

**Stormwater Management Fee Adjustment License Agreement**

WHEREAS, the City of \_\_\_\_\_ (“City”) enacted an ordinance establishing a stormwater user fee (the “Ordinance”) which fee is based upon the amount of impervious surface located on real property in the City (“User Fee”); and

WHEREAS, said ordinance provides a basis for property-owners to obtain an adjustment to the User Fee (“Credit”) as set forth in the FEE ADJUSTMENT POLICY, Revised January 5, 2000 and as may be modified or amended in the future (“Adjustment Policy”); and

WHEREAS, section 5.6 of said Adjustment Policy makes available to certain entities a Credit of up to 100 percent of the User Fee where said entity permits the construction and maintenance of stormwater detention/retention facilities on its land which provide a city-wide benefit; and

WHEREAS, Milwaukee County (“County”) has objected to the Ordinance and Adjustment Policy on numerous grounds threatening the City with litigation to challenge the Ordinance and Adjustment Policy. In addition, the County has refused to pay the stormwater charges that the City has levied to date; and

WHEREAS, the City desires to have certain stormwater projects constructed and maintained, and, to avoid the threatened litigation, the City and County have agreed that it is in each party’s best interest for the County to make certain of its land available for the construction and maintenance of these stormwater projects in exchange for the City agreeing not to impose User Fees on the County to the extent provided by this Agreement; and

WHEREAS, the parties wish to set forth the terms and conditions of their agreement;

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE CITY AND COUNTY AS FOLLOWS:

1. Scope of Agreement. This Agreement pertains only to (a) parks located in the City that are owned, managed or controlled by the County’s Department of Parks, Recreation and Culture (“Parks Department”); (b) other properties located in the City that are owned, controlled or managed by the County’s Department of Public Works all of which are described more fully in Exhibit A (“Property”). The Property shall also include any land that is acquired by or transferred to the County’s Parks Department after the date of this Agreement and used primarily for park and/or recreational purposes.

2. Term. The initial term of this Agreement is 40 years. This Agreement shall automatically renew for additional periods of 40 years each, provided the land described in Exhibit C to this Agreement is being made available for stormwater management at the end of the preceding term. For example, if this land is being made available for stormwater management at the end of the 80<sup>th</sup> year of this Agreement, the Agreement will automatically be extended for an additional term of 40 years.

### 3. Credit.

(a) The County shall receive a credit in an amount equal to the User Fee otherwise attributable to the Property in exchange for the County making land available for the designing, planning, construction and maintenance of the stormwater projects described in Exhibits B and C (the "Stormwater Projects"); provided the County does not unreasonably withhold its consent to the design and plans for the Stormwater Projects. The land that is being made available is also described in Exhibits B and C (the "Land"). The County and City agree that the Land does not have to be used exclusively for stormwater management purposes to entitle the County to receive this credit, but any additional uses may not materially interfere with the use of the Land for stormwater management purposes. In addition, any impervious areas added within the area of the Property in the future is not subject to the City's User Fee.

(b) No User Fee attributable to the Property shall be billed to the County as long as the Land is made available by the county for the Stormwater Projects. If the Land is not made available for these purposes, the City shall give notice to the County and provide a reasonable period of time for the County to cure the alleged failure. If the alleged failure is not cured within this time period, the Property shall then be subject to User Fees from the time the failure occurred until the failure is cured together with interest and penalties as set forth in the Ordinance. However, nothing in this Agreement shall prevent the County from challenging the right of the City to impose and collect a User Fee for this Property. If the City is permitted to impose a User Fee on the County, the City may collect these sums of money in the same manner as provided under the Ordinance for collection of delinquent User Fees.

4. Transfer of Property. Should any portion of the Property be sold or leased by the County to an entity that is not related to the County, the portion that is sold or leased will no longer qualify for the credit provided for in this Agreement until such time as the portion of the Property reverts back to the County or another entity related to the County. This paragraph does not preclude that portion of the Property from otherwise qualifying for a credit on some other basis under the Adjustment Policy.

5. Waiver of Right-of-Entry Fees. The County agrees to waive all "right of entry" permit charges for the installation of stormwater facilities over and in the Property. The City shall otherwise comply with all other application and permit conditions, including the need to obtain easements from the County.

6. Waiver of Charges Imposed in Lieu of User Fees. This Agreement shall also apply to any other method adopted by the City to collect money from the Property for the construction, operation and maintenance of the City's storm sewers and any other activity allowed by this Ordinance or Wisconsin Statute sections 66.8019 regarding stormwater ("Stormwater Work"). This applies to any method of collection including but not limited property taxes, special assessments, user fees, special charges or the like. In the event the City attempts to collect any money from the Property for Stormwater Work, no matter the form of collection, the City then agrees to pay a user fee to the County in an amount equal to these charges for the right to continue to use the Land for stormwater management purposes. If the County is unable to enforce this provision of the Agreement and the net result is that the County pays a User fee, or



11. Medical Complex. While this Agreement only relates to the Property as defined in Section 1, the City and County agree that this Agreement does not prevent the County from challenging the right of the City to impose and collect a User Fee, or similar fee, on any land or improvement that is owned, controlled or managed by the County within the City but which is not covered by this Agreement. By way of example only, the parties agree that they will review the charges currently being imposed on the land and improvements known as the Medical Complex at the County Grounds, and nothing in this Agreement precludes the County or any other party that has standing from challenging these User Fees.

12. License Agreement. The City acknowledges that this Agreement constitutes a license agreement referred to in Section 5.6 of the Adjustment Policy and that the Stormwater Projects fulfill the requirements referred to in Section 5.6 of the Adjustment Policy for the granting of credit referenced in that section.

13. No Admission. If the County challenges the City's right to impose and collect User Fees on any land owned, managed or controlled by the County, including, but not limited to, the Property, the City and County agree that this Agreement may not be used in any such challenge to show, demonstrate or prove that the County agreed to be subject to the Ordinance or the imposition or collection of User Fees.

14. Future Negotiations. The County and City agree to negotiate the municipal issues that exist between them in good faith as soon as practical after the effective date of this Agreement. These issues include, but are not limited to, stormwater infrastructure, potable water supply, sanitary sewers, streets and street lighting and fire and police services.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MILWAUKEE COUNTY

CITY OF \_\_\_\_\_

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