

FACILITY USE AGREEMENT

(Green Island Tennis Courts)

This Facility Use Agreement (the “Agreement”) is entered into by and between the **City of La Crosse**, a Wisconsin municipal corporation, (the “**City**”), and the **Board of Regents of the University of Wisconsin System**, a body corporate under Wis. Stat. § 36.07 and doing business as the University of Wisconsin - La Crosse (the “**University**”).

Whereas, the City and University entered into a Joint Facility Use Agreement on September 23, 2013 allowing, among other things, City access to the University’s tennis courts;

Whereas, the University discontinued use of the tennis courts and the Joint Facility Use Agreement in 2019;

Whereas, the University, the Coulee Region Tennis Association, Ltd. (the “Association”) and Aquinas Catholic Schools, Inc. (“Aquinas”)(collectively, the “Facility Users”) would like the City to construct and maintain a tennis facility with thirteen (13) outdoor courts and allow them the use of the facility; and

Whereas, the construction and maintenance of a tennis facility is a significant endeavor for the City and would not be possible without continued support of the University, Association and Aquinas.

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Term. The term of this Agreement shall commence on August 1, 2020 and end on July 31, 2040.

2. Facility. The City shall design and construct thirteen (13) outdoor tennis courts at Green Island Park (the “Facility”), subject to annual appropriation of the City’s Common Council. The location and design of the Facility shall be determined by the City. A site layout plan is attached as **Exhibit A**.

3. Contribution of Construction Funds. University shall provide funds to offset the City’s costs to design and construct the Facility, specifically:

a. University Contribution. The University shall disburse two hundred fifty thousand dollars (\$250,000.00) to the City, which shall be kept in a segregated account until used to pay for the design and construction of the Facility.

d. Use of Funds. The City shall spend the funds for the purpose of designing and constructing the Facility. A site layout plan for construction of the facility is attached as **Exhibit A**. If the Facility is not constructed, the City shall return the funds.

4. Shared Use of Facility. After construction of the Facility, the City, University, Association and Aquinas shall share priority scheduling of the Facility for calendar years 2020 through 2040, more specifically,

A. During the term of this Agreement, University shall have scheduled use of the Facility as follows:

i. University use of the Facility tennis courts for the fall tennis season shall commence on the first day of practice specified by the National Collegiate Athletic Association (herein "NCAA") and shall conclude at 7:00 p.m. CST on November 1st .

ii. University use of the Facility tennis courts for the spring tennis season shall commence on the first day of practice specified by the NCAA and shall conclude at 7:00 p.m. CST on the day prior to the first day of the NCAA Division III National Tournament.

iii. On weekday (i.e., Monday through Friday) practice days during the Fall Season and Spring Season, University has priority use of the Facility tennis courts. Priority use shall commence at 9:00 a.m. and shall conclude at 7:00 p.m.

iv. On match days during the Fall Season and Spring Season, University has priority use of the Facility tennis courts. Match days can be scheduled any day of the week, including weekends. Priority use shall be from 8:00 a.m. to 7:00 p.m.

v. Pursuant to Section 4. B. and subject to the Association Use Agreement and Aquinas Use Agreement (as further described under Section 14 below), University shall have priority scheduling of the Facility (6 tennis courts) for multi-team competitions (i.e., invitationals, WIAA subsection and section tournaments, conference tournaments), including the rescheduling of such competitions that have been interrupted, canceled, or delayed due to weather or other circumstances.

vi. University shall have access to water, restrooms, locker rooms and other indoor meeting rooms and offices as needed at the nearby Green Island Ice Arena to the extent the Green Island Ice Arena is not already occupied and is available for use. University shall also have accessible parking located at or near the Facility. In the event the Green Island Ice Arena is occupied and/or not available for University's use, then the City shall still provide reasonable alternative restroom arrangements (e.g., placement of portable toilets at or near the Facility.)

B. Scheduling. Competitions are scheduled as much as eleven (11) months in advance. Tennis court availability for competitions, particularly multi-team competitions, is crucial for scheduling. Accordingly, annually during the term of this Agreement, City, University, the Association and Aquinas shall meet in November following the Fall Season to discuss any topics related to master scheduling for the subsequent Fall Season. Annually during the term of this Agreement, City, University, the Association and Aquinas shall meet in July following the Spring Season related to the master scheduling of the Facility for the subsequent Spring Season. In January of each year during the term of this Agreement, the Facility Users and the City shall participate in a scheduling meeting to identify potential scheduling conflicts, negotiate in good faith to finalize the Facility schedule and make every effort to resolve such conflicts with minimal disruption to any other Facility User. University shall have the opportunity during the aforementioned scheduling meetings to schedule use of the Facility for tennis camps and programming during the off-season periods (i.e., periods not including dates already part of University's Fall and Spring Seasons). Subject to Section 11, any scheduling conflicts that remain unresolved between the Facility Users and the City shall be decided by the Director of the Parks and Recreation Department, or his/her designee within the Department. City's Parks & Recreation Department shall schedule and conduct the annual scheduling meetings. Meetings may be conducted and/or attended in person or by electronic means.

C. Public Use. For days or times that are not scheduled during the annual scheduling meeting, the City may schedule events or allow other general public use of the Facility.

5. Maintenance. City shall operate and provide ordinary and regular maintenance of the Facility subject to annual appropriation of the City's Common Council. The City shall not be responsible for any uncommon or extraordinary maintenance, supply, equipment, personnel, utilities, clean-up costs or any other expense associated with the use of the Facility by the

University, Association or Aquinas. Specific work to set up or dismantle preparations for events at the Facility shall be the responsibility of the particular Facility User for the event. City and University further acknowledge, understand and agree that the Facility will deteriorate over time and that the contributions made pursuant to Section 3. are only in consideration for the City to design and construct the Facility on City land.

A. During the term of this Agreement, University shall pay an annual user fee of four thousand dollars (\$4,000.00). The user fee shall be paid in two semi-annual installments of two thousand (\$2,000.00) dollars. The first installment shall be due on or before August 1 of each year during the term. The second installment shall be due on or before March 15 of each year during the term. The user fees paid by Aquinas, the University and the Association shall be placed in a facility specific fund with the City. Said user fees shall be utilized for the resurfacing of the court playing surface, tennis net replacement, net post repair and replacement and fencing repair, as applicable. In years 10-20 of the Agreement the user fee shall increase to \$5,000 per year.

6. Appropriate Use. Each Facility User using the Facility as described in this Agreement shall be responsible for ensuring that its use complies with this Agreement along with any applicable laws, rules, regulations, policies and procedures. The sale or consumption of alcoholic beverages in or about the Facility is prohibited. Additionally, the Facility Users shall not sell or cause to be sold programs and/or other novelties in or about the Facility, except on written terms and conditions as established by the City's Board of Park Commissioners. Each Facility User shall not permit any use whatsoever of fire, flames, sparks, or the like without the prior express written consent of (i) the Chief of the City's Fire Department and (ii) the City's Board of Park Commissioners. The University, Association and Aquinas shall provide appropriate crowd control and oversight for participants when using the Facility and shall ensure that spectators and participants comply with all applicable laws, rules, regulations, policies and procedures during their use of the Facility. Each Facility User shall be responsible for any damage caused by its use arising from this Agreement.

7. Violation and Removal from Facility. If at any time the use of the Facility by University, Association or Aquinas violates an applicable ordinance or law of the City, State or other authority, they shall either cease and desist from continuing such use or surrender the Facility forthwith upon demand of the City. The terms and conditions of this Agreement do not require the City to relinquish its control of the Facility to any particular Facility User and/or any other party. The City retains the right to require any Facility User, or any of Facility User's participants, guests or subcontractors, to leave the Facility and City premises if the City in its sole discretion determines that circumstances require it.

and that such facility use agreements will hold the same term duration as this Agreement as well as substantially similar terms as shown in Sections 2-15 and Exhibit C of this Agreement. City further warrants that the terms and conditions of the other facility use agreements with Aquinas and Association will in no way (a) seek to alter or put additional responsibilities on University beyond University's responsibilities under this Agreement or (b) jeopardize any of University's rights under this Agreement, including the right to quiet enjoyment and use of the Facility. With regard to (b) above, this includes but is not limited to the preservation of University's right to priority and/or secondary priority scheduling of the Facility as further discussed in this Agreement.

13. Force Majeure. Neither party shall be liable for loss, damage or delay in performance resulting from any cause beyond its reasonable control, including, without limitation, severe weather, fire, earthquake or other natural disaster, labor strike, embargo, war, epidemic or pandemic, act of terrorism, or any law, order, proclamation, ordinance, demand or requirement of any government agency. If a party determines that its performance will be impacted by a force majeure event, that party shall provide prompt written notice to the other parties. Such notice shall advise the other parties of the nature and anticipated duration of the event. Notwithstanding the foregoing, each party shall use commercially reasonable efforts to promptly perform its obligations under this Agreement. Such force majeure event shall extend the time of performance for a period equal to the period of delay; provided, however, that if the period of delay actually exceeds or is reasonably anticipated to exceed six months, then any party may terminate this Agreement with no further liability to the other party by providing written notice of termination.

14. Miscellaneous. This Agreement represents the complete and entire understanding between the Parties, and contains all the terms and conditions agreed upon by the Parties hereto. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or be binding upon any of the parties hereto. This Agreement shall not be modified, changed or altered in any respect except in a writing signed by all parties. If any term, condition, covenant, provisions, or part thereof of this Agreement is declared invalid, void, or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. The parties acknowledge and agree that each party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction that ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed fairly as to all parties and not in favor or against a particular party. No party shall assign its rights or obligations pursuant to this Agreement without the express written consent of the other party. This Agreement shall be binding upon the parties hereto and their successors and permitted assigns. This Agreement

may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one agreement. All rights not expressly granted to the University, Association or Aquinas are reserved by the City.

15. Authority. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

In Witness whereof, the Parties have executed this Agreement as of the date first set forth above.

**BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM d/b/a THE
UNIVERSITY OF WISCONSIN-LA CROSSE**

CITY OF LA CROSSE

By: _____
Print Name: Robert J. Hetzel
Title: Vice Chancellor for Administration
& Finance
Date: _____

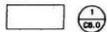
By: _____
Print Name: _____
Title: _____
Date: _____

EXHIBIT A
Site Layout Plan

(Site Layout Plan Attached - 1 Page Total)

SURFACE HATCH PATTERNS:

PROPOSED 3.0" ASPHALT PAVEMENT
12" DENGE GRADE BASE, 12" BREAKER RUN
W/ GEOTEXTILE FABRIC



PROPOSED 3.0" ASPHALT PAVEMENT, COURT SURFACING
12" DENGE GRADE BASE, 12" BREAKER RUN
W/ GEOTEXTILE FABRIC



PROPOSED 3.0" ASPHALT PAVEMENT
12" DENGE GRADE BASE

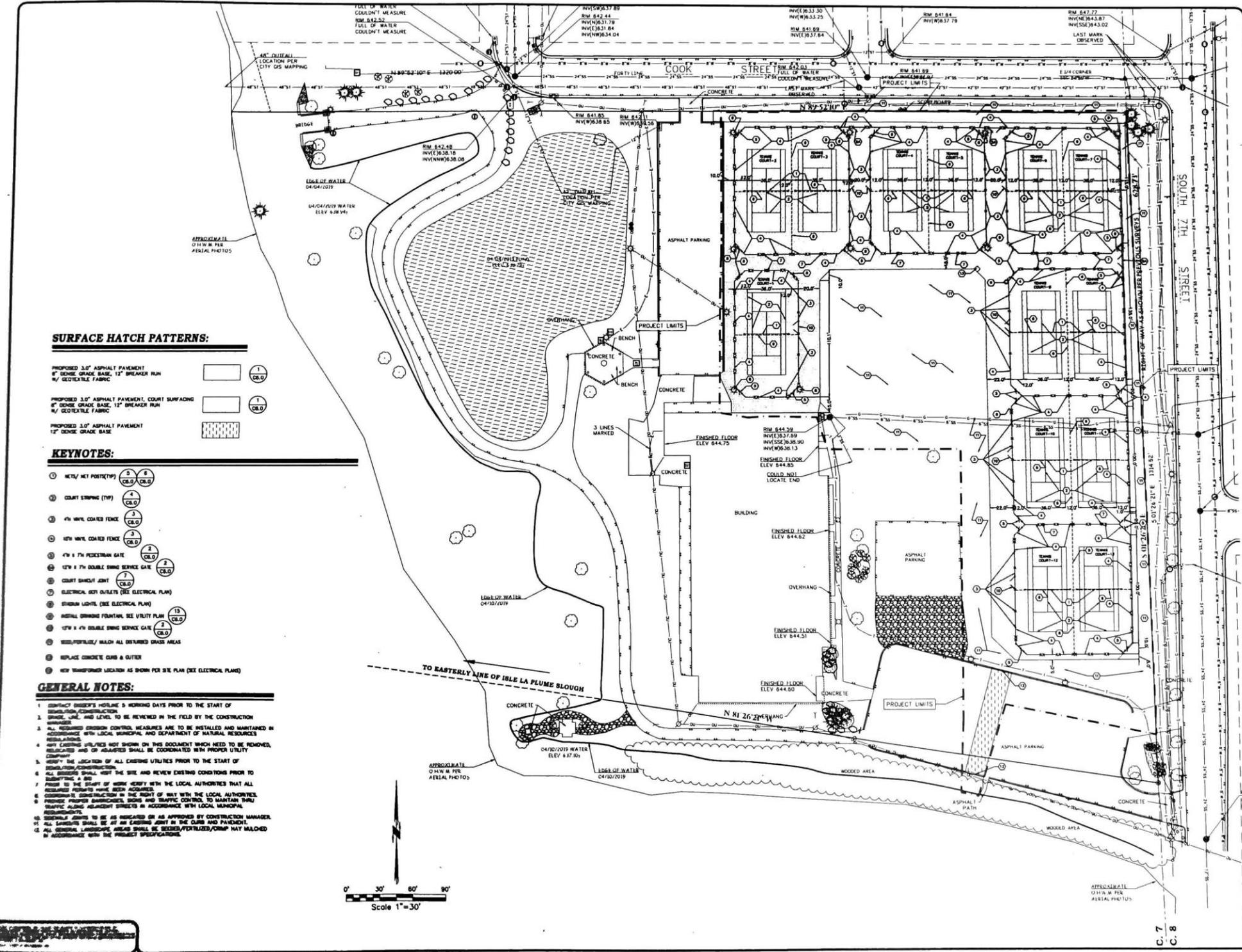
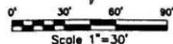


KEYNOTES:

- 1 WEL/ NET POSTS (TP)
- 2 COURT STRIPING (TP)
- 3 4" NYL COATED FENCE
- 4 6" NYL COATED FENCE
- 5 4" x 7" PEDESTRIAN GATE
- 6 4" x 7" DOUBLE DRNG SERVICE GATE
- 7 COURT SHEDT JOINT
- 8 ELECTRICAL BOX OUTLETS (SEE ELECTRICAL PLAN)
- 9 STREET LIGHTS (SEE ELECTRICAL PLAN)
- 10 METAL DRINKING FOUNTAIN, SEE UTILITY PLAN
- 11 4" x 7" DOUBLE DRNG SERVICE GATE
- 12 SEE/REMOVE/ MAINT ALL DISTURBED GRASS AREAS
- 13 REPLACE CONCRETE CURB & GUTTER
- 14 NEW TRANSFORMER LOCATION AS SHOWN PER SITE PLAN (SEE ELECTRICAL PLANS)

GENERAL NOTES:

1. CONTRACTOR'S RESPONSIBILITY TO BE COMPLETED PRIOR TO THE START OF CONSTRUCTION.
2. ALL REQUIRED EROSION CONTROL MEASURES ARE TO BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH LOCAL MUNICIPAL AND DEPARTMENT OF NATURAL RESOURCES REGULATIONS.
3. ANY EXISTING UTILITIES NOT SHOWN ON THIS DOCUMENT WHICH NEED TO BE REMOVED, RELOCATED AND OR ABANDONED SHALL BE COORDINATED WITH PROPER UTILITY COMPANIES.
4. VERIFY THE LOCATION OF ALL EXISTING UTILITIES PRIOR TO THE START OF CONSTRUCTION.
5. ALL BIDDERS SHALL MEET THE SITE AND REVIEW EXISTING CONDITIONS PRIOR TO BIDDING. A BID PRICES TO THE START OF WORK MUST BE WITH THE LOCAL AUTHORITIES THAT ALL NECESSARY PERMITS HAVE BEEN ACQUIRED.
6. CONTRACTOR'S RESPONSIBILITY TO BE COMPLETED PRIOR TO THE START OF CONSTRUCTION.
7. CONTRACTOR SHALL MAINTAIN TRAFFIC CONTROL TO MAINTAIN TRAFFIC ALONG ADJACENT STREETS IN ACCORDANCE WITH LOCAL MUNICIPAL REGULATIONS.
8. SCHEDULED WORKS TO BE AS INDICATED OR AS APPROVED BY CONSTRUCTION MANAGER.
9. ALL SCHEDULED WORKS SHALL BE AS APPROVED BY THE CURB AND PARADEWAY.
10. ALL GENERAL LANDSCAPE AREAS SHALL BE SEEDING, FERTILIZED, CRIMP MAY ALLOWED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.



DATE	11/11/2011
PROJECT NO.	11200
SCALE	1"=30'
DRAWN BY	DL
CHECKED BY	HL
DATE	11/11/2011
PROJECT NO.	11200

SITE LAYOUT PLAN

LA CROSSE PARKS, RECREATION & FORESTRY DEPT
GROSSE ISLAND PARK TENNIS COURTS
SITE DEVELOPMENT PROJECT
LA CROSSE, WISCONSIN

Civil Engineering
 Land Surveying
 Landscape Architecture
 444 E. Hennepin Street
 St. Paul, MN 55101
 763.344.9399 (F) 763.344.9393 (C)



EXHIBIT B INSURANCE

INSURANCE. Unless otherwise specified in this Agreement, the University, Association and Aquinas (each hereafter referred to as “Contracting Party”) shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below for their conduct at the Facility.

- a. *Worker’s Compensation and Employers Liability Insurance.* Contracting Party shall cover or insure under the applicable labor laws relating to worker’s compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer’s liability insurance with limits of at least for employers liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.
- b. *Commercial General Liability and Automobile Liability Insurance.* Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:
 - i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
 - ii. Contracting Party shall maintain limits no less than the following:
 1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.

2. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

c. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i. City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent

for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of City.

ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.

iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its elected and appointed officers, employees or authorized representatives or volunteers.

iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v. Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to City.

vi. Such liability insurance shall indemnify City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for

damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.

- vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to City and shall have a minimum AM Best's rating of A- VIII.
- d. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by City. At the option of City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- e. *Evidences of Insurance.* Prior to execution of the Agreement, Contracting Party shall file with City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- f. *Sub-Leases.* In the event that Contracting Party employs other lessees (sub-lessees) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.
- g. *Self-Insurance.* The parties acknowledge that University is part of the University of Wisconsin-System which is self-insured for purposes of General Liability insurance under the State of Wisconsin's Self-Funded Property and Liability Program (i.e., WI Statutes Sections 893.82 and 895.46) and also self-insured via a State of Wisconsin self-insurance program with regard to Worker's Compensation/Employer's Liability (i.e., WI Statute Ch. 102) and Automobile Liability (i.e., Section 895.46). The parties hereby acknowledge that, because University is selfinsured for the aforementioned insurance types, certain requirements mentioned in Sections a-e of this Exhibit B are simply not applicable, such as the requirement for having certain policies endorsed with "additional insured" endorsements. The parties hereby stipulate that the Certificate of Coverage provided by University evidencing "Liability" coverage (i.e., General Liability coverage), Worker's Compensation coverage, and Automobile Liability coverage pursuant to the laws of the State of Wisconsin shall be deemed to satisfy the General Liability, Worker's Compensation/Employer's Liability, Automobile Liability, and Umbrella/Excess Liability insurance requirements previously stated in Sections a-e of this Exhibit B.

h. *Special Insurance for Competitions/Events.* The parties acknowledge that University does not intend to charge admission to spectators for competitions and/or events held by University at the Facility. As such, the parties do not need to purchase any additional insurance for such competitions and/or events beyond the insurance already required under this Exhibit C. However, in the event that University decides in the future it would like to charge admission for any particular competition and/or event, then the City may require that additional insurance (i.e., special event coverage) be in place prior to the start of such competition and/or event. Furthermore, in the event that University is unable to purchase such special event insurance coverage pursuant to this subsection (h), then the City may purchase the special event coverage on University's behalf instead and will then pass the direct cost of such special event coverage back to the University.
