

LEASE AGREEMENT

This Operating Agreement, herein referred to as the "Agreement," is made on this ____ day of _____, _____, by and between the City of Mankato, a municipal corporation, hereinafter referred to as the "City", Mankato Family YMCA, a non-profit corporation, hereinafter referred to as the "Operator" and the MANTAS Swim Club, a non-profit swim team, hereinafter referred to as the "Team". City, Operator and Team are at times jointly referred to as "Parties".

RECITALS

WHEREAS, the City owns an outdoor aquatic facility and related facilities, including all fixtures, furnishings, and improvements there, and all rights privileges, and appurtenances thereto, located on or about the real property located at 300 East Mabel Street, Mankato, Minnesota 56001, known as the Tourtellotte Pool. Tourtellotte Pool is the location of a three-pool facility hereinafter referred to as "Pool". Adjacent to said pool is a bath house, mechanical building and concession's sales structure hereinafter referred to as "Amenities". Pool and Amenities are at times jointly referred to as "Facility". See map on Exhibit A for reference of space.

WHEREAS, the City desires the Operator to operate an outdoor public pool in the City and for that purpose enters into an Agreement for said operations at the Facility;

WHEREAS, the City desires the Team to operate a youth swim team for the public to participate in at the Facility;

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties hereto, it is agreed that the Team is granted access to the Facility under the following terms and conditions:

AGREEMENT

1. RECITALS INCORPORATED; EFFECT OF OPERATIONS.

- 1.1 The Recitals set forth above are true and correct and are fully incorporated into this Agreement as if set forth herein.
- 1.2 This Agreement supersedes all prior leases, agreements, and amendments, whether oral or written, between the Parties hereto concerning the subject matter contemplated herein.

2. PREMISES.

- 2.1 Use of Facility. Subject to the terms of this Agreement, City hereby grants Team the operation of Facility in conjunction with the Operator for the City for the Term (as defined at Section 3).
- 2.2 Access.
 - a. City grants to Team, and its personnel, employees, agents, and licensees (collectively, "Personnel"), a non-exclusive right to use the Facility for scheduled practices and events.

- b. Operator shall provide Team access to the space as is scheduled.
- c. Unless under the supervision and control of Operator, neither Operator, Team nor its Personnel will provide any form of access, whether express, constructive, or implied, to the Facility to any other person.

2.3 Facility.

- a. City grants to Team access to the pool deck and the bath house.

2.4 Amenities.

- a. City grants to Team access to the lane lines, electrical access, deck lighting and sound system for scheduled events.

2.5 Storage Space.

- a. Storage access is limited to Team-specific storage areas as listed on Exhibit B. At the end of each year's Permitted Use, Team may leave items in storage but ensure that all items are appropriately winterized and tidied. Liquids may not be stored over winter. No perishable items may remain at the Facility outside of the Permitted Use.

2.6 Parking.

- a. Team shall encourage participants to park in the designated parking lot, located to the northwest of the Facility.

3. TERM.

- 3.1 Initial Term. The initial term of this Lease shall be for a period of three (3) years commencing on January 1, 2025, and terminating on December 31, 2027 ("Term").
- 3.2 Surrender. At the expiration or termination of this Agreement for any reason, Team shall at its expense: (i) peaceably surrender and deliver the Facility in good and clean condition, excepting only reasonable wear and tear or damage beyond the control of Team;; (ii) if directed by City, remove any leasehold improvements, alterations or additions installed by Team, and repair any damage caused thereby; and (iii) remove all of its personal property, trade fixtures, signs, and decorations, and repair any damage caused thereby. If Team fails to remove its property upon the expiration of this Agreement, said property shall be deemed abandoned and shall either become City's property or be disposed of by City at Team's expense.

4. USE OF PREMISES.

- 4.1 Permitted Use. The Team's Permitted Use shall be determined by the City, Operator and Team collectively.
 - a. During the Term, the City shall provide a formal date in writing to the Team acknowledging the beginning of the Permitted Use. This date will be impacted by weather and maintenance but shall make every attempt to avoid negatively impacting the Team's ability to use the facility.
 - b. City, Operator and Team shall work together to agree upon the practice schedule.
 - c. City, Operator and Team shall discuss quantity and dates of swim meets as these competitions directly impact the community's use of the facility. Team shall make

efforts to reduce the negative impact of usage on the Facility to the access of the public.

- d. Permitted Use opportunities are defined in the City of Mankato Council approved Fee Schedule as adjusted annually by the City of Mankato Council.

4.2 Team acknowledges that the Permitted Use is a use granted exclusively to Team, for swim practices and swim meets.

- a. Events not considered a Permitted Use, including non-aquatics related activities, events that reach beyond the fenced area of the pool or non-competition type events require submitting a Special Event Permit Application or Private Rental Application (depending on the circumstances) by Team that must meet the related regulations and guidelines in order to be accepted by the City.
- b. Use of space outside of the Permitted Use time frame must be requested by Team in writing.

4.3 Advanced Scheduling Notice. Team shall provide to City, on or before April 1, of the Term, the requested practice schedule and anticipated swim meets schedule.

- a. City, Operator and Team shall work together to agree upon schedule prior to advertisement.
- b. City, Operator and Team shall agree to the swim meet dates in advance. Approval of swim meets shall be made in writing prior to commitment of the Team.

4.4 Restrictions. The Facility shall not at any time be used: (i) in violation of any applicable federal, state, or local law ordinance, rule, or regulation ("**Laws**"); (ii) for any business not consisting principally of the Permitted Use; (iii) for the sale or off sale or consumption of liquor without proper licensing as required by applicable Laws. No part of the Facility shall be occupied or used by any person for any purposes or in a manner which, in order to meet any requirement of Laws, requires that City make any addition or alteration on or to the Facility.

4.5 Reservation of Rights. City reserves the right to suspend open, close, or otherwise restrict access to certain areas of the Facility if the City reasonably believes a significant risk exists that may injure, damage or otherwise be harmful to City, or the Facility, or the participants, patrons, Team, Operator, or staff at the Facility. The Team and Operator shall be solely responsible for their own safety and the safety of their guests, invitees, and anyone entering the pool area under their control or authority. The Team and Operator acknowledge and agree that City does not and shall not assume any responsibility for the safety or supervision of the Team and Operator, and their guests, invitees, or any other persons using the pool under this Agreement.

5. RENT AND USAGE PAYMENT.

5.1 Date When Payment Begins. All Payments shall commence and, and begin to accrue, as of the Effective Date.

5.2 Annual Cost.

- a. Team shall require each MANTAS participant to purchase the MANTAS Pool Pass, provided by the City, prior to the start of the Term. This payment will cover the usage of the pool for practices.
 - a) Participants will be issued a scannable card to use to enter the facility upon each visit.
- b. Participants of MANTAS that do not participate frequently enough to purchase the MANTAS Pool Pass may pay the daily rate to practice. This participation must be approved by MANTAS staff onsite.
- c. Team shall pay \$1,000 per day for swim meets. This charge will include the cost to close the facility from the public and the Operator to staff the Facility.
 - a) Half day swim meets may be requested at a pro-rated rate of \$500.

5.3 Equipment Cost.

- a. Team may utilize the city provided dumpsters located at Tourtellotte Park for their events. Should refuse needs exceed the capacity of these dumpsters, additional dumpsters may be required at the sole cost of the Team.
- b. City shall provide bleachers for swim meets when requested by Team. The cost for bleachers will be \$50 per bleachers set.

5.4 Place of Payment. Except as otherwise set forth herein, all Payment hereto shall be paid in U.S. dollars, on or before the applicable date of payment during the Term. All payments shall be paid or mailed to the following address, or to such other payee or address as City may designate in writing to Team: City of Mankato, Attn: Accounts Payable, 10 Civic Center Plaza, P.O. Box 3368, Mankato, MN 56002-3368.

5.5 Late Payment Charge. Notwithstanding any other remedies for nonpayment of Rent, if any payment is not received on or before the applicable date of payment, Team shall pay a late payment charge of one and one-half percent (1.5%) per month of the unpaid balance. The obligation to make late payments shall not require prior written notice. In addition, if Team shall fail to pay Rent after the same becomes due and payable, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of 5% per annum. If any payment made by check and such check is returned by Team's bank, Team agrees to pay City a returned check fee equal to \$75 per check returned, and Rent shall not be deemed received until City has received good funds.

6. CONCESSIONS AND ADVERTISING.

6.1 Sale of Concessions. During swim meets, Team shall:

- a. have the right to the proceeds of all tickets, novelties, and programs sold at the Facility during all Team swim meets;
- b. have the right to sell concessions of the type that are usually sold at a swim meet or aquatic facility and retain the proceeds from all sales thereof;
- c. provide City with Department of Health license or Special Event Permit as applicable; and
- d. abide by and comply with all applicable Laws.

- 6.2 Branding. Team may add temporary branding in the Facility during the swim meet dates only. All branding, locations, materials and attachments must be approved by City in writing prior to installation on an annual basis.

7. TEAM RESPONSIBILITIES.

- 7.1 Team Responsibilities. Team shall, at its cost, and in a manner suitable for and commensurate with USA Swimming or its equivalent:
- a. Apply for and maintain throughout the Term all licenses, including all required licenses, permits, and approvals, and diligently pursue such applications, and take all reasonable actions within Team's control to obtain such licenses, permits, and approvals, including those required for the Permitted Use;
 - b. Conduct all Permitted Use events in compliance with the sound and noise plan agreed upon among the Parties, and take such other steps to ensure that sounds and noises caused by Team's activities at the Facility will be at a reasonably acceptable level that will not adversely affect the neighborhood surrounding the Facility;
 - c. Not including facility staff and lifeguards, Team shall provide all staff necessary for Team's Permitted Use events at the Facility, including ticket attendants, score keepers, public address announcers, locker room attendants, and trainers;
 - d. Provide temporary extra amenities required by the Team beyond what a community user might need;
 - e. Remove trash from Concessions, Restrooms and Deck area and place in City provided dumpster;
 - f. Regular cleaning of the Storage Space; and
 - g. Provide the routine cleaning and regular daily maintenance of rest rooms and spectator portions of the Complex during each Team Permitted Use event with City provided equipment and supplies.
- 7.2 Notify City of maintenance needs and problems that arise in the Complex.
- 7.3 Team shall work with Operator to manage weather-related delays and closures using NOAA weather and Red Cross guidelines. In the case of weather-related delays and closures, Operator shall be responsible for notifying City and updating the public-view calendar on ActiveNet.

8. CITY RESPONSIBILITIES.

- 8.1 City shall be responsible for obtaining all appropriate licensure for the operation of the Facility.
- 8.2 City shall act as the primary point of contact for Team's use.
- 8.3 Maintenance. Except as otherwise provided herein, throughout the Term, City shall maintain the Facility at its current level with no additional charge to Team. If the Facility requires an extraordinary amount of maintenance because of the acts or omissions of or on behalf of the Team or its Personnel, then Team shall pay to City

such amounts as may be required to prepare, maintain, or repair the Facility, which amounts Team shall pay to City (i) at a rate equal to one and one-half (1.5) times the cost of City's fully loaded staff, (ii) by the hour or by the mile rate established by the City of Mankato Central Garage for equipment usage, and (iii) for the actual cost of any reasonably required materials used or to be used in such preparation, maintenance, or repair.

- a. City shall provide all lawn and landscaping maintenance, electrical, plumbing and fence repairs.
- b. City shall inspect pool mechanical equipment and provide all routine maintenance associated with pool mechanics.
- c. Except as otherwise provided herein, throughout the Term, City shall be responsible for any heavy maintenance of the Facility. This maintenance may include expanded cleaning service, facility repairs, pool mechanical repairs or other incidents that may occur. If the Facility requires an extraordinary amount of maintenance because of the acts or omissions of or on behalf of Team or its Personnel, then Team may be responsible for reimbursement of said damage costs.

8.4 Facility Preparation. The City will prepare the pool and bath house in advance of the Permitted Use dates.

8.5 Fees. The City shall establish all fees related to use of the Facility.

9. OPERATOR RESPONSIBILITIES.

- 9.1 Operator shall be responsible for providing access for the Team to the Facility. The Team will scan in at the front desk, serviced by the Operator, prior to each swim practice.
- 9.2 Operator shall provide oversight of the Facility in the form of lifeguards, custodial, pool chemistry management and facility management.
- 9.3 Operator will work with the City on maintenance needs, schedules, closures and pool access needs.
- 9.4 No part of this agreement shall negate or supersede the original agreement between the City and Operator.
- 9.5 Operator shall have no additional financial responsibility related to the Team. The cost of managing the facility during Team events shall be included in the general pool management costs of the facility.

10. EQUAL OPPORTUNITY.

- 10.1 Non-Discrimination. Throughout the Term, Team shall not discriminate on the basis of sex, color, age, national origin, marital status, familial status, pregnancy, citizenship, creed, genetic information, disability, veteran status, status with regard to public assistance, membership in a local human rights commission, or other categories protected by law.
- 10.2 Failure to Comply by Team. If Team is found to have discriminated as determined by a court of competent jurisdiction or other appropriate public forum as agreed by Team and City, this Agreement may be terminated, in whole or in part, by City. Team shall, upon

reasonable notice, provide City with access to all records pertaining to hiring and employment and all other pertinent data and records for enabling City and its representatives to ascertain compliance with the provisions of this Agreement.

11. ALTERATIONS AND IMPROVEMENTS.

- 11.1 Alterations. Team shall not make any exterior or structural alterations in any portion of the Facility, nor any alterations in the interior or the exterior of any of the facilities located at the Facility without, in each instance, first obtaining the advance written consent of City Manager or designee.
- 11.2 Improvement Requests. Team shall send all improvement requests to City contact in writing. Improvements will be considered in conjunction with annual City Improvements and long-term benefits to the entire community.
- 11.3 Any alterations and/or improvements made to the Facility by the Team shall become the property of the City and the Team shall have no further rights to said improvements except as provided within this Agreement. The City agrees to notify the Team of any contemplated improvements to the Facility and shall consult with the Team prior to performing any capital improvements that impact Team use of the Facility.

12. TEAM INSURANCE.

- 12.1 Team Liability Insurance. The Team agrees to maintain, in full force and effect during their use and/or occupancy of the Facility, commercial general liability (CGL) insurance based upon an occurrence basis from a licensed carrier in the State of Minnesota in the minimum amounts set forth below covering property damage bodily injury risks including, but not limited to, premises and operations; product and completed operations; contractual; broad form property damage; and independent contractors and personal injury coverage. The Team shall furnish the City, prior to their use and occupancy of the Facility, with a certificate of insurance naming the City and its officers, employees, and agents as additional insureds on the CGL policy and Umbrella/Excess policy, if any, and providing that the insurance evidenced thereby will not be cancelled prior to the termination of this Agreement without thirty (30) days' notice of cancellation or ten (10) days' notice for non-payment of premium. Said insurance shall maintain Commercial General Liability Insurance in a minimum amount of \$2,000,000 per occurrence; \$3,000,000 annual aggregate.



13. PROPERTY CASUALTY INSURANCE.

- 13.1 Property Insurance. Team agrees to carry, maintain and pay during the Term, insurance for at least 100% of the full replacement value of all Team's property located on the Premises. Team on behalf of itself and its insurer, waives all claims it may have against the City for damage to Team's property regardless of cause. This waiver does not waive liability for damage caused by willful, wanton or intentional misconduct of the City or any person acting on behalf of the City.

14. CITY INSURANCE REQUIREMENTS

- 14.1 Property Insurance. City agrees to carry, maintain and pay during the Term all risk property insurance covering, fire and extended coverage, vandalism and malicious mischief, and all other perils of direct physical loss or damage to the Facility.

15. INDEMNIFICATION.

- 15.1 Indemnity. Each party agrees to fully defend, indemnify and hold harmless the other party, its agents and employees, from and against all claims, actions, judgments, cost and expenses arising out of the damage or injuries to third persons or other property, caused by the negligence or a wrongful act or omission, including breach of contract of this Agreement, by a party, its agents, and employees in the use, occupancy or maintenance of the Facility, including those claims that might arise under the Unemployment Compensation or the Workers' Compensation Act of the State of Minnesota, on behalf of a party, employees, or other persons while so engaged in the performance of any services contemplated under this Agreement; provided, however, that a party shall not be liable for any injury or damage or loss occasioned by the negligence or willful misconduct of the other party, its agents, or employees; and provided further that a party shall give prompt and reasonable notice of any such claims or actions to the other party who shall have the right to investigate, comprise and defend the same. Nothing herein shall constitute a waiver by either party of any immunities, exclusions or limitations on liability provided by Minnesota Statutes, Chapter 466, or such other law as may apply. In no event, shall Team assert or rely upon such statutory limited liability of City to avoid liability for any act for which Team would otherwise be legally responsible. The obligations of this Section shall survive the expiration or other termination of this Agreement.

16. DEFAULT/REMEDIES.

- 16.1 Default/Remedies. In the event of any default by either party under this Agreement, then the other party, at its option, and after thirty (30) days written notice and opportunity to cure, may, in addition to all other rights and remedies provided in this Agreement, or otherwise at law or in equity, terminate this Agreement.

17. ASSIGNMENT.

- 17.1 Assignment. Team shall not assign or transfer this Agreement in whole or in part or sublet all or any part of the Premises without the prior written consent of City.

18. NOTICES.

- 18.1 Notices. All notices and demands required or permitted hereunder shall be sent by email and certified mail, return receipt requested, postage prepaid, by facsimile transmission or by Federal Express or other reputable overnight courier service and shall be deemed given upon the postmarked date, if sent by certified mail, or the date deposited with Federal Express or such other reputable overnight courier service, or the date of the facsimile transmission, but shall not be deemed received until one (1) business day following deposit with Federal Express or other reputable overnight courier service, or three (3) days following deposit in the United States Mail, if sent by certified mail, and addressed to:

To City:
City of Mankato
ATTN: Director of Administrative Services
10 Civic Center Plaza
P.O. Box 3368
Mankato, MN 56002-3368
pskophammer@mankatomn.gov

To Operator:
Mankato Family YMCA
ATTN: Executive Director
1401 South Riverfront Drive
Mankato, MN 56001
aburk@mankatoymca.org

To Team:
MANTAS
ATTN: Head Coach
120 Red Oak Lane
Mankato, MN 56001
headcoach@mantasswimclub.com

or at such other address requested in writing by a party upon thirty (30) days' notice to the other parties.

19. RECORDING.

- 19.1 Recording. Team shall not record this Agreement, but may with the prior written consent of City, record at Team's cost, a memorandum of this Agreement in a form acceptable to City with the Blue Earth County Recorder's office.

20. FORCE MAJEURE AND PERMITTED DELAYS.

- 20.1 Force Majeure/Permitted Delays. Except for the obligation to pay Fees, or other sums due under this Agreement, either party hereto is delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, pandemics, epidemics, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts ("Permitted Delay" or "Permitted Delays"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay, so long as the party affected diligently pursues performance as soon as reasonably possible with due diligence. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within five (5) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act due to a Permitted Delay is be sixty (60) days.

21. GENERAL TERMS.

- 21.1 Severability. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the Parties hereto that, if any provision of this Agreement is capable of two

- constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.
- 21.2 Applicable Law. This Agreement shall be governed by the laws of the State Minnesota, without regard to any conflict of law's provisions. All legal proceedings shall be venued in the County of Blue Earth.
- 21.3 Time of the Essence. Time shall be of the essence in interpreting the provisions of this Agreement.
- 21.4 Entire Agreement and Amendments. As expressly set forth in this Agreement, this Agreement contains all of the agreements of the City and Team hereto with respect to matters covered or mentioned in this Agreement and no prior agreement, letters, representations, warranties, promises, or understandings pertaining to any such matters shall be effective for any such purpose. This Agreement may be amended or added to only by an agreement in writing signed by the Parties hereto or their respective successors in interest.
- 21.5 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, principal agent, or employer-employee relationship between or among the Parties.
- 21.6 Cumulative Remedies and Nonwaiver. The various rights and remedies contained in this Agreement shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of the right to exercise any power any either Party shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by a Party shall not be construed by any other Party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by the Parties to or of any act by any other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to approval of any subsequent similar act. No surrender of the Premises by MAPA shall be affected by City's acceptance of Fees or by other means whatsoever unless the same is evidenced by City's written acceptance of the surrender.
- 21.7 Headings. The headings of the sections contained herein are for convenience only and do not define, limit or construe the contents of such sections.
- 21.8 Successors and Assigns. Except as set forth in the Agreement, this Agreement shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.
- 21.9 Interpretation. The parties agree that no provision hereof or act of either party, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties.
- 21.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute one and the same instrument. Facsimile or PDF counterpart signatures to this Agreement shall constitute an original signature.

IN WITNESS WHEREOF, the parties to this agreement have affixed their signatures as follows:

CITY OF MANKATO

The undersigned certify that they have lawfully executed this Memorandum on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

Approved:

By: _____ Date: _____
City Manager

MANKATO FAMILY YMCA

The undersigned certify that they have lawfully executed this contract on behalf of Mankato Family YMCA.

Attested:

By: _____ Date: _____
Executive Director

MANKATO MANTAS SWIM CLUB

The undersigned certify that they have lawfully executed this contract on behalf of Mankato MANTAS Swim Club.

Attested:

By: _____ Date: _____
Head Coach

Exhibit A: Tourtellotte Pool

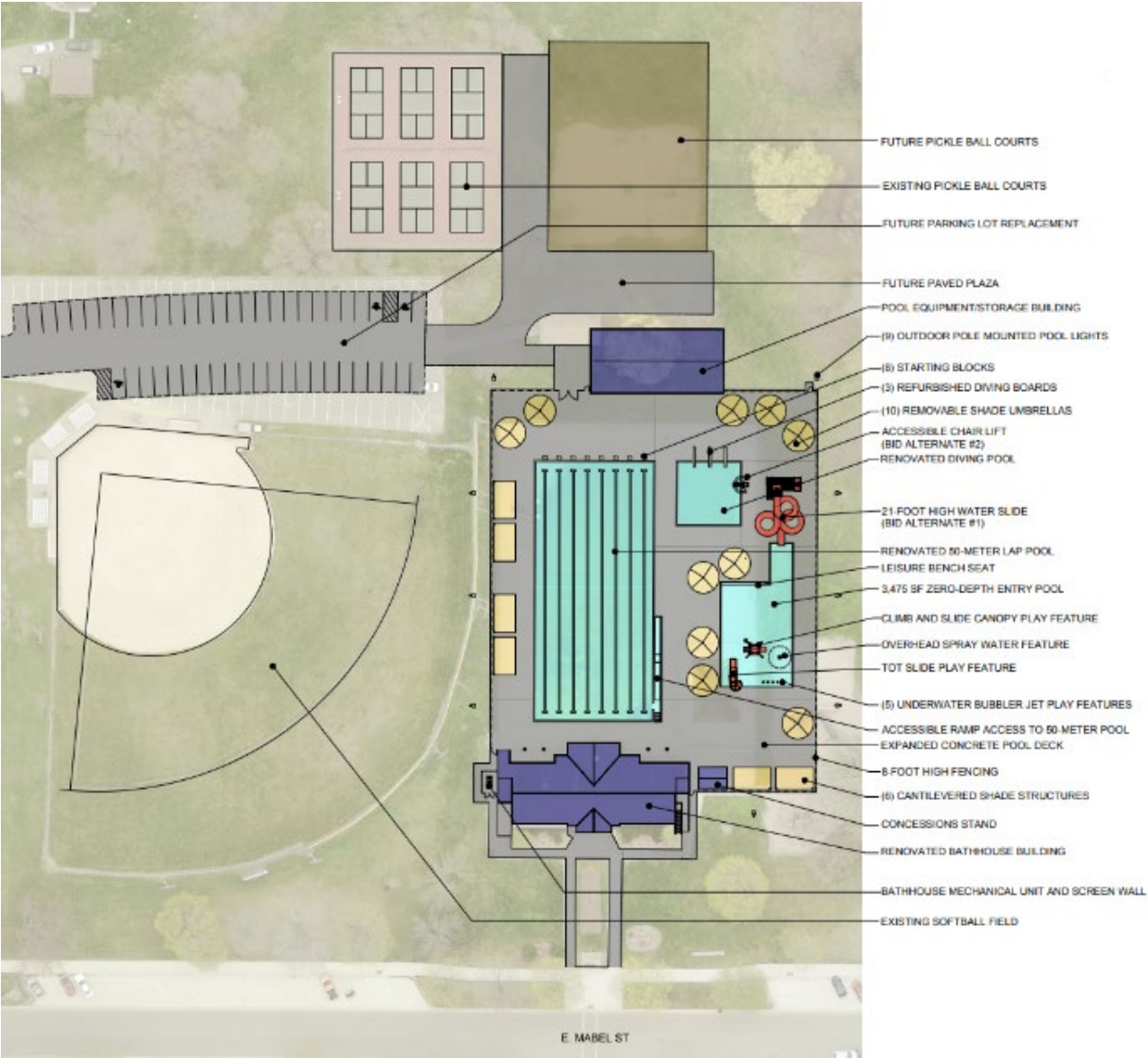
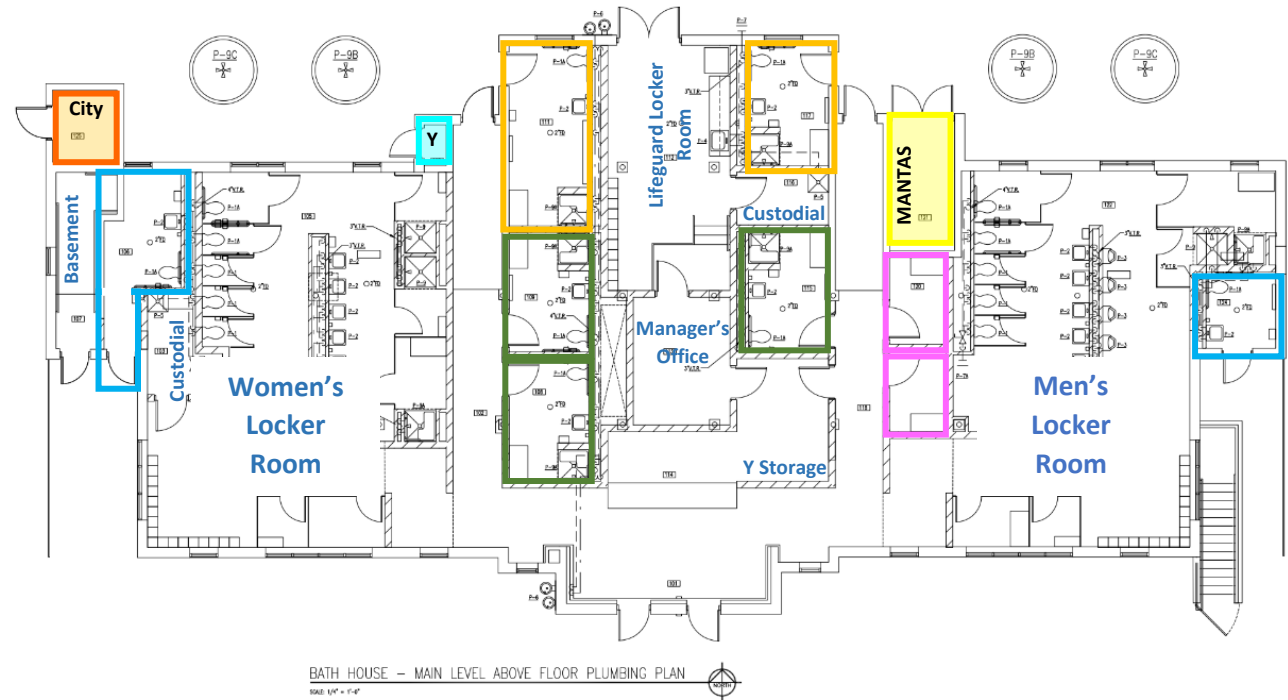


Exhibit B: Bath House

First Floor



Deck Restrooms

Inclusive Restrooms & Changing Rooms

City Storage

Changing Rooms (no plumbing)

Exterior Restrooms for non-pool users

Y Storage

MANTAS Storage

Basement – City storage only. Mechanical and electrical access will be available for Operator.

