

Memorandum of Understanding

This document constitutes a Memorandum of Understanding (hereinafter referred to as “MOU”) between **Noblesville Babe Ruth Baseball Inc.** (hereinafter referred to as “Babe Ruth”), an Indiana nonprofit corporation, and the City of Noblesville, Indiana, a municipal corporation (hereinafter referred to as “City” or “Noblesville”), is executed pursuant to the terms and conditions set forth herein.

Recitals

Whereas, the City owns property at Forest Park on Cicero Road that includes two baseball fields, dugouts, bullpens, restrooms, concession facilities, grandstands, and other amenities;

Whereas, Babe Ruth leases the baseball fields from the City and operates youth sports leagues for Noblesville and area participants;

Whereas, Babe Ruth maintains the fields and facilities through its board, coaches, and volunteers;

Whereas, Babe Ruth provides valuable recreational, personal development, economic, and community connections opportunities and impact;

Whereas, the lighting systems and equipment at Logan Field are at the end of their useful life and need to be upgraded to provide visibility and safety for players and participants;

Whereas, fencing along the perimeter of the fields needs to be repairs and upgraded to ensure the grounds are secured and maintained;

Whereas, the City appropriated available American Rescue Plan funding to support these maintenance and capital needs;

Whereas, Babe Ruth desires to receive the appropriated funding, to select and manage contractors to complete the necessary work, and to report back to the city an accounting of the use of the funds;

Now therefore, in consideration of the mutual promises contained herein and other considerations, the receipt and sufficiency of which are hereby acknowledged; Babe Ruth and the City agree as follows:

- 1. RECITALS.** The representations set forth in the above recitals are material to the MOU and are hereby incorporated into and made a part of the MOU as if fully set forth in the body of the MOU.
- 2. DUTIES OF Babe Ruth.** Babe Ruth shall perform the functions as set forth or described in Exhibit A, attached to and made a part of this MOU.
- 3. TERM AND RENEWAL.**

- A. The term of this MOU shall be for nine (9) months, beginning on September 10, 2024, and ending on June 10, 2025 unless terminated in accordance with this MOU.
- B. The parties may renew or extend this agreement by mutual agreement.

4. COMPENSATION OF Babe Ruth.

- A. Babe Ruth shall furnish all labor, materials, supplies, and services in accordance with the conditions of this MOU necessary to perform the functions as defined in **Exhibit A**.
- B. Payment will be for the amount of \$275,000, subject to invoice(s) being submitted by Babe Ruth detailing the quote for services to be rendered consistent with this MOU and funding appropriation.

5. TERMINATION FOR CAUSE OR CONVENIENCE.

- A. If Babe Ruth becomes insolvent, or if it refuses or fails to perform the work and functions provided by this MOU, or if it refuses to perform disputed work or functions as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this MOU, then City may, without prejudice to any other right or remedy, terminate this MOU in whole or in part, in writing, provided that Babe Ruth shall be given, except in the case of emergencies, (a) not less than ninety (90) calendar days' notice of City's intent to terminate, and (b) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Babe Ruth upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Babe Ruth's default.
- B. This MOU may be terminated in whole or in part in writing by City for City's convenience; provided that Babe Ruth is given (a) not less than ninety (90) calendar days' notice of intent to terminate and (b) an opportunity for consultation with City prior to termination. If City effects termination for convenience, Babe Ruth's compensation shall be equitably adjusted.

6. **TERMINATION FOR FAILURE OF FUNDING.** Notwithstanding any other provision of this MOU and pursuant to Indiana law, if funds for the continued fulfillment of this MOU by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

7. **GENERAL PROVISIONS.**

- A. Non-Agent. Notwithstanding anything to the contrary in this MOU or elsewhere, is not an agent of the City and shall not in any way purport to act or speak for or on behalf of the City.
- B. Independent Contractor. The parties agree that Babe Ruth is an independent contractor as that term is commonly used and is not an employee of City. As such, Babe Ruth is solely responsible for all taxes and none shall be withheld from the sums paid to Babe Ruth. Babe Ruth acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Babe Ruth has no authority, express or implied, to bind or obligate City in any way.
- C. Subcontracting. The parties agree that Babe Ruth shall not subcontract, assign or delegate any responsibility to perform under this Agreement without prior written approval of City; however, it is understood that Babe Ruth has obtained or will obtain quotes from contractors to perform the work identified in this MOU and the City anticipates approving the subcontracting upon review of updated or final quotes. In the event that City approves of any such subcontracting, assignment or delegation, Babe Ruth shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Babe Ruth shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Babe Ruth of any responsibility for performing under this Agreement.
- D. Necessary Qualifications. Babe Ruth certifies that it will furnish to City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of City, other units of local government, the State of Indiana, and the United States. Babe Ruth further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.
- E. Confidentiality of City Information. Babe Ruth understands that the information provided to it or obtained from City during the performance of its responsibilities may be confidential and may not, without prior written consent of City, be disclosed to a person not in

City's employ except to employees or agents of Babe Ruth who have a need to know in order to provide the services. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by Babe Ruth at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Babe Ruth; (c) is made known to Babe Ruth by a third person who does not impose any obligation of confidence on Babe Ruth with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon Babe Ruth shall provide notice and an opportunity to object to City prior to such disclosure; or (e) information that is independently developed by Babe Ruth without references to the confidential information. Babe Ruth shall not, under any circumstances, release information provided to it by, or on behalf of, City that is required to be kept confidential by City pursuant to Indiana law, except as contemplated by this section, clause (d).

- F. Records; Audit. Babe Ruth shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement. Babe Ruth shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by City or any other authorized representative of City. Copies thereof, if requested, shall be furnished at no cost to City. Babe Ruth acknowledges that the funding in this MOU is provided through the City's American Rescue Plan allocation, which carries with it specified reporting documentation obligations, and Babe Ruth will cooperate with the City to ensure those obligations are satisfied.
- G. Remedies. Following the occurrence of any default, breach, or other failure to perform, or an act of negligence or misconduct causing damage to either Party, by the other or any of its employees, agents, or subcontractors, the aggrieved party shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available. This provision shall survive any termination of this Agreement.
- H. Indemnification. Babe Ruth agrees to indemnify, defend, and hold harmless City and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any act or omission by Babe Ruth or any of its officers, agents, employees or

subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. This provision shall survive any termination of this Agreement.

- I. Insurance. Babe Ruth shall furnish, or cause to be furnished, City with certification of comprehensive general liability insurance coverage with a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence. Babe Ruth shall furnish certificates of insurance provided by the insurer, and the certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to City.
- J. Notice. Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To Noblesville Babe Ruth:

Noblesville Babe Ruth, Inc.
P.O. Box 545
Noblesville, IN 46060
Attn: Christopher Thomas

To Noblesville:

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060
Attn: Savannah Wines, Parks
Director

Copy to:
City of Noblesville
Attn: City Attorney
16 S. 10th Street
Noblesville, IN 46060

K. Non-discrimination. Babe Ruth and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-

era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

L. Conflict of Interest. Babe Ruth certifies and warrants to Noblesville that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with Noblesville.

M. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster, pandemic, or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

N. Applicable Laws; Forum. Babe Ruth agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Noblesville and Babe Ruth to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Noblesville. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

O. Waiver. Neither party's delay or inaction in pursuing the remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Party's rights or remedies.

P. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken,

and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

- Q. Attorneys' Fees. Either party shall be liable to the other for reasonable attorneys' fees incurred by in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of the other party from a breach of any provision of this Agreement, from an indemnity obligation, or from a failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.
- R. Successors and Assigns. Noblesville and Babe Ruth each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Noblesville or Babe Ruth.

8. INTERPRETATION AND INTENT.

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Babe Ruth. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Babe Ruth which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Babe Ruth.
- B. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Babe Ruth or other rights or obligations of City or Babe Ruth, the document or provision thereof imposing the greater obligation upon City and affording the greater right or remedy to City, shall govern.
- C. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.

D. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

Entered into this 10 date of September, 2024.

Noblesville Babe Ruth Baseball Inc.

City of Noblesville

By: Christopher Thomas
Title: President NBRB Board

By: ~~_____~~
Title: ~~_____~~

EXHIBIT A

Installation of new lighting system around Logan Field at Forest Park.

Repair and installation of upgraded fencing along south end of baseball fields near walking trail.

Coordination with City parks department representatives to complete the projects and provide necessary documentation.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this 10th day of September, 2024.



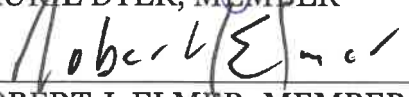
JACK MARTIN, PRESIDENT



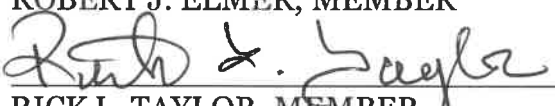
JOHN DITSLEAR, MEMBER



LAURIE DYER, MEMBER




ROBERT J. ELMER, MEMBER



RICK L. TAYLOR, MEMBER

ATTEST:



EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA