in building playground equipment, pools, or other infrastructure in the City. The City could take this on and welcome sponsorships but he didn't think a need should be ignored within that area. He believed it would be welcomed in that district to have something in Brockmeyer Park that could be utilized by the general public. Nutting felt this project would grow if it was done in a manner like the one in Stevens Point. The greatest need is to incrementally bring a variety of parks into compliance and then Hoerter and others could spearhead a project. Gisselman thought the Park Foundation could act as a funnel for a capital drive and didn't think it should all be on the Park Department. Oberbeck said this playground could be outsourced and designed the way the pools were. It is with

half a mile of a TIF district so there is alternative funding that could be looked at. Since it would be a larger development there would probably be a greater number of individuals that would want to be a part of this. It could even be used for therapies by organizations on the west side of town.

Duncanson said the department is already doing an assessment City wide and is already discussing updating the master plan for Brockmeyer Park. If it appears there is a serious effort to do a fully accessible playground at Brockmeyer Park, that will impact what the overall City-wide assessment is. They need to remember that in order for the City to become ADA compliant this doesn't have to be built. However, what is designed and installed in other locations may not need to be at as high of a level if a KASH type playground is built. Duncanson said it would be wonderful to have something like the KASH playground but he is not interested unless there is a maintenance fund attached to it.

Oberbeck said the west side has a lot of tax base and the City has an obligation to take care of all the taxpayers. People have been waiting many years for something to happen in Brockmeyer Park. Neal sees it as either doing what they must do or doing what they could do. They must pick and choose certain parts of town and upgrade the equipment as the budget allows. The KASH type of playground is a community development project spearheaded by donors and foundations with the cooperation of the City. Oberbeck said it could be a totally City funded project because the City has an obligation to maintain facilities in parks. Just like the City puts pools, shelters, and play equipment in parks, why are they saying they aren't going to do anything for Brockmeyer Park. It is a large expansive space with expensive infrastructure and he is hearing they can't do a fully accessible playground for \$500,000 yet they are spending \$3 million on pools in other smaller parks. They are obligated as a City to make sure all the parks are usable and are an asset to those areas. They didn't say pools should have been funded from the outside. Instead they said they were going to invest in that infrastructure and possibly build a pool on a different site. He questions the philosophy that this can't be done with City funds. He liked the idea of where the community becomes involved and takes it from a 30% that meets standards to a 100%. Duncanson said that Brockmeyer Park was cut into phases but only the first phase was accomplished. The accessibility of the playground has to be improved. If the KASH playground idea had not come up, that is what staff would be recommending. Neal said the City can say it will improve Brockmeyer playground to a certain level and give a cost and a timeline. It can also say there is another option out there, a larger community project that would require something beyond just the City financing of it. Then the determination of which way to go will have to be made and it's not their decision to make. Oberbeck said the decision could and should be brought back on a future agenda for action. Gisselman said this is great step in seeing the opportunities and they have seriously to think about the financing and how it will be balanced. Nutting said that staff knows what it needs to do with the current infrastructure in how many years to stay within compliance.

Duncanson said it is a huge amount of work to outline a phased project and to get it ready for submittal in the CIP process which starts next month to have it ready for the 2016 budget. Fiorenza said they have requested funds for several years from CIP and haven't been successful and he seriously hopes this moves to the top. Oberbeck felt the community's input is needed because if those parks are just going to have a few accessible items to meet the minimums. Will they be used and are the community's needs going to be met? Maybe they should look at a destination facility rather than trying to break it up to serve everyone and then it really doesn't serve anyone to any great extent. Duncanson felt the expectation in various neighborhoods is for there to be play equipment if they are not near a school. One of the requirements of ADA is that they aren't going to be able to leave any large area of the community without some accessible play facility. On the other hand he doesn't think it's appropriate to put high level facilities everywhere. The population being served is not that large overall and the City has to balance what they can afford and how many people can be accommodated. Oberbeck said additional park developments in the City have to be scrutinized because they need to take care of what they already have first. For the next meeting Neal would like some sort of an idea of what is needed in terms of budget requirements to meet the minimally accessible requirements. They could keep the KASH playground idea on the radar but from a maintenance standpoint need to get a handle on the required ones. Oberbeck would like to see an organized group in the community bring a proposal of doing something in Brockmeyer Park such as IMBA is doing for bike trails in Sylvan Hill Park. Oberbeck thought it would help to have an indication of support from this Committee. Then it can be brought back here for a resolution of support to bring to City Council and move it forward that way. There is no commitment for funding but that there is support for the idea. Duncanson said that the City of Stevens Point did not get involved until there was a firmly organized group that had a proposal and a strategy. Nutting said that no one from this City would stop a grassroots organization from putting something together with their potential commitment and asking if there was a place for it.

Hoerter left the meeting at 6:30pm

Approval of Minutes – Motion by Neal, second by Gisselman to approve the Park and Recreation Committee February 2, 2015 draft minutes. Motion **carried** by voice vote. Vote reflected as 4-0.

Sponsorships – Discussion and Possible Action on the Scope of Potential Financial Sponsorships for Parks and Recreation Facilities and Programs to Offset Annual Operating Costs – Neal said that park staff had given their reaction to his original list. A question was raised if a park already has a name or was donated or built by somebody would that preclude that facility from being sponsored in some way. Neal felt those parks still could have some kind of maintenance or adjunct sponsorship. It would be a secondary acknowledgement. He looked at some things that could be considered for maintenance sponsorships. He will continue to work on the list possibly considering upper and lower tiers for amounts and put together a plan to market it. Oberbeck brought up the concept of having a “Friends” group where people belong to an organization that helps maintain the park system and are recognized that way. Neal said there was such a group in Milwaukee that does park cleanup and holds fundraisers. He said the City didn’t start that, the people saw a need and it grew. This sponsorship type thing is something the City can proactively market and sell to get some money to help the City. He will continue to work on it. He still hasn’t spoken with anyone on the staff through the Mayor of who he would work with here in outreach, answering phone calls, getting photos of facilities, etc. Duncanson said if this Committee has anything they could say to Neal to narrow the scope they should do so because the Committee will have to be comfortable with the outcome. Neal said he would take anyone’s input. The main thing he sees is some opportunities for outright sponsorship where a business or neighborhood group might take it on. With the maintenance sponsorships he is trying to have some kind of visibility attached and how that is managed. They will have to determine what signs or physical visibility options are out there.

River Edge Trail – Report on the Likely Location and Features of the River Edge Trail in the East River Redevelopment Area – Duncanson said that currently the River Edge Trail follows the former rail grade that the City owns from Third Street over to Barker Stewart Island. There will be pathways on either side of the stream so it was decided to take the walkway and connect it to the River Edge Trail and not have the former rail line be used as the trail or in the way of any other development. Duncanson discussed the connection crossing the railroad track by Bridge Street. He said if Fulton Street is put through to the edge of the river that will be another connection to the trail. They will keep the trail back from the edge a little bit in case there is a determination to do stairs or terraces down to the edge of the water. Duncanson discussed the entire layout of the trail and the river bank treatments. In some areas the bank will be laid back at a lesser slope than what it is right now and in other areas it will be left at the existing slope. He discussed bank areas where there will be rip-rap, trees, landscaping, placed stones, etc. Duncanson discussed how the trail would abut the WOW building. He said the trail would be at a lower level than the deck area. Accessibility to the trail was discussed. Duncanson discussed the wharf area. He said it was designed so that people can bring a boat there and come up on shore and also so that it can be expanded in the future. Duncanson summarized the trail in the entire area saying that near the Eye Clinic it will be curvilinear trail at the top of the bank. There will be areas of grass vegetation and areas of rip-rap. In the rip-rap areas some of the better trees will be saved. If Fulton Street goes to the river there will likely be a terraced plaza area where people can gather on the river. As the trail goes north, there will be walkways that go down to edge of water and sitting areas on both sides of the bridge. Once the trail crosses the bridge it will slope downhill toward the wharf area. It will continue past the WOW building at a level slightly below and will then come back to top of bank where it will meander. There may be some public park space near the Bridge Street Bridge. There will be opportunity to get onto Bridge Street and go to the other side of the river or go onto Bridge and connect with existing trail. Gisselman is concerned because right now there are two 1<sup>st</sup> Streets. Duncanson said when this 1<sup>st</sup> Street goes past the Water Works building it becomes River Drive and maybe it should all be River Drive.

Bird City Wisconsin – Report and Possible Action on the 2015 Application For Bird City Wisconsin Designation – Duncanson said that it was time for the annual proclamation by the Mayor for the City’s celebration of International Bird Day. The proclamation is needed for the 2016 application. **Motion** by Gisselman, second by Nutting to forward the Mayors proclamation of the celebration of International Bird Day to City Council. Motion **carried** by voice vote. Vote reflected as 4-0. Oberbeck commented that information should be passed on to the Public Health and Safety Committee regarding the cat trap, neuter, release program and impacts to the Wausau Bird City designation.

Project Update

Kaiser Pool – Duncanson reported that the pool shell is complete and pool decks will be installed in spring. Exterior masonry is complete of the bath house and roof trusses are being set. The project is on schedule.

Memorial Pool – Duncanson reported that pool and bath house final designs are being completed. Tentative bid in late March.

Future Agenda Items – sponsorship update, possibility of ADA improvements to the equipment, possibly endorsing the larger accessible type facility

Next Regular Meeting – Monday, April 6, 2015 at 5:15pm at Board Room, City Hall.

Adjourn - **Motion** by Nutting, second by Gisselman to adjourn at 7:30 p.m. Motion **carried** by voice vote. Vote reflected as 4-0.

## **AGENDA SUMMARY**

4. Athletic Park Development and Use Agreements – Discussion and Possible Action on Entering Into a Development Agreement and Amending the Existing Athletic Park Use Agreement Related to Proposed Athletic Park Improvements

The City of Wausau was the recipient of a generous gift of a new grandstand at Athletic Park in 2014. The City participated in the plan with the creation of the adjoining Athletic Neighborhood Park. This was Phase I of a plan to upgrade all the spectator facilities in the ball park. The Macdonald Foundation is proposing to undertake the next phase of the plan with replacement of the third base line seating, party deck, concession and restroom facilities. Construction would start in late summer 2015 and be completed by May 2016. As with the Phase I project, the responsibilities of the involved parties are laid out in a Development Agreement and there are associated amendments to the existing 2013 Athletic Park Use Agreement (enclosed).

### Development Agreement

PRF and Engineering staff have reviewed the City obligations and believe those items required to be completed by May, 2015 can be accomplished by the deadline within existing budgets. Those items scheduled for future years will require funds to be designated in future budgets. The Section 1.01 Lighting and Public Walkway Improvement will require a 2016 road reconstruction project. This project was part of the 2013 Development Agreement. Cost estimates will be developed as part of the 2016 budget. We presently estimate the Section 1.03 Bathroom Improvements will require a 2016 CIP project of around \$80,000 to complete. The Section 1.04 Outfield Improvements is a project that staff recognizes the need for. This spring and summer staff will develop a plan and cost estimate for inclusion in the 2016 budget. The Section 1.08 Cross Walk project will have the warning flasher component identified in the 2016 budget.

### Third Amendment to Athletic Park Use Agreement

PRF staff has worked with the City Attorney and WCB to develop these amendments. The amendments accomplish the following:

- Give WCB scheduling priority for all baseball related events
- Extends the agreement for an additional 5 year period
- Approve improvement proposals
- Defines and sets fees for “Allowed Combined Facility Events”
- Clarifies responsibilities for utility payments
- Clarifies storage of WCB property
- Extends liquor sales to the Group Outings area and to the entire facility for private events
- Updates exclusive access areas

Staff recommends the Committee approve the documents and forward them to the Common Council for their consideration on April 14, 2015.

# DRAFT

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_ 2015, by and between the **City of Wausau**, a municipal corporation of the State of Wisconsin (herein after referred to as “City”) and The **Macdonald Foundation** (f/k/a the Macdonald Family Charitable Trust, hereinafter the “Foundation”) with respect to their mutually beneficial and cooperative continued redevelopment of the facilities located at 324 East Wausau Avenue, Wausau, Wisconsin, commonly known as Athletic Park (hereinafter referred to as “Athletic Park”), and the adjoining neighborhood park located between East Wausau Avenue and East Union Avenue in Wausau, Wisconsin (the “Neighborhood Park”) (Athletic Park and Neighborhood Park are referred to collectively hereafter as the “Combined Premises”).

### ARTICLE 1 – CITY OBLIGATIONS

Section 1.01. *Completion of Lighting and Public Walkways Improvements.* As initially agreed in the Development Agreement between City, Foundation, and Macndon, LLC dated May 20, 2013, prior to May 1, 2015, City shall stripe, install pedestrian walkway signage and lighting from Athletic Park to the Wilson-Hurd Parking Area to the north in accordance with lighting plans reasonably approved by the Foundation and Wisconsin College Baseball, Inc. (“WCB”). By May 1, 2016, City will install a sidewalk that is separated from the 5<sup>th</sup> Street driving surface from Athletic Park to the Wilson-Hurd Parking Area to the north in accordance with plans reasonably approved by the Foundation and WCB.

Section 1.02. *Parking Lot Improvements.* As initially agreed in the Development Agreement between City, Foundation and Macndon, LLC dated May 20, 2013, prior to May 1, 2015, City shall improve and increase in size the Wilson-Hurd Parking Area or alternative parking areas near Athletic Park (including, but not limited to properties acquired in the future by the City) to provide an minimum 198 parking slots in accordance with plans approved by the Foundation and WCB. The parties will further work cooperatively to develop by May 1, 2016, a parking plan for Athletic Park that primarily takes into consideration current and anticipated uses of Athletic Park

Section 1.03. *Bathroom Improvements.* The parties acknowledge that WCB plans to undertake certain alterations and improvements to Athletic Park approximately commencing in September, 2015, including replacement of the third base line bleachers, third base line group outings facility and restrooms (the “Phase 2 Improvements”). The parties acknowledge that these alternations are being undertaken pursuant to that certain Athletic Park Use Agreement, as amended, by and between the City, WCB and Northwoods League, Inc. Prior to June 1, 2016, the City will (subject to the work by the Foundation noted below) complete, at its sole cost, a construction of the interior portions of the restrooms to be located under the third base line bleachers pursuant to the designs provided by WCB and its contractors and otherwise reasonably

acceptable to the City. The parties agree that the City will waive any permitting fees that may be chargeable by the City with respect to the Phase 2 Improvements.

Section 1.04. *Outfield Improvements.* Prior to May 1, 2017, the City will, at its sole cost, renovate and repair the baseball field outfield of Athletic Park (which work will likely consist of primarily grading, leveling and re-seeding) in accordance with plans approved by the Foundation and WCB.

Section 1.05. *Installation of Outside Foul Ball Warning Signs.* Prior to May 1, 2015, the City will, at its sole cost, install foul ball warning signs outside the stadium perimeter of Athletic Park (a sample of the signage is attached). These signs will be installed on Wausau Avenue (between 5<sup>th</sup> and 3<sup>rd</sup> Streets), on 3<sup>rd</sup> Street (north of Wausau Avenue) and on Union Avenue (across from Neighborhood Park and in handicapped parking areas.) The signs should be of size that can be easily seen by motorists and otherwise reasonably acceptable to WCB.

Section 1.06. *Installation of Inside Foul Ball Warning Signs.* Prior to May 1, 2015, the City will, at its sole cost, install 12 foul ball warning signs inside the stadium perimeter of Athletic Park. The signs will be of approximately 8.5" x 11" or larger (a sample of the signage is attached), in locations reasonably approved by WCB, and otherwise reasonably acceptable to WCB.

Section 1.07. *Third Base Foul Line Utility Work.* Within two (2) weeks following the completion by the Foundation or WCB of the trenching and clean up of the underground utilities along the 3<sup>rd</sup> base foul line, the City will repair, at its sole cost, the irrigation, warning track and playing field impacted by such utility work.

Section 1.08. *Cross Walk.* Prior to May 1, 2015, the City will, at its sole cost, upgrade the crosswalks at the intersection of E. Wausau Avenue and 3<sup>rd</sup> Street that will allow fans to cross from East/West and North/South, which work will include restriping and, installation of "Pedestrian Crossing" caution signs in reasonable locations on 3<sup>rd</sup> Street. Prior to May 1, 2016, the City will, at its sole cost, install pedestrian crossing warning flashers in reasonable locations at the intersection of E. Wausau Avenue and 3<sup>rd</sup> Street.

## **ARTICLE 2 – FOUNDATION OBLIGATIONS**

Section 2.01 *B-Poles Replacement.* Prior to October 1, 2015, Foundation will cause to be replaced the B-poles for Athletic Park in accordance with City's reasonable requirements, which cost shall be considered a donation to the City by the Foundation.

**ARTICLE 3 - MISCELLANEOUS:**

Section 3.01 *Condition Precedent.* The City acknowledges that WCB's and Foundation's obligations under this Agreement are contingent upon the City taking, by April 14, 2015, all action necessary by the City to approve this Agreement.

Section 3.02 *Good Faith Efforts.* The parties acknowledge and agree that they have entered into these terms and conditions to establish development relationships intended to be mutually beneficial for both parties. Accordingly, each of the parties will work together and cooperate with each other in implementing the purposes and intents of these terms and conditions and in attempting to resolve any questions and settle any disputes hereunder on a "time is of the essence" basis and resolving all doubtful, questionable, or unclear issues or situations in favor of the efficient and cost-effective completion of the work contemplated herein. In addition, both parties will respond to such matters in good faith and in a cooperative, practical, problem solving manner.

Section 3.03 *Waiver.* Any waiver, alteration, modification, or cancellation of this Agreement will not be valid unless in writing and signed by each of the parties hereto. The waiver by either party of a breach of any provision of this Agreement by the other of them will not operate or be construed as a waiver of any subsequent breach.

Section 3.04 *Notices.* All notices, demands, certificates, or other communications under this Agreement shall be in writing. They shall be deemed given (a) when hand delivered to the address below, (b) when transmitted by facsimile or electronic mail to the number below with electronic confirmation of receipt, or (c) two (2) business days after being mailed by first-class mail, postage prepaid, to the address below. Any party may, by written notice to the other parties, designate a change of address for these purposes.

CITY

City of Wausau  
Attn: City Attorney  
407 Grant Street  
Wausau, WI 54403

Foundation:

Mark Macdonald, Foundatonee  
1561 Gates Avenue  
Manhattan Beach, CA 90266

With a Copy to

Joseph M. Mella, Esq.  
Ruder Ware, L.L.S.C.  
500 North First Street, Suite 8000  
Wausau, WI 54403

Section 3.05 *Successors and Assigns.* This Agreement and the rights and obligations of the parties hereto will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns.

Section 3.06 *Unenforceability.* If any provision of this Agreement is unenforceable pursuant to applicable law, the same will be severable from the remainder of this Agreement and the remainder of this Agreement will be enforceable to the fullest extent permitted by law.

Section 3.07 *Applicable Law.* This Agreement and all the rights and obligations of the parties hereto with respect thereto will be construed in accordance with, and governed by, the laws of the State of Wisconsin.

Section 3.08 *Further Assurances.* Each of the parties hereto will execute and deliver to the other party hereto such other documents and instruments as may be reasonably required by either party in connection with the performance of this Agreement.

Section 3.09 *Recording.* The parties shall enter into a memorandum or short form of this Agreement, and either party may record the same in the office of the register of deeds for Marathon County, Wisconsin.

Section 3.10 *Counterparts.* This Agreement may be signed in one (1) or more counterpart originals, which, when taken together shall constitute the same original.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the day and year first written above.

**MACDONALD FOUNDATION:**

\_\_\_\_\_  
By: Mark Macdonald  
Its: Trustee

**CITY OF WAUSAU:**

By: \_\_\_\_\_  
James E. Tipple, Mayor

Attest: \_\_\_\_\_  
Toni Rayala, Clerk

DRAFT

# **DRAFT**

## **THIRD AMENDMENT TO ATHLETIC PARK USE AGREEMENT**

**THIS THIRD AMENDMENT TO ATHLETIC PARK USE AGREEMENT** (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF WAUSAU**, a municipal corporation organized pursuant to the laws of the State of Wisconsin (hereinafter called “City”), **NORTHWOODS LEAGUE, INC.**, a Florida corporation (hereinafter called “Northwoods”), and **WISCONSIN COLLEGE BASEBALL, LLC**, a Wisconsin limited liability company (hereinafter called “WCB”).

### **WITNESSETH:**

WHEREAS, City, Northwoods, and WCB are parties to that certain Athletic Park Use Agreement dated May 20, 2013 (the “Original Agreement”); and

WHEREAS, the parties hereto wish to amend the Original Agreement as provided herein;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### **ARTICLE 1 - DEFINITIONS**

Section 1.1 Unless otherwise defined herein, all capitalized terms shall have the meaning given thereto in the Original Agreement.

Section 1.2 “Combined Facilities” shall mean Athletic Park and Neighborhood Park.

### **ARTICLE 2 - AMENDMENTS**

Section 2.1 Term. The Term of the Agreement is hereby extended to December 31, 2038.

Section 2.2 Scheduling Priority. Article II, Section 2 of the Original Agreement is hereby amended by replacing the first sentence thereof with the following:

Have scheduling priority for all baseball related events, including Northwoods League games, conducted at Athletic Park each year.

Section 2.3 Optimist Event. Article II, Section 2 of the Original Agreement is hereby amended by deleting the following sentences:

The Optimist Youth Baseball Tournament, or its successors, shall be allowed use of Athletic Park for one (1) weekend tournament annually, consisting of a Friday-Saturday-Sunday tournament schedule, so long as WCB shall also be allowed to use Athletic Park for one (1) Northwoods League game during said tournament weekend. The parties shall use their best efforts to schedule the Optimist Tournament on the weekend before Father's Day or on one of the two weekends following Father's Day annually.

Section 2.4 Rental Fees. A new Article II, Subsection 3.E. is hereby created in the Original Agreement to read as follows:

E. **Years 2034-2038**. On March 15th, 2034, City will have the ability to "Look Back" at past costs and adjust the annual base rental fee and individual game fee for the 2034 through 2038 seasons if all of the following conditions exist:

- a. 2029-2033 gross revenues from Athletic Park naming rights are less than \$175,000; and
- b. Cumulative change in the CPI has exceeded 55%); and
- c. City and WCB have not been able to attract four Outside Events to Athletic Park; and
- d. Annual gross revenues of WCB exceed \$1,750,000 as confirmed by the President of the Northwoods League.

Section 2.5 Improvements to Athletic Park prior to 2015. Notwithstanding the provisions of Article II, Section 5 of the Original Agreement, all proposals for improvements to Athletic Park heretofore delivered to City and the Department prior to 2015 are hereby deemed approved. Any further improvements or alterations, including those contemplated to be undertaken in 2015, are subject to the provisions of the Original Agreement.

Section 2.6 Non-Baseball Event Use. The first full sentence of Article II, Section 7 of the Original Agreement is hereby amended to read as follows:

Use Athletic Park for college league baseball game purposes and pre-season practice and Allowed Combined Facility Events (as defined herein).

Section 2.7 Allowed Combined Facility Events. For purposes of the Original Agreement, as amended hereby, an "Allowed Combined Facility Event" shall mean any non-baseball event organized and conducted by WCB in the Combined Facilities. Notwithstanding any provisions of the Original Agreement, City hereby permits WCB Scheduling priority for up to ten (10) Allowed Combined Events provided that none of the dates fall between June 1st and August 15th. The scheduling shall be handled in the same manner as baseball game scheduling.

If WCB charges admission for an Allowed Combined Facility Event, WCB shall pay to City an event fee equal to the then applicable per game fee. If WCB does not charge admission for an Allowed Combined Facility Event, WCB shall pay an event fee to City in accordance with an event fee schedule attached hereto; provided, however, that the event fees shall not be increased by the City by more than 3% per year (compounded annually) during the term of this Agreement. All services provided by City to WCB for baseball game events shall also be provided in the same manner for any Allowed Combined Facility Event.

Section 2.8 Use of Neighborhood Park. The first full sentence of Article II, Section 8 of the Original Agreement is hereby amended to read in its entirety as follows:

Not less than three (3) hours before commencement of any games or events, have exclusive use of Neighborhood Park for WCB baseball games and promotional events.

Section 2.9 Telephone Fees. Article II, Section 16 of the Original Agreement is hereby amended by inserting prior to the concluding period the following:

, except for elevator telephone fees, which shall be the sole responsibility of City.

Section 2.10 Article III, Section 1.B. is hereby amended to read as follows:

B. **Years 2019-2038**. In 2019, 2024, 2029, and 2034 there will be a five-year “look back” at changes in CPI that will be used to determine the maximum percentage of annual change in the annual concession fee for that year and the following four (4) years. The annual fee for such period shall change by the lesser of the adjusted maximum percentage of annual increase or the actual percentage of change in CPI for the prior year. These five-year “look backs” will determine the gross change in CPI between the first and fifth years of the five-year period immediately preceding the adjustment year. The amount of gross change shall be expressed as a percentage. This percentage shall be divided by five. The resulting percentage shall be the maximum percentage of annual change for the corresponding five-year period.

On March 15th of 2019, 2024, 2029, and 2034 City will have the ability to “Look Back” at past concession fees and adjust the current year base concession fee using the same criteria as rental and game fee adjustments further described herein.

Section 2.11 WCB Personal Property. Article II, Section 21 of the Original Agreement is hereby amended in its entirety to read as follows:

**WCB Personal Property**. Remove all WCB personal property, other than concession facilities and equipment, from the public areas of Athletic Park (except for storage areas,

the retail store, office, concession stands, press box and the clubhouse) annually from November 1 through the following April 1, unless specifically exempted in writing by the City. Any WCB property remaining at Athletic Park from November 1 through April 1 shall be left in a clean and orderly condition. WCB will move their personal property as reasonably requested by City for planned maintenance activities. Except as provided for herein, WCB shall not leave or store any personal property in Neighborhood Park, unless specifically exempted in writing by the City. Any WCB personal property used or operated in Neighborhood Park during any WCB-sponsored event shall be removed from Neighborhood Park by 10:00 am the day following such event.

Section 2.12 Athletic Park Maintenance. Article II, Section 22 of the Original Agreement is hereby amended by inserting after the concluding period thereof the following:

Maintenance and upkeep of Athletic Park by the City as required herein will be provided on the same schedule and frequency and at the same standard of quality as provided in 2014.

Section 2.13 Neighborhood Park Maintenance. Article II, Section 23 of the Original Agreement is hereby amended in its entirety to read as follows:

**Maintenance of Neighborhood Park.** Maintain Neighborhood Park to meet applicable health and safety codes and to support the agreed upon programmatic needs of WCB. Maintenance and upkeep of Neighborhood Park by the City as required herein will be provided on the same schedule and frequency and at the same standard of quality as provided in 2014.

Section 2.14 Utilities. Article II, Section 29 of the Original Agreement is hereby amended in its entirety to read as follows:

**Utilities.** Provide utilities, including electricity, water and sewer, except as directed elsewhere in the Agreement. The facilities will be winterized on or before November 1 of each year through the following April 1, and the parties acknowledge that all utilities will be shut off to the facilities except for electrical service for security lighting purposes.

Section 2.15 Liquor Sales. Notwithstanding any agreement in the Original Agreement, as amended, to the contrary, City acknowledges that so long as it maintains a liquor duly issued liquor license and is in compliance with all applicable laws and ordinances, WCB will be allowed to sell and provide liquor during any baseball game events within the Group Outing areas above the 3rd base concession stand. During any Allowed Combined Facility Event, WCB will be allowed to sell and provide liquor within Luxury Suites or Group Outings area above the 3rd base Concession Stand; provided, however, that in the event an Allowed Combined Facility Event is conducted as an “invitation only” event, liquor may be sold or provided anywhere within the Combined Facilities.

Section 2.16 Exclusive Access. Notwithstanding any agreement in the Original Agreement, as amended, to the contrary, Neither City nor Department shall allow access to any portion of the Clubhouse, Luxury Suites, 1<sup>st</sup> and 3<sup>rd</sup> base Group Outing areas, Concession Stands, Press Box, Ticket Office, Retail Store and Storage Shed in Athletic Park, except for WCB, City and Department staff without the prior, written consent of WCB.

Section 2.17 Advertising and Naming Rights. Notwithstanding any agreement in the Original Agreement, as amended, to the contrary, the City acknowledges and agrees that WCB may keep all terms and conditions of any agreement with respect to advertising and naming rights confidential and shall be under no obligation to disclose such terms to any party.

### ARTICLE 3 - MISCELLANEOUS

Section 3.1 No Additional Fees. Except for the fees and charges imposed on WCB as set forth in the Original Agreement, as amended hereby, or as currently imposed, City will not charge, impose or levy additional fees or charges on WCB for the operations or sales activities in Athletic Park or the Neighborhood Park described in this Agreement, as amended hereby, during the Term of this Agreement.

Section 3.2 No Further Amendments. The terms and conditions of the Original Agreement, except to the extent as modified and amended by this Agreement, shall continue in full force and effect.

Section 3.3 Applicable Law. This Agreement and all the rights and obligations of the parties hereto with respect thereto will be construed in accordance with, and governed by, the laws of the State of Wisconsin.

Section 3.4 Further Assurances. Each of the parties hereto will execute and deliver to the other party hereto such other documents and instruments as may be reasonably required by either party in connection with the performance of this Agreement.

Section 3.5 Counterparts. This Agreement may be signed in one (1) or more counterpart originals, which, when taken together shall constitute the same original.

[DOCUMENT CONTINUES ON NEXT PAGE]

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

**WITNESS:**

**CITY OF WAUSAU**

\_\_\_\_\_

\_\_\_\_\_  
Jim Tipple, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Toni Rayala, Clerk

**WISCONSIN COLLEGE BASEBALL,  
LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Mark Macdonald, Owner

**NORTHWOODS LEAGUE, INC.**

\_\_\_\_\_

By: \_\_\_\_\_  
Richard R. Radatz, Jr., President

TEMPORARY EASEMENT AGREEMENT FOR THE USE OF WILSON-HURD PROPERTY FOR ATHLETIC PARK  
PARKING BY THE CITY OF WAUSAU

THIS AGREEMENT (the "Temporary Easement Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Wilson-Hurd Mfg. Co., a Wisconsin corporation, herein referred to as "GRANTOR," and the City of Wausau, a municipal corporation of the State of Wisconsin, herein referred to as "CITY".

WITNESSETH:

WHEREAS, CITY wishes to establish, operate, and maintain a temporary parking lot on land owned by GRANTOR for the purpose of providing off-street parking for activities at Athletic Park; and

WHEREAS, GRANTOR will allow such parking lot as a temporary easement on GRANTOR'S property upon certain terms and conditions as hereinafter enumerated.

NOW, THEREFORE, the parties hereto agree as follows:

1. GRANTOR hereby grants to CITY, at no charge, a temporary nonexclusive easement (the "Easement") over and across the south 195.00 feet of the Wilson-Hurd property at 311 Winton Street, Wausau, Wisconsin, as delineated on "Exhibit 1" which is attached hereto and incorporated herein by reference (the "Temporary Easement Area"), for the purpose of establishing, operating, and maintaining a temporary parking lot for the benefit of the public while the public is attending activities at Athletic Park.
2. CITY shall provide temporary perimeter improvements to delineate and contain the parking activities on the Temporary Easement Area, shall be responsible for all mowing, dust control, and litter collection and removal on the Temporary Easement Area, and shall install, maintain, repair, and remove the surface of and other improvements on the Temporary Easement Area. Typical parking lot improvements and maintenance of the Temporary Easement Area will consist of filling low areas that collect water, maintaining the grass, removing surface debris, stabilizing and grading entrances, and installing identification signage, traffic control devices and signage, and security lighting. The security lighting shall consist of two wood pole mounted cobra head type fixtures without footings located along the south edge of the Temporary Easement Area as shown on Exhibit 2. Such security lighting shall be allowed to remain in place until such time that it is determined whether a new Temporary Easement Agreement will be approved for the following year. If either GRANTOR or CITY determine that a new Temporary Easement Agreement will not be approved or sought for the following year, upon written notification to the other party, CITY will remove such security lighting within thirty (30) days and restore the Temporary Easement Area at the sole cost of CITY.
3. CITY shall be responsible to maintain the improvements in the Temporary Easement Area and, if CITY fails to adequately maintain the Temporary Easement Area and its improvements, GRANTOR may provide CITY with a written notice setting forth the needed repairs, improvements, or maintenance. If it is determined that work is, in fact, needed in the Temporary Easement Area and if CITY does not commence such work within five (5) working days from the date of receipt of the aforesaid written notice and such failure to commence such maintenance or repair work is not due to a cause beyond CITY's control, then GRANTOR may perform such work and CITY shall reimburse GRANTOR for all costs which are reasonably incurred by GRANTOR in performing such work.
4. GRANTOR hereby grants CITY permission to establish and charge a nominal fee to individuals using the parking lot on the Temporary Easement Area.
5. CITY shall maintain in effect at all times during the term of this Temporary Easement Agreement a policy of commercial general liability insurance to insure against injury to property, person, or loss of life arising out of use of the Temporary Easement Area with limits of coverage that are reasonably acceptable to GRANTOR. CITY shall provide GRANTOR with a certificate of insurance showing that GRANTOR is an additional insured under such commercial general liability insurance. The policy of commercial general liability insurance shall contain a supplemental endorsement covering contractual liability voluntarily assumed by CITY under this Temporary Easement Agreement. No such policy of commercial general liability insurance shall be terminated except after thirty (30) days' prior written notice to GRANTOR. At least thirty (30) days prior to the expiration of such policy of commercial general liability insurance, CITY shall furnish GRANTOR with evidence of the renewal of such policy.

6. CITY agrees to release, indemnify, and hold harmless GRANTOR, and GRANTOR's employees, agents, and officers, from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, actions, and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone, or of the death or deaths of anyone, or by reason of any personal injury and/or real or personal property damage, or by reason of any other liability imposed by law, or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to the operations, actions, or omissions of CITY or the public in connection with the use of the Temporary Easement Area; specifically included within this release, indemnification, and hold harmless are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.
7. GRANTOR agrees to release, indemnify, and hold harmless CITY, and CITY's employees, agents, officers, and officials (whether hired, appointed, or elected), from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, actions, and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone, or of the death or deaths of anyone, or by reason of any personal injury and/or real or personal property damage, or by reason of any other liability imposed by law, or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to the operations, actions, or omissions of GRANTOR on the Temporary Easement Area or on any adjacent premises owned by GRANTOR and/or as a result of and/or due to the presence of GRANTOR on the Temporary Easement Area or on any adjacent premises owned by GRANTOR; specifically included within this release, indemnification, and hold harmless are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.
8. CITY agrees to defend, indemnify, and hold harmless GRANTOR, and GRANTOR's employees, agents, and officers from and against any and all judgments, demands, losses, costs, claims, expenses, suits, demands, actions, causes of action, administrative orders, consent agreements and orders, liabilities, and penalties arising under any applicable federal, state, or local statute, law, or regulation relating to environmental matters which are now in force or hereinafter enacted to the extent that such have been occasioned, wholly or in part, by any condition, accident, or event caused by any negligent or intentional act or omission of CITY, or any of CITY's employees, agents, officers, officials (whether hired, appointed, or elected), contractors, subcontractors, licensees, invitees (including the public), successors, and assigns on the Temporary Easement Area which arises out of disposing, releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of "Toxic Material," "Hazardous Substances," or "Hazardous Waste" during the term of this Temporary Easement Agreement or the performance or failure to perform any abatement activities required by any appropriate federal, state, or local government authority with regard thereto.
9. GRANTOR agrees to defend, indemnify, and hold harmless CITY, and CITY's employees, agents, officers, and officials (whether hired, appointed, or elected), from and against any and all judgments, demands, losses, costs, claims, expenses, suits, demands, actions, causes of action, administrative orders, consent agreements and orders, liabilities, and penalties arising under any applicable federal, state, or local statute, law, or regulation relating to environmental matters which are now in force or hereinafter enacted to the extent that such have been occasioned, wholly or in part, by any condition, accident, or event caused by any negligent or intentional act or omission of GRANTOR, or any of GRANTOR's employees, agents, officers, contractors, subcontractors, licensees, invitees (excluding the public), successors, and assigns on the Temporary Easement Area which arises out of disposing, releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of "Toxic Material," "Hazardous Substances," or "Hazardous Waste" prior to or during the term of this Temporary Easement Agreement or the performance or failure to perform any abatement activities required by any appropriate federal, state, or local government authority with regard thereto.
10. This Temporary Easement Agreement shall be effective as of the day and year first above written and, unless earlier terminated by GRANTOR, shall expire as of December 31, 2015. GRANTOR reserves the right to cancel this Temporary Easement Agreement at its sole discretion upon thirty (30) days' prior written notice to CITY. Upon receipt of such notice, CITY will have thirty (30) days to cease its use of the Temporary Easement Area, to remove all improvements which CITY has installed on the Temporary Easement Area, and to restore the Temporary Easement Area to the condition which it was in as of the day and year first above written.
11. This Temporary Easement Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

12. All notices to either party to this Temporary Easement Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. Either party may change its address for notice by providing written notice to the other party.
13. Enforcement of this Temporary Easement Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Temporary Easement Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Temporary Easement Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.
14. Nothing in this Temporary Easement Agreement shall be deemed to be a gift or dedication of any portion of the Temporary Easement Area to the general public or for any public purpose whatsoever. CITY and GRANTOR agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Temporary Easement Area, whether by express grant, implication, or prescription. These measures may include, without limitation, the posting of "Private Parking Lot", "No Through Traffic", or "No Trespassing" signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Temporary Easement Agreement.

IN WITNESS WHEREOF, this Temporary Easement Agreement has been duly executed the day and year first above written.

WILSON-HURD MFG. CO.

CITY OF WAUSAU

\_\_\_\_\_  
Dan Wieselmann, Vice President Finance

\_\_\_\_\_  
James E. Tipple, Mayor

\_\_\_\_\_  
Toni Rayala, Clerk

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF MARATHON)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above named Dan Wieselmann of Wilson-Hurd Manufacturing Company, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, Wisconsin  
My commission: \_\_\_\_\_

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF MARATHON)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above named James E. Tipple, Mayor, and Toni Rayala, Clerk for the City of Wausau, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, Wisconsin  
My commission: \_\_\_\_\_





Wausau Municipal Code

9.20.020 Regulation of persons. Persons using the public parks shall comply with the following:

(h) No owner or person having immediate custody, care or control of any animal, shall permit said animal to enter and/or remain in any designated public park building, bathing beach, **the Marathon County Sports Complex, the Marathon Park Amphitheater**, or playground safety surface area within any city park, except for a dog specially trained to lead blind or deaf persons or to provide support for mobility-impaired persons. This restriction is in addition to the provisions contained in Chapter 8.08 of the Wausau Municipal Code;

## PROJECT UPDATE

### Kaiser Pool

Pool slides have been installed. Interior concrete slabs at the bath house have been poured and the building is close to being closed in. Final site work will be completed this spring.

### Athletic Neighborhood Park - Playground

The new canopy for the playground has been delivered to the Park Department. Installation is scheduled for late April – early May depending on weather conditions.

### Memorial Pool Design

Pool design to be presented at meeting.

### Radtke Point Erosion Mitigation

Becher Hoppe has completed the mitigation plans, are finalizing specifications and coordinating with the FAA.