Dugout Replacement Project Agreement

(Norse Park)

THIS AGREEMENT entered into as of the _____ day of _____, _____, by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Stoughton Area Baseball Association, Inc., a Wisconsin non-profit corporation ("SABA").

RECITALS

1. Norse Park is a public park owned by the City of Stoughton located at 630 Kriedeman Drive, Stoughton, Dane County, Wisconsin.

2. SABA is a non-profit corporation formed to promote and facilitate baseball in the Stoughton area. To further its purposes, SABA wishes to construct, at its cost, new dugout facilities serving the baseball diamond at Norse Park (the "Public Improvements").

3. The City is willing to design and manage all construction activities, provide in-kind work to remove the existing dugouts, excavate for the new dugouts, provide concrete work to comply with the American with Disibilities Act for the Public Improvements, and to authorize SABA to construct the Public Improvements, in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, SABA and the City agree as follows:

A. **RECITALS.** The above recitals are material to and are incorporated in this Agreement.

B. **PLANS AND SPECIFICATIONS.** The City shall, prepare and provide to SABA detailed plans, specifications and an opinion of probable cost of the Public Improvements. SABA's rights and obligations under this Agreement are contingent upon SABA notifying the City that SABA is satisfied with the plans and specifications.

C. **CONSTRUCTION OF PUBLIC IMPROVEMENTS.**

1. *Construction.* SABA shall construct and install the Public Improvements. The Public Improvements shall be constructed and installed in accordance with the plans and specifications prepared by the City. Except as otherwise provided in this Agreement, the Public Improvements will be constructed and installed at SABA's sole expense.

2. *Construction Responsibilities*.

(a) City of Stoughton.

(1) Manage the construction of the dugouts following all agreed upon plans and specifications.

(2) Removal and disposal of the existing dugouts and concrete pad.

(3) Install concrete pad and walkway to meet all ADA requirements.

(4) Set the donated "I" beam on the masonary block.

(5) Construct the roof section of the dugout using donated funds from SABA to purchase materials.

(6) Perform all grading, seeding and mulching for the project using donated funds to purchase materials.

(b) SABA

(1) Provide funding for the construction of the dugouts. An opinion of probable cost will be provided by the City to SABA.

(2) Procure contractors to perform masonary work.

(3) Pay all invoices for services rendered and materials used to construct the dugouts.

3. *City Approval of Starting Dates.* No land disturbances or work on the Public Improvements shall begin without the City Park Director's approval.

4. *Change to Work Order*. No change may be made to the approved plans and specifications for the Public Improvements without the written approval of the City Park Director.

5. *Time of Completion*. The Public Improvements shall be substantially complete within 12 months after this Agreement is executed. No damages may be recovered by SABA or any person against the City for delay in completion of the Public Improvements.

6. *Indemnification*. SABA, and its successors and assigns, shall indemnify, hold harmless and defend the City and its officers, agents and employees, from any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Public Improvements occasioned wholly or in part by any act or omission on SABA's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time occurring on, at or in the Norse Park property, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City. The City shall be entitled to appear in any proceedings to defend itself against such claims, and all costs, expenses and reasonable attorney fees incurred by the City in connection with such defense shall be paid by SABA to the City. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event the City elects to exercise any of the remedies as provided under this Agreement following default hereunder.

7. *Insurance*.

(a) *General requirements*. SABA's contractors performing any work on the Public Improvements shall, at no cost to the City, maintain in effect at all times during the construction of the Public Improvements insurance coverage of the types and with limits not less than those set forth in this Section C. 7. A start date for construction shall not be approved until a list of SABA's contractors and proof of insurance have been provided to and approved by the City. Proof of insurance shall include a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this Agreement. The Commercial General Liability coverage must include the coverages described in form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure or their equivalent. In addition, SABA shall provide endorsements acceptable to the City demonstrating that the requirements of Section C. 7. (e), relating to naming additional insureds, have been satisfied.

(b) *Waivers of subrogation*. All policies of insurance required by this Section C. 7 shall be primary and non-contributing coverage, and no insurance or self-insurance maintained by the City, or its officers, council members, board members, agents, employees or authorized volunteers, will contribute to coverage of any loss. All liability and workers compensation policies must be endorsed with a waiver of subrogation in favor of the City, its officers, council members, agents, employees, and authorized volunteers.

(c) *Deductibles and self-insured retentions*. Any deductible or self-insured retention in any of the policies of insurance required by this Section C. 7 must be declared to the City and satisfied by SABA.

(d) *Acceptability of insurers*. All policies of insurance required by this Section C. 7 shall be placed with insurers who have an A.M. Best rating of not less than A- and a Financial Size Category of not less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.

(e) *Additional insureds requirements*. The following must be named as additional insureds on all policies of insurance required by this Section C. 7, for liability arising out of the construction of the Public Improvements: the City and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 10 07 04 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 07 04 or their equivalents for a minimum of three years after the Public Improvements are completed. The preceding sentence does not apply to Workers Compensation Policies.

(f) *Limits and coverage*. The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or the broader coverage and maximum limits of coverage of any insurance policy of proceeds available to the Named Insured. The parties agree that the insurance requirements in this Agreement shall not in any way act to reduce coverage that is broader or that includes higher limits. No

representation is made that the minimum insurance requirements specified in this Agreement are sufficient to cover the obligations of SABA under this Agreement.

(g) *Claims Made Coverage*. If any insurance policy required by this Agreement is maintained on a claims-made basis, then the following additional requirements shall apply:

(1) The retroactive date must be shown, and must be before the date of this Agreement or the approved construction start date;

(2) Insurance must be maintained and evidence of insurance must be provided for a minimum of three years after the Public Improvements have been completed.

(3) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement or the prior to the approved construction start date, SABA or another party required to provide the insurance coverage shall purchase an extended reporting period for a minimum of three years after the date Public Improvements are completed.

(h) *Termination, cancellation or non-renewal*. SABA shall provide endorsements to the policies of insurance required to be maintained under this Agreement that provide that such policies shall not be cancelled, non-renewed, or voided without 30 days prior written notice to the City, except where cancellation is due to the non-payment of premiums, in which event 10 days-prior written notice shall be provided.

(i) *Coverage types and policy limits*. SABA and SABA's contractors shall maintain the following types of insurance coverage with not less than the following limits:

(1) <u>Commercial General Liability</u> coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

a.	Each Occurrence Limit	$1,000,000
b.	Personal Advertising Injury Limit	$1,000,000
c.	General aggregate limit (other than Products-Completed Operations) per project	$2,000,000
d.	Products-Completed Operations aggregate	$2,000,000
e.	Fire Damage limit – any one fire	$50,000
f.	Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work	

(2) Business Automobile Coverage. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of $1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1-"Any Auto" basis.

(3) Workers Compensation and Employers Liability. As required by Wisconsin State Statute.

(4) Umbrella Liability providing coverage at least as broad as all the underlying liability policies with a minimum limit of $2,000,000 each occurrence and $2,000,000 aggregate, and a maximum self-insured retention of $25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by the City. Products-Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work.

D. **FUTURE REMOVAL OF BASEBALL FIELD FROM NORSE PARK.** SABA Acknowledges and agrees that the City may, in its sole discretion, change the design of and programming at Norse Park, and that the City is likely to remove the baseball field and associated Public Improvements from Norse Park at a currently unknown future date. SABA agrees to not oppose the removal of the baseball field from Norse Park on the basis of its construction of the Public Improvements or for any other reason.

E. **REPRESENTATIONS AND WARRANTIES.** SABA warrants that SABA's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of SABA's articles of organization or membership agreements, or any agreement or other instrument binding upon SABA, or any law, governmental regulation, court decree, or order applicable to SABA or to the Property.

F. **GENERAL CONDITIONS.**

1. Binding Effect / Assignment. The obligations of SABA and the City under this Agreement shall be binding on their respective successors and assigns. SABA may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, and any unapproved assignment is void.

2. 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 signed by both the City and SABA, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

3. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the City and SABA.

4. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies.

5. Entire Agreement/Appendices Incorporated. This written Agreement shall constitute the entire Agreement between SABA and the City as of the date hereof.

6. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

7. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

8. Insurance.

9. Notice. Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail as follows:

To SABA:	_____ _____ _____ _____
To the City:	Park Director City of Stoughton 207 S. Forest Street Stoughton, WI 53589
City Attorney	Matthew P. Dregne 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784

10. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. SABA hereby consents to personal jurisdiction in Dane County. SABA also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

11. Compliance with Laws. SABA shall comply with all federal, state and local laws with respect to the construction of the Public Improvements, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

12. No Partnership. The City does not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with SABA.

13. Good Faith. Both parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

14. Applicable Law. This Agreement shall be construed under the laws of the state of Wisconsin.

15. No Private Right or Cause of Action. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

16. Effective Date. This Agreement shall be effective as of the date and year first written above.

17. Construction of Agreement. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY:
CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

ATTEST:

_____

Candee Christen, City Clerk

STOUGHTON AREA BASEBALL ASSOCIATION, INC.

By_____