

**AGREEMENT BETWEEN CITY OF MADISON HEIGHTS
AND THE SOUTHEASTERN MICHIGAN PICKLEBALL ASSOCIATION
RE: USE OF PICKLEBALL COURTS AT ROSIE'S PARK**

This Agreement ("Agreement") is made between the City of Madison Heights, a Michigan municipal corporation, whose address is 300 W. Thirteen Mile Road, Madison Heights, Michigan, 48071 ("the City") and the Southeastern Michigan Pickleball Association, a Michigan nonprofit organization, whose principal address is 3815 Yorba Linda Blvd., Royal Oak, Michigan 48073 ("SMPA"). In this Agreement, the City and SMPA will also be referred to individually as "party" or jointly as the "parties."

RECITALS

WHEREAS, the City shall be constructing eight (8) ("Pickleball Courts") in Rosie's Park, 1111 E. Farnum Avenue, Madison Heights, Michigan 48071; and

WHEREAS, the construction of Pickleball Courts at Rosie's Park represents a valuable addition to the City, promoting physical activity and social interaction among multiple generations of residents; and

WHEREAS, the cost of construction is estimated to be \$379,004, of which the City has budgeted \$351,000, which includes a Grant from Oakland County Parks and Recreation for \$75,000; and

WHEREAS, the estimated cost of construction of eight (8) Pickleball Courts is \$32,700 above the budgeted amount; and

WHEREAS, it is the City's plan to close the funding gap and to ensure that the Pickleball Courts are utilized effectively and properly maintained; and

WHEREAS, SMPA is willing to donate \$16,200 to subsidize the design and construction of the Pickleball Courts, handle the programming on the Pickleball Courts

for a certain percentage of available time; and provide additional equipment and expertise as provided for herein; and

WHEREAS, City staff will request that the Madison Heights Community Foundation contribute tree plantings in the amount of \$16,500 which will also close the funding gap and provide environmental benefits, limit court noise and reduce wind.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the parties agree as follows:

1. TERM

The term of this Agreement shall begin January 31, 2025 and continue until December 31, 2026 unless terminated sooner by either party as provided for herein. On the date the initial term ends, this Agreement shall automatically renew, without action of either party for a period of one year. However, if either party provides notice to the other party, at least 30 days prior to the end of the initial term, of its desire that the Agreement not renew, then the Agreement shall end on the last day of the initial term.

2. TERMINATION BY THE CITY

The City may terminate this Agreement, at any time, if SMPA is notified in writing at least 60 days prior to the effective date of termination or if any one of the following occurs: (i) premises are no longer being used for the purposes identified in the Agreement; (ii) SMPA provided the City with information at any time during this Agreement that was false or fraudulent; (iii) SMPA materially fails to perform any of its obligations under the Agreement, if such failure is not cured within 30 calendar days after receiving Notice of Default from the City.

If the City terminates its Agreement with the absence of default or breach by SMPA, the City is not required to reimburse SMPA for the non-depreciated value or capital improvements made by SMPA.

3. TERMINATION BY SMPA

SMPA may terminate this Agreement, at any time, if the City is notified in writing at least 60 days prior to the effective date of termination or if any one of the following occurs: (i) premises are no longer being used for the purposes identified in the Agreement; (ii) the City provided SMPA with information at any time during this Agreement that was false or fraudulent; (iii) the City materially fails to perform any of its obligations under the Agreement, if such failure is not cured within 30 calendar days after receiving Notice of Default from SMPA.

If SMPA terminates its Agreement with the absence of default or breach by the City, SMPA is not required to reimburse the City for the non-depreciated value or capital improvements made by the City.

4. AMENDMENTS

All amendments or modifications to this Agreement shall be in writing and approved by the parties.

5. USE OF THE PREMISES

The use and occupancy of Rosie's Park and the use of the Pickleball Courts shall be in a careful and proper manner. In particular, SMPA shall not permit any vehicles to be driven on grass or off-road unless approved by a designated employee from the Madison Heights Department of Public Services. SMPA shall not permit the use of loudspeaker system, unless approved by the City Manager or their designee. SMPA shall not erect or

place any temporary structures, tents, mobile carts or other similar facilities without written permission from the City Manager or her designee.

The Eight (8) Pickleball Courts are owned and held by the City for the use and benefit of the general public. SMPA shall not use or occupy the eight (8) Pickleball Courts at Rosie's Park for any unlawful purpose. SMPA will conform and obey with all current and future Federal and State laws, Ordinances and the rules and regulations of all governmental authorities and agencies with respect to the use and occupancy of the premises.

6. CONTRIBUTIONS OF SMPA – Total of \$16,200

- (a) SMPA shall donate \$12,000 to subsidize the design and the construction of eight (8) Pickleball Courts in Rosie's Park, 1111 E. Farnum Avenue, Madison Heights, Michigan 48071.
- (b) SMPA will donate \$4,200 for the addition of mid-rails in the 7' fencing for the pickleball courts.
- (c) SMPA shall provide Wind Screens, if the City elects to include them, not to exceed an additional amount of \$3,800.
- (c) SMPA shall prepare recommendations on Rules and Signage for the City to post.
- (d) SMPA and the City shall split the cost of court surface maintenance (crack repair, sealer, paint, etc.) on a 50/50 basis when needed in order to maintain the courts in excellent condition. The estimated cost over a 5-year to 7-year period to maintain the Pickleball Courts is a maximum of \$70,543 which includes projected inflation.

- (e) SMPA shall be responsible for the registration and programming of up to approximately 20% of “available court time” on an annual basis between the second Monday in April and the second Monday in October each year during the hours of 9:00 a.m. to 9:00 p.m. (“available court time”)

Programming shall include up to the following:

- (i) Six (6) Leagues/Sessions, 2 Sessions/Season (Spring and Summer) (2.5 hours per League);
- (ii) Two (2) 3-Day Events-Tournament Style or similar;
- (iii) Eight (8) 3-Hour Events-Mixer Style or similar;
- (iv) Three (3) 6-Hour Events-Mini Tournament Style or similar.

Fees derived from the Leagues and Tournament Programming shall be split as follows: seventy (70%) percent SMPA and thirty (30%) percent City.

- (f) SMPA shall schedule a minimum of two (2) “Introduction to Pickleball” sessions through the Madison Heights Active Adult Center prior to the date the Eight (8) Pickleball Courts are scheduled to open.
- (g) SMPA agrees to maintain with the City a valid Certificate of Insurance, including coverages and limits as required by the City’s Risk Manager and name the City as an additional insured, relating to use, occupancy and activities contained in the Agreement.
- (h) SMPA shall leave the eight (8) Pickleball Courts at Rosie’s Park, at the expiration or prior termination of this Agreement or after any renewal or extension thereof, in as good as condition as received, reasonable wear and tear excepted.

- (i) SMPA shall be responsible for all damage to property, public or private, caused by SMPA in the operation and performance of this Agreement.
- (j) SMPA shall be required to assist the City in an effort to adequately maintain the eight (8) Pickleball Courts. This assistance may include, but may not be limited to providing, volunteer labor, donation of materials, and financial assistance for such maintenance of the eight (8) Pickleball Courts.
- (k) SMPA agrees that all ladder leaders and others working with the public, have received sufficient training by SMPA and have passed background checks performed by the City to ensure the safety and welfare of all participants, spectators, and others involved in SMPA's programming.
- (l) During tournaments, the SMPA shall be permitted to place temporary signage on the inner fencing and nets of the Pickleball Courts, with the understanding that this temporary signage may be sponsored by individuals or organizations supporting the nonprofit's events and programming. All temporary signage designs and content must adhere to the City's guidelines.
- (m) SMPA shall be responsible for securing and maintaining any temporary signage placed on the inner fencing and nets of the pickleball courts, ensuring that such placements do not cause damage to public or private property.
- (n) SMPA shall retain any revenue generated from temporary signage from tournament sponsorships for the purpose of sustaining its programming and

events. The City waives any rights to revenue generated from the temporary signage during tournaments.

- (o) This Agreement and all covenants and provisions herein contained shall inure to the benefit and be binding upon its successors and assigns of the parties hereto.
- (p) SMPA shall not assign this Agreement without the express written consent of the City.

7. CITY'S CONTRIBUTIONS – Total of \$351,000

- (a) The City shall provide SMPA access to a secure storage facility for the storage of maintenance equipment such as brooms, rollers, court drying drag mats, and other equipment.
- (b) The City shall provide to SMPA access to electricity for blowers to blow debris and water off the Pickleball Courts in order to maintain court surface integrity.
- (c) The City shall provide SMPA with access to a live video feed of the courts (if available now or in the future) in order for Leagues and Events to have advanced knowledge of surface conditions for safety of the players and scheduling purposes.
- (d) The City shall provide SMPA with the usual and customary maintenance of the area related to the Pickleball Courts and the area of the Pickleball Courts surrounding the courts such as fencing, lawn and walking path maintenance, including provision of trash and recycling receptacles, and removal of trash and recycling from receptacles.

8. INDEMNIFICATION AND HOLD HARMLESS

Each party shall indemnify and hold harmless each other, its Councils, Officers, Administrators, employees, attorneys, affiliates, successors and assigns from any and all liability arising, directly or indirectly, from the use of the eight (8) Pickleball Courts and equipment owned by either party during the term of this Agreement. In the event any suit, proceeding, claim, loss, damage, cost, charge or expense shall be brought against either party, its Councils, Officers, Administrators, employees, attorneys, affiliates, successors or assigns by virtue of the above referenced activity, during the term of this Agreement, each party hereby covenants and agrees to assume their respective defense thereof and defend the same and pay all costs, charges, attorney fees and other expenses relating thereto. Notwithstanding the foregoing, this indemnification and hold harmless provision excludes the sole acts and/or sole omissions to acts on the part of the City and on the part of SMPA.

9. GENERAL PROVISIONS

(a) Through this Agreement, SMPA shall have no title interest to the premises where the Pickleball Courts reside and has not, does not, and will not claim any such title or any easement over such premises.

(b) With this Agreement, the City and SMPA are expressly not forming any type of partnership, joint venture, or any other type of business venture together whatsoever. The parties agree that at all times and for all purposes under this Agreement, there is no employer-employee relationship between the parties. No liability, right of benefit associated with any employer-employee relationship shall be implied by this Agreement or service performed under this Agreement. Agents, contractors, employees, and

volunteers providing services to the City related to the SMPA contributions of this Agreement shall not constitute an employer-employee relationship with the City and are the sole responsibility of SMPA for any liability that may arise in the execution of this Agreement.

(c) Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

(d) Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligations, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other rights in favor of any other person or entity as third-party beneficiaries.

(e) Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

(f) Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to Force Majeure, any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include without limitation, acts of God, floods, fire, explosion, vandalism, or national, state and local emergencies.

10. LAWS OF THE STATE OF MICHIGAN

This Agreement is made and entered into in the State of Michigan and shall for all respects be interpreted, enforced and governed under the laws of the State of Michigan.

11. This Agreement contains the entire Agreement between the parties and fully supersedes any and all prior Agreements or understanding between the parties. This Agreement shall not be changed or supplemented orally. If any provision(s) of this Agreement shall be found to be invalid or unenforceable, the remainder shall not be affected.

Witness: _____

Print: _____

**Southeastern Michigan Pickleball
Association**

By: _____

Print: _____

Title: _____

Date: _____

CITY OF MADISON HEIGHTS

Witness: _____

Print: _____

By: _____

Print: _____

Title: City Manager

CITY OF MADISON HEIGHTS

Witness: _____

Print: _____

By: _____

Print: _____

Title: City Clerk

Date: _____