

**REGULAR COUNCIL PROCEEDINGS**

**CITY OF FLAT ROCK, MICHIGAN**

**TUESDAY, FEBRUARY 17, 2015**

The regular meeting of the Flat Rock City Council convened at the Municipal Building on the above date at 7:30 p.m.

**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL OF COUNCIL MEMBERS:**

PRESENT: Mayor Dropiewski, Council Members: Beller, Bergeron, Martin, and Thomas

ALSO PRESENT: Fire Chief Bill Vack, Police Chief John Leacher, DPS Director Matt Sype, Recreation Director Rodney Wade, Treasurer Brian Marciniak, Economic Development Director Liz Hendley, Attorney David Grunow and City Clerk Meaghan Bachman

**Resolution 02-17-01**

Motion by Martin  
Supported by Bergeron

RESOLVED, That Flat Rock City Council hereby excuses Council Members Tefend and Wrobel as absent at the regular City Council meeting of February 17, 2015

Motion carried unanimously

**3. APPROVAL OF MINUTES:**

**Resolution 02-17-02**

Motion by Thomas  
Supported by Martin

RESOLVED, to approve the minutes of the regular City Council meeting of February 2, 2015 as presented

Motion carried unanimously

**4. CITIZENS TO BE HEARD:**

Resident Arlen Fadely spoke of shelters for the homeless. He noted Rockwood has a shelter in their police department and asked if Flat Rock accommodated the homeless.

Beautification Commissioner Sue Farrar announced the City Wide Garage Sale Dates as May 16<sup>th</sup> and 17<sup>th</sup>, 2015 and September 12<sup>th</sup> and 13<sup>th</sup>, 2015. She also announced the commission met with local artist David Grosse to design and hand paint ornaments, small canvass, and magnets to be sold at City Hall of landmarks in Flat Rock for the 50<sup>th</sup> Anniversary. The goods will be available after April 1, 2015.

**5. REPORTS FROM DEPARTMENT HEADS:**

Treasurer Brian Marciniak noted that taxes are now considered late and must be paid with the late payment penalty. All taxes must be paid at City Hall by February 27, 2015 and after this date the taxes must be paid at Wayne County. He also noted property tax information is available online and partial payments are not accepted.

Economic Development Director Liz Hendley announced the 2015 Flat Rock Business Forum on May 7, 2015 from 6:00 PM – 9:00 PM at the Flat Rock Community Center. She noted the theme is “Flat Rock Open for Business”. She announced various businesses and organizations that will be in attendance.

Police Chief John Leacher announced the Flat Rock Police Department participated in the Random Acts of Kindness that encourages others to do kind things. He noted McDonalds and Zorbas donated gift cards for the officers to hand out. Chief Leacher noted officers looked for kids doing kind and good things at school and the officers conducted traffic stops for being good drivers. He noted the public response was great and the officers enjoyed it.

City Clerk Meaghan Bachman spoke of the recent precinct location change. She noted new Voter ID cards are being mailed out to voters in precincts 1 and 4.

**6. REPORTS FROM COUNCIL MEMBERS:**

Council Member Steve Beller reminded residents to keep pets indoors during the cold weather.

Council Member Jim Martin noted the cold weather conditions.

Council Member John Bergeron congratulated the police officers on the Random Acts of Kindness event.

Council Member Dawn Thomas wished her father a happy 74<sup>th</sup> birthday.

**7. MAYOR’S COMMENTS:**

Mayor Dropiewski noted his attendance with Wayne County Mayors and Wayne County Executive Warren Evans. Discussions included the finances of Wayne County and the Mayor noted he will keep the Council informed.

Mayor Dropiewski noted in the near future Wayne County will be getting out of the Assessing business. He noted Wayne County signs the Flat Rock Assessment Roll. He noted we will need to obtain our own services.

Mayor Dropiewski announced festivities events for 2015. The Summer Blast (formally Country Blast) will be June 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup>. Crusin Huroc Park will be August 16<sup>th</sup>. Riverfest along with the 50<sup>th</sup> Anniversary of the City is September 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup>.

**8. UNFINISHED BUSINESS:**

**Item 8-A- Request to hire Tom Roberts as the Architect for design of the new women's locker room facility in the police department**

**Resolution 02-17-03**

Motion by Martin  
Supported by Beller

RESOLVED, to hire Tom Roberts as the Architect for design of the new women's locker room facility in the police department in the amount of \$3,500.00

Motion carried unanimously

**Item 8-A- Michigan Mutual Aid Box Alarm System Interlocal Agreement**

**Resolution 02-17-04**

Motion by Thomas  
Supported by Dropiewski

RESOLVED, to approve the Michigan Mutual Aid Box Alarm System Interlocal Agreement  
This Agreement is entered into between the participating units of local government "Parties" that execute this Agreement and adopt its terms and conditions as provided by law.

WHEREAS, the Constitution of the State of Michigan, 1963, Article VII, Section 28, authorizes units of local government to contract as provided by law; and,

WHEREAS, the Urban Cooperation Act, of 1967, 1967 PA 7, MCL 124.501, et seq., provides that any political subdivision of Michigan or of another state may enter into interlocal agreements for joint exercise of power, privilege, or authority that agencies share in common and might each exercise separately; and,

WHEREAS, the Parties have determined that it is in their best interests to enter into this Agreement to secure to each the benefits of mutual aid in fire protection, suppression, rescue and emergency medical assistance, hazardous materials control, technical rescue and/or other emergency support for an Emergency, Disaster, or other Serious Threat to Public Health and Safety; and,

WHEREAS, the Parties have determined that it is in their best interests to form an association to provide for communications procedures, training, and other functions to further the provision of said protection of life and property during an Emergency, Disaster, or other Serious Threat to Public Health and Safety; and

WHEREAS, the Constitution and people of the State of Michigan have long recognized the value of cooperation by and among the state and its political subdivisions;  
NOW, THEREFORE, the Parties agree as follows:

**SECTION ONE**

**Purpose**

It is recognized and acknowledged that in certain situations, such as natural disasters and man-made catastrophes, no political subdivision possesses all the necessary resources to cope with

every possible Emergency, Disaster or Serious Threat to Public Safety, and an effective, efficient response can be best achieved by leveraging collective resources from other political subdivisions. Further, it is acknowledged that coordination of mutual aid through the Mutual Aid Box Alarm System is the most desirable for the effective and efficient provision of mutual aid,

## SECTION TWO

### Definitions

The Parties agree that the following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

- A. "Agreement" means Mutual Aid Box Alarm System Agreement.
- B. "Mutual Aid Box Alarm System (" MABAS") means a definite and prearranged plan whereby response and assistance is provided to a Requesting Party by an Assisting Party in accordance with the system established and maintained by MABAS Members;
- C. "Party" means a political subdivision which has entered into this Agreement as a signatory;
- D. "Requesting Party" means any Party requesting assistance under this agreement;
- E. "Assisting Party" means any Party furnishing equipment, personnel, and/or services to a Requesting Party under this agreement;
- F. "Emergency" means an occurrence or condition in a Party's jurisdiction which results in a situation of such magnitude and/or consequence that it cannot be adequately handled by the Requesting Party and such that a Requesting Party determines the necessity of requesting aid;
- G. "Disaster" means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, or similar occurrences resulting from terrorist activities, riots, or civil disorders;
- H. "Serious Threats to Public Health and Safety" means other threats or incidents such as those described as Disasters, of sufficient magnitude that the necessary public safety response threatens to overwhelm local resources and requires mutual aid or other assistance;
- I. "Division" means the geographically associated Parties which have been grouped for operational efficiency and representation of those Parties;
- J. "Training" means the regular scheduled practice of emergency procedures during non-emergency drills to implement the necessary joint operations of MABAS;
- K. "Executive Board" means the governing body of MABAS composed of Division representatives.
- L. "Effective Date" means the date on which the Agreement is first filed with the Department of State, the Office of the Great Seal, and each county where Parties are located.

## SECTION THREE

### Executive Board of MABAS

An Executive Board shall be established to consider, adopt, and amend needed rules, procedures, by-laws and any other matters deemed necessary by the Parties.

The Executive Board shall consist of a member elected from each Division of MABAS who shall serve as the voting representative of said Division of MABAS matters, and may appoint a designee from his or her Division to serve temporarily in his or her stead. Such designee shall have all rights and privileges attendant to a representative of the Division. A President and Vice President shall be elected from the representatives of the Parties and shall serve without compensation. The President and other officers shall coordinate the activities of the MABAS Association.

## SECTION FOUR

#### Duties of the Executive Board

The Executive Board shall meet regularly to conduct business and to consider and publish the rules, procedures, and bylaws of the MABAS Association, which shall govern the Executive Board meetings and such other relevant matters as the Executive Board shall deem necessary,

#### SECTION FIVE

##### Rules and Procedures

Rules, procedures, and by laws of the MABAS Association shall be established by the Member Units via the Executive Board as deemed necessary for the purpose of administrative functions, the exchange of information, and the common welfare of the MABAS.

#### SECTION SIX

##### Authority and Action to Effect Mutual Aid

- A. The Parties hereby authorize and direct their respective Fire Chief or his or her designee to take necessary and proper action to render and/or request mutual aid from the other Parties in accordance with the policies and procedures established and maintained by the MABAS Association.
- B. Upon a Fire Department's receipt of a request from another Party for Fire Services, the Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief shall have the right to commit the requested Firefighters, other personnel, and Fire Apparatus to the assistance of the requesting Party. The aid rendered shall be to the extent of available personnel and equipment not required for adequate protection of the territorial limits of the Responding Party. The judgment of the Fire Chief, or his or her designee, of the Responding Party shall be final as to the personnel and equipment available to render aid.
- C. An authorized representative of the Party which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the Requesting Party, and shall submit an explanation for the refusal.

#### SECTION SEVEN

##### Jurisdiction Over Personnel and Equipment

Personnel dispatched to aid a party pursuant to this Agreement shall at all times remain employees of the Assisting Party, and are entitled to receive benefits and/or compensation to which they are otherwise entitled to under the Michigan Workers' Disability Compensation Act of 1969, any pension law, or any act of Congress. Personnel dispatched intrastate to assist a party pursuant to this Agreement continue to enjoy all powers, duties, rights, privileges, and immunities as provided by Michigan Law. When Parties are dispatched pursuant to the Emergency Management Assistance Compact (EMAC), the Parties shall adhere to all provisions of the EMAC. Personnel rendering aid shall report for direction and assignment at the scene of the emergency to the Incident Commander of the Requesting Party.

#### SECTION EIGHT

##### Compensation for Aid

Equipment, personnel, and/or services provided pursuant to this Agreement, absent a state or federal declaration of emergency or disaster shall be at no charge to the Requesting Party for the first eight hours. Any expenses recoverable from third parties shall be equitably distributed among Responding Parties. Nothing herein shall operate to bar any recovery of funds from any state or federal agency under any existing statutes. The Parties reserve the right to waive any charges to a Requesting Party.

#### SECTION NINE

##### Insurance

Each Party shall procure and maintain, at its sole and exclusive expense, insurance coverage, including comprehensive liability, personal injury, property damage, worker's compensation, and, if applicable, emergency medical service professional liability, with minimum limits of \$1,000,000 auto and \$1,000,000 combined single limit general liability and professional liability. The obligations of the Section may be satisfied by a Party's membership in a self-insurance pool, a self-insurance plan, or arrangement with an insurance provider approved by the state of jurisdiction. The MABAS Executive Board may require that copies or other evidence of compliance with the provisions of this Section be provided by the Parties to the MABAS Executive Board.

## SECTION TEN

### Liability

Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts. The Parties shall not be responsible for any liability or costs associated with those acts and the defense of those acts for Parties outside of their political jurisdictions. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Fire Services or for leaving the scene of an Incident with proper notice after responding to a request for service.

## SECTION ELEVEN

### No Waiver of Governmental Immunity

All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker's compensation and other benefits which apply to the activity of Parties, officers, agency, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such Parties, officers, agents, or employees extraterritorially under the provision of this Agreement. No provision of the Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by any Party of any governmental immunity as provided by the Act or otherwise under law.

## SECTION TWELVE

- A. The existence of the Association commences on the Effective Date and continues until terminated in accordance with this Section.
- B. Any Party may withdraw, at any time, from this Agreement for any reason, or for no reason at all, upon thirty (30) days written notice to the Association. The withdrawal of any Party shall not terminate or have any effect upon the provisions of this Agreement so long as the Association remains composed of at least two (2) Parties. Parties withdrawing from the Association and subsequently requesting a mutual aid resource from an Association member may be subject to reasonable fees for that resource according to the fee schedule established, and periodically reviewed and updated, by the Executive Board.
- C. This Agreement shall continue until terminated by the first to occur of the following:
  - (i) The Association consists of less than two (2) Parties; or,
  - (ii) A unanimous vote of termination by the total membership of the Executive Board.

## SECTION THIRTEEN

## Miscellaneous

- A. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any party. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.
- B. Severability of Provisions. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of this Agreement shall remain in full force.
- C. Governing Law/Consent to Jurisdiction and Venue. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan.
- D. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- E. Terminology. All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.
- F. Recitals. The Recitals shall be considered an integral part of this Agreement.
- G. Amendment. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement and approval of the governing bodies of all Parties. Amendments to this Agreement shall be filed with the Department of State, the Office of the Great Seal, each county of the State where a Party is located, and any other governmental agency, office, and official required by law. The undersigned unit of local government or public agency hereby adopts, subscribes, and approves this Agreement to which this signature page will be attached, and agrees to be a party and be bound by the terms.
- H. Compliance with Law. The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.
- I. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.
- J. Counterpart Signatures. This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) agreement.
- K. Permits and Licenses. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents necessary to perform all its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting party.

- L. No Implied Waiver. Absent a written waiver, no fact, 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.
- M. Notices. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid to the person appointed to the governing board by the governing body of the participating agency.

Motion carried unanimously

**9. NEW BUSINESS**

**Item 9-A-Local Governing Body Resolution for a Charitable Gaming License for the Monroe Pride Trap Team 501 (c) (3), of Flat Rock**

**Resolution 02-17-05**

Motion by Thomas  
Supported by Martin

RESOLVED, to approve Local Governing Body Resolution for a Charitable Gaming License for the Monroe Pride Trap Team 501 (c) (3), of Flat Rock

Motion carried unanimously

**Item 9-B-Renewal of Badger Meter service agreement**

**Resolution 02-17-06**

Motion by Martin  
Supported by Beller

RESOLVED, to approve the renewal of Badger Meter service agreement that covers the City of Flat Rock's Read Center software and laptop computer used for radio water meter reading. This agreement covers updates and support for the software and hardware associated with this program. The total cost for the annual renewal is \$3,615.00.

Motion carried unanimously

**Item 9-C- Request from the Historic Preservation Commission to install a "Preserve America Sign" on the Community Service Organization Board**

**Resolution 02-17-07**

Motion by Martin  
Supported by Thomas

RESOLVED, to approve the request from the Historic Preservation Commission to install a "Preserve America Sign" on the Community Service Organization Board in front of the Reading Building on the corner of Gibraltar Road and Garden Boulevard

Motion carried unanimously

**Item 9-D- Security cameras for the Historical Complex**

**Resolution 02-17-08**

Motion by Martin  
Supported by Beller

RESOLVED, TO TABLE the install of security cameras at the Historical Complex until the 2<sup>nd</sup> City Council meeting in March of 2015

Motion **TABLED** unanimously

**Item 9- E-Baseball License and Use Agreement**

**Resolution 02-17-09**

Motion by Thomas  
Supported by Bergeron

RESOLVED, to approve the Baseball License and Use Agreement as follows with the Recreation Director to fill in the appropriate dates:

THIS AGREEMENT is entered into this day of \_\_\_\_\_, 2015, between the City of Flat Rock, a Michigan municipal corporation ("City"), whose address is 25500 Gibraltar Road, Flat Rock, Michigan 48134, and Catholic Baseball Players For Christ Inc., a Michigan non-profit corporation, also known as the "Lake Erie Monarchs," whose address is 2230 W. Sigler Road, Carleton, Michigan 48117, and is based on the following facts and circumstances:

- A. The City has an existing baseball/softball sports complex located at 25500 Gibraltar Road, Flat Rock, Michigan, consisting of three softball and one baseball playing surface diamonds, restroom facilities, and concession building.
- B. The Lake Erie Monarchs (the "Club") is a non-profit baseball organization, participating in the Great Lakes Collegiate League whose purpose is to assist young men to become top caliber competitors in the sport of baseball.
- C. The Club desires to have allocation for the playing of baseball games in a facility and at a diamond of high school or college caliber, and has inspected and accepts the baseball/softball sports complex owned and operated by the City as such a baseball diamond and facility.
- D. The City and Club desire to enter into an agreement specifying the terms under which the Club will use the baseball facility and diamond in connection with the Club's home games.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Club agree as follows:

## ARTICLE I DEFINITIONS

As used in this Agreement, the following terms and words are defined as provided in this Article:

1.1. "Active Use Period" means a period commencing \_\_\_\_\_ and ending \_\_\_\_\_ of each calendar year during the term of this Agreement.

1.2. "Baseball Facility" means the baseball diamond and playing surface field, press area, bleachers, seating, and concession building, and other areas enclosed by gating and fencing, as depicted on the attached diagram, designated as Exhibit A.

1.3. "Baseball Novelties" means merchandise, goods and wares bearing the symbol, mark or name of the Club or its team or any players or other personnel; or bearing the symbol, mark or name of the Great Lakes Collegiate League.

1.4. "Club" means the Catholic Baseball Players For Christ Inc., a Michigan non-profit corporation, also known as the "Lake Erie Monarchs," and its permitted successors or assigns.

1.5. "Existing Parking Area" means the parking area existing at the commencement date of this Agreement, adjacent to the baseball/softball complex and containing approximately \_\_\_\_\_ parking areas.

1.6. "Home Game Date" means baseball games played at the baseball facility on one or more dates as approved by the City, and the calendar day upon which a home game of the Club is I scheduled to be played at the baseball facility.

1.7. "Scheduled Date" means a date approved by the City in which a baseball game is Played at the baseball facility by the Club, but not being a regularly scheduled home game.

## ARTICLE II TERM

2. The term of this use agreement shall be for a period commencing on the day of execution of this Agreement, and ending \_\_\_\_\_, 2015. Notwithstanding the foregoing, the active use of the baseball facility by the Club shall be limited to a period commencing \_\_\_\_\_, 2015 and ending \_\_\_\_\_, 2015 ("Active Use Period"), unless otherwise agreed in writing by the parties.

## ARTICLE III

### CONSTRUCTION, MAINTENANCE AND INSURANCE

3.1. Construction.

a. The City shall provide and install a press area consisting of a raised floor or platform, enclosed with a tent, sized to comfortably seat eight (8) persons, together with a high quality state of the art sound and public address system, including all equipment, software, sound effects, and controller operating devices. The Club has reviewed the specifications for both the press area and sound system and accept and approve the specifications.

b. The City shall construct and install adequate gates and fencing, to cordon off and separate the baseball facility from the other playing surface diamonds and facilities at the baseball/softball sports complex (except for the food and beverage concession, which will be open to all participants and spectators at the baseball/softball sports complex). The location and design of the gates and fencing are depicted in Exhibit A, attached. Club by the execution of this Agreement acknowledges and agrees that the gating and fencing location, material, and other specifications are acceptable and adequate for the purposes intended by Club for the use of the baseball facility.

c. The City at its expense shall remove the two fenced-in on-deck circles near the dugout areas, and fencing.

d. The City may at its sole expense, after review by the City, and at the City's absolute discretion, remove some or all of the caging and fencing from the dugout area, to be replaced with removable netting.

3.2. Completion Date. The City agrees that all work specified in paragraph 3.1 shall be substantially completed on or before \_\_\_\_\_, 2015.

3.3. Maintenance of Complex.

a. The City shall continue to maintain the baseball/softball sports complex, together with the baseball facility, including but not limited to the playing field, in a neat, safe, and sanitary condition and in a good state of repair at all times during the term of this Agreement, so that the baseball facility will be at all times maintained to a condition typical of a well-cared for high school or collegiate baseball field. The City shall provide lighting at the baseball facility to the standards and extent currently installed and provided at the baseball/softball sports complex. In addition, the City will provide a mound tarp and a tarp to cover home plate to be placed on the mound and at home plate while the baseball diamond is not in use. It shall be the responsibility of Club to remove the tarp coverings at the commencement of use and the installation of the tarp coverings at the conclusion of each game while the playing area is not in use.

b. Notwithstanding the provisions of paragraph 3.3(a) above, Club shall have the ability, if Club believes such measures are necessary, to drag the playing area field, tamp the mound and plate and base 'areas, and add necessary quick dry calcined clay to the playing surface of the playing area diamond of the baseball facility. The cost of the calcined clay material shall be at the sole expense of Club.

3.4. Insurance and Indemnification.

a. As partial consideration for this Agreement, Club agrees to indemnify and defend (at the City's option), and hold harmless the City, its employees, officials, agents, and representatives, and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings, reasonable attorney fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of Club, its competitors, invitees, licensees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including, but not limited to, permitted uses of the fields and facilities, any injury or damage that occurs in or about the fields or facilities relating to baseball activities, or Club's performance or failure to perform the terms and conditions of this Agreement. Club shall promptly notify City of any serious injuries occurring on the fields or facilities and any claim asserted by any individual.

b. Club shall, effective the date in which Club is permitted to occupy and use, the baseball facility pursuant to this Agreement, obtain and maintain, through the term of this Agreement, commercial general liability coverage including personal injury liability, with limits of ii at least Two Million Dollars (\$2,000,000) and an aggregate of Four Million Dollars (\$4,000,000) combined single limit per occurrence. Club shall name the City, its officers, officials, employees, and volunteers as additional insured on the public liability policy and provide certificates of all Insurance or original policies.

c. Relative to the insurance required herein, the following shall apply:

- (i) The limits may be obtained by individual policies or by combining primary and umbrella policies.
- (ii) Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer may opt to reduce or eliminate such deductibles or self-insured retentions as respect to the City, its officers, officials, employees, and volunteers; or the Club shall provide a financial guaranty satisfactory to City guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- (iii) The general liability policies are to be endorsed to contain the following provisions:
  - (a) The City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability;
  - (b) For any claims related to this Agreement, the Club's insurance coverage shall be primary insurance as respects to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of the Club's insurance.
  - (c) Each insurance policy required shall be endorsed that coverage shall not be cancelled or materially changed without written notice to the City.
  - (d) Maintenance of the proper insurance for the duration of this Agreement is a material element of the Agreement. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the Agreement by the Club.
  - (iv) Acceptability of Insurer. Insurance is to be provided with insurer with a current A. M. Best's rating of no less than A.
  - (v) Club shall furnish the City with original certificates and amendatory endorsements affecting coverage required by these provisions. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the City in sufficient time before the Active Use Period to permit Club to remedy any deficiencies. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these provisions at any time.
- d. Club certifies that it has no employees.

#### ARTICLE IV DESTRUCTION OF BASEBALL FACILITY

- 4.1. If the baseball/softball sports complex or baseball facility are damaged by fire or other casualty under circumstances where the cost to repair does not exceed 50% of its replacement value and the cost is covered by insurance maintained by the City, the damage shall be repaired by the City, and until such repairs are completed, use payments shall be abated in proportion to the portion of the baseball facilities which is unusable by Club in the conduct of its baseball games (but there should be no abatement of use payments by reason of any portion of the baseball facility being unusable for a period equal to three days or less).
- 4.2. If the cost to repair such damage exceeds 50% of its replacement value, or if the loss is not covered by insurance maintained by the City, the City at its option may elect to repair the damage, in which event use payments shall be abated as provided above. The City shall make such election whether or not to rebuild within 30 days of such damage.

4.3. If the City does not elect to make such repairs, or if it reasonably appears that such repairs cannot be made within 180 days of the date of such damage, then either party may, by written notice to the other within 45 days of the date of the damage, terminate this Agreement.

## ARTICLE V LICENSE TO USE STADIUM FOR HOME GAMES

5.1. Use of Baseball Facility for Home Games. During the term of this Agreement, Club shall be allowed to use and play its regular home games at the baseball facility, up to twenty (20) Home Game Dates and such other Scheduled Dates (not to exceed six in number) as approved by the City, through its Recreation Director (hereinafter "Scheduled Dates"). All Home Game Dates and Scheduled Dates shall be within the Active Use Period as provided above. In the event a game is not started and cannot be played because of inclement weather ("rained-out"), the game may be rescheduled and made up as one of the twenty (20) Home Game Dates, and shall be scheduled as approved by the City through its Recreation Department. The use of the baseball facility shall be limited to the playing of baseball games and the holding of youth baseball camps, and other related activities as described in this article, and for no other purpose without the written consent of the City.

5.2. Home Game Schedule. Club shall furnish to the City, through its Recreation Director, a schedule for all home games to be played during the Active Use Period. The Recreation Director and a representative of Club shall meet and discuss the requested home game schedule dates, and arrive with a finalized schedule, initialed or signed by each party, based on the following parameters:

- The schedule shall not conflict with Flat Rock Community High School games, high school district or regional games, or any other contractual agreements of the City.
- The schedule will facilitate the use of the baseball facility by the City for two preferential weekends to allow City to reserve those dates for tournament rentals.

5.3. Scheduled Dates. After a finalized home game schedule is determined by the parties, Club may request the use of the baseball facility on additional Scheduled Dates (not to exceed six in number). Such request shall be approved in writing by the Recreation Director, who shall consider the parameters referenced above and such other use or potential use commitments of the baseball facility by the City or other participants.

5.4. Use of Parking Facilities. Club shall have the right for the non-exclusive use of the existing parking facilities on any Home Game Date, or other approved Scheduled Dates, and the free youth baseball camps. Club shall not be allowed to charge any fee for the use of the parking facilities. Club acknowledges that the parking facilities will be used by its fans, participants, and spectators and other persons visiting the baseball/softball sports complex when the complex is jointly used by Club and the City, and the use of the parking facility shall be open to the public, free of charge.

5.5. Exclusive Use on Game Dates. Club shall have exclusive use of the baseball facility (but not the remainder of the baseball/softball sports complex) three hours before the scheduled start of a baseball game on a Home Game Date and other approved Scheduled Date, and one hour after the conclusion of the 9th inning of a game (or the conclusion of a game if terminated prior to the 9th inning). On days in which youth baseball camps are conducted, the use commencement time shall be 9:00 a.m. on the day scheduled. The use of the baseball facility by the Club shall include the use of the press box and the ability to play music over the sound and public address system through pre-game, game and post-game periods. In no event shall music be played after 11:00 p.m. and shall be at such levels as reasonably determined by the City. The City shall have the right of access to the public address system for emergency purposes, including general announcements and crowd control.

5.6. Youth Baseball Camps. Club may conduct and hold youth baseball camps on eight (8) of Club's scheduled game days. Club shall also conduct one (1) free youth baseball camp for Flat Rock Little League participants and other children residing in the city.

5.7. City to Furnish Utilities. On any home day or other approved Scheduled Date, the City shall furnish and have available all utilities required for the use of the baseball facility.

5.8. Baseball Facility Personnel. The Club shall employ and train an adequate number of personnel to be responsible and to conduct, supervise, control and manage Club's operations and use of the baseball facility. Such personnel shall include ticket sellers, ticket takers, scoreboard operators, public address announcers, attendants, clean-up personnel, security personnel, crowd control personnel, food and beverage concession personnel and such other personnel reasonably necessary for the conduct of its operations during the use of the baseball facility. All individuals shall be under the sole employment and direction of Club and shall be responsible for those generalized functions described herein.

5.9. Presentation of Baseball Games. Club shall assume full responsibility for the presentation of its baseball games, baseball camps, and other permitted use of the baseball facility, including the payment of all expenses incident to the playing of baseball games and its use of the baseball facility, unless otherwise specifically agreed to be paid by the City as set forth in this Agreement. Club shall provide for its own use, screens, roll aways and a pitching ramp for pre-game batting practice.

5.10. Use Payments. In connection with the license to use the baseball facility as provided in this article, Club shall pay to the City annual consideration as follows:

a. An annual sum of Six Thousand Dollars (\$6,000.00), for up to twenty (20) Home Game Dates, to be paid Five Hundred Dollars (\$500.00) on the date of execution of this Agreement, Two Thousand Dollars (\$2,000.00) on or before \_\_\_\_\_, Two Thousand Dollars (\$2,000.00) on or before \_\_\_\_\_, and Fifteen Hundred Dollars (\$1500.00) on or before \_\_\_\_\_, 2015.

b. The sum of Three Hundred Dollars (\$300.00) for each additional Scheduled Date (in excess of the twenty [20] Home Game Dates) scheduled and approved by the City through its Recreation Director.

5.11. Revenues. Club shall be entitled to receive and (as between itself and the City) retain the following:

a. All ticket proceeds.

b. Concession revenues, as provided in paragraph 8.3 below.

c. All gross revenue derived from the sale of baseball novelties.

d. All gross revenue derived from the publication, including advertising, and sale of programs and/or score cards, it being understood that all costs of production and distribution of programs shall be the sole responsibility of Club.

e. Stadium Advertising.

(i) All advertising and sponsorship revenue derived by Club's access and use to 100 linear feet of outfield advertising wall space as described in paragraph 7.1(b) for the placement of removable banners/signage.

(ii) Ten percent (10%) commission on sales of advertising or sponsorships on the playing fields on transactions above Five Thousand Dollars (\$5,000), as described in paragraph 7.1 (a).

#### ARTICLE VI TICKET SALES

6.1. Spectator Fees. The sale of tickets or gate admissions to spectators for the right to gain access to the baseball facility for each Home Game Date or other Scheduled Date shall be under the sole responsibility and control by Club.

6.2. Ticket Prices. Notwithstanding the foregoing, Club shall not charge a gate or ticket fee greater than Five Dollars (\$5.00) per adult, and Four Dollars (\$4.00) for students (age 13 - 17), for admission on any Home Game Date or other Scheduled Date.

6.3. Access to Baseball/Softball Sports Complex. Club acknowledges that during the use of the baseball facility, City or other licensees may be using other softball diamonds and facilities at the baseball/softball sports complex. City, its employees, agents, volunteers, participants, spectators, and other individuals using the facility will not be charged entry to the baseball/softball sports complex and shall be given complete access to the food and beverage concession building, without charge of any kind (except for payment for concessions at the same price as other customers of the food and beverage concession). Such individuals, though not being able to gain immediate access within the gated/fenced area without purchase of a ticket or gate fee, may have the ability to view Club's baseball games from vantage points outside of the gated/fenced area, but within the baseball/softball sports complex, without charge. Club acknowledges and accepts such fact and circumstance.

#### ARTICLE VII ADVERTISING

7.1. City Advertising.

a. Except as reserved to the Club as provided below, City shall have the right to sell and obtain third party advertising or sponsorships to be placed throughout the baseball/softball sports complex, including signs and banners to be placed on the outfield wall of the baseball facility. All revenue from such sales or sponsorships shall be retained solely by the City. Notwithstanding the foregoing, Club shall be paid a ten percent (10%) commission for assisting City with sales of additional advertising or sponsorships at the baseball/softball sports complex on transactions above Five Thousand Dollars (\$5,000). Such sales must be first pre-registered and approved by the City in order to receive payment.

b. Club shall be granted access to 100 linear feet of the outfield wall space between first base and third base and the right field corner for the placement of removable advertising banners/signage. Such access shall be only for the months of June and July, and all revenue paid retained by Club.

7.2. The content of the advertisement or identification of all sponsors must first be approved by the City at its sole and absolute discretion.

#### ARTICLE VIII CONCESSIONS

8.1. Food and Beverage. The Club shall be required to operate the food and beverage concession building and shall place trained personnel to staff operations of the concession building on Home Game Dates and other approved Scheduled Dates. The retail sales price for all food and beverage items shall be established by the City.

8.2. Stocking and Purchase of Supplies. It shall be the responsibility of City to purchase and stock the food and beverage concession building at its sole expense, and shall maintain an adequate inventory of food and beverage for sale for each game date. Upon receipt of all permits and licenses and other approvals necessary and required for the sale of alcoholic beverages, beverage sales shall include beer, wine, and wine cooler sales. City shall make its best efforts to obtain such permits and licenses, but the failure to obtain same shall not affect the other terms and conditions of this Agreement.

8.3. Payment for Concession Operations. Club shall be responsible for the staffing, inventory control, cash management, and compliance with all applicable rules, statutes, laws and regulations pertaining to the sale and operations of the food and beverage concession building, selling food and beverage items at prices established by the City. On the day following a Home Game Date or other approved Scheduled Date, Club shall report and account for all dollar gross sales receipts, and inventory count on all items sold, paying all revenue over to the City, through its Recreation Department. Within seven (7) days thereafter, the City shall inventory food and beverage items remaining as saleable ("remaining inventory"), and pay Club sixty percent (60%) of the net profit from the concession sales, and subtracting from that payment to Club forty percent (40%) of the retail sales value of food and beverage items not accounted for from the remaining inventory.

8.4. Baseball Novelties. Club shall have the exclusive right to sell baseball novelties at the baseball/softball sports complex on Home Game Dates and other approved baseball game dates, and retain all sales revenue therefrom.

#### ARTICLE IX DEFAULT; REMEDIES

##### 9.1. Defaults; Remedies.

a. Events of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Club (an "Event of Default"):

(i) The failure by Club to make any payment for usage by the tenth (10<sup>th</sup>) day after such amount is due;

(ii) The failure by Club to make any other payment required to be made by Club hereunder (other than a payment specified in subsection [I] above), including, without limitation, those amounts due under section 8.3;

(iii) The failure by Club to observe or perform or the violation of any of the other covenants, conditions or provisions of this Agreement to be observed or performed by Club, where such failure shall continue for a period of ten (10) days after Club's receipt of written notice of default or violation from City; provided, however, that if the nature of Club's obligation is such that more than ten (10) days are required for performance, then Club shall not be in default if Club commences performance within such 10-day period and thereafter diligently prosecutes the same to completion and in any event completes such performance within thirty (30) days of Club's receipt of such written notice; or

(iv) The failure by Club to use the Premises for baseball purposes as a member of the Great Lakes Collegiate League for Home Game Dates of no less than twenty (20) games per year.

b. Upon an Event of Default, then, without prejudice to any other remedies which City might have, City may, at its election, declare this Agreement forfeited and the term ended, and re-enter the baseball facility, with or without process of law, and remove all persons and property therefrom.

9.2. Removal of Property.

a. In the event of any re-entry or taking possession of the baseball facility for default, City shall have the right, but not the obligation, to remove from the Premises all personal property of club located therein, and may store the same in any place selected by City, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Club, after it has been stored for a period of thirty (30) days or more. The proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for the storage, if any, and third to the payment of any other sums of money which may then be due from Club to City under any of the terms hereof, the balance if any without interest to be paid to Club.

b. Club hereby waives all claims for damages that may be caused by City's re- entering and taking possession of the baseball facility and Premises or removing and storing the property of Club as provided in this Agreement, and will hold City harmless from loss, costs or damages occasioned by City thereby. No such reentry shall be considered or construed to be a forcible entry.

9.3. Club Still Liable for Rent. City shall not be liable for damages by reason of such re- entry. Notwithstanding any such re-entry by City, the liability of Club for usage fees provided for herein shall not be extinguished for the balance of the agreement term. Club shall pay City, as damages, an amount equal to the construction and installation costs incurred by the City for the City's obligations under Article. III above of this Agreement, less any sums previously paid by Club under paragraph 5.I 0, or the remaining payments due under the terms of this Agreement, whichever sum is greater, together with such other damages including loss from concession sales profit, as allowed by law.

9.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity. The assertion by a party of any right or remedy will not preclude the assertion by the party of any other rights or the seeking of any other remedy.

9.5. Default by City. City shall not be in default unless City fails to perform obligations required of City within twenty (20) days after written notice by Club to City, provided, however, that if the nature of the City's obligation is such that more than twenty (20) days are required for performance then City shall not be in default if City commences performance within such 20-day period and thereafter diligently prosecutes the same to completion. If City fails to cure any such default within the allotted time, Club may cure such default itself and offset the cost thereof against usage payments payable hereunder.

ARTICLE X MISCELLANEOUS

10.1. Surrender. At the expiration of the term of this Agreement, or at the earlier termination of this Agreement, Club shall surrender the baseball facility in good condition, reasonable wear and tear excepted.

10.2. Liens and Solvency. Club shall keep the baseball facility free from any liens arising out of any work performed, materials furnished or obligations incurred by Club and hold City harmless therefrom including all costs and attorney's fees. In the event Club becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Club, then City may cancel this Agreement at City's option and Club shall nevertheless be liable for any further losses or damages sustained by City so caused by Club.

10.3. Assignment. Club shall not have the right to assign this Agreement or let or sublet the whole or part of the baseball facility without the written consent of City, which consent may be withheld at its sole and absolute discretion. Any purported assignment or sublet shall be of no effect if not consented to by the City. Any assignment or sublet of this Agreement shall not extinguish or diminish the liability of Club hereunder.

10.4. Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

10.5. Transfer by City. If the City shall assign its interest under this Agreement or transfer its interest in the baseball/softball sports complex, such transferee shall be required to assume all obligations of City under this Agreement, and City shall be relieved of any obligation accruing hereunder after such assignment or transfer, and such transferee shall thereafter be deemed to be the City hereunder.

10.6. Heirs and Successors. Subject to the provisions hereof pertaining to assignment and subletting (paragraph 10.3), the covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of any or all of the parties hereto.

10.7. Mutual Release and Waiver. To the extent a loss is covered by insurance in force, City and Club hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire or other insurance policies, including any causes of loss forms attached thereto; provided, that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of City or Club.

10.8. Notices. All notices under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, sent by confirmed facsimile, overnight courier services or registered or certified mail, postage prepaid, and shall be deemed given upon delivery if personally delivered, upon the earlier of actual receipt or one day after it is sent, if sent by overnight courier or confirmed facsimile, or three days after it is sent by registered or certified mail. All notices or other communications shall be made as follows:

If to the City:

City of Flat Rock 25500 Gibraltar Road Flat Rock, MI 48134  
Attention: City Clerk  
Facsimile No.: (734) 783-0304

With a Copy To:

David P. Grunow, City Attorney  
GRUNOW & ASSOCIATES PLLC  
26342 Gibraltar Road Flat Rock, MI 48134  
Facsimile No.: (734) 782-2424

If to the Club:

Catholic Baseball Players For Christ Inc.  
2230 W. Sigler Road Carleton, MI 48117  
Attention: James R. DeSana Jr., President Facsimile No.:\_

10.9. Compliance with Laws. All operations or activities upon, or any use or occupancy of the baseball facility or baseball/softball sports complex, or any portion thereof, by Club or any person claiming through Club shall be in all material respects in compliance with all state, federal and local laws, ordinances, rules, regulations, permits, standards, and requirements.

IO.IO. Time is of the Essence of this Agreement. Time is of the essence in the performance of all obligations of Club and City under this Agreement.

10.11. City Approvals. City shall, from time to time, designate one or more people who are authorized on behalf of City to give consents or approvals required of City hereunder. Such designation shall remain effective until such time as City notifies Club in writing of a new designee or designees. At the outset, City's designee shall be Rodney Wade, Recreation Director.

10.12. Force Majeure. Notwithstanding anything in this Agreement to the contrary, each party's obligation to perform under this Agreement shall be excused to the extent that such performance is prevented, delayed or rendered impracticable by events beyond that party's reasonable control, provided such party shall have exercised all reasonable efforts to avoid such events. Such events shall include, without limitation, inclement weather, acts of God, strikes, civil commotion, riot, war and any other cause whether similar or dissimilar to those enumerated that is reasonably beyond the control of the party obligated to perform. Force Majeure shall not include financial inability to perform (regardless of the cause) and shall not apply to defaults arising out of the loss by Club of its right to operate a team with the Great Lakes Collegiate League.

10.13. Whole Agreement. This Agreement constitutes the entire agreement between the parties and will be deemed to supersede and cancel any and all other prior discussions, negotiations, proposals, undertakings, understandings, and agreements, whether written or oral, relating to the transactions contemplated in this Agreement. None of the previous and contemporaneous negotiations, preliminary drafts, or previous versions of this Agreement leading up to its execution and not set forth in this Agreement will be used by any of the parties to construe or affect the validity of this Agreement. Each party acknowledges that no representation, inducement, or condition not set forth in this Agreement has been made or relied on by either party.

10.14. Construction of Contract. This Agreement has been negotiated at arm's length and carefully reviewed by both parties. This Agreement shall not be construed against either party or construed against the party who drafted this Agreement.

10.15. Joint Ventures. Any intention to create a joint venture or partnership relationship between the parties is hereby expressly disclaimed. Further, no agent, servant, or employee of Club or any subcontractor shall under any circumstances be deemed an agent, servant, or employee of City, and that no agent, servant, or employee of the City shall be under any circumstances deemed an agent, servant, or employee of Club.

10.16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile transmission or by electronic mail, with an executed hard copy to follow.

Motion carried unanimously

**Item 9- F-Stone Creek Banquet Hall Website**

**Resolution 02-17-10**

Motion by Beller  
Supported by Dropiewski

RESOLVED, to approve the design and development of a website for Stone Creek Banquet Hall at the Flat Rock Community Center by Kaleidico of Flat Rock

Motion carried unanimously

**Item 9- G-Stone Creek Banquet Hall Website**

**Resolution 02-17-11**

Motion by Dropiewski  
Supported by Bergeron

RESOLVED, to approve the use of Google AdWords and Facebook placement to drive more traffic in conjunction with the Stone Creek Banquet Hall website; this would be based on a 3 month trial, to gain initial feedback on what kind of traffic can be generated. This will be conducted and designed by Kaleidico of Flat Rock

Motion carried unanimously

**10. CITIZENS TO BE HEARD (ADDITIONAL COMMENTS):**

NONE

**11. CORRESPONDENCE:**

NONE

**12. ADJOURNMENT:**

**Resolution 02-17-12**

Motion by Martin  
Supported by Bergeron

RESOLVED, to adjourn the regular City Council meeting of February 17, 2015 at 8:15 PM

All voting yes; motion carried unanimously

\_\_\_\_\_  
**JONATHAN DROPIEWSKI, MAYOR**

**DATE:** \_\_\_\_\_  
**Approved**

\_\_\_\_\_  
**MEAGHAN K. BACHMAN, CITY CLERK**