



OFFICE OF THE COUNTY EXECUTIVE

# Milwaukee County

CHRIS ABELE COUNTY EXECUTIVE

Date: June 29, 2012

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment to the Milwaukee County Federated Library System Board

Pursuant to the provisions set forth in Wisconsin Statutes Sec. 43.19 (1) (a) and subject to confirmation by your honorable body, I am hereby appointing Alderman Nik Kovac to serve on the Milwaukee County Federated Library System Board. Alderman Kovac represents a resource library member and his term will expire on December 31, 2014.

A copy of Alderman Kovac's resume is attached for your review.

Your consideration and confirmation will be appreciated.

Chris Abele  
Milwaukee County Executive

cc: Supervisor Willie Johnson, Jr., Co-Chair, Finance, Personnel and Audit Committee  
 Supervisor David Cullen, Co-Chair, Finance, Personnel and Audit Committee  
 Kelly Bablitch, Chief of Staff, County Board  
 Carol Mueller, Committee Clerk  
 Steve Cady, Research Analyst  
 Jim Gingery, Director MCFLS  
 Alderman Nik Kovac

## **Nik Kovac**

200 East Wells Street  
Milwaukee, WI 53202  
(414) 286 3765  
[nkovac@milwaukee.gov](mailto:nkovac@milwaukee.gov)

---

### **Education**

Bachelor of Arts in Mathematics *cum laude*, Harvard University, June 2000  
University of Wisconsin-Milwaukee, earned 20 credits, 1994-95  
Riverside University High School, Valedictorian 1995

### **Government Experience**

*Alderman, 3<sup>rd</sup> District* April 2008 - present  
**City of Milwaukee**

- Elected representative of 40,000 residents of the East Side, Riverwest, and north Downtown
- Member of the Finance and Personnel Committee, the Licenses Committee, the Arts Board, the Library Board, the Lakefront Development Advisory Commission, and the Park East Development Commission

*Enumerator* Summer 2000  
**United States Census**

- Traveled door-to-door in towns north of Boston, interviewing residents and helping them fill out their census forms

### **Private Sector Work Experience**

*Community Newspaper Editor* 2004 – 2007  
**Riverwest Currents 2007 and Brooklyn Star / Queens Ledger 2004-07**

- Wrote headlines, laid out graphics, wrote editorials and supervised reporters
- Walked, biked, and drove the beats in many neighborhoods in Milwaukee and New York City, covering business, resident, and government meetings and controversies

*Special Events Associate* 2002 – 2005  
**Council on Foreign Relations**

- Prepared contracts, invoices, and internal paperwork for events
- Operations Manager for Park Avenue mansion during private rental events
- Balanced the department's \$1 million budget at the close of fiscal year 2002

*Teaching Assistant* Spring 1997 – Fall 1999  
**Harvard Math Department**

- Led a weekly problem solving session and graded homework for calculus courses
- Received Certificate of Distinction, given to teachers who receive high marks of satisfaction from student response questionnaires



OFFICE OF THE COUNTY EXECUTIVE

# Milwaukee County

CHRIS ABELE COUNTY EXECUTIVE

Date: June 29, 2012

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Andy Nunemaker to serve on the War Memorial Corporation Board of Trustees. Andy Nunemaker's term will expire on April 30, 2016.

Your consideration and confirmation will be appreciated.

Attached is a copy of his biography for your review.

A handwritten signature in black ink, appearing to read "Chris Abele".

Chris Abele  
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee  
Milwaukee County Board of Supervisors  
Kelly Bablitch, Chief of Staff, County Board  
Dave Drent, Executive Director, War Memorial Corporation  
Andy Nunemaker

Andy Nunemaker  
2221 North Terrace Avenue  
Milwaukee, WI

Andy Nunemaker is the CEO of Dynamis Corporation, a provider of sales software in the healthcare insurance industry. Prior to co-founding Dynamis, Andy served as President of Intermedix EMSystems and CEO of EMSystems (Intermedix acquired EMSystems in 2010). Andy also held a number of executive roles with GE Healthcare including CEO of GE Healthcare for Australia, New Zealand and Southeast Asia. Andy holds a Bachelor of Science Degree in Electrical Engineering from Valparaiso University, a Master of Science Degree in Electrical Engineering from Georgia Tech and an MBA from Harvard, where he served as student body president.

Andy serves on the Board of Directors for Valparaiso University, the Milwaukee Symphony Orchestra, the Milwaukee Art Museum and the Marcus Center for the Performing Arts. He teaches in the MBA program at Marquette University as a part-time faculty member in the Entrepreneurship program and is a member of the Marquette University Golden Angel Network. He is past-president of the Entrepreneur's Organization of Wisconsin, the Milwaukee Forum, the Historic Water Tower Neighborhood Association and the Harvard Business School Club of Wisconsin.

Andy was awarded the "40 Under 40 Award" by the Milwaukee Business Journal in 2006 recognizing his outstanding professional and charitable achievements. He received the Small Business Times Bravo Award for Entrepreneurialism in 2006. Andy was a finalist for the 2008 and 2009 Ernst & Young Entrepreneur of the Year Award, recognizing his entrepreneurial and business accomplishments, and he was named Milwaukee's Fittest Executive by the Biz Times and Wisconsin Athletic Club in 2009. Andy was also awarded the Young Alumnus of the Year by Valparaiso University and the Friend of the College of Business Administration by Marquette University.



OFFICE OF THE COUNTY EXECUTIVE

# Milwaukee County

CHRIS ABELE COUNTY EXECUTIVE

Date: June 29, 2012

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Jim Duff to serve on the War Memorial Corporation Board of Trustees. Jim Duff's term will expire on April 30, 2016.

Your consideration and confirmation will be appreciated.

Attached is a copy of his biography for your review.

A handwritten signature in black ink, appearing to read "Chris Abele".

Chris Abele  
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee  
Milwaukee County Board of Supervisors  
Kelly Bablitch, Chief of Staff, County Board  
Dave Drent, Executive Director, War Memorial Corporation  
Jim Duff, Director of Veteran Services

## RESUME

**James A. Duff**

**8020 Harwood Avenue**

**Wauwatosa, Wisconsin 53213**

**(home) 414.302.1396 (work) 414.382.1753 (cell) 414.322.1581**

**OBJECTIVE:** A position of influence in government, with responsibility for realizing cost savings while expanding services and achieving efficiencies

**EXPERIENCE: Deputy Director/Acting Director, Veterans Services 12/2004 – 12/2011  
Director, Veterans Services 12/2011 - Present  
Milwaukee County, Milwaukee, WI**

- Principal representative to county's 60,000 veterans and their families
- Conduct outreach, make presentations at schools, meeting places and community events
- Developed new services while reducing personnel costs
- Principal advocate regarding veterans issues
- Fostered creative relationships to provide additional services to veterans
- Assist veterans/families in applying for local/state/federal benefits
- Maintained or reduced budget in every year of assignment

**Adjutant, Cudworth Post 23 04/2003 – 11/2004**

**American Legion, Whitefish Bay, WI**

- Managed administrative activities of a 900+ member veterans organization
- Made public speeches and presentations

**Supervisor, Customer Services 09/1999 – 03/2003**

**United States Postal Service, Milwaukee, WI**

- Supervised 30 union employees in mail delivery and customer service
- Managed assignments and overtime in achieving budgetary goals

**Manager, Production/Distribution 04/1997 – 09/1999**

**Hometown Inc, Milwaukee, WI**

- Supervised 35 union employees in ice production/distribution, fuel oil deliveries, and maintenance and customer service.
- Responsible for operational budget of \$4M; achieved budgetary goals

**Chief, Personnel Automation and Data Processing 06/1989 – 03/1997**

**Headquarters, Wisconsin Army National Guard, Madison, WI**

- Responsible for integrity of Wisconsin Army National Guard personnel data base and all associated information and reports
- Managed Standard Installation/Division Personnel Reporting System (SIPDERS) Branch – 8 military employees
- Provided information/reports to all levels of chain-of-command
- Conducted briefings to end-users/reported to staff agencies at state level

**MILITARY EXPERIENCE: Retired US Army: Active Army 1971-1978, (AGR – WIARNG) 1983-1997**

**EDUCATION: BA, Business/Communications, Concordia College, Mequon, WI 2004**

**Currently enrolled in MBA program at UW-Whitewater**

**ORGANIZATIONS/AFFILIATIONS: Member, VVA, American Legion, VFW; War Memorial Center Veterans Board of Directors; Past President, Soldiers Home Foundation Inc; Past Chairman, Board of Directors Grays Child Development Center; Licensed Minister, Church of God in Christ**

**COUNTY OF MILWAUKEE**

## INTER-OFFICE COMMUNICATION

DATE: June 25, 2012

TO: Supervisor Marina Dimitrijevic, Chairperson, County Board of Supervisors

FROM: Gregory G. High, Director, AE&ES Section, DAS-FM

SUBJECT: **Acknowledgement of the review of the Milwaukee County Compliance Maintenance Annual Report (CMAR) for 2011**

The Milwaukee County Department of Administration requests that the attached resolution be scheduled for consideration by the Parks Energy and Environment Committee at its meeting to be held on July 17, 2012.

**Policy**

The County is required under the stipulated agreement with the DNR and State Attorney General's Office to file a Compliance Maintenance Annual Report (CMAR) for its wastewater collection system(s) under Wisconsin Code NR 208.

**Background**

Milwaukee County as one of 28 defendants in an enforcement action by the DNR and State Attorney General entered into a stipulated agreement on March 1, 2006. This agreement requires the County to accomplish certain objectives according to an agreed timeframe in order to avoid monetary penalties. Filing an annual Compliance Maintenance Report with the DNR is part of one of the objectives.

NR 208 requires that the "governing body" of the County acknowledge their review of the report and indicate specific actions being taken to bring the County's sanitary sewer collection system into compliance with State statutes.

A copy of the draft CMAR report is attached for reference.

**Conclusion**

A resolution passed by the County Board and signed by the County Executive is needed to fulfill this requirement.

**Recommendation**

The Director of the Department of Administration respectfully recommends that the County Board and County Executive review and adopt the attached resolution in order to satisfy the above noted requirement.

Prepared by: Jill Organ, Project Manager, AE&ES, DAS-FM

Approved By:

---

Greg High, P.E., Director  
AE&ES Section, DAS-FM

Enclosures: Fiscal Note Form  
Draft Resolution  
Estimate for 2013 Operating Cost  
Draft CMAR to WDNR

cc: Chris Abele, County Executive  
Gerry Broderick, Supervisor  
Michael Mayo, Sr., Supervisor  
Craig Kammholz, Fiscal and Budget Administrator, DAS  
Vince Masterson, DAS-Fiscal  
Pat Farley, Director, DAS

1 Supervisor Gerry P. Broderick, Chairperson,  
2 From the Committee on Parks, Energy and Environment, reporting on:

3  
4 File No. \_\_-\_\_

5 (ITEM ) From the Director, Department of Administration, requesting approval  
6 of the required Milwaukee County Compliance Maintenance Annual Report  
7 (CMAR) for 2011 for Milwaukee County's wastewater collection system under  
8 Wisconsin Code NR 208, by recommending adoption of the following:

9  
10 **A RESOLUTION**

11  
12 WHEREAS, it is a requirement under a Wisconsin Pollutant Discharge  
13 Elimination System (WPDES) permit issued by the Wisconsin Department of  
14 Natural Resources to file a Compliance Maintenance Annual Report (CMAR) for  
15 Milwaukee County's wastewater collection system under Wisconsin Code NR  
16 208; and

17  
18 WHEREAS, the county has an extensive system of sanitary sewers serving its  
19 many parks, buildings and other facilities; and

20  
21 WHEREAS, the county is operating under a stipulated agreement with the  
22 Wisconsin Department of Natural Resources and State Attorney General's Office  
23 to cure problems cited in Claim WI-0047341-03; and

24  
25 WHEREAS, it is necessary for the county to acknowledge that its governing  
26 body has reviewed its annual Compliance Maintenance Annual Report  
27 (CMAR); and

28  
29 WHEREAS, the Committee on Parks, Energy and Environment at its  
30 meeting on  
31 July 26, 2012, recommended adoption of said request (vote 7-0); now, therefore,

32  
33 BE IT RESOLVED, that the Milwaukee County Board of Supervisors  
34 acknowledges the following Capacity Management, Operation, and  
35 Maintenance (CMOM) Program goals identified in the 2011 Compliance  
36 Maintenance Annual Report (CMAR):

- 37  
38 1. Comply with the conditions of the WPDES permit  
39 2. Minimize the occurrence of preventable overflows  
40 3. Ensure proper O&M is performed on County sewer collection system  
41 assets  
42 4. Improve or maintain system reliability  
43 5. Reduce the potential threat to human health from sewer overflows  
44 6. Provide adequate capacity to convey peak flow  
45 7. Manage infiltration and inflow  
46 8. Protect collection system worker health and safety

47      9. Operate a continuous CMOM Program

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** 06/20/12

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Compliance Maintenance Annual Report - 2011

**FISCAL EFFECT:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact                                     | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required  | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues     |
| <input checked="" type="checkbox"/> Absorbed Within Agency's Budget                                    | <input type="checkbox"/> Decrease Capital Revenues     |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget   |  |
| <input type="checkbox"/> Decrease Operating Expenditures   | <input type="checkbox"/> Use of contingent funds       |
| <input type="checkbox"/> Increase Operating Revenues   |  |
| <input type="checkbox"/> Decrease Operating Revenues   |  |

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	<b>Expenditure or Revenue Category</b>	<b>Current Year</b>	<b>Subsequent Year</b>
<b>Operating Budget</b>	Expenditure	175,000	175,000
	Revenue	0	0
	Net Cost	175,000	175,000
<b>Capital Improvement Budget</b>	Expenditure	150,000	150,000
	Revenue	0	0
	Net Cost	150,000	150,000

## DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.<sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Our stipulated agreement with the State requires conformance to NR 208 which requires an annual acknowledgement of the County's efforts to manage and maintain its sanitary sewer collection system. This is referred to as a CMAR Report (Compliance Maintenance Annual Report).

B. Milwaukee County has spent approximately 4.3 million dollars on sanitary sewer infrastructure improvements and CMOM (Capacity Management, Operation, and Maintenance) Program activities since 2005. The ongoing inspection, televising, field investigation, mapping, planning, management, and reporting of the sanitary sewer collection systems within the county owned facilities requires an annual operating budget allocation totaling \$175,000 from the departments, as detailed in the attached estimate. The CMOM Program identifies capital improvement projects each year with 2013 work estimated to be \$150,000.

C. The operation and capital budgets for 2012 are sufficient to perform the tasks associated with a continuous CMOM program. We do not expect the annual operational costs to increase in the next five years as we anticipate any inflationary effects to be offset by greater efficiency within AE&ES and the departments. Capital improvement costs will be estimated annually to address infrastructure projects identified in the CMOM Program.

Department/Prepared By Department of Administration: Jill Organ

Recommended By: \_\_\_\_\_

Gregory G. High, Director, AE&ES, DAS-FM

Authorized Signature \_\_\_\_\_

Gregory G. High, Director, AE&ES, DAS-FM

Authorized Signature \_\_\_\_\_

Did DAS-Fiscal Staff Review?  Yes  No

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

**Milwaukee County Department of Public Works  
Sanitary Sewer Capacity Management, Operation & Maintenance Program  
2013 Departmental Budget Request Recommendations (Created on 5/7/12)**

Description of Work for each department to perform	Percent To Do	Est Cost per Unit	Total all Depts.	Parks		Grounds		Airports		Zoo		H.O.C.		Transit	
Inspect Sanitary Sewer Manholes			1001	482		221		157		87		34		20	
Total Number of Manholes				121	\$9,075.00	55	\$4,125.00	39	\$2,925.00	22	\$1,650.00	9	\$675.00	5	\$375.00
Manholes by Stipulated Agreement	25%	\$75.00													
Cost to Inspect MH															
Cleaning and Televising			199,133	115,200		35,500		26,700		12,000		7,200		2,533	
Total Lineal Feet of Sanitary Sewers			19,913	11,520	\$26,956.80	3,550	\$8,307.00	2,670	\$6,247.80	1,200	\$2,808.00	720	\$1,684.80	253	\$592.02
Estimated Sanitary Sewers to Televising	10%	\$2.34													
Dye Water Testing				2,304	\$2,534.40	710	\$781.00	534	\$587.40	240	\$264.00	144	\$158.40	51	\$56.10
Estimated Sanitary Sewers to Dye Test	2%	\$1.10		2	\$350.00	3	\$525.00	2	\$350.00	1	\$175.00	1	\$175.00	1	\$175.00
Mobilization Setups		\$175.00													
Smoke Testing				2,304	\$1,267.20	710	\$390.50	534	\$293.70	240	\$132.00	144	\$79.20	51	\$28.05
Estimated Sanitary Sewers to Smoke Test	2%	\$0.55		3	\$525.00	1	\$175.00	1	\$175.00	1	\$175.00	1	\$175.00	1	\$175.00
Mobilization Setups		\$175.00													
Field Investigations (based on number of MHs inspected)					\$4,507		\$2,066		\$1,468		\$813		\$318		\$187
Training for MH Inspections (8 hours)					\$0		\$0		\$0		\$0		\$0		\$0
Document Organization & Submittal (based on number of MHs inspected)					\$0		\$0		\$0		\$0		\$0		\$0
CMOM Annual Meetings (2 @ 6 hours ea)					\$0		\$0		\$0		\$0		\$0		\$0
<b>Estimated Internal Cost</b>					\$45,215		\$16,370		\$12,047		\$6,017		\$3,265		\$1,588
<b>Sanitary Sewer Technical Services by DTPW with cost distributed to the departments</b>															
	* Total Cost	Fixed Cost	Variable Cost	Parks		Grounds		Airports		Zoo		H.O.C.		Transit	
Percent of MHs on County owned property per Dept.	100%			48.15%		22.08%		15.68%		8.69%		3.40%		2.00%	
Train Departments to Perform Inspections	\$0	100%		\$0		\$0		\$0		\$0		\$0		\$0	
Record Drawing Search	\$4,930	10%	90%	\$2,219		\$1,062		\$778		\$468		\$233		\$171	
G.I.S. Mapping Updates	\$9,120	10%	90%	\$4,104		\$1,964		\$1,439		\$865		\$431		\$316	
Update & Maintain Inspection Database	\$5,860	10%	90%	\$2,637		\$1,262		\$925		\$556		\$277		\$203	
Analyze Inspection Data	\$4,030	10%	90%	\$1,814		\$868		\$636		\$382		\$190		\$140	
Label Inspection Photos	\$6,780	10%	90%	\$3,051		\$1,460		\$1,070		\$643		\$320		\$235	
Add Inspection Reports to City Works	\$4,180	10%	90%	\$1,881		\$900		\$660		\$397		\$197		\$145	
Upload, Convert to City Works, and View CCTV video	\$7,330	10%	90%	\$3,299		\$1,579		\$1,157		\$696		\$346		\$254	
Prepare List of Recommended Projects	\$4,830	10%	90%	\$2,174		\$1,040		\$762		\$458		\$228		\$167	
Prepare List of Recommended Inspections for Next Year	\$3,630	10%	90%	\$1,634		\$782		\$573		\$344		\$171		\$126	
Prepare Plans & Specs for Rehab.	\$8,220	10%	90%	\$3,699		\$1,770		\$1,297		\$780		\$388		\$285	
Annual CMOM Meetings with Individual Departments	\$4,680	100%		\$780		\$780		\$780		\$780		\$780		\$780	
Annual CMOM Committee Meetings	\$4,200	100%		\$700		\$700		\$700		\$700		\$700		\$700	
CMOM Implementation	\$12,480	10%	90%	\$5,616		\$2,688		\$1,970		\$1,184		\$590		\$432	
Update MMSD I/I Master Plan	\$2,430	100%		\$405		\$405		\$405		\$405		\$405		\$405	
MMSD I/I Management Annual Progress Report	\$3,540	25%	75%	\$1,426		\$734		\$564		\$378		\$238		\$201	
DNR Compliance Maintenance Annual Report	\$4,260	50%	50%	\$1,381		\$825		\$689		\$540		\$427		\$398	
<b>Estimated DTPW Cost</b>					\$36,819		\$18,819		\$14,405		\$9,577		\$5,922		\$4,957
<b>Rounded Total Estimated Cost</b>					\$82,000		\$35,200		\$26,500		\$15,600		\$9,200		\$6,500

\* For total cost of each technical services task, see page 2.

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Financial Management

	Questions	Points						
1.	Person Providing This Financial Information							
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Name:</td> <td style="border: 1px solid black; padding: 2px;">Jill Organ</td> </tr> <tr> <td>Telephone:</td> <td style="border: 1px solid black; padding: 2px;">(414) 278-4819</td> </tr> <tr> <td>E-Mail Address(optional):</td> <td style="border: 1px solid black; padding: 2px;">jorgan@milwcnty.com</td> </tr> </table>	Name:	Jill Organ	Telephone:	(414) 278-4819	E-Mail Address(optional):	jorgan@milwcnty.com	
Name:	Jill Organ							
Telephone:	(414) 278-4819							
E-Mail Address(optional):	jorgan@milwcnty.com							
2.	Are User Charge or other Revenues sufficient to cover O&M Expenses for your wastewater treatment plant AND/OR collection system ?	0						
	<p style="margin-left: 40px;"> <input checked="" type="radio"/> Yes (0 points)  <input type="radio"/> No (40 points)                 </p> <p>If No, please explain:</p> <div style="border: 1px solid black; height: 20px; width: 60%; margin-left: 40px;"></div>							
3.	When was the User Charge System or other revenue source(s) last reviewed and/or revised? Year: 2011	0						
	<p style="margin-left: 40px;"> <input type="radio"/> 0-2 years ago (0 points)  <input type="radio"/> 3 or more years ago (20 points)  <input checked="" type="radio"/> Not Applicable (Private Facility)                 </p>							
4.	Did you have a special account (e.g., CWFP required segregated Replacement Fund, etc.) or financial resources available for repairing or replacing equipment for your wastewater treatment plant and/or collection system?	0						
	<p style="margin-left: 40px;"> <input checked="" type="radio"/> Yes  <input type="radio"/> No (40 points)                 </p>							
<b>REPLACEMENT FUNDS(PUBLIC MUNICIPAL FACILITIES SHALL COMPLETE QUESTION 5)</b>								
5.	Equipment Replacement Funds							
	5.1 When was the Equipment Replacement Fund last reviewed and/or revised? Year:	0						
	<p style="margin-left: 40px;"> <input type="radio"/> 1-2 years ago (0 points)  <input type="radio"/> 3 or more years ago (20 points)  <input checked="" type="radio"/> Not Applicable Explain:                 </p> <div style="border: 1px solid black; padding: 5px; margin-left: 40px;">We do not have wastewater equipment</div>							
	5.2 What amount is in your Replacement Fund?							
<b>Equipment Replacement Fund Activity</b>								
	<b>5.2.1 Ending Balance Reported on Last Year's CMAR:</b>	\$1.00						
	<b>5.2.2 Adjustments</b> if necessary (e.g., earned interest, audit correction, withdrawal of excess funds, increase making up previous shortfall, etc.)	+ \$0.00						
Parks - July 17, 2012 - Page 14								

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Financial Management (Continued)

	<b>5.2.3 Adjusted January 1st Beginning Balance</b>	\$1.00	
	<b>5.2.4 Additions</b> to Fund (e.g., portion of User Fee, earned interest, etc.) +	\$0.00	
	<b>5.2.5 Subtractions</b> from Fund (e.g., equipment replacement, major repairs - use description box 5.2.5.1 below*).	\$0.00	
	<b>5.2.6 Ending Balance as of December 31st for CMAR Reporting Year</b>	\$1.00	
(All Sources: This ending balance should include all Equipment Replacement Funds whether held in a bank account(s), certificate(s) of deposit, etc.)			
*5.2.5.1. Indicate adjustments, equipment purchases and/or major repairs from 5.2.5 above			
<input style="width: 100%; height: 20px;" type="text"/>			

	<b>5.3 What amount should be in your replacement fund?</b>	\$1.00	
(If you had a CWFP loan, this amount was originally based on the Financial Assistance Agreement (FAA) and should be regularly updated as needed. Further calculation instructions and an example can be found by clicking the HELP option button.)			

	<b>5.3.1 Is the Dec. 31 Ending Balance in your Replacement Fund above (#5.2.6) equal to or greater than the amount that should be in it(#5.3)?</b>		
	<input checked="" type="radio"/> Yes		
	<input type="radio"/> No Explain:		
<input style="width: 100%; height: 20px;" type="text"/>			

**6. Future Planning**

	<b>6.1 During the next ten years, will you be involved in formal planning for upgrading, rehabilitating or new construction of your treatment facility or collection system?</b>		
	<input checked="" type="radio"/> Yes (If yes, please provide major project information, if not already listed below)		
	<input type="radio"/> No		

Project Description	Estimated Cost	Approximate Construction Year
Complete construction for manhole and pipe rehabilitation. Complete Management Plan, Overflow Response Plan, Communication Plan, and Audit Plan. Continue to update Cityworks and G.I.S. sanitary sewer mapping and database.	\$61,031.32	2009
Departmental work: Training for inspections, inspect 25% sanitary sewer manholes, televising, cleaning, dye water testing, smoke testing, field investigations, document organization and submittal, CMOM annual meetings and activities.	\$33,401.90	2009
A&E work: Train departments to perform inspections, search record drawings, update GIS mapping and databases, upload inspection reports and convert information to City Works, view CCTV video, analyze inspection data, prepare list of recommended projects, prepare list of recommended inspections for following year, annual CMOM meetings, prepare MMSD I/I Management Annual Progress Report, Prepare WDNR Compliance Maintenance Annual Report.	\$31,066.00	2009

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Financial Management (Continued)

Countywide Sanitary Sewers: Airport, HOC, and Transit Sanitary Sewer Rehabilitation and Countywide CCTV	\$75,252.90	2010
Inspect 25% sanitary sewer manholes, televising, cleaning, dye water testing, smoke testing, field investigations, document organization and submittal, CMOM annual meetings and activities, continually update GIS mapping and databases, upload inspection reports and convert information to City Works, view CCTV video, search record drawings, analyze inspection data, prepare list of recommended projects, prepare list of recommended inspections for following year, annual CMOM meetings, prepare MMSD I/I Management Annual Progress Report, Prepare WDNR Compliance Maintenance Annual Report.	\$175,773.44	2010
Inspect 25% sanitary sewer manholes, televising, cleaning, dye water testing, smoke testing, field investigations, document organization and submittal, CMOM annual meetings and activities, continually update GIS mapping and databases, upload inspection reports and convert information to City Works, view CCTV video, search record drawings, analyze inspection data, prepare list of recommended projects, prepare list of recommended inspections for following year, annual CMOM meetings, prepare MMSD CMOM Program Annual Report, Prepare WDNR Compliance Maintenance Annual Report.	\$81,626.24	2011
Begin CMOM Readiness Review, sanitary sewer database, and manhole inspection program.	\$10,259.71	2005
Create sanitary sewer database, inspect manhole tops, begin abandoning unused sewers, begin SSES, continue CMOM Readiness Review.	\$269,444.43	2006
Complete manhole top rehabilitation, abandon more unused manholes and pipes, complete SSES, update sanitary sewer database, complete CMOM Readiness Review, begin Strategic Plan, begin planning and design for 2008 construction projects.	\$1,927,033.03	2007
Planning, design and construction for manhole and pipe rehabilitation identified in SSES. Completed Strategic Plan. Began Management Plan, Overflow Response plan, Communications Plan, and Audit Plan. Incorporated Cityworks software into G.I.S. and pdated sanitary sewer mapping and database. Performed MMSD and CMAR reporting. Conducted internal CMOM meetings. Attended MMSD CMOM meetings.	\$171,283.85	2008
McGovern Park Sanitary Sewers: Constructed new sewers to serve existing buildings and abandoned old sewers including sewer under lagoon and sewer from demolished swimming pool.	\$346,008.42	2008
Parks North Sanitary Sewer Rehabilitation	\$287,980.69	2008
Parks South Sanitary Sewer Rehabilitation	\$311,302.81	2008
County Grounds/Zoo Sanitary Rehabilitation	\$284,719.27	2009
Countywide Sanitary Sewers: Airport, HOC, and Transit Sanitary Sewer Rehabilitation and Countywide CCTV	\$110,048.41	2009
2010 Sanitary Sewers-Multiple Locations	\$6,648.58	2010
2010 Sanitary Sewers-Multiple Locations	\$123,479.22	2011

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Financial Management (Continued)

	Correct deficiencies identified during previous year's inspections.	\$150,000.00	2012	
	Inspect 25% sanitary sewer manholes, televising, cleaning, dye water testing, smoke testing, field investigations, document organization and submittal, CMOM annual meetings and activities, continually update GIS mapping and databases, upload inspection reports and convert information to City Works, view CCTV video, search record drawings, analyze inspection data, prepare list of recommended projects, prepare list of recommended inspections for following year, annual CMOM meetings, prepare MMSD CMOM Program Annual Report, Prepare WDNR Compliance Maintenance Annual Report.	\$175,000.00	2012	
	Countywide Sanitary Sewers: Airport, HOC, and Transit Sanitary Sewer Rehabilitation and Countywide CCTV	\$3,419.22	2011	
	Inspect 25% sanitary sewer manholes, televising, cleaning, dye water testing, smoke testing, field investigations, document organization and submittal, CMOM annual meetings and activities, continually update GIS mapping and databases, upload inspection reports and convert information to City Works, view CCTV video, search record drawings, analyze inspection data, prepare list of recommended projects, prepare list of recommended inspections for following year, annual CMOM meetings, prepare MMSD CMOM Program Annual Report, Prepare WDNR Compliance Maintenance Annual Report.	\$175,000.00	2013	
7.	Financial Management General Comments:			
	<div style="border: 1px solid black; width: 600px; height: 20px; margin: 0 auto;"></div>			

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	A

# COMPLIANCE MAINTENANCE ANNUAL REPORT

Facility Name: Milwaukee County Facilities

Last Updated:  
6/25/2012

Reporting Year: 2011

## Sanitary Sewer Collection Systems

	Questions	Points
1.	Do you have a Capacity, Management, Operation & Maintenance(CMOM) requirement in your WPDES permit?	
	<input checked="" type="radio"/> Yes <input type="radio"/> No	
2.	Did you have a <u>documented</u> (written records/files, computer files, video tapes, etc.) sanitary sewer collection system operation & maintenance or CMOM program last calendar year?	0
	<input checked="" type="radio"/> Yes (go to question 3) <input type="radio"/> No (30 points) (go to question 4)	
3.	Check the elements listed below that are included in your Operation and Maintenance (O&M) or CMOM program.:	
	<div style="border: 1px solid black; padding: 5px;"> <input checked="" type="checkbox"/> <b>Goals:</b> Describe the specific goals you have for your collection system:  <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">                     1. Comply with the conditions of the WPDES permit 2. Minimize the occurrence of preventable overflows 3. Ensure proper O&amp;M is performed on County sewer collection system assets 4. Improve or maintain system reliability 5. Reduce the potential threat to human health from sewer overflows 6. Provide adequate capacity to convey peak flow 7. Manage infiltration and inflow 8. Protect collection system worker health and safety 9. Operate a continuous CMOM Program                 </div> </div> <input checked="" type="checkbox"/> <b>Organization:</b> Do you have the following written organizational elements (check only those that you have): <input checked="" type="checkbox"/> Ownership and governing body description <input checked="" type="checkbox"/> Organizational chart <input checked="" type="checkbox"/> Personnel and position descriptions <input checked="" type="checkbox"/> Internal communication procedures <input type="checkbox"/> Public information and education program  <input checked="" type="checkbox"/> <b>Legal Authority:</b> Do you have the legal authority for the following (check only those that apply): <input type="checkbox"/> Sewer use ordinance Last Revised MM/DD/YYYY <input style="width: 50px; height: 20px;" type="text"/> <input type="checkbox"/> Pretreatment/Industrial control Programs <input type="checkbox"/> Fat, Oil and Grease control <input type="checkbox"/> Illicit discharges (commercial, industrial) <input checked="" type="checkbox"/> Private property clear water (sump pumps, roof or foundation drains, etc) <input checked="" type="checkbox"/> Private lateral inspections/repairs <input checked="" type="checkbox"/> Service and management agreements  <input checked="" type="checkbox"/> <b>Maintenance Activities: details in Question 4</b> <input checked="" type="checkbox"/> <b>Design and Performance Provisions:</b> How do you ensure that your sewer system is designed and constructed properly? <input checked="" type="checkbox"/> State plumbing code <input checked="" type="checkbox"/> DNR NR 110 standards <input checked="" type="checkbox"/> Local municipal code requirements <input checked="" type="checkbox"/> Construction, inspection and testing <input type="checkbox"/> Others:	

# COMPLIANCE MAINTENANCE ANNUAL REPORT

Facility Name: Milwaukee County Facilities

Last Updated:  
6/25/2012

Reporting Year: 2011

Sanitary Sewer Collection Systems (Continued)

	<p><input checked="" type="checkbox"/> <b>Overflow Emergency Response Plan:</b> Does your emergency response capability include (check only those that you have):</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Alarm system and routine testing</li> <li><input checked="" type="checkbox"/> Emergency equipment</li> <li><input checked="" type="checkbox"/> Emergency procedures</li> <li><input checked="" type="checkbox"/> Communications/Notifications (DNR, Internal, Public, Media etc)</li> </ul> <p><input checked="" type="checkbox"/> <b>Capacity Assurance:</b> How well do you know your sewer system? Do you have the following?</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Current and up-to-date sewer map</li> <li><input checked="" type="checkbox"/> Sewer system plans and specifications</li> <li><input checked="" type="checkbox"/> Manhole location map</li> <li><input checked="" type="checkbox"/> Lift station pump and wet well capacity information</li> <li><input checked="" type="checkbox"/> Lift station O&amp;M manuals</li> </ul> <p>Within your sewer system have you identified the following?</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Areas with flat sewers</li> <li><input checked="" type="checkbox"/> Areas with surcharging</li> <li><input checked="" type="checkbox"/> Areas with bottlenecks or constrictions</li> <li><input type="checkbox"/> Areas with chronic basement backups or SSO's</li> <li><input checked="" type="checkbox"/> Areas with excess debris, solids or grease accumulation</li> <li><input checked="" type="checkbox"/> Areas with heavy root growth</li> <li><input checked="" type="checkbox"/> Areas with excessive infiltration/inflow (I/I)</li> <li><input type="checkbox"/> Sewers with severe defects that affect flow capacity</li> <li><input checked="" type="checkbox"/> Adequacy of capacity for new connections</li> <li><input type="checkbox"/> Lift station capacity and/or pumping problems</li> </ul> <p><input checked="" type="checkbox"/> <b>Annual Self-Auditing of your O&amp;M/CMOM Program</b> to ensure above components are being implemented, evaluated, and re-prioritized as needed.</p> <p><input type="checkbox"/> <b>Special Studies Last Year (check only if applicable):</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Infiltration/Inflow (I/I) Analysis</li> <li><input type="checkbox"/> Sewer System Evaluation Survey (SSES)</li> <li><input type="checkbox"/> Sewer Evaluation and Capacity Management Plan (SECAP)</li> <li><input type="checkbox"/> Lift Station Evaluation Report</li> <li><input type="checkbox"/> Others:</li> </ul>	
--	---	--

4.	Did your sanitary sewer collection system maintenance program include the following maintenance activities? Complete all that apply and indicate the amount maintained:	
----	---	--

Cleaning	1	% of system/year
Root Removal	1	% of system/year
Flow Monitoring	5	% of system/year
Smoke Testing	0	% of system/year
Sewer Line Televising	1	% of system/year

Parks - July 17, 2012 - Page 19

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Sanitary Sewer Collection Systems (Continued)

Manhole Inspections	<input style="width: 50px;" type="text" value="27.2"/>	% of system/year
Lift Station O&M	<input style="width: 50px;" type="text" value="0"/>	# per L.S./year
Manhole Rehabilitation	<input style="width: 50px;" type="text" value="3.4"/>	% of manholes rehabed
Mainline Rehabilitation	<input style="width: 50px;" type="text" value="1"/>	% of sewer lines rehabed
Private Sewer Inspections	<input style="width: 50px;" type="text" value="0"/>	% of system/year
Private Sewer I/I Removal	<input style="width: 50px;" type="text" value="0"/>	% of private services
Please include additional comments about your sanitary sewer collection system below:		
<input style="width: 100%; height: 20px;" type="text"/>		

**5. Provide the following collection system and flow information for the past year:**

<input style="width: 80px;" type="text" value="34.6"/>	Total Actual Amount of Precipitation Last Year
<input style="width: 80px;" type="text" value="32.6"/>	Annual Average Precipitation (for your location)
<input style="width: 80px;" type="text" value="42.53"/>	Miles of Sanitary Sewer
<input style="width: 80px;" type="text" value="31"/>	Number of Lift Stations
<input style="width: 80px;" type="text" value="0"/>	Number of Lift Station Failure
<input style="width: 80px;" type="text" value="0"/>	Number of Sewer Pipe Failures
<input style="width: 80px;" type="text" value="2"/>	Number of Basement Backup Occurrences
<input style="width: 80px;" type="text" value="0"/>	Number of Complaints
<input style="width: 80px;" type="text"/>	Average Daily Flow in MGD
<input style="width: 80px;" type="text"/>	Peak Monthly Flow in MGD(if available)



# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Sanitary Sewer Collection Systems (Continued)

	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: left; padding: 2px;">NUMBER OF SANITARY SEWER OVERFLOWS (SSO) REPORTED (10 POINTS PER OCCURRENCE)</th> <td rowspan="3" style="width: 5%; text-align: center; vertical-align: middle;">0</td> </tr> <tr> <th style="width: 10%; padding: 2px;">Date</th> <th style="width: 40%; padding: 2px;">Location</th> <th style="width: 30%; padding: 2px;">Cause</th> <th style="width: 15%; padding: 2px;">Estimated Volume (MG)</th> </tr> <tr> <td colspan="4" style="padding: 2px;">NONE REPORTED</td> </tr> </table> <p>Were there SSOs that occurred last year that are not listed above?</p> <p style="margin-left: 20px;"> <input type="radio"/> Yes  <input checked="" type="radio"/> No     </p> <p>If Yes, list the SSOs that occurred:</p> <div style="border: 1px solid black; height: 20px; width: 60%; margin-left: 20px;"></div>	NUMBER OF SANITARY SEWER OVERFLOWS (SSO) REPORTED (10 POINTS PER OCCURRENCE)				0	Date	Location	Cause	Estimated Volume (MG)	NONE REPORTED			
NUMBER OF SANITARY SEWER OVERFLOWS (SSO) REPORTED (10 POINTS PER OCCURRENCE)				0										
Date	Location	Cause	Estimated Volume (MG)											
NONE REPORTED														
	<p><b>PERFORMANCE INDICATORS</b></p> <p><input style="width: 60px;" type="text" value="0.00"/> Lift Station Failures(failures/ps/year)</p> <p><input style="width: 60px;" type="text" value="0.00"/> Sewer Pipe Failures(pipe failures/sewer mile/yr)</p> <p><input style="width: 60px;" type="text" value="0.00"/> Sanitary Sewer Overflows (number/sewer mile/yr)</p> <p><input style="width: 60px;" type="text" value="0.05"/> Basement Backups(number/sewer mile)</p> <p><input style="width: 60px;" type="text" value="0.00"/> Complaints (number/sewer mile)</p> <p><input style="width: 60px;" type="text"/> Peaking Factor Ratio (Peak Monthly:Annual Daily Average)</p> <p><input style="width: 60px;" type="text"/> Peaking Factor Ratio(Peak Hourly:Annual daily Average)</p>													
6.	<p>Was infiltration/inflow(I/I) significant in your community last year?</p> <p style="margin-left: 20px;"> <input type="radio"/> Yes  <input checked="" type="radio"/> No     </p> <p>If Yes, please describe:</p> <div style="border: 1px solid black; height: 20px; width: 60%; margin-left: 20px;"></div>													
7.	<p>Has infiltration/inflow and resultant high flows affected performance or created problems in your collection system, lift stations, or treatment plant at any time in the past year?</p> <p style="margin-left: 20px;"> <input type="radio"/> Yes  <input checked="" type="radio"/> No     </p> <p>If Yes, please describe:</p> <div style="border: 1px solid black; height: 20px; width: 60%; margin-left: 20px;"></div>													
8.	<p>Explain any infiltration/inflow(I/I) changes this year from previous years?</p>													
	<p>Parks - July 17, 2012 - Page 22</p>													

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:  
6/25/2012**

**Reporting Year: 2011**

Sanitary Sewer Collection Systems (Continued)

9.	What is being done to address infiltration/inflow in your collection system?	

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	A

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:**

**Reporting Year: 2011**

WPDES No.0047341

GRADING SUMMARY				
SECTION	LETTER GRADE	GRADE POINTS	WEIGHTING FACTORS	SECTION POINTS
Financial Management	A	4.0	1	4
Collection Systems	A	4.0	3	12
TOTALS			4	16
GRADE POINT AVERAGE(GPA)=4.00		4.00		

Notes:

A = Voluntary Range

B = Voluntary Range

C = Recommendation Range (Response Required)

D = Action Range (Response Required)

F = Action Range (Response Required)

# COMPLIANCE MAINTENANCE ANNUAL REPORT

**Facility Name: Milwaukee County Facilities**

**Last Updated:**

**Reporting Year: 2011**

Resolution or Owner's Statement

NAME OF GOVERNING BODY OR OWNER	DATE OF RESOLUTION OR ACTION TAKEN
Milwaukee County	07/26/2012
RESOLUTION NUMBER	
ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO SPECIFIC CMAR SECTIONS (Optional for grade A or B, required for grade C, D, or F):	
<b>Financial Management: Grade=A</b>	
<b>Collection Systems: Grade=A</b>	
ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO THE OVERALL GRADE POINT AVERAGE AND ANY GENERAL COMMENTS (Optional for G.P.A. greater than or equal to 3.00, required for G.P.A. less than 3.00) <b>G.P.A. = 4.00</b>	

Date: July 3, 2012

To: Supervisor Gerry Broderick, Chairman; Parks, Energy and Environment Committee

From: Ellen Censky PhD., MPM Senior Vice-president and Academic Dean  
Larry N. Bannister, MPM Facility Operations Director

CC: Jay Williams, MPM President and CEO  
Chris Abele, Milwaukee County Executive  
Marina Dimitrijevic, Chairwoman County Board of Supervisor  
Greg High, Director of Architectural and Engineering Division

Subject: Informational Report on the change of appearance to the Milwaukee Public Museum's south elevation in conjunction with the approved project (W011405) for repair and replacement the existing marble façade.

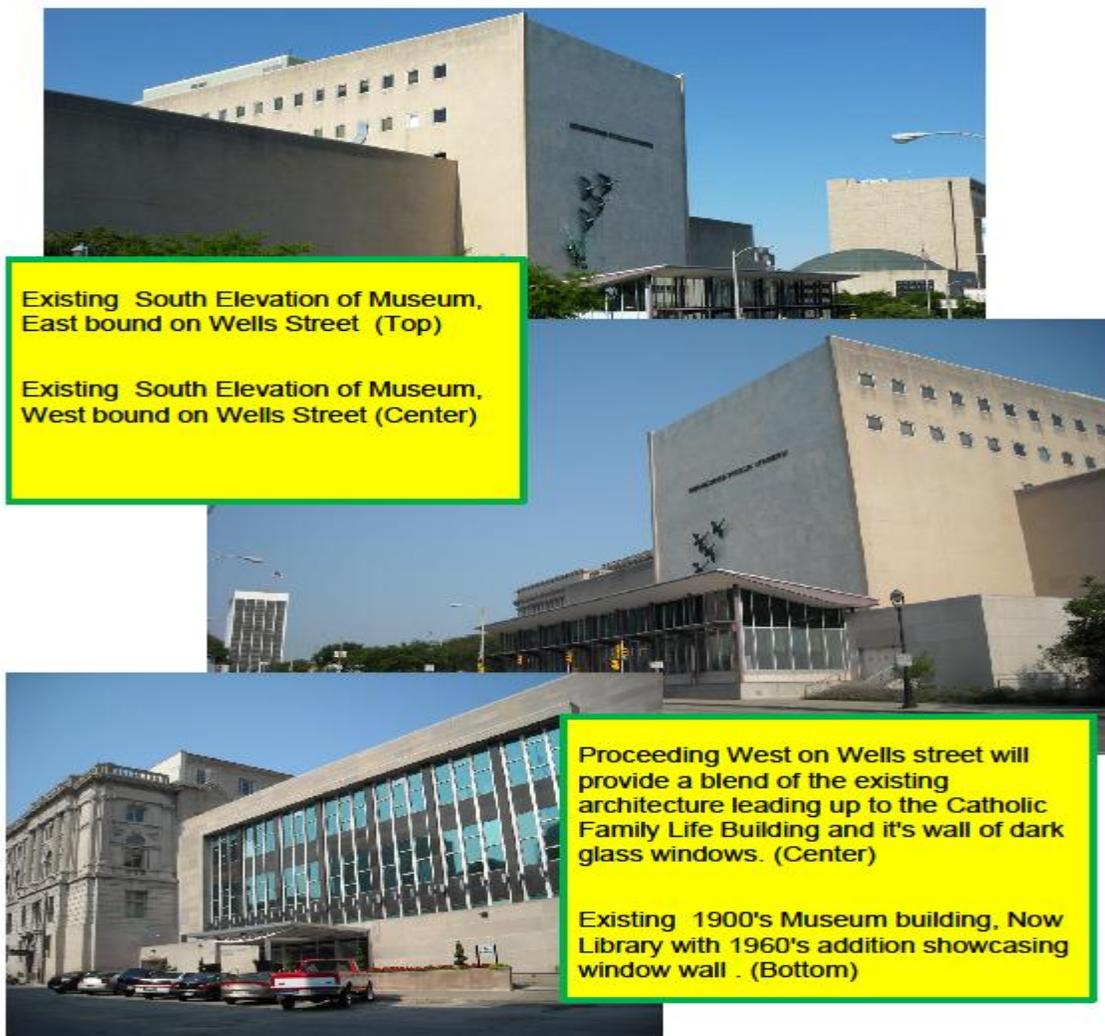
### **Background**

In 2011, the Milwaukee County Board approved the funds to replace the marble façade panels on the north and south face of the building. In exploring all options for replacement products and keeping the County's Green Print program in mind, the Museum, in consultation with the County's Architectural and Engineering Division and HGA Architectural firm determined that it is feasible and within budget to replace the existing natural marble stone with Photovoltaic (PV) glass panels on the south elevation (Wells Street view) of the Museum. This will result in a substantial change to the look of the building and it is for this reason that MPM Inc is making this presentation to the Parks, Energy and Environment Committee.

As is normal for an institution that is 130 years old, the Milwaukee Public Museum has gone through many physical transformations, from new additions to structural changes to the outside appearance. The replacement of the existing marble, which has no historical significance to the architectural style of the Museum, will again bring about a new transformation. The modification that we seek today results from several identified needs -- safety in stabilizing the structural façade, enhancement of an inadequate building envelope, and integration of a new technology -- Photovoltaic Panels. The latter two improvements will reduce energy use and ultimately improve our urban setting for generations to come.

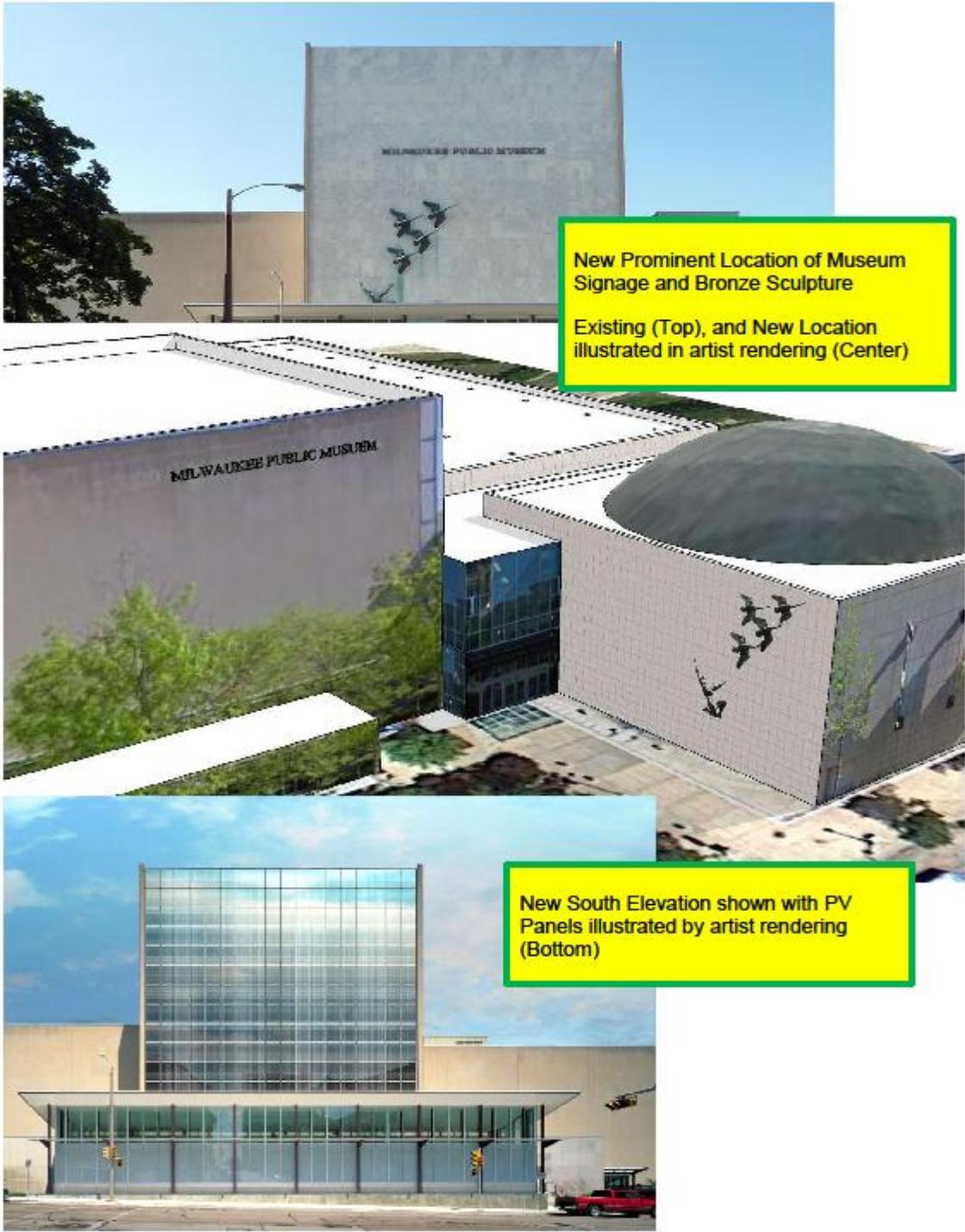
### **Process and Design**

As a first step in assessing the potential products, the team (A&E, Museum and HGA professionals) looked at the request by the County to replace the existing marble and substitute or replace failing components. The marble replacement path from technical perspective and budgetary review would increase the budget by \$750,000. A new and innovative approach was needed to not only secure the failing marble but increase the efficiency of the buildings envelope.



The proposed design resolves the 50-year-old problems of ineffective or nonexistent insulation, and lack of moisture barrier. HGA consultants reviewed the original design from the 1960's and found it to be an inefficient system that encapsulated the building, and did not provide a sustainable environment to preserve the collections and displays of today's museum. From the exterior, the side end return walls of the marble elevations allow for the installation of a vapor barrier and insulation with integral framework that can receive many types of cladding that include Photovoltaic panels. By using PV Panels as cladding we will be producing electrical energy that will result in energy cost savings in excess of \$300,000 over 30 years. The installation of PV Panels will provide a physical skin life and durability equivalent to glass panels. The PV Panels nearly black in color with a reflective sheen not unlike glass will add dimension to the Wells Street exposure. The new contrasting look will signify that you have arrived at your destination, The Milwaukee Public Museum.

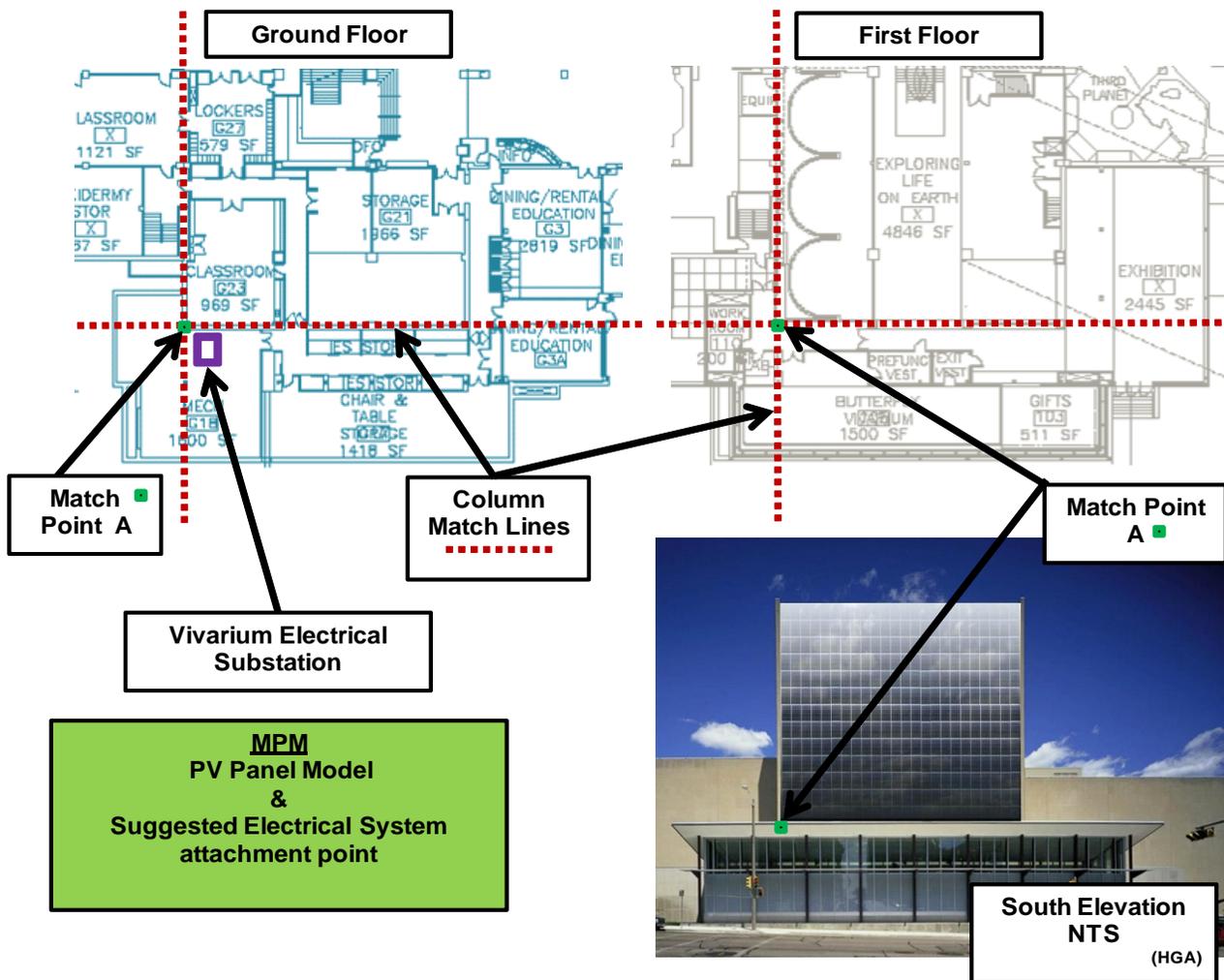
Our new look will take into consideration the prominent placement of Milwaukee Public Museum's name and bronze sculpture now lost in near obscurity to other locations in the photographs below.



## Technical

Photovoltaic Panel installation on a vertical surface presents no difficulty and has been installed on many building throughout the world. The same mounting techniques that are utilized in hanging glass panels are employed with the twist of incorporating a rated wiring system for the PV Panels. The racking system is custom fit to the panels specified for the project. In our case Helios Panels or their equivalent will be specified so that the matrix of panels will equal 234 producing a panel count similar to the former marble layout. This pattern of panels will allow for proper spacing during installation or if maintenance is needed due to damage. Fortunately the southeast corner of the PV Panel racking system is directly over a major electrical distribution point. This positioning adds the benefit of saving time and cost for the electrical component installation. The vertical mounting system also acts as a rain wall protecting the insulation and moisture barrier behind its stunning image. There is the estimated cost of electrical components and installation that brings its full cost still within the approved budget range. The benefit of PV is that there is no other façade cladding product that will produce 83,000 watt-hours of power per year at an estimated 30 year savings of \$300,000 beyond its cost to install. The graphic image below depicts the alignment of the PV Panels and racking system on the south wall, and its relationship to the electrical substation within the building.

### PV Panel Installation Graphic





## **Mission, Education, and Sustainability**

The mission of the Milwaukee Public Museum is to *inspire curiosity, excite minds and increase desire to preserve and protect our world's natural and cultural diversity through exhibitions, educational programs, collections and research*. Implicit in this mission is the commitment of the museum to providing and promoting a healthy and sustainable environment for staff and visitors through standards and practices outlined by the US Green Building Council's Leadership in Energy and Environmental Design. The MPM policy emphasizes exploring the use of sustainable alternatives when replacing or repairing the facilities. For example, when the roof on the 6<sup>th</sup> floor portion of the building needed to be replaced, the museum sought additional funding to install a green roof. The museum also created an exhibit on green roofs showcasing their benefits to the museum and to the community and provided programming for middle school children on green roofs and sustainability.

The museum's plan to replace the marble panels with photovoltaic panels on the south face of the building is a similar project. It meets to goals of the MPM Sustainability Policy. We will also have a small exhibit that showcases how solar panels work and what benefits they will provide to the museum and to the community. This will also provide us with additional demonstration opportunities in our programming on environmental sustainability.

This project also meets two of the goals of Milwaukee County's Green Print Program, -- to retrofit public buildings with high-performance, energy efficient technology and to examine the use of renewable energy sources.

The Photovoltaic Panels will provide a very visible showcase for the museum, for the county, and for the city to demonstrate its commitment to protecting and sustaining the environment thus improving the quality of life for citizens of the county.

# *Milwaukee Public Museum*

---

800 West Wells Street, Milwaukee, Wisconsin

## **Photovoltaic Feasibility Study**



Architecture | Engineering | Planning

Hammel, Green and Abrahamson, Inc.  
333 East Erie Street  
Milwaukee, Wisconsin 53202  
(414) 278-8200

HGA Commission Number  
1215-011-00

© 2012 HGA, Inc.

**Final Report**

**June 14, 2012**

---

## SUMMARY

This study was commissioned by the MPM, Inc. to determine the feasibility and evaluate the benefits and implications of replacing the existing marble on the south façade of the Museum with a photovoltaic array. The study includes an analysis of the PV system installation and cost estimates for construction. A cost benefit analysis is not included in the scope of this study. This pre-design study will potentially allow Milwaukee County and MPM, Inc. to move forward with design and construction bidding documents if funding is available.



Milwaukee Public Museum viewed from the south.

The Milwaukee Public Museum is located on the north side of Wells Street between James Lovell Street and 9<sup>th</sup> Street. The building is clad predominantly in limestone panels with the exception of the eight-story center tower, where the north and south ends are clad in marble. The existing white marble façade presents the Museum to the community. Over the years, the existing marble has deteriorated to the point that replacement is required. Hammel, Green and Abrahamson, Inc. has been commissioned by Milwaukee County to design a replacement façade for the marble. The Architect analyzed and presented several options for a new façade to replace the marble. MPM, Inc. requested this photovoltaic feasibility study to determine whether installing a photovoltaic array on the south wall is a practical solution. The Architect has been directed by the responsible

representatives of Milwaukee County and the MPM, Inc. to proceed with design development work on the north wall pending a decision on the south wall.

### **Existing Conditions**

The Museum is constructed with a poured-in-place concrete frame. Concrete masonry walls infill the space between the concrete columns and beams. The masonry walls are flush with the concrete frame and provide a backup wall for the 4-inch marble veneer that also conceals the concrete frame. The original wall construction does not include insulation or specific provisions for control of moisture or water vapor. This type of exterior wall construction was not uncommon for the time the building was constructed.

### **Proposed Façade Replacement**

The proposed marble veneer replacement system will use state-of-the-art rain screen principles to greatly improve the thermal and moisture performance of the wall. After removal of the marble veneer, the conditions of the concrete masonry walls and relief angles which remain will be verified. Any required repairs will be made. The proposed replacement wall system will consist of an insulated metal panel back-up wall system installed on the exterior face of the exposed concrete masonry wall. The metal panel will provide thermal, moisture and vapor protection and support the frame for the new façade. The new veneer will be supported on an independent frame braced by the metal panel back-up wall system.

### **Photovoltaic System**

The marble on the south face of the Museum could be replaced with photovoltaic panels in lieu of another veneer selection. In a photovoltaic panel system the metal panel backup wall system would remain the same as the proposed veneer back-up system providing thermal, moisture and vapor protection and support for the frame that would carry the solar panels.

The south façade of the Museum is approximately 80 feet wide by 95 feet high. The south façade is set back from the street a sufficient distance that it remains exposed to the sun throughout the year.

The basis of the photovoltaic design for this study is the Helios 9T6 400 watt panel constructed by a Milwaukee photovoltaic panel manufacturer, Helios Solar Works. The Helios panel is 51 ½” wide by 77 ¾” tall.

The PV panel array would consist of 234 PV panels arranged uniformly in 13 vertical rows with 18 panels in each row. The framing system proposed to support the all-glass façade in the marble replacement project could be modified slightly to support the framing system for the PV panels.

The balance of system would be as follows:

- BOD: Utility Interactive, Power-One String Inverter (Aurora PVI-CENTRAL-100-480-US) 100kW Central String Inverter; one (1) PVI-VSN-AU-RG-PACK Universal Commercial energy

## Milwaukee Public Museum Photovoltaic Feasibility Study

---

meter-display-data logger; three (3) Aurora Smart Combiners for Grounded Arrays – 12 string inputs with integrated DC disconnect; Factory Commissioning/Monitoring.

- DC Grounding Electrode System.
- 250A - 480Y/277V, 3P, 4W +G Feeder (4#250kcmil, plus 1#4 Gnd. in 2-1/2" EMT) from indoor inverter to existing suitable unit substation.
- 800A/3P Frame, (250A trip set) 600V Feeder Breaker suitable for existing unit substation.



Milwaukee Public Museum with PV Array installed.

The rendering above shows that the PV wall would present a new, aesthetically pleasing image to the public and respect the iconic character and mission of the Museum.

The ideal angle for a solar panel array in this latitude is 43 degrees. The wall of the Museum is 90 degrees, which reduces the average amount of energy that can be produced by a solar array approximately 25%. This comparison can be reviewed in Appendix 2. Even with this reduction, it is estimated that PV panels on the south wall could produce over \$7,000 in electrical energy every year at today's prices. The PV panels carry a 30 year warranty. Over that time frame, this represents a savings of \$210,000 or more if the price of energy goes up.

### Photovoltaic Cost Estimate

The budget analysis for this study assumes that the photovoltaic system will be installed on the south face of the Museum as part of, or in conjunction with, the current marble replacement project.

The installation cost for the system was developed using a combination of historical cost data, cost information provided by equipment manufacturers and installation costs from contractors and other sources. The following PV specific costs are included in the estimate.

• PV Panels (\$520 + \$30 SH each)	\$128,700
• BOD	\$75,000
• DC Grounding Electrode System	\$5,000
• 250A - 480Y/277V, 3P, 4W +G Feeder	\$20,000
• 800A/3P Frame, 600V Feeder Breaker	\$7,500
• Back-up frame, panel clips, labor and other miscellaneous costs	<u>\$149,760</u>
PV Specific Total Budget	\$385,960

### Project Estimate

The Project Budget Options Summary and Preliminary Construction Cost Estimates can be found in Appendix 3. The Budget Options Summary outlines on a single page the probable cost of options investigated for the Exterior Façade Restoration Project and the PV option. This information is derived from the more detailed cost estimate information found in the Preliminary Construction Cost Estimates. Each estimate shows an estimated cost for each side of the building.

Four façade design options were reviewed for the marble replacement and are outlined below.

1. Glass Façade Option – Install an all-glass façade on the North and South face of the Museum. The probable construction cost for this Option is \$1,190,798.
2. Glass Façade Option with Photovoltaic Panels – Install an all-glass façade on the North face and PV Panels on the South face of the Museum. The probable construction cost for this Option is \$1,315,852.
3. Phenolic Panel Option – Install a phenolic panel façade on the North and South face of the Museum. The probable construction cost for this Option is \$1,000,877.
4. Phenolic Panel Option with Photovoltaic Panels – Install a phenolic panel façade on the North face and PV Panels on the South face of the Museum. The probable construction cost for this Option is \$1,211,324.

The probable Construction Budget for the PV panel option with an all-glass façade on the North wall is \$1,315,852, 10% over the Project budget.

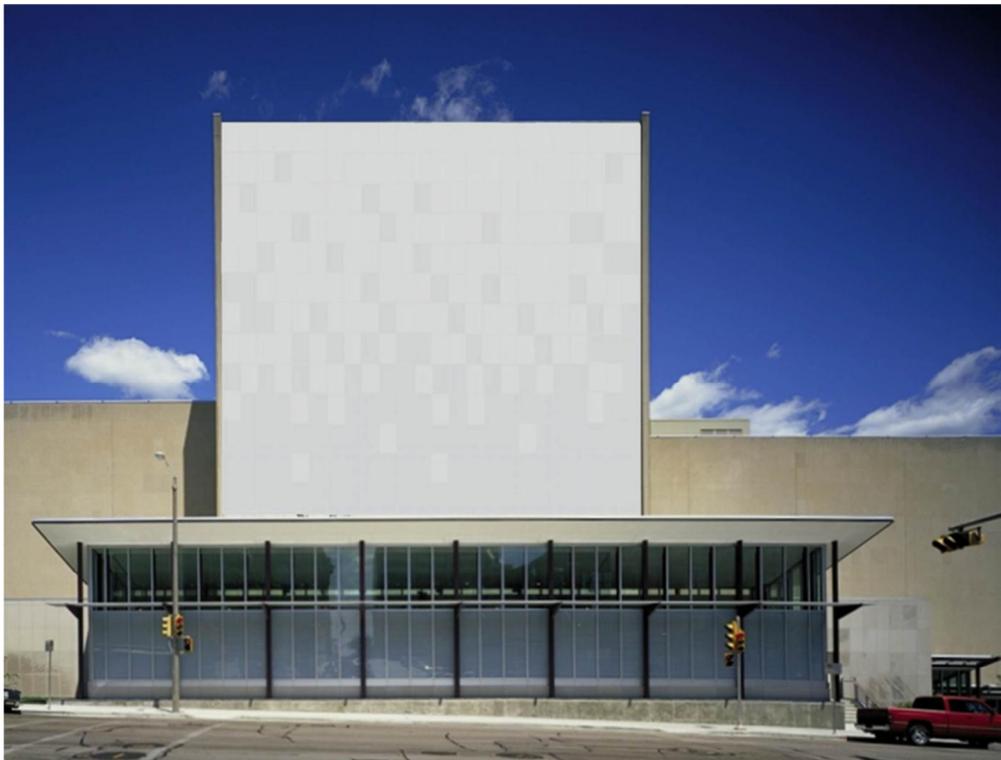
The probable Construction Budget for the PV panel option with a phenolic panel façade on the North wall is \$1,211,324, less than 1% over the Project budget.

### Conclusion

The photovoltaic array installed in a prominent location on the South wall of the Milwaukee Public Museum would present a positive image of the Museum to the public. The PV would allow the Museum to add educational programs on renewable energy that would dovetail with other education programs on sustainability, such as the recently installed green roof.

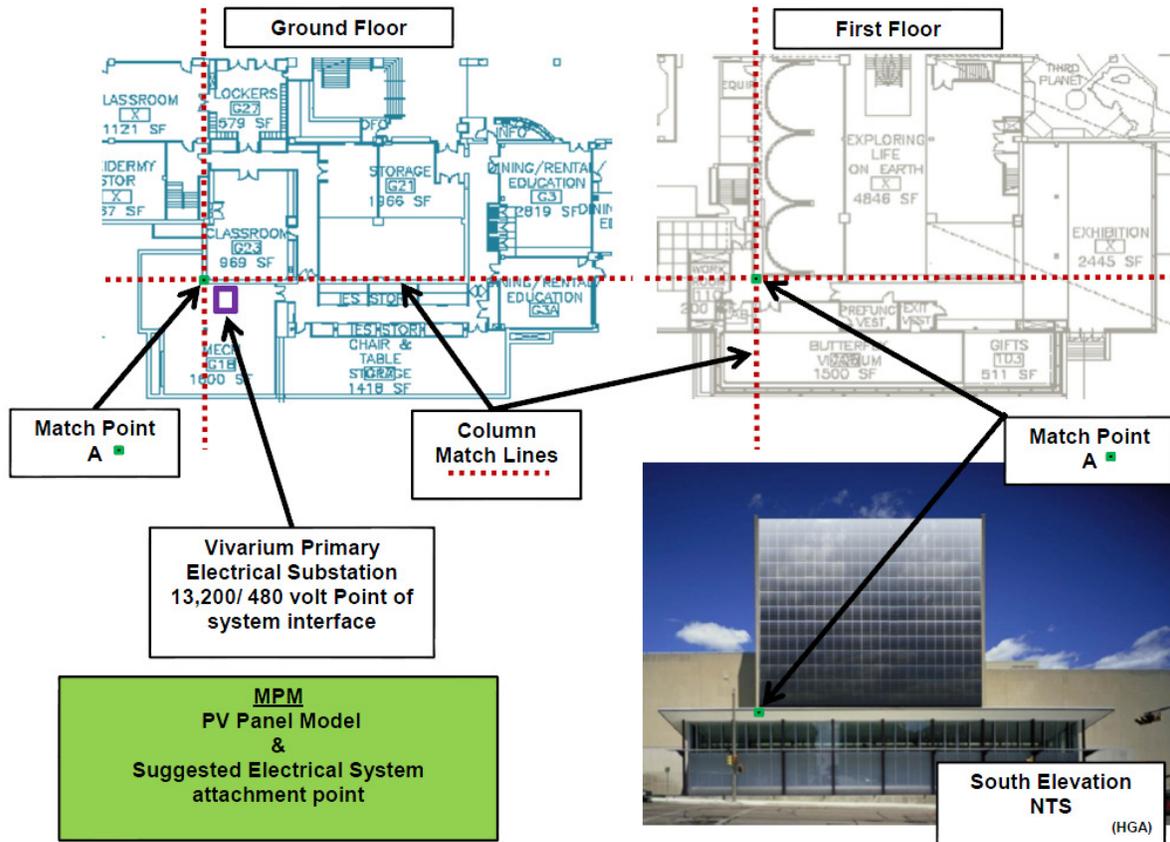
The PV installation in conjunction with the all-glass façade on the North face is the more expensive option and is over the Project budget. Changing the marble replacement on the north wall from all glass to a phenolic panel system creates a Project within one percent of the budget. A life cycle cost benefit analysis was not included in the scope of this study, but a significant electrical energy savings will be realized with a PV system.

A rendering of the north façade of the Milwaukee Public Museum was not in the scope of this study but a rendering of Phenolic Panels installed on the South façade was created in the Schematic Phase of the MPM Exterior Façade Restoration Project. The rendering is reproduced below. This is an attractive and durable solution. This design which looks similar to marble can be readily adapted to the North face.



Appendix 1

Schematic Plan of PV System



## Appendix 2

### AC Energy and Cost Savings Calculations

**Optimum Installation for Milwaukee  
 (Array installed at 43 degrees)  
 Provided for comparison purposes**

Station Identification	
City:	Milwaukee
State:	Wisconsin
Latitude:	42.95° N
Longitude:	87.90° W
Elevation:	211 m
PV System Specifications	
DC Rating:	93.6 kW
DC to AC Derate Factor:	0.770
AC Rating:	72.1 kW
Array Type:	Fixed Tilt
Array Tilt:	43.0°
Array Azimuth:	180.0°
Energy Specifications	
Cost of Electricity:	9.1 ¢/kWh

Results			
Month	Solar Radiation (kWh/m <sup>2</sup> /day)	AC Energy (kWh)	Energy Value (\$)
1	3.32	8035	731.19
2	3.96	8399	764.31
3	4.28	9697	882.43
4	5.11	10747	977.98
5	5.58	11819	1075.53
6	5.88	11603	1055.87
7	5.66	11320	1030.12
8	5.60	11336	1031.58
9	5.19	10431	949.22
10	4.34	9286	845.03
11	2.96	6376	580.22
12	2.49	5836	531.08
Year	4.53	114883	10454.35

**Appendix 2**

**AC Energy and Cost Savings Calculations**

**Milwaukee Public Museum Installation on Vertical Wall**

Station Identification	
City:	Milwaukee
State:	Wisconsin
Latitude:	42.95° N
Longitude:	87.90° W
Elevation:	211 m
PV System Specifications	
DC Rating:	93.6 kW
DC to AC Derate Factor:	0.770
AC Rating:	72.1 kW
Array Type:	Fixed Tilt
Array Tilt:	90.0°
Array Azimuth:	180.0°
Energy Specifications	
Cost of Electricity:	9.1 ¢/kWh

Results			
Month	Solar Radiation (kWh/m <sup>2</sup> /day)	AC Energy (kWh)	Energy Value (\$)
1	3.44	8308	756.03
2	3.70	7813	710.98
3	3.43	7631	694.42
4	3.12	6140	558.74
5	2.89	5408	492.13
6	2.78	4689	426.70
7	2.80	4844	440.80
8	3.21	5978	544.00
9	3.65	7131	648.92
10	3.67	7755	705.71
11	2.75	5869	534.08
12	2.56	5966	542.91
Year	3.16	77533	7055.50

**Appendix 3 – Preliminary Construction Cost Estimates**

**Project Budget  
Options Summary**

**Project Budget**

Total Budget	\$1,400,000	
AE and County Fees	\$200,000	
Construction Budget	<u>\$1,200,000</u>	<u>\$1,200,000</u>

**Glass Façade Option**

	<b>Glass Façade</b>	<b>Photovoltaic Option</b>
North Wall	\$484,967	\$484,967
South Wall	\$597,577	\$711,262
Subtotal	<u>\$1,082,544</u>	<u>\$1,196,229</u>
Construction Contingency 10%	\$108,254	\$119,623
Construction Budget	<u>\$1,190,798</u>	<u>\$1,315,852</u>
Percent of Construction Budget	99.23%	109.65%

**Phenolic Panel Façade Option**

	<b>Phenolic Panel Façade</b>	<b>Photovoltaic Option</b>
North Wall	\$379,853	\$379,853
South Wall	\$530,035	\$721,351
Subtotal	<u>\$909,888</u>	<u>\$1,101,204</u>
Construction Contingency 10%	\$90,989	\$110,120
Construction Budget	<u>\$1,000,877</u>	<u>\$1,211,324</u>
Percent of Construction Budget	83.41%	100.94%

**Potential Alternates**

**Add Parapet Guardrails**

Parapet Guardrails	\$17,388
Construction Contingency 10%	\$1,739
Total Add for Parapet Guardrails	<u>\$19,127</u>

**Add North Window Replacement**

North Window Replacement	\$130,390
Construction Contingency 10%	\$13,039
Total Add for Window Replacement	<u>\$143,429</u>

## Appendix 3 – Preliminary Construction Cost Estimates

### North Wall – Glass Facade Option

#### MPM Building Re-Cladding



#### *Preliminary Construction Cost Estimate*

Rev Date : 6-11-12

<b>North Wall - Glass Façade</b>		5860 sqft	(wo/windows)	
Item		Quantity	Unit Price	Total\$
Remove existing stone		5,860 sqft	\$7.77	\$45,532
Reinstall salvaged stone & back-up		220 sqft	\$42.35	\$9,318
Aluminum flashing on base soffit & parapet		160 lft	\$35.00	\$5,600
Window flashing @ new or existing windows		448 lft	\$20.00	\$8,960
Moisture barrier & insulated back-up panel	<i>material</i>	5,860 sqft	\$12.00	\$70,320
Install moisture barrier & insulated back-up panel	<i>material</i>	5,640 sqft	\$3.00	\$16,920
1/2" laminated tempered glass cladding w/ film	<i>material</i>	5,640 sqft	\$18.00	\$101,520
Stainless steel glass support framing system	<i>material</i>	2,080 lft	\$10.75	\$22,360
Stainless steel glass fasteners	<i>material</i>	1,368 each	\$28.00	\$38,304
Install glass cladding system & support framing system	<i>labor &amp; equipment</i>	5,640 sqft	\$14.68	\$82,795
<b>Mobilization/General Conditions</b>		<b>15%</b>		<b>\$60,244.34</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$23,093.66</b>
<b>Total Construction Cost (North Wall)</b>				<b>\$484,967</b>
<b>Cost per Square foot</b>				<b>\$82.76</b>
<b>Potential Add Alternate - Replace Windows</b>		1,534 sqft	\$85.00	\$130,390
<b>Total Construction Cost w/ windows (North Wall)</b>				<b>\$615,357</b>
				<b>\$83.22</b>
<b>Guardrail Alternate</b>				
Item		Quantity	Unit Price	Total\$
New cable guardrail & support @ parapet		160 lft	\$90.00	\$14,400
<b>General Conditions</b>		<b>15%</b>		<b>\$2,160.00</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$828.00</b>
<b>Total Guardrail Alternate Cost</b>				<b>\$17,388.00</b>

## Appendix 3 – Preliminary Construction Cost Estimates

### South Wall – Glass Facade Option

#### MPM Building Re-Cladding



#### *Preliminary Construction Cost Estimate*

Rev Date : 6-11-12

<b>South Wall - Glass Façade</b>		<b>7600 sqft</b>	
<b>Item</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total\$</b>
Remove existing stone	7,600 sqft	\$7.77	\$59,052
Remove & salvage bronze artwork	1 lsum	\$3,500.00	\$3,500
Reinstall salvaged bronze artwork	1 lsum	\$4,000.00	\$4,000
Aluminum flashing on base soffit & parapet	160 lft	\$35.00	\$5,600
Base flashing & roof repair/replace	160 lft	\$60.00	\$9,600
Moisture barrier & insulated back-up panel	<i>material</i> 7,600 sqft	\$12.00	\$91,200
Install moisture barrier & insulated back-up panel	<i>material</i> 7,600 sqft	\$3.00	\$22,800
1/2" laminated tempered glass cladding w/ film	<i>material</i> 7,600 sqft	\$18.00	\$136,800
Stainless steel glass support framing system	<i>material</i> 2,560 lft	\$10.75	\$27,520
Stainless steel glass fasteners	<i>material</i> 1,536 each	\$28.00	\$43,008
Install glass cladding system & support framing system	<i>labor &amp; equipment</i> 7,600 sqft	\$12.08	\$91,808
<b>Mobilization/General Conditions</b>	<b>15%</b>		<b>\$74,233.20</b>
<b>Estimating Contingency Factor</b>	<b>5%</b>		<b>\$28,456.06</b>
<b>Total Construction Cost</b>			<b>\$597,577</b>
<b>Cost per Square foot</b>			<b>\$78.63</b>

## Appendix 3 – Preliminary Construction Cost Estimates

### South Wall – Photovoltaic Panel Option (Use with North Glass Façade)

#### MPM Building Re-Cladding

##### *Preliminary Construction Cost Estimate*



Rev Date : 6-11-12

South Wall - Photovoltaic Panels Option		7600 sqft		
Item		Quantity	Unit Price	Total\$
Remove existing stone		7,600 sqft	\$7.77	\$59,052
Remove & salvage bronze artwork		1 lsum	\$3,500.00	\$3,500
Reinstall salvaged bronze artwork		1 lsum	\$4,000.00	\$4,000
Aluminum flashing on base soffit & parapet		160 lft	\$35.00	\$5,600
Base flashing & roof repair/replace		160 lft	\$60.00	\$9,600
Moisture barrier & insulated back-up panel	<i>material</i>	7,600 sqft	\$12.00	\$91,200
Install moisture barrier & insulated back-up panel	<i>material</i>	7,600 sqft	\$3.00	\$22,800
Metal panel cladding	<i>material</i>	560 sqft	\$8.00	\$4,480
Install metal cladding system & back-up walls	<i>labor &amp; equipment</i>	560 sqft	\$5.08	\$2,845
<b>Subtotal</b>				<b>\$203,077</b>
<b>PV Panels - South Side</b>				
PV Panels	<i>material</i>	234 ea	\$550.00	\$128,700
Panel backup frame and installation	<i>material</i>	4,720 lft	\$8.00	\$37,760
Panel Clips	<i>material</i>	1,440 ea	\$12.00	\$17,280
Panel Installation	<i>labor &amp; equipment</i>	234 ea	\$211.41	\$49,470
Wire, Inverter and Misc Materials w/design & installation		234 ea	\$652.78	\$152,751
<b>Subtotal</b>				<b>\$385,960</b>
<b>Mobilization/General Conditions</b>		<b>15%</b>		<b>\$88,355.59</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$33,869.64</b>
<b>Total Construction Cost</b>				<b>\$711,262</b>
<b>Cost per Square foot</b>				<b>\$93.59</b>

## Appendix 3 – Preliminary Construction Cost Estimates

### North Wall – Phenolic Panel Option

#### MPM Building Re-Cladding



#### *Preliminary Construction Cost Estimate*

<b>North Wall - Phenolic Panels</b>		5860 sqft	(wo/windows)	
Item		Quantity	Unit Price	Total\$
Remove existing stone		5,860 sqft	\$7.77	\$45,532
Reinstall salvaged stone & back-up		220 sqft	\$42.35	\$9,318
Aluminum flashing on base soffit & parapet		160 lft	\$35.00	\$5,600
Window flashing @ new or existing windows		448 lft	\$20.00	\$8,960
Moisture barrier & insulated back-up panel	<i>material</i>	5,860 sqft	\$12.00	\$70,320
Install moisture barrier & insulated back-up panel	<i>material</i>	5,640 sqft	\$3.00	\$16,920
Install phenolic panel cladding system w/suppost frame	<i>labor &amp; material</i>	5,640 sqft	\$28.00	\$157,920
<b>Mobilization/General Conditions</b>		<b>15%</b>		<b>\$47,185.46</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$18,087.76</b>
<b>Total Construction Cost (North Wall)</b>				<b>\$379,843</b>
<b>Cost per Square foot</b>				<b>\$64.82</b>
<b>Potential Add Alternate - Replace Windows</b>		1,534 sqft	\$85.00	\$130,390
<b>Total Construction Cost w/ windows (North Wall)</b>				<b>\$510,233</b>
				<b>\$69.01</b>
<b>Guardrail Alternate</b>				
Item		Quantity	Unit Price	Total\$
New cable guardrail & support @ parapet		160 lft	\$90.00	\$14,400
<b>General Conditions</b>		<b>15%</b>		<b>\$2,160.00</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$828.00</b>
<b>Total Guardrail Alternate Cost</b>				<b>\$17,388.00</b>

Appendix 3 – Preliminary Construction Cost Estimates

South Wall – Phenolic Panel Option

**MPM Building Re-Cladding**



*Preliminary Construction Cost Estimate*

<b>South Wall - Glass Façade</b>		7600 sqft		
Item		Quantity	Unit Price	Total\$
Remove existing stone		7,600 sqft	\$7.77	\$59,052
Remove & salvage bronze artwork		1 lsum	\$3,500.00	\$3,500
Reinstall salvaged bronze artwork		1 lsum	\$4,000.00	\$4,000
Aluminum flashing on base soffit & parapet		160 lnft	\$35.00	\$5,600
Base flashing & roof repair/replace		160 lnft	\$60.00	\$9,600
Moisture barrier & insulated back-up panel	<i>material</i>	7,600 sqft	\$12.00	\$91,200
Install moisture barrier & insulated back-up panel	<i>material</i>	7,600 sqft	\$3.00	\$22,800
Install phenolic panel cladding system w/suppost frame	<i>labor &amp; material</i>	7,600 sqft	\$32.00	\$243,200
<b>Mobilization/General Conditions</b>		<b>15%</b>		<b>\$65,842.80</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$25,239.74</b>
<b>Total Construction Cost</b>				<b>\$530,035</b>
<b>Cost per Square foot</b>				<b>\$69.74</b>

## Appendix 3 – Preliminary Construction Cost Estimates

### South Wall – Photovoltaic Panel Option (Use with North Phenolic Panel Façade)

#### MPM Building Re-Cladding



#### *Preliminary Construction Cost Estimate*

<b>South Wall - Photovoltaic Panels Option</b>		7600 sqft		
Item		Quantity	Unit Price	Total\$
Remove existing stone		7,600 sqft	\$7.77	\$59,052
Remove & salvage bronze artwork		1 lsum	\$3,500.00	\$3,500
Reinstall salvaged bronze artwork		1 lsum	\$4,000.00	\$4,000
Aluminum flashing on base soffit & parapet		160 lft	\$35.00	\$5,600
Base flashing & roof repair/replace		160 lft	\$60.00	\$9,600
Moisture barrier & insulated back-up panel	<i>material</i>	7,600 sqft	\$12.00	\$91,200
Install moisture barrier & insulated back-up panel	<i>material labor &amp;</i>	7,600 sqft	\$3.00	\$22,800
Install phenolic panel cladding system w/support frame	<i>material</i>	560 sqft	\$28.00	\$15,680
<b>Subtotal</b>				\$211,432
<b>PV Panels - South Side</b>				
PV Panels	<i>material</i>	234 ea	\$550.00	\$128,700
Panel backup frame and installation	<i>material</i>	4,720 lft	\$8.00	\$37,760
Panel Clips	<i>material labor &amp;</i>	1,440 ea	\$12.00	\$17,280
Panel Installation	<i>equipment</i>	234 ea	\$211.41	\$49,470
Wire, Inverter and Misc Materials w/design & installation		234 ea	\$652.78	\$152,751
<b>Subtotal</b>				\$385,960
<b>Mobilization/General Conditions</b>		<b>15%</b>		<b>\$89,608.87</b>
<b>Estimating Contingency Factor</b>		<b>5%</b>		<b>\$34,350.07</b>
<b>Total Construction Cost</b>				<b>\$721,351</b>
<b>Cost per Square foot</b>				<b>\$94.91</b>

g:\1200\1215\011-00\4. work\reports\pv study\pv study expanded final.docx



Date: July 6, 2012

To: Chairwoman M. Dimitrijevic  
Supervisor W. Johnson, Jr.  
Supervisor G. Broderick

CC: Jay Williams

**Subject: Report from the Milwaukee Public Museum  
Fiscal 2012 – 3rd Quarter Financial Update**

**Summary**

The continuing purpose of the museum is to educate, explore, discover and preserve the world and its people. MPM's mission, across time and cultures, is to be a world class museum that focuses on the intersections between people and the environment.

The third quarter included the wrap up of the Cleopatra Exhibition. The exhibit closed to the public on April 22<sup>nd</sup>.

We continue to work on a number of grants and improvements to the permanent displays in the museum. The China section on the third floor is being renovated as it was impacted by the load-in/load out of the Cleopatra exhibit.

Significant gifts (\$2.2M) were received in May in support of certain restricted programs and those are reflected in the financial results.

Through May, attendance for the museum is up 15% over the prior year at nearly 200,000 visitors. Theater operations are flat versus the prior year through the 3<sup>rd</sup> quarter.

**Financial Results (Unaudited)**

Attached are unaudited financial statements through 9 months of fiscal 2012. MPM is showing a loss of \$0.37 million through the 3<sup>rd</sup> quarter. Revenues of \$11.4M are \$2.8M below Plan but \$1.0M higher than fiscal 2011. Operating Expenses are 8.5% below Plan at \$11.3M and include Cleopatra exhibition costs. Unrestricted net income is a loss of \$1.6M (\$1.8M below plan) resulting from the financial impact of the traveling exhibit. This result has significantly impacted operating cash and the museum has taken steps to reduce operating expenses going forward.

The third quarter yielded a positive change in net assets of \$1.2M due to the receipt of major restricted gifts. We continue to anticipate new commitments in support of the goals we have put forth to donors.

**Milwaukee Public Museum**

**Looking Forward**

We continue to work on our infrastructure and permanent exhibits to improve the museum-going experience for our visitors. Beginning in May, MPM is hosting, “*Art and the Animal*,” an exhibit of paintings and sculptures of wild life and their habitats. This exhibit will run through Labor Day in MPM’s Uihlein Gallery and there is no additional charge for visitors to view it.

We are currently working with County representatives on a project to replace the marble facades on the North and South ends of the building which would include additional elements that would greatly improve the exterior envelope of the structure and reduce/eliminate a number of issues we are currently experiencing.

Please contact me if you have any questions or concerns with the enclosed materials.

Sincerely,

***Michael A. Bernatz***

Michael A. Bernatz  
Chief Financial Officer  
Milwaukee Public Museum

**Milwaukee Public Museum**

<b>MPM Consolidated Statement of Activities for the Nine Months Months Ended 5/31/12</b>					
	<b>YTD</b>	<b>YTD</b>		<b>Prior Year</b>	<b>Prior Year</b>
	<b>Actual</b>	<b>Budget</b>	<b>Dev</b>	<b>Actual</b>	<b>Change</b>
<b>Revenue:</b>					
Contributions and Membership	2,658,336	2,672,251	(13,915)	2,642,155	16,181
Special Event Revenue	554,372	479,550	74,822	402,015	152,357
Public Support	2,626,782	2,626,782	(0)	2,626,782	(0)
Admissions	2,587,485	5,619,717	(3,032,232)	1,880,629	706,856
IMAX/Planetarium	604,070	839,766	(235,696)	658,154	(54,084)
Programs	120,176	151,246	(31,070)	142,044	(21,868)
Restaurant and Facility Rental	162,512	265,490	(102,978)	232,621	(70,108)
Retail	448,766	625,703	(176,937)	630,403	(181,637)
Other income	189,668	95,300	94,368	110,969	78,698
Net assets released from restrictions	1,459,538	854,819	604,719	905,554	553,984
Total Unrestricted Revenue	11,411,704	14,230,624	(2,818,919)	10,409,926	1,001,779
<b>Operating Expenses:</b>					
Curatorial	822,573	907,068	(84,494)	858,067	(35,494)
Exhibits	3,293,763	4,056,711	(762,948)	678,642	2,615,122
Special Events	250,459	203,000	47,459	168,275	82,184
Imax/Planetarium	428,339	528,310	(99,972)	517,183	(88,844)
Programs	359,383	409,508	(50,125)	412,972	(53,589)
Restaurant and Facility Rental	11,322	42,070	(30,748)	38,082	(26,760)
Retail	377,235	470,806	(93,571)	495,485	(118,250)
Fundraising	895,042	981,608	(86,565)	746,250	148,792
Administrative	2,163,511	2,041,594	121,917	2,107,668	55,843
Facilities	2,282,233	2,318,637	(36,404)	2,227,942	54,291
Interest	164,584	163,080	1,505	193,653	(29,069)
Marketing	427,860	405,986	21,873	407,731	20,128
Depreciation	962,257	958,460	3,797	1,026,228	(63,971)
Total Operating Expenses	12,438,561	13,486,838	(1,048,277)	10,056,778	2,381,783
Inc (dec) in unrestricted net assets before non operating items	(1,026,857)	743,786	(1,770,642)	353,147	(1,380,004)
<b>Non Operating Items:</b>					
Pension & Post Retirement Benefits Expense	(560,452)	(558,000)	(2,452)	(550,541)	(9,911)
Investment Earnings	11,637	0	11,637	427,217	(415,580)
Gain on Refinancing	0	0	0	10,853,676	(10,853,676)
Loss on interest rate swap liability	(44)	0	(44)	(160,757)	160,713
Total Non Operating Items	(548,859)	(558,000)	9,141	10,569,595	(11,118,454)
Inc (dec) in unrestricted net assets	(1,575,716)	185,786	(1,761,502)	10,922,743	(12,498,458)
<b>Changes in Temporarily Restricted Net Assets:</b>					
Contributions	2,576,336	4,349,000	(1,772,664)	1,556,051	1,020,284
Investment Earnings	83,720	0	83,720	740,386	(656,666)
Net assets released from restrictions for operations	(1,459,538)	(854,819)	(604,719)	(905,554)	(553,984)
Inc (dec) in temporarily restricted net assets	1,200,517	3,494,181	(2,293,664)	1,390,883	(190,365)
<b>Changes in Permanently Restricted Net Assets:</b>					
Contributions	3,500	0	3,500	105,027	(101,527)
Investment Earnings	1,516	0	1,516	17,128	(15,612)
Net assets released from restrictions for operations	0	0	0	0	0
Inc (dec) in permanently restricted net assets	5,016	0	5,016	122,155	(117,139)
<b>Inc (dec) in Net Assets</b>	<b>(370,182)</b>	<b>3,679,967</b>	<b>(4,050,149)</b>	<b>12,435,780</b>	<b>(12,805,963)</b>

**Milwaukee Public Museum**

<b>MPM Consolidated Statement of Financial Position as of 5/31/12</b>					
	<b>Consolidated</b>	<b>Consolidated</b>		<b>Consolidated</b>	<b>Prior Year</b>
	<b><u>5/31/12</u></b>	<b><u>8/31/11</u></b>	<b><u>Change</u></b>	<b><u>5/31/11</u></b>	<b><u>Change</u></b>
<b>Assets:</b>					
Cash and cash equivalents	1,912,194	2,294,845	(382,651)	3,364,701	(1,452,507)
Investments	289,276	289,934	(658)	313,689	(24,413)
Accounts Receivable	45,039	59,918	(14,879)	61,457	(16,417)
Contributions Receivable - Current	1,384,980	999,612	385,368	338,869	1,046,111
Inventories, net	40,564	29,043	11,521	41,340	(777)
Prepaid Expenses	259,914	387,031	(127,117)	211,261	48,652
Total Current Assets	3,931,966	4,060,383	(128,417)	4,331,317	(399,351)
<b>Other Assets:</b>					
Cash and investments held for endowment	6,317,386	6,936,255	(618,869)	7,437,454	(1,120,068)
Contributions Receivable - Long Term	2,146,907	946,907	1,200,000	1,647,554	499,353
Other Long Term Assets	0	0	0	152,110	(152,110)
Total Other Assets	8,464,293	7,883,162	581,131	9,237,118	(772,825)
<b>Property &amp; Equipment:</b>					
Construction in Progress	53,539	50,753	2,786	50,188	3,351
Building Additions	19,338,666	19,221,371	117,295	19,221,371	117,296
Furniture, equipment and other improvements	10,599,437	10,459,037	140,400	10,451,540	147,897
Gross Property & Equipment	29,991,642	29,731,161	260,481	29,723,099	268,543
Less-Accumulated depreciation	(14,704,560)	(13,742,303)	(962,257)	(13,410,223)	(1,294,337)
Net Property & Equipment	15,287,083	15,988,858	(701,775)	16,312,876	(1,025,793)
<b>Total Assets</b>	<b>27,683,342</b>	<b>27,932,403</b>	<b>(249,061)</b>	<b>29,881,311</b>	<b>(2,197,969)</b>
<b>Liabilities and Net Assets:</b>					
Accounts Payable	865,973	503,920	362,053	572,799	293,174
Accrued Payroll & Benefits	621,373	670,803	(49,430)	583,345	38,028
Deferred Revenue	1,013,545	1,093,213	(79,668)	1,050,577	(37,032)
Interest Payable	18,106	18,867	(761)	19,121	(1,015)
Accrued Postretirement Benefits - Current	102,548	102,548	0	111,685	(9,137)
Notes Payable - Current	262,000	262,000	0	262,000	0
Capital Leases - Current	0	0	0	0	(0)
Total Current Liabilities	2,883,545	2,651,351	232,194	2,599,528	284,017
Accrued Postretirement Benefits	7,811,708	7,726,326	85,382	8,240,458	(428,750)
Interest Rate Swap Liability	273,059	273,014	45	160,757	112,302
Notes Payable	4,410,500	4,607,000	(196,500)	4,672,500	(262,000)
<b>Total Liabilities</b>	<b>15,378,812</b>	<b>15,257,691</b>	<b>121,121</b>	<b>15,673,243</b>	<b>(294,431)</b>
<b>Net Assets:</b>					
Unrestricted	3,533,175	5,108,891	(1,575,716)	6,351,386	(2,818,210)
Temporarily Restricted	4,947,113	3,746,596	1,200,517	4,030,235	916,879
Permanently Restricted	3,824,241	3,819,225	5,016	3,826,448	(2,207)
<b>Total Net Assets</b>	<b>12,304,530</b>	<b>12,674,712</b>	<b>(370,182)</b>	<b>14,208,068</b>	<b>(1,903,539)</b>
<b>Total Liabilities and Net Assets</b>	<b>27,683,342</b>	<b>27,932,403</b>	<b>(249,061)</b>	<b>29,881,311</b>	<b>(2,197,969)</b>



CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE  
SUE BLACK, DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: May 31, 2012

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: Sue Black, Director, Department of Parks, Recreation and Culture

**Subject: Request to Enter into a Lease Agreement with The Rock Sports Complex, LLC for that Portion of the Root River Parkway (South), Commonly Known as Crystal Ridge – ACTION**

### POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a lease agreement with The Rock Sports Complex, LLC (RSC) for that portion of the Root River Parkway (South), commonly known as Crystal Ridge, to allow RSC to construct, endow, maintain, and operate athletic fields and concessions facilities at the property.

### BACKGROUND

The County-owned property commonly known as Crystal Ridge is made up of a former County dump site and an adjacent piece of County park land at the intersection of South 76<sup>th</sup> St. and Loomis Rd. The dump site is within the city of Franklin while the park land is within the village of Greendale. At present, the dump site has been capped to the satisfaction of the Wisconsin Department of Natural Resources (WDNR). However, because of potential methane gas migration and differential settling within the waste, the County's ability to develop Crystal Ridge for anything other than outdoor recreational activities is severely restricted.

In 1983 Milwaukee County entered into a twenty five (25) year lease agreement with Midwest Development Corporation (MDC) for Crystal Ridge. The lease permitted MDC to build a down-hill ski facility on the park land. On the adjacent capped dump site, MDC built support facilities, including a parking lot, storage building, and ski chalet and restaurant. The eastern and western areas of Crystal Ridge have been basically unused. To-date MDC continues to operate the ski hill and some ancillary recreational activities on a year-to-year basis, which may at any time be terminated by either the County or MDC upon ninety (90) days written notice.



In 2008, because the MDC lease was to expire and because the landfill capping process was finally complete, the County began exploring options for what would be the highest and best use of Crystal Ridge. Due to the severe restrictions on how the capped portion of the property could be developed, DPRC, in coordination with the City of Franklin, decided that an outdoor recreational facility, including athletic fields, would be the best use.

In 2009, because DPRC had received inquiries from both the private and public sector on the future use of Crystal Ridge, DRPC drafted a request for information (RFI) for the development of the property. The RFI was never issued due to the fact that the 2010 adopted operating budget called for the sale of Crystal Ridge, the proceeds of which were to be used to first pay any costs associated with the sale of the property and to defer existing debt on the property. Any remaining proceeds were to be re-directed towards major maintenance needs in the parks system. The 2010 budget did not, however, include revenue from the sale. Although the department sought proposals for the sale of the property, there were no interested buyers due to the environmental liabilities associated with owning and operating on a former dump site.

Even though the property failed to find interested buyers in 2010, the 2011 adopted operating budget, once again, called for the sale of Crystal Ridge. This budget went a bit further than the previous by declaring Crystal Ridge surplus parkland and projecting \$7,000,000 in revenue. At that time, the existing debt service on the property was \$4,000,000. The sale proceeds were to be used to defease the outstanding bond debt and to finance DRPC major maintenance projects. Like in 2010, no interested buyers came forward.

Throughout the process of attempting to sell Crystal Ridge, DPRC entertained multiple offers by area sports leagues to develop athletic fields at the property. While the intentions of these groups were genuine, their ability to finance the development proved to be insufficient. In each instance, the proposer counted on significant capital contributions from the County.

Then, in 2012, RSC approached DPRC with a proposal to construct and operate at no cost to the County a multi-purpose recreational facility at Crystal Ridge. Unlike the previous proposers, RSC is financially able to undertake the improvements with no capital contributions from the County. In its proposal and with DPRC approval, the athletics fields would be located on the eastern and western unused portions of Crystal Ridge. The ski hill would continue to be located on park land with the possibility of being expanded. And the supporting facilities, i.e. parking lots, concessions, etc. would be spread throughout the property to service the sports complex patrons.

The athletic fields and related amenities will be constructed, endowed, maintained and operated by RSC at no cost to the County; and, upon termination or expiration of the lease, the improvements will become the property of the County. The project is expected to cost about \$3,000,000, with annual maintenance costs in the range of \$1,000,000 to \$1,500,000. All the operating expenses, including maintenance, for the sports complex are the responsibility of RSC. For leasing the land and improvements to RSC, DPRC will receive a base rent payment of \$25,000, plus five percent (5%) of the

earnings generated by RSC's use of the property, before interest and taxes, escalating after the fifth and fifteenth operating years. RSC is also required to populate an endowment fund with \$50,000, which is to be maintained at that level throughout the lease term. Like the improvements, the endowment fund reserves become the property of the County upon termination or expiration of the lease.

To date, DPRC and RSC have met on several occasions to discuss our mutual interests and are negotiating a lease for Crystal Ridge. Prior to execution, the lease will be reviewed by Corporation Counsel, Risk Management, Audit and the Department of Administrative Services (DAS). RSC has also submitted to DPRC and DAS its due diligence for County review.

**RECOMMENDATION**

The Parks Director respectfully recommends that the department be authorized to enter into a lease with The Rock Sports Complex, LLC for that portion of the Root River Parkway (South), commonly known as Crystal Ridge.

Prepared by: Paul Kuglitsch, Contract Services Officer/DPRC

**Recommended by:**

**Approved by:**

---

Laura Schloesser, Chief of  
Administration and External Affairs

---

Sue Black, Parks Director

Cc: County Executive Chris Abele  
Amber Moreen, Chief of Staff, County Executive's Office  
Kelly Bablitch, Chief of Staff, County Board  
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee  
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee  
Vince Masterson, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS  
Janelle Jensen, Parks, Energy & Environment Committee Clerk  
Glenn Bultman, Research Analyst, County Board  
Jessica Janz-McKnight, Research Analyst, County Board

1  
2  
3  
4 (ITEM NO. ) From the Director, Department of Parks, Recreation and Culture,  
5 requesting authorization to enter into a lease agreement with The Rock Sports  
6 Complex, LLC for that portion of the Root River Parkway (South), commonly  
7 known as Crystal Ridge, to allow for the construction, endowment, maintenance  
8 and operation of athletic fields and related amenities, by recommending  
9 adoption of the following:

10  
11 **A RESOLUTION**

12  
13 WHEREAS, The Rock Sports Complex, LLC (RSC) has approached the  
14 Department of Parks, Recreation and Culture (DPRC) with a proposal to  
15 develop at no cost to the County athletic fields and related amenities at a site  
16 along the Root River Parkway (South), commonly known as Crystal Ridge; and  
17

18 WHEREAS, Crystal Ridge is made up of a former County dump site and an  
19 adjacent piece of the County park land at the intersection of South 76<sup>th</sup> Street  
20 and Loomis Road; and

21  
22 WHEREAS, the dump sites at and adjacent to Crystal Ridge have been  
23 capped to the satisfaction of the Wisconsin Department of Natural Resources;  
24 however, because of potential methane gas migration and differential settling  
25 within the waste, DPRC's ability to develop these properties for anything other  
26 than outdoor recreational activities is severely restricted; and

27  
28 WHEREAS, in 1983 DPRC entered into a lease agreement with the Midwest  
29 Development Corporation (MDC) permitting MDC to build a down-hill ski facility  
30 on the park land; and, on the adjacent capped dump site, MDC was permitted  
31 to build support facilities, including a parking lot, storage building, and ski chalet  
32 and restaurant; and

33  
34 WHEREAS, the eastern and western areas of Crystal Ridge have been  
35 basically unused; and

36  
37 WHEREAS, the MDC lease expired in 2008; and

38  
39 WHEREAS, since that time, the ski hill has continued to be operated by  
40 MDC on a year-to-year basis and DPRC has explored both the sale of Crystal  
41 Ridge and the development of Crystal Ridge; however, because of the  
42 environmental liabilities and use restrictions, no buyers or financially able  
43 developers have come forth, until now; and  
44

45 WHEREAS, in 2012 RSC approached DPRC with its proposal to develop at  
46 no cost to the County athletic fields and related amenities at Crystal Ridge,  
47 requiring a lease of the property to undertake its improvements; and  
48

49 WHEREAS, the project is expected to cost about \$3,000,000, with annual  
50 maintenance costs in the range of \$1,000,000 to \$1,500,000; and  
51

52 WHEREAS, all of the constructions costs, operating expenses, and  
53 maintenance costs are the responsibility of RSC; and  
54

55 WHEREAS, the terms of the lease provide for an initial fifteen (15) year term  
56 with an option to renew for an additional ten (10) years; and  
57

58 WHEREAS, for leasing Crystal Ridge, DPRC will receive a base rent  
59 payment of \$25,000, plus five percent (5%) of net earnings before interest and  
60 taxes, escalating after the fifth and fifteenth operating years; and  
61

62 WHEREAS, RSC is also required to populate an endowment fund with  
63 \$50,000, to be used for capital repairs and major maintenance; and  
64

65 WHEREAS, upon termination or expiration of the lease, Milwaukee County  
66 shall acquire title to the improvements and any equipment necessary to  
67 operate the Sports Park, as well as any remaining endowment funds reserves;  
68 now, therefore,  
69

70 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby  
71 authorizes the Parks Director to execute a lease with The Rock Sports Complex,  
72 LLC to allow for the construction, endowment, maintenance and operation of  
73 athletic fields and related amenities at Crystal Ridge.  
74

## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** June 4, 2012

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Lease Agreement Between the Department of Parks, Recreation and Culture and The Sports Rock Complex, LLC for Crystal Ridge.

**FISCAL EFFECT:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact<br><input checked="" type="checkbox"/> Existing Staff Time Required<br><input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below)<br><input type="checkbox"/> Absorbed Within Agency's Budget<br><input type="checkbox"/> Not Absorbed Within Agency's Budget<br><input type="checkbox"/> Decrease Operating Expenditures<br><input checked="" type="checkbox"/> Increase Operating Revenues<br><input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures<br><input type="checkbox"/> Decrease Capital Expenditures<br><input type="checkbox"/> Increase Capital Revenues<br><input type="checkbox"/> Decrease Capital Revenues<br><input type="checkbox"/> Use of contingent funds |
|---|--|

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	Expenditure or Revenue Category	Current Year	Subsequent Year
<b>Operating Budget</b>	Expenditure	0	0
	Revenue	0	\$25,000
	Net Cost	0	0
<b>Capital Improvement Budget</b>	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

## DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. <sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a lease agreement with The Rock Sports Complex, LLC for the lease of Crystal Ridge to allow RSC to construct, endow, maintain, and operate athletic fields and related amenities, including concessions facilities at the property.

B. RSC will contract, endow, maintain and operate the improvements at no cost to Milwaukee County. The projected cost of the project is in about \$3,000,000.00. Upon termination or expiration of the lease, Milwaukee County retains ownership of the improvements. Also, RSC is responsible for the all of the costs associated with operating the facility. RSC will remit to DPRC \$25,000 annually plus 5% of its annual earnings, before taxes and interest, escalating after the fifth and fifteenth operating years.

C. No Impact.

D. None

Department/Prepared By Paul Kuglitsch/DPRC

Authorized Signature \_\_\_\_\_

Did DAS-Fiscal Staff Review?  Yes  No

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.



CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE  
SUE BLACK, DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: June 26, 2012

To: Chairwoman Marina Dimitrijevic, Milwaukee County Board of Supervisors

From: Sue Black, Director, Department of Parks, Recreation and Culture

**Subject: Request to Enter into a Maintenance and Operations Services Agreement with The Rock Sports Complex, LLC for that Portion of the Root River Parkway (South), Commonly Known as Crystal Ridge – ACTION**

### POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC (RSC) for that portion of the Root River Parkway (South), commonly known as Crystal Ridge, to allow RSC to construct, endow, maintain, and operate athletic fields and related amenities at the property.

### BACKGROUND

The County-owned property commonly known as Crystal Ridge is made up of a former County dump site and an adjacent piece of County park land at the intersection of South 76<sup>th</sup> St. and Loomis Rd. (please see Exhibit "A"). The dump site is within the city of Franklin while the park land is within the village of Greendale. At present, the dump site has been capped to the satisfaction of the Wisconsin Department of Natural Resources (WDNR). However, because of potential methane gas migration and differential settling within the waste, the County's ability to develop Crystal Ridge for anything other than outdoor recreational activities is severely restricted.

In 1983 Milwaukee County entered into a twenty five (25) year lease agreement with Midwest Development Corporation (MDC) for Crystal Ridge. The lease permitted MDC to build a down-hill ski facility on the park land. On the adjacent capped dump site, MDC built support facilities, including a parking lot, storage building, ski chalet and restaurant (please see Exhibit "B"). The eastern and western areas of Crystal Ridge have been basically unused. To-date, per the lease terms, MDC continues to operate the ski hill and some ancillary recreational activities on a year-to-year basis. The lease may be terminated at any time by either the County or MDC upon ninety (90) days written notice.



In 2008, because the MDC lease was to expire and because the landfill capping process was finally complete, the County began exploring options for what would be the highest and best use of Crystal Ridge. Due to the severe restrictions on how the capped portion of the property could be developed, DPRC, in coordination with the City of Franklin, decided that an outdoor recreational facility, including athletic fields, would be the best use.

In 2009, because DPRC had received inquiries from both the private and public sector on the future use of Crystal Ridge, DRPC drafted a request for information (RFI) for the development of the property. The RFI was never issued due to the fact that the 2010 adopted operating budget called for the sale of Crystal Ridge, the proceeds of which were to be used to first pay any costs associated with the sale of the property and to defer existing debt on the property. Any remaining proceeds were to be re-directed towards major maintenance needs in the parks system. The 2010 budget did not, however, include revenue from the sale. Although the department sought proposals for the sale of the property, there were no interested buyers due to the environmental liabilities associated with owning and operating on a former dump site.

Even though the property failed to find interested buyers in 2010, the 2011 adopted operating budget, once again, called for the sale of Crystal Ridge. This budget went a bit further than the previous by declaring Crystal Ridge surplus parkland and projecting \$7,000,000 in revenue. At that time, the existing debt service on the property was \$4,000,000. The sale proceeds were to be used to defease the outstanding bond debt and to finance DRPC major maintenance projects. Like in 2010, no interested buyers came forward.

Throughout the process of attempting to sell Crystal Ridge, DPRC entertained multiple offers by area sports leagues to develop athletic fields at the property. While the intentions of these groups were genuine and sincere, their ability to finance the development proved to be insufficient. In each instance, the proposer counted on significant capital contributions from the County.

Then, in 2012, RSC approached DPRC with a proposal to construct, operate and manage at no cost to the County a multi-purpose recreational facility at Crystal Ridge (please see [Exhibit "C"](#)). Unlike the previous proposers, RSC has sufficient financial resources to underwrite the improvements with no capital contributions from the County. In its proposal and with the approval of WDNR, DPRC, and the Department of Administrative Services - Architecture and Engineering Division (DAS-A&E), the athletics fields would be located on the eastern and western unused portions of Crystal Ridge. The ski hill would continue to be located on park land with the possibility of being expanded. And the supporting facilities, i.e. parking lots, concessions facility, etc. would be spread throughout the property to service the sports complex patrons.

To accomplish this feat, DPRC and RSC would enter into a maintenance and operations services agreement, outlining the rights and responsibilities of the parties (please see [Exhibit "D"](#)). The athletic fields and related amenities would be constructed, maintained, operated and managed by RSC at no cost to the County; and, upon termination or expiration of the agreement, the improvements would

become the property of the County. The project is expected to cost in excess of \$3,000,000. All of the operating expenses, including maintenance and management, for the sports complex are the responsibility of RSC. For allowing RSC to construct and operate its improvements at Crystal Ridge, DPRC would receive an annual base rental payment of \$25,000, plus five percent (5%) of RSC's annual net earnings before taxes and interest in years 1-5, eight percent (8%) in years 6-15, and ten percent (10%) in years 16-25. RSC is also required to populate an endowment fund with a minimum of \$50,000, to be used to make capital repairs to the facility. Like the improvements, the endowment fund reserves would become the property of the County upon termination or expiration of the agreement.

Of special note is the fact that, per the terms and conditions of the agreement and because of the environmentally sensitive nature of the property, RSC is not permitted to undertake any construction activities at Crystal Ridge until it receives approval from WDNR, DPRC, and DAS-A&E.

### **RECOMMENDATION**

The Parks Director respectfully recommends that the department be authorized to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC for that portion of the Root River Parkway (South), commonly known as Crystal Ridge to allow The Rock Sports Complex to construct, maintain, operate and manage athletic fields and related amenities for the benefit of Milwaukee County residents and visitors.

Prepared by: Paul Kuglitsch, Contract Services Officer/DPRC

**Recommended by:**

**Approved by:**

---

Laura Schloesser, Chief of  
Administration and External Affairs

---

Sue Black, Parks Director

Attachments:        Exhibit A – map of the Root River Parkway (South)  
                          Exhibit B – map of Crystal Ridge  
                          Exhibit C – proposed Sports Park  
                          Exhibit D – Maintenance and Operations Services Agreement

Cc:    County Executive Chris Abele  
      Amber Moreen, Chief of Staff, County Executive's Office  
      Scott Manske, Comptroller  
      Kelly Bablitch, Chief of Staff, County Board  
      Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee  
      Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee  
      Vince Masterson, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS  
      Janelle Jensen, Parks, Energy & Environment Committee Clerk  
      Glenn Bultman, Research Analyst, County Board  
      Jessica Janz-McKnight, Research Analyst, County Board

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

(ITEM NO. ) From the Director, Department of Parks, Recreation and Culture, seeking authorization to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC for that portion of the Root River Parkway (South), commonly known as Crystal Ridge, to allow for the construction, maintenance, operation and management of athletic fields and related amenities, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, The Rock Sports Complex, LLC ("RSC") has approached the Department of Parks, Recreation and Culture ("DPRC") with a proposal to develop at no cost to the County athletic fields and related amenities at a site along the Root River Parkway (South), commonly known as Crystal Ridge (the "Property"); and

WHEREAS, the Property is made up of a former County dump site and an adjacent piece of the County park land at the intersection of South 76<sup>th</sup> Street and Loomis Road; and

WHEREAS, the dump sites at and adjacent to the Property have been capped to the satisfaction of the Wisconsin Department of Natural Resources ("WDNR"); however, because of potential methane gas migration and differential settling within the waste, DPRC's ability to develop these properties for anything other than outdoor recreational activities is severely restricted; and

WHEREAS, in 1983 DPRC entered into a lease agreement with the Midwest Development Corporation ("MDC") permitting MDC to build a down-hill ski facility on the park land; and, on the adjacent capped dump site, MDC was permitted to build support facilities, including a parking lot, storage building, ski chalet and restaurant; and

WHEREAS, the eastern and western areas of the Property have been basically unused; and

WHEREAS, the MDC lease expired in 2008; and

WHEREAS, since that time, the ski hill has continued to be operated by MDC on a year-to-year basis as DPRC has explored both the sale and development of the Property; however, because of the environmental liabilities and use restrictions, no buyers or financially able developers have come forward, until now; and

45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88

WHEREAS, in 2012 RSC approached DPRC with its proposal to develop at no cost to the County athletic fields and related amenities at the Property, requiring an agreement between DPRC and RSC to allow RSC to construct and manage its improvements on the Property; and

WHEREAS, all of the constructions costs, maintenance costs, and operating and management expenses are the responsibility of RSC; and

WHEREAS, the terms of the agreement provide that no construction activities can take place at the Property unless and until, (1) the condition of Property is satisfactory to WDNR, DPRC and the Department of Administrative Service - Architecture and Engineering Division ("DAS-A&E"), and (2) WDNR, DPRC and DAS-A&E approve RSC's plans and specifications for its improvements at the Property; and

WHEREAS, the agreement is for an initial fifteen (15) year term with an option to renew for an additional ten (10) years; and

WHEREAS, for allowing RSC to construct and manage its improvements at the Property, DPRC will receive an annual base rental payment of \$25,000, plus five percent (5%) of RSC's annual net earnings before interest and taxes in years 1-5, eight percent (8%) in years 6-15, and ten percent (10%) in years 16-25; and

WHEREAS, RSC is also required to populate an endowment fund with \$50,000, to be used for capital repairs and major maintenance; and

WHEREAS, upon termination or expiration of the agreement, Milwaukee County shall acquire title to the improvements and any equipment necessary to operate the facilities, as well as any remaining endowment fund reserves; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Parks Director to execute a maintenance and operations services agreement with The Rock Sports Complex, LLC to allow for the construction, maintenance, operation and management of athletic fields and related amenities at Crystal Ridge; and

BE IT FURTHER RESOLVED, that no construction activities can be undertaken at Crystal Ridge by The Rock Sports Complex, LLC without written approval from the Wisconsin Department of Natural Resources and Milwaukee County.

## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** June 26, 2012

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Maintenance and Operations Services Agreement Between the Department of Parks, Recreation and Culture and The Rock Sports Complex, LLC for Crystal Ridge - REVISED.

**FISCAL EFFECT:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact<br><input checked="" type="checkbox"/> Existing Staff Time Required<br><input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below)<br><input type="checkbox"/> Absorbed Within Agency's Budget<br><input type="checkbox"/> Not Absorbed Within Agency's Budget<br><input type="checkbox"/> Decrease Operating Expenditures<br><input checked="" type="checkbox"/> Increase Operating Revenues<br><input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures<br><input type="checkbox"/> Decrease Capital Expenditures<br><input type="checkbox"/> Increase Capital Revenues<br><input type="checkbox"/> Decrease Capital Revenues<br><input type="checkbox"/> Use of contingent funds |
|---|--|

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	Expenditure or Revenue Category	Current Year	Subsequent Year
<b>Operating Budget</b>	Expenditure	0	0
	Revenue	0	\$25,000
	Net Cost	0	0
<b>Capital Improvement Budget</b>	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

## DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. <sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC (RSC) for Crystal Ridge to allow RSC to construct, maintain, operate and manage athletic fields and related amenities, including a concessions facility at the property.

B. RSC will construct, maintain, operate and manage the improvements at no cost to Milwaukee County. The projected cost of the project is in excess of \$3,000,000.00. Upon termination or expiration of the agreement, Milwaukee County retains ownership of the improvements. Also, RSC is responsible for the all of the costs associated with the maintenance and operation of the facility. RSC will remit to DPRC \$25,000 annually, plus 5% of its annual net earnings before taxes and interest in years 1-5, 8% in years 6-15, and 10% in years 16-25.

C. No Impact.

D. None

Department/Prepared By Paul Kuglitsch/DPRC

Authorized Signature \_\_\_\_\_

Did DAS-Fiscal Staff Review?  Yes  No

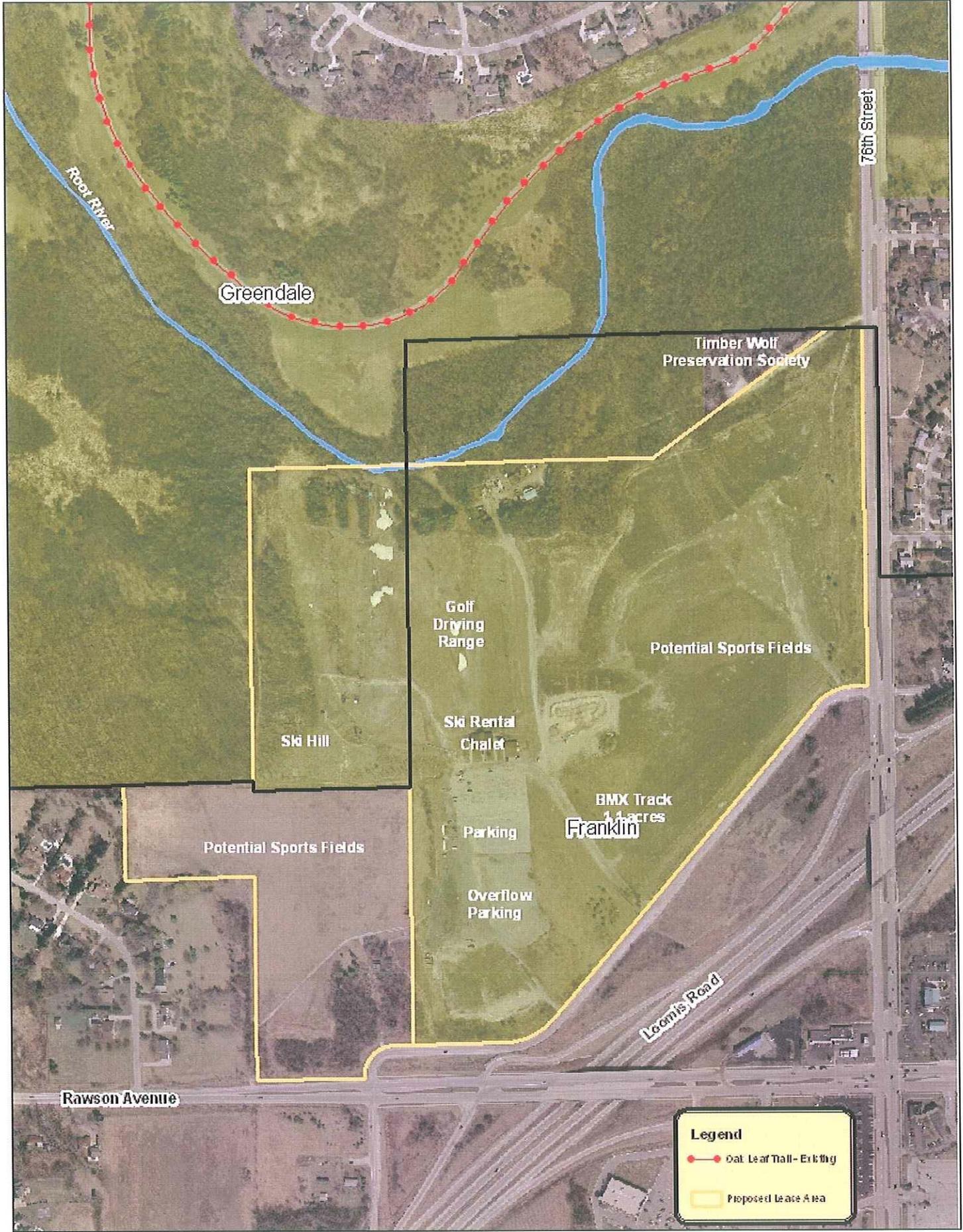
<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

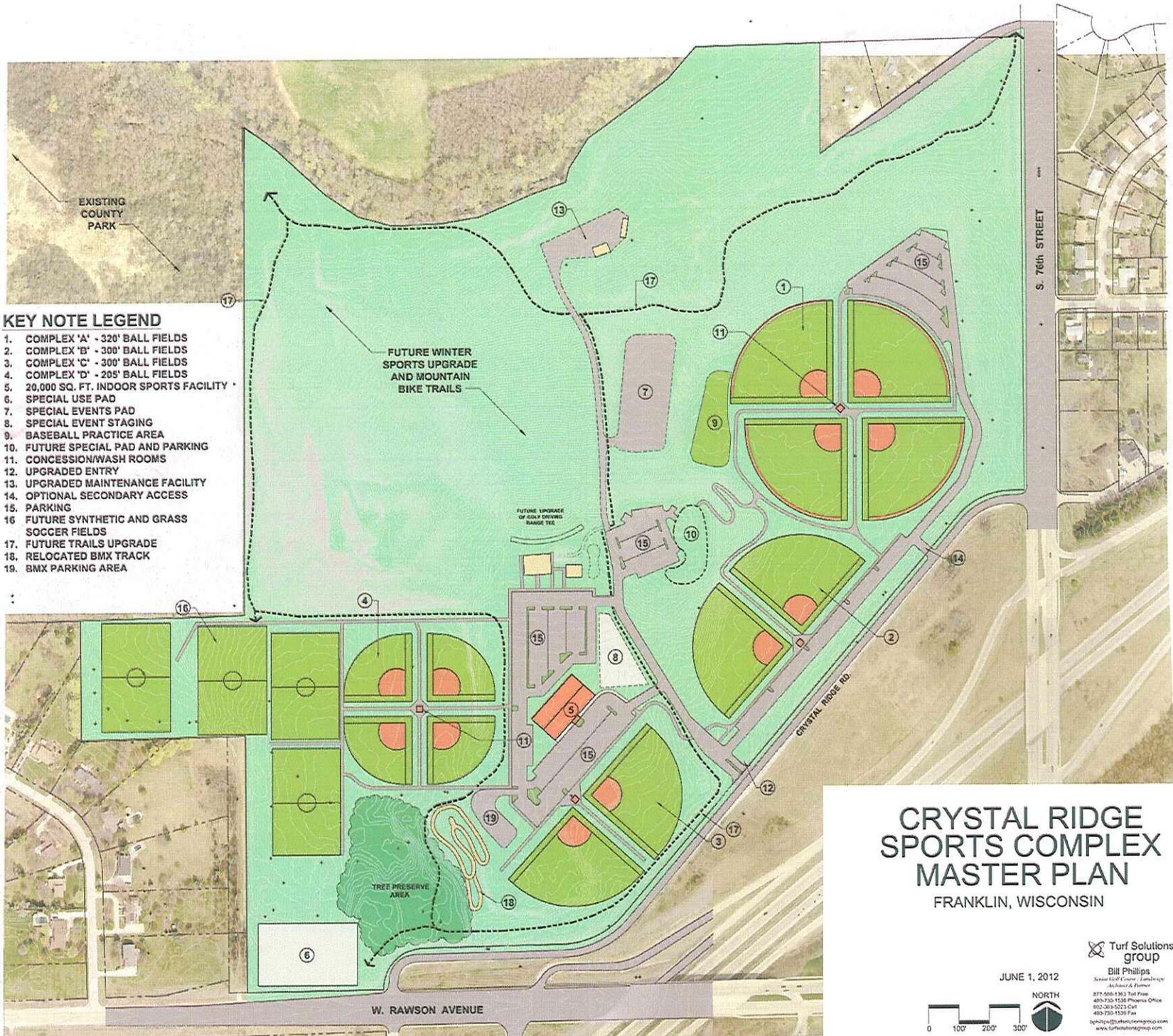


CRYSTAL RIDGE AREA SITE MAP



0 120 240 Feet





**KEY NOTE LEGEND**

- 1. COMPLEX 'A' - 320' BALL FIELDS
- 2. COMPLEX 'B' - 300' BALL FIELDS
- 3. COMPLEX 'C' - 300' BALL FIELDS
- 4. COMPLEX 'D' - 205' BALL FIELDS
- 5. 20,000 SQ. FT. INDOOR SPORTS FACILITY
- 6. SPECIAL USE PAD
- 7. SPECIAL EVENTS PAD
- 8. SPECIAL EVENT STAGING
- 9. BASEBALL PRACTICE AREA
- 10. FUTURE SPECIAL PAD AND PARKING
- 11. CONCESSION/WASH ROOMS
- 12. UPGRADED ENTRY
- 13. UPGRADED MAINTENANCE FACILITY
- 14. OPTIONAL SECONDARY ACCESS
- 15. PARKING
- 16. FUTURE SYNTHETIC AND GRASS SOCCER FIELDS
- 17. FUTURE TRAILS UPGRADE
- 18. RELOCATED BMX TRACK
- 19. BMX PARKING AREA

**CRYSTAL RIDGE  
SPORTS COMPLEX  
MASTER PLAN**  
FRANKLIN, WISCONSIN

Turf Solutions group  
 Bill Phillips  
 Senior Golf Course Landscape Architect & Planner  
 877-686-1913 Toll Free  
 480-730-1530 Phoenix Office  
 802-248-5023 Call  
 480-730-1530 Fax  
 bphillips@turfandirrigationgroup.com  
 www.turfsolutionsgroup.com

JUNE 1, 2012

NORTH

0 100' 200' 300'

**MILWAUKEE COUNTY WISCONSIN**

**SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT  
(Multi-Purpose Sports Complex)**

THIS SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT (this “Agreement”) is entered into by and between MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin, as represented through its Department of Parks, Recreation and Culture (the “County”), and The Rock Sports Complex, LLC (the “Operator”), with reference to the following recited facts:

**RECITALS**

A. The County met with the Operator to discuss the idea of building and operating a multi-purpose sports complex on land owned by the County with the Operator to provide certain services including but not limited to operational services relating to the design, construction, management, operation and maintenance of a multi-purpose sports complex (hereinafter referred to as the “Sports Park” and as more specifically described and defined in ARTICLE I) to be located on County-owned land commonly referred to as Crystal Ridge with a property identification number(s) of: 744-8980-001; 745-8998-000; 744-8985-02; 744-8985-001, and comprising approximately 140 total acres.

B. The County represents and warrants that it owns that certain real property specifically described in Exhibit “A” attached to this Agreement (the “Property”), subject to certain reservations, covenants, conditions or restrictions relating to the use of the Property.

C. The County and Operator desire to construct a top quality, for-profit, self-supporting multi-purpose Sports Park facility on the Property.

D. The County and the Operator (hereinafter collectively the “Parties”) desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Operator’s operation and maintenance of the Sports Park for the County following construction and installation of the Sports Park on the Property, if at all.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES OF THE COUNTY AND THE OPERATOR SET FORTH IN THIS AGREEMENT, THE COUNTY AND THE OPERATOR AGREE, AS FOLLOWS:

**ARTICLE I**

**DEFINITIONS**

1. The following definitions apply in this Agreement:

1.1 “***Affiliate***” means with respect to any Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Operator, such Person or (ii) any general partner, officer or director of such Person or of any other Person described in clause (i). As used in the previous sentence,

“control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “Affiliated” shall have the correlative meaning.

1.2 “Annual Net Income Statement” means a financial statement, prepared in accordance with generally accepted accounting principles and in accordance with Operator’s accounting policies.

1.3 “Application” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any activity on the Property that this Agreement allows, including any application for any building permit, certificate of occupancy, utility service or connection, easement, covenant, condition, restriction, subdivision plat, or such other instrument as the Operator may from time to time reasonably request in performing services under this Agreement; (b) to enable the Operator from time to time to seek any Approval or to use or operate the Sports Park in accordance with this Agreement; or (c) otherwise reasonably necessary and appropriate to permit the Operator to perform its services under this Agreement.

1.4 “Approvals” means any and all licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any use, maintenance, repair or operation of the Sports Park.

1.5 “Bankruptcy Law” means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.6 “Bankruptcy Proceeding” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.7 “Building Equipment” means all fixtures incorporated into the Sports Park, whether acquired by the County or the Operator and used, useful, or necessary to operate the Sports Park as such (including, but not limited to, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes) as opposed to operating any business in the Sports Park.

1.8 “Capital Repair” means any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or any other component of the Sports Park.

1.9 “Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any part of the Sports Park, whether or not insured or insurable.

1.10 “Commencement Date” means the earliest of the following dates to occur, if at all: (a) the Operator issues a certificate of completion to its designated contractor(s) performing the design-build or construction activities required for installation of the Sports Park and, unless

waived by the Operator, the Operator has obtained all Approvals as set forth in Section 21.2; or (b) the Operator opens all or any part of the Sports Park for use by members of the public.

1.11 “**Concession Facility**” means the family-style, sports-themed food and beverage restaurant type concession facility to be constructed as part of the Sports Park.

1.12 “**Condemnation**” means any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding.

1.13 “**Condemnation Award**” means any award(s) paid or payable (whether or not in a separate award) to either Party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

1.14 “**Condemnation Effective Date**” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any part of the Sports Park subject to the Condemnation.

1.15 “**Contingent County Revenue**” means a percentage of Operator’s net earnings before taxes and interest generated by its use of the Property, payable to the County in the following amounts: (i) Years 1 through 5, five percent (5%), (ii) Years 6 through 15, eight percent (8%), (iii) Years 16 through 25, ten percent (10%).

1.16 “**County**” has the definition set forth in the Preamble.

1.17 “**County Approval**” when used in this Agreement, any requirement of the “County’s approval” or “prior written approval” or “consent” or words of similar import shall be deemed satisfied by the written approval of the Director of Milwaukee County Department of Parks, Recreation and Culture (the “Parks Director”) or designee.

1.18 “**County Existing Infrastructure**” means the existing ski chalet, other buildings, utility infrastructure and any other non-real property on the Property, whether or not owned by the County, as of the date of this Agreement.

1.19 “**County Parties**” means and refers to, collectively, the County, its elected officials, County Commission, officers, employees, agents and legal representatives.

1.20 “**County Party**” means and refers to, individually, the County and each of its elected officials, officers, employees, agents and legal representatives.

1.21 “**County Representative**” means an employee, employees or agent of the County designated in writing by the Parks Director for the purpose of facilitating the review of the Sports Park Plans and Specifications and for post-Commencement Date coordination including scheduling of Public Events with the Operator.

1.22 **“County Revenues”** means, collectively, the Fixed County Revenue, and the Contingent County Revenue.

1.23 **“Default”** means any Monetary Default or Non-Monetary Default.

1.24 **“Default Interest”** means interest at an annual rate equal to the lesser of: (a) five percent (5%) per annum; or (b) the Usury Limit.

1.25 **“Effective Date”** means and refers to the first date on which all of the following have occurred: (1) this Agreement has been approved by the Milwaukee County Board of Supervisors and, (2) this Agreement has been executed by the authorized representative(s) of each Party.

1.26 **“Environmental Claim”** means any written complaint, summons, action, citation, notice of violation, directive, order, claim, litigation, investigation, judicial or administrative proceeding or action, judgment, lien, demand, letter or communication from any Person alleging non-compliance with any Environmental Law relating to any actual or threatened Hazardous Substance Discharge.

1.27 **“Environmental Laws”** means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Hazardous Substance Discharge or threatened Hazardous Substance Discharge, transport or handling of Hazardous Substances.

1.28 **“Equity Interest”** means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity, nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.29 **“Expiration Date”** means the date when this Agreement terminates or expires in accordance with its terms.

1.30 **“Fee Estate”** means the County’s fee estate in the Property.

1.31 **“FF&E”** means all movable furniture, furnishings, equipment, and personal property (excluding Building Equipment) that may be removed without material damage to the Sports Park and without adversely affecting: (a) the structural integrity of the Sports Park; (b) any electrical, plumbing, mechanical, or other system of the Sports Park; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Sports Park. FF&E includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

1.32 **“Fixed County Revenue”** means a guaranteed rent of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) per Operating Year payable during the Initial Term of this Agreement. In the event Operator exercises its option to renew this Agreement, the County and Operator agree that further negotiation regarding the Fixed County Revenue may be appropriate at that time, and said revenue amount shall be negotiated and agreed upon in good faith as between the Parties; provided that if the Parties cannot agree on such revenue amount, such amount will be THIRTY ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$31,250.00) per Operating Year.

1.33 **“Government”** means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property (or any activity this Agreement requires or allows), including the United States government, the State and County governments and their subdivisions and municipalities, including the City, and all other applicable governmental agencies, authorities, commissions, boards, department and subdivisions thereof.

1.34 **“Hazardous Substance”** includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (iii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law; (v) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (vi) defined as “hazardous waste” under 40 C.F.R. Part 260; (vii) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT)Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as “hazardous waste” or, as a “hazardous substance” under Wisconsin Statutes or the Wisconsin Administrative Code; (ix) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations

adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

1.35 “Hazardous Substance Discharge” means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from the Property whether or not caused by a Party to this Agreement and whether occurring before or after the Commencement Date.

1.36 “Immaterial Loss” means a Casualty or Condemnation resulting in a loss of ten thousand dollars (\$10,000) or less.

1.37 “Indemnify” means, where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor’s indemnity.

1.38 “Indemnitee” means any Party entitled to be Indemnified under this Agreement and its agents, directors, employees, Equity Interest holders, mortgagees, officers and elected officials.

1.39 “Indemnitor” means the Party that agrees pursuant to this Agreement to Indemnify the other Party to this Agreement.

1.40 “Initial Term” shall have the meaning set forth in Section 3.1.

1.41 “Insubstantial Condemnation” means any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

1.42 “Law” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Sports Park or this Agreement in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Sports Park, or relating to any Taxes, or otherwise relating to this Agreement or any Party’s rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.43 “Legal Costs” of any Party means all reasonable costs and expenses such Party incurs in any legal proceeding (or other matter for which such Party is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses.

1.44 “Loss” means any Casualty or Condemnation.

1.45 “Loss Proceeds” means any Condemnation Award(s) or Property Insurance Proceeds.

1.46 **“Monetary Default”** means the Operator’s failure to pay any County Revenues.

1.47 **“Naming Rights”** shall mean the exclusive right (subject to County’s written approval) to name through the use of sponsor logo(s), trade name(s), trademark(s), or service mark(s), the fields within the Sports Park to be constructed on the Property and the Concession Facility to be constructed in the Sports Park but not including any Facilities or areas outlying the Sports Park or the Sports Park as a whole as further provided in Section 5.20.

1.48 **“Non-Monetary Default”** means the Operator’s: (a) failure to comply with any materially affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) material breach of any representation or warranty (as of the date made or deemed made).

1.49 **“Notice”** means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default.

1.50 **“Notify”** means give a Notice.

1.51 **“Notice of Default”** means any Notice claiming or giving Notice of a Default or alleged Default.

1.52 **“Operating Year”** means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term. In this Agreement, Operating Years are referred to in consecutive numerical order starting with the Operating Year commencing on the first day of the first full calendar month after the Commencement Date being referred to as “Operating Year 1” and followed by “Operating Year 2,” “Operating Year 3,” etc.

1.53 **“Operator”** has the meaning set forth in the Preamble.

1.54 **“Operator FF&E”** means all FF&E used or located at the Sports Park and purchased by the Operator or anyone claiming through the Operator.

1.55 **“Operator Parties”** means and refers to, collectively, the Operator, its shareholders, directors, officers, employees, agents and legal representatives.

1.56 **“Operator Party”** means and refers to, individually, the Operator and each of its shareholders, directors, officers, employees, Affiliates, agents and legal representatives.

1.57 **“Parties”** means and refers, collectively, to the County and the Operator.

1.58 **“Party”** means and refers, individually, to either the County or the Operator, as applicable.

1.59 **“Person”** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.60 **“Pro Forma”** means and refers to that certain pro forma gross revenue and sports team participation projections for the Sports Park prepared by the Operator based on the facility and its related amenities to be constructed on the Property attached hereto and incorporated herein as Exhibit “D” to this Agreement.

1.61 **“Property”** means that certain real property specifically described in Exhibit “A” attached to this Agreement.

1.62 **“Property Insurance”** means insurance providing coverage for the Sports Park, all of the Sports Park, and all Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of all of the Sports Park and all Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage.

1.63 **“Property Insurance Proceeds”** means net proceeds (after reasonable costs of paid premiums, adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the County or the Operator, excluding proceeds of the Operator’s business interruption insurance in excess of the County’s Revenues.

1.64 **“Remediation”** or **“Remedial Action”** and their derivatives (such as **“Remediate”**) means and includes any investigation, clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of “removal” and “remedial” actions as those terms are defined in applicable Environmental Laws.

1.65 **“Renewal Term”** shall have the meaning ascribed to the term in Section 3.

1.66 **“Retail Facility”** means one or more retail merchandise sales facility to be constructed as part of the Sports Park.

1.67 **“Restoration”** means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration and safeguarding of the damaged or remaining Sports Park, substantially consistent with their condition before the Loss, subject to any changes in Law that would limit any such activities.

1.68 **“Restoration Funds”** means any Loss Proceeds to be applied to Restoration.

1.69 **“Restore”** means accomplish a Restoration.

1.70 **“Scheduled Expiration Date”** has the meaning set forth in Section 3.01.

1.71 **“Sports Park”** means, collectively the facilities constructed or installed by Operator on the Property as described in Section 4.1.2 and any improvements, additions or renovations thereto, all constructed and installed in accordance with the Sports Park Plans and Specifications.

1.72 “**Sports Park Events or Sports Park Event**” shall mean sports events and any and all other sports contests, tournaments, music concerts, corporate sponsored events or other events of any kind which may be scheduled and exhibited at the Sports Park, except for those Public Events scheduled in coordination with the Operator on days or at times when there are no conflicting Sports Park Event or Sports Park Events.

1.73 “**Sports Park Expenses**” means all costs of operating and maintaining the Sports Park pursuant to the terms and conditions of this Agreement, after the Commencement Date.

1.74 “**Sports Park Plans and Specifications**” means the final landscaping plans, grading plans and construction drawings for construction and installation of the Sports Park as prepared by the Operator’s design-build team and approved by the Parties pursuant to Article IV, subject to minor field changes in response to construction or property conditions during construction.

1.75 “**State**” means the State of Wisconsin.

1.76 “**Substantial Casualty**” means a Casualty that: (a) renders 25% or more of the Concession Facility not capable of being used or occupied for more than sixty (60) days; (b) renders, at least, two (2) of the Sports Park baseball fields significantly unusable for more than ninety (90) days; (c) renders 25% or more of the ski hill significantly unusable for more than ninety (90) days; (d) requires Restoration whose cost the County reasonably estimates in writing would exceed One Hundred Thousand Dollars (\$100,000); or (e) pursuant to Law, prevents the Sports Park from being Restored to the same bulk, and for the same use(s), as before the Casualty. Notwithstanding anything to the contrary, anything giving rise to an Environmental Claims, invoking the environmental indemnification obligations under Article XIII, or requiring Remediation, will be deemed a Substantial Casualty.

1.77 “**Substantial Condemnation**” means any Condemnation that (a) takes the entire Sports Park; (b) in the Operator’s reasonable determination renders the remaining Sports Park uneconomic; or (c) occurs less than six (6) months before the end of the Term.

1.78 “**Taxes**” means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), possessory interest taxes, assessments, municipal water and sewer fees, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect to any of the foregoing, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Sports Park, or the sidewalks or streets in front of or adjoining the Sports Park, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Sports Park, or any FF&E, Building Equipment or other facility used in the operation of any of the foregoing, or the fee or income received from the Sports Park, or any use or occupancy of the Sports Park. If at any time during the Term the method of taxation prevailing at the Commencement Date is altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Sports Park and

imposed upon the County, then all such new taxes, assessments, levies, Taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term “Taxes,” to the extent that such amount would be payable, if the Sports Park were the only property of the County subject to such Taxes.

1.79 **“Temporary Condemnation”** means a Condemnation of the temporary right to use or occupy all or any portion of the Sports Park.

1.80 **“Term”** means the Initial Term and, if applicable, the validly exercised Renewal Term.

1.81 **“Transfer”** of any property, right or obligation under this Agreement means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation under this Agreement, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in clause “b” affecting any Equity Interest(s) or any other interest in such property, right or obligation under this Agreement or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “b” through “d,” shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party to this Agreement has received Notice of such occurrence) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State of Wisconsin real estate transfer tax; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (c) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.82 **“Unavoidable Delay”** means delay in performing any obligation under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption (excluding the County’s as a Party to this Agreement), war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency.

1.83 **“Usury Limit”** means the highest rate of interest, if any, that Law allows under the circumstances.

## ARTICLE II

### OPERATION AND MAINTENANCE COVENANT

2. Exclusive License. The County hereby grants to the Operator and the Operator hereby accepts from the County an exclusive license to occupy the Property to use, to operate, to manage and to market the Sports Park, TO HAVE AND TO HOLD, subject to all the terms and conditions herein, throughout the Term for the sole purpose of managing and operating the Sports Park in accordance with the terms and conditions herein.

## ARTICLE III

### TERM

3.1 Term. The term of this Agreement (the “Initial Term”) shall: (a) commence, if at all, on the Commencement Date; and (b) shall continue for a period of fifteen (15) years thereafter (the “Scheduled Expiration Date”), unless terminated sooner as provided under this Agreement.

3.2 Renewal Option. The Operator shall provide the County written notice of intent to renew no later than three (3) months prior to the Scheduled Expiration Date. Upon such Notice, this Agreement may be renewed on the same terms and conditions, for one additional successive period of ten (10) years (the “Renewal Term”) commencing at the expiration of the Initial Term and for such other additional renewal periods thereafter as may be mutually agreed upon by the Parties.

## ARTICLE IV

### SPORTS PARK CONSTRUCTION; EXISTING INFRASTRUCTURE

#### 4.1 Condition of the Property.

4.1.1 The Parties agree that Operator accepts the Property subject to all existing easements or restrictions on the Property and surrounding area, and Operator shall obtain any and all Approvals necessary for the construction of the Sports Park and its use of the Property, including from the Wisconsin Department of Natural Resources (“WDNR”), as contemplated herein. The County does not represent that the Property is suitable to Operator’s proposed use. County is not responsible for any required Approvals, zoning changes, building permits or other required authorizations from regulatory agencies, without limitation; provided, however, County agrees to use reasonable efforts to assist Operator in obtaining any such Approvals, changes, permits or authorization.

4.1.2 Based on the foregoing, the Operator understands that it cannot undertake any construction activities at the Property unless and until the condition of the Property is satisfactory to the County and the WDNR.

#### 4.2 Construction.

4.2.1 This Agreement and the obligations of the County and the Operator

hereunder are contingent upon Operator successfully meeting the Milwaukee County “Due Diligence” requirements (see attached as Exhibit “C”) and upon Operator obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the proposed Sports Park. All costs associated with the construction, maintenance and operation of the Sports Park are the responsibility of Operator.

4.2.2 Prior to the start of any construction activities, including any subsequent alterations, renovations or improvements to the Property, Operator shall submit any, every and all detailed Sports Park Plans and Specifications, and any revisions thereto, to the County, to the Architecture and Engineering Division of the Milwaukee County Department of Administrative Services, and to the WDNR, together with the name of Operator’s proposed contractor(s) for review and approval, which approval shall not be unreasonably delayed or withheld. Operator shall reimburse County for the actual and out-of-pocket cost of a Milwaukee County Project Manager during construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

It is understood by the Parties that the Operator anticipates that its improvements to the Property may proceed in stages with the installation of the fields, fencing, and Concession Facility being financed, submitted for approval, and constructed first; and with the other improvements, to be financed, submitted for approval, and constructed at a later date, dependent on the timing of Operator’s financing. The provisions and requirements of this Article IV and its subparts shall apply with equal force and effect to any later construction.

4.2.3 Conditions for approval specified in Section 4.1.2 shall include, but not be limited to, provision that: (1) Operator shall obtain, prior to commencing any alterations, additions or improvements, all necessary permits and licenses from the appropriate governmental authorities, including the WDNR; and (2) Operator shall commence construction of the Sports Park described in the approved plans and specifications as soon as reasonably practicable following the County’s and the WDNR’s approval and shall complete the applicable construction within a reasonable time thereafter (subject to extension by reason of force majeure). As of the date of this Agreement the Parties agree that, with regard to the phases of construction, such reasonable time for completion is eighteen (18) months after the commencement of construction.

4.2.4 All development and landscaping shall be completed in a manner consistent with standards acceptable to the County and the WDNR. The County and the WDNR shall have the right to inspect the work at reasonable times provided it does not interfere with Operator’s construction and improvements. Any and all alterations, additions and additional improvements shall be made in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Property, including the WDNR. Operator shall also indemnify and hold County harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alternation, addition or improvement to the Property undertaken by or on behalf of Operator. Any structures, alterations, additions or improvements installed on the Property by Operator that are necessary for the continued operation of the Sports Park shall become the property of the County upon the expiration or termination of this Agreement. In no event shall Operator make any alterations or additions to the Property without the prior written

consent of the County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter, provided further that routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed \$25,000 in cost.

4.2.5 Operator or its general contractor shall provide Builders Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Property is ready for occupancy.

4.2.6 Operator agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Operator shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Franklin final occupancy permits, if applicable.

4.2.7 County shall use reasonable efforts to assist Operator in finding funding for the repair or replacement, and maintenance of the road commonly known as Crystal Ridge Drive, and all entrances therefrom into the Sports Park.

4.3 Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for capital repairs of the Property, which shall total FIFTY THOUSAND DOLLARS (\$50,000.00). as additional consideration, Operator agrees to augment the Fund by depositing the interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the Fund falls below \$50,000.00 at any time, Operator shall add to the Fund enough assets to maintain a minimum balance of \$50,000.00. Failure to maintain a balance of \$50,000.00 shall be grounds for termination of this Lease by County, provided Operator fails to cure any such shortage within thirty (30) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

(a) Capital repairs and major maintenance to assure upkeep of the Property and the improvements to be constructed on the Property.

(b) Additional improvements or non-routine maintenance to the Property as may be agreed upon by Lessee and Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

Management of the Fund shall include the establishment of an interest bearing account(s), changing investment strategies, monitoring account activity, and providing joint written approval of all payments from account assets, which approval by County shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall have the right to make withdrawals from the Fund without County's approval, but upon notice to

County, for up to \$10,000 for any item described in clause (a) above, provided that the Fund does not fall below \$50,000 as a result thereof and the aggregate amount so withdrawn from the Fund without County approval in any twelve (12) month period does not exceed \$25,000. Operator shall provide County with quarterly reports relating to Fund activities, including funds received, monies spent, and any long-term obligations, including an annual report prepared by independent auditors.

## **ARTICLE V**

### **SPORTS PARK OPERATION AND MAINTENANCE**

5.1 General. The Operator shall have the right to operate, manage and market the Sports Park subject to the terms and conditions set forth in this Agreement. Such operation and management shall be conducted in a manner that will maximize opportunities to achieve and sustain a profit for each Operating Year from the operations of the Sports Park and the promotion of tourism in the County by attracting, promoting, and contracting for tournaments, outdoor activity and other sport related events and non-sport activities.

5.2 Except to the extent that this Agreement otherwise expressly provides or allows, the Operator shall, during the Term, keep and maintain the Sports Park in good order, condition, and repair, subject to Loss, reasonable wear and tear, and any other condition that this Agreement does not require the Operator to repair or Restore. The Operator shall remove trash, water, mud, sand and debris from the Sports Park.

5.3 Continuous Operation Covenant. The Operator covenants to the County to cause the Sports Park to be continuously operated as weather and Seasons permit throughout the Term.

5.4 General Operational Responsibilities. The Operator shall have the following described general responsibilities regarding operation of the Sports Park, which the Operator shall perform at its sole expense:

5.4.1 enter into and pay any costs associated with arrangements, if any, with concessionaires, vendors licensees, tournament promoters, contractors or other providers of services to or intended users of the Sports Park;

5.4.2 enter into and pay any costs associated with contracts for the furnishing of ongoing utilities and telecommunications services, maintenance, repair and other services to the Sports Park;

5.4.3 incur and pay such expenses as shall be reasonably necessary for the proper operation of the Sports Park, including, without limitation, employee salaries and benefits and applicable taxes and withholdings, and rental expenses for leased FF&E, as necessary;

5.4.4 maintain a level of Operating Inventory as applicable and reasonably appropriate for supplying the needs of the Sports Park and its customers;

5.4.5 apply for, obtain and maintain all licenses and permits required of the Operator in connection with the operation of the Sports Park, including beer and wine licenses and sign permits. The County shall reasonably cooperate with the Operator in the application for, obtaining and maintenance of such licenses and permits; provided that such cooperation by the County is legally permitted and does not result in any direct or indirect cost to the County;

5.4.6 use commercially reasonable efforts to do, or cause to be done, all acts in and about the Sports Park as shall be reasonably necessary to comply with any applicable insurance policies or Law;

5.4.7 pay initial activation charges for utilities and services for the Sports Park, after initial construction of the Sports Park in accordance with the Sports Park Plans and Specifications;

5.4.8 offer a reasonable schedule of recreational sports programming in adult and youth softball, baseball, soccer, lacrosse, mountain biking and such other sports activities as approved by the County, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all of the seasons of the year; and

5.4.9 operate the ski hill as a ski hill.

5.5 Operational Services. Subject to the terms of this Agreement the Operator shall have the responsibility to: (a) determine, establish, and implement the policies, standards, prices and schedules for the operation of the Sports Park and all matters affecting customer relations; (b) hire, train, and supervise all employees; (c) supervise and direct advertising, sales and business promotion; and (d) establish accounting and payroll procedures and functions.

5.6 Personnel. The number of employees working at the Sports Park, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by the Operator, but minimum staffing levels shall be comparable to those at similar recreational sports parks at other similar locations in Wisconsin.

5.7 Specific Operating Procedures. In addition to the more general responsibilities of the Operator for operation of the Sports Park described in 6.01, the Operator shall operate the Sports Park in accordance with the following operating procedures:

5.7.1 Sports Park Operating Hours. The Operator shall operate the Sports Park on days and at hours consistent with similar recreational sports parks at other similar locations in Wisconsin, subject to closure due to inclement weather, Substantial Casualty, Substantial Condemnation or Unavoidable Delay. The hours of operation of the Sports Park shall not allow any game or event to be scheduled to begin later than 9:00 p.m. on any night and all field lighting at the Sports Park shall be turned off and all use of the Sports Park fields and batting cages shall be concluded by 10:30 p.m. every night. The Concession Facility and any other parts of the Sports Park shall close by 2:00 a.m. every night. The County has the authority to adjust

the hours of operation of County parks, including the Sports Park, in the County's sole discretion, and nothing in this Agreement is intended to limit or abrogate such authority.

5.7.2 Fees and Charges. All fees, charges and prices for services at the Sports Park shall be set by the Operator at amounts comparable to those of similar recreational sports parks at other similar locations in Wisconsin. If the County finds that the Operator is setting Fees and Charges at a rate the County determines in its reasonable discretion are excessive, the County and the Operator agree to negotiate in good faith Fees and Charges mutually acceptable to both Parties.

5.7.3 Limitation on Consumption of Alcoholic Beverages in the Sports Park. The Operator shall restrict users of the Sports Park to consuming alcoholic beverages in the Concession Facility, the sidewalks, patios, picnic areas and spectator seating areas within the Sports Park. Alcoholic beverages shall not be allowed to be consumed in any other areas of the Sports Park such as the playing surfaces, dug-outs, or playground areas.

5.7.4 Smoking Areas. The Operator shall designate reasonable smoking areas within the Sports Park, subject to the County's reasonable approval and in compliance with applicable Law.

5.7.5 Sports Park Operating Expenses. The Operator shall, at its sole expense, timely pay and discharges all Sports Park Expenses, in accordance with the provisions of this Section 5.7.

5.8 Noise. The Operator shall not use or permit the use of the Sports Park in any manner that creates or maintains any noise or sound in violation of the County's or any noise ordinance of the City of Franklin and the Village of Greendale, as applicable to the Property or to the Sports Park.

5.9 Nuisance. The Operator shall not itself and shall not allow any other Person to use the Sports Park for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Sports Park that would result in a nuisance or a violation of any Law, as the same may now or hereafter be in force and effect.

5.10 Permits, Licenses, Etc. The Operator shall, for the full Term, at the Operator's cost and expense, maintain all franchises, permits, contractual arrangements, licenses, and registrations required for the Operator to conduct all sales, operations relating to the Sports Park that are contemplated in this Agreement to be undertaken by the Operator. The County shall use reasonable efforts in assisting Operator in maintaining all franchises, permits, contractual arrangements, licenses and registrations.

5.11 Abandonment. The Operator shall not abandon or surrender the operation of all or any part of the Sports Park during the Term, except as otherwise expressly provided in herein.

5.12 Contracts and Agreements. All equipment leases, financing agreements, contracts and agreements relating to the Sports Park (including contracts for utility services, telecommunications services, Maintenance and Repair services, pest control, supplies, landscaping services, and agreements for tournaments, banquets and other group functions), entered into during the Term shall be entered into by the Operator as the contracting party. The Operator shall not have any authority to enter into any equipment lease, financing agreement, contract or agreement that extends beyond the Term of this Agreement, that is not terminable on thirty (30) days or less notice, if the Operator defaults under the terms of this Agreement, or that is secured by all or any part of the Sports Park or the Property. All contracts entered into by the Operator regarding the Sports Park shall automatically expire on the Expiration Date.

5.13 Business Name. During the entire Term, the Operator shall conduct business in the Sports Park under the name “The Rock Sports Complex” (or something similar); provided that the Operator may change the operating name of the Sports Park and the Operator shall notify the County of any such name change.

5.14 Security. The Operator may, at its own discretion, provide such security for the operation of the Sports Park to protect the customers, employees, guests, contractors and other invitees of the Sports Park.

5.15 Signage.

5.15.1 All such signage must be approved by the County and comply with the County Code and any applicable code of the City of Franklin and the Village of Greendale.

5.15.2 All signs on or in the Sports Park will be maintained by the Operator in good condition during the Term.

5.15.3 The Operator agrees to provide the County with prominent acknowledgment signage using the County Parks Logo as integral part of all promotions. The acknowledgment signage must be prominently displayed at the entrance to the Sports Park and in all of Operator’s print, digital, and TV promotions and advertising related to the activities covered by this Agreement.

5.15.4 The Operator will remove all signs containing the Operator’s name or logo installed in or on the Sports Park by the Operator on or before the Expiration Date, except as otherwise agreed between the Operator and the County, and will repair and restore any damage caused by installation or removal of such signs. The Operator shall not cause or allow the display of any advertising of tobacco products or adult entertainment on, in or about the Sports Park.

5.16 Event Programs And Merchandising. The County grants to the Operator the sole and exclusive right to sell, lease, or contract for the sale or lease of event programs, yearbooks, novelties, pendants, hats, clothing, sporting equipment, cameras, film, binoculars, headsets, or any other items, goods, or equipment which the Operator may desire to offer for sale or lease at the Sports Park. The County shall also grant to the Operator or its designee the right to set up

carts, kiosks, and other similar temporary structures for the sale of such items at locations within the Sports Park selected by the Operator in its reasonable discretion, taking into consideration public safety and access. Further, the Operator shall have the right to grant any of the rights held by the Operator under this Section to a single supplier or to enter into multiple agreements with multiple suppliers. The County agrees that the Operator may determine the items of merchandise to be offered for sale or lease in such areas and the prices to be charged for such items of merchandise and shall select any suppliers for such merchandise. The County has the right to offer complimentary materials at the Sports Park during the Sports Park Events solely for the purpose of promoting tourism or economic development within the County.

#### 5.17 Concessions.

5.17.1 Right To Sell. Milwaukee County hereby grants to the Operator the sole and exclusive right to sell or contract others, including without limitation the Operator Affiliates, to sell, all food, beverages, and other concessions within the Sports Park and to operate the Concession Facility and concessions stands. The rights granted to the Operator with regard to concessions pursuant to this Agreement shall also include the right (without limitation) to grant to third party(s) any and all so-called "pouring rights" or similar beverage designations with regard to the use of the Sports Park at all times.

5.17.2 Food And Beverage. Any concessionaire contracted by the Operator shall be entitled to bring a reasonably sufficient number of workers into the Sports Park, free of charge, in order to operate the concessions, pursuant to this Agreement. The Operator shall have the right to determine items of food or beverage offered for sale, the prices to be charged for such items of food or beverage, or the concessionaire or concessionaires selected to provide such food and beverage concessions. The County agrees that the Operator may determine the items of to be offered for sale or lease in such areas and the prices to be charged for such items and shall select any suppliers. Except for Public Events, the County shall have no right to offer any food or beverage items for sale at any Sports Park Events without the consent of the Operator. The Operator shall have the right to determine the location of concession stands for the sale of food and beverage concessions and staging areas for the storage and preparation of food and beverages prior to sale, both within the Sports Park and elsewhere on the Sports Park Property, in its reasonable discretion, subject to considerations for public safety and access.

5.17.3 Access To Facility. The Operator shall establish all policies relating to access to the Sports Park including, but not limited to, entry to Sports Park with consumables, parking rates, and signs and banners subject to applicable Law. The County shall entrust the Operator with keys to the Sports Park, and the Operator shall at no time be denied access to the Sports Park by the County unless the Operator is in default or the Agreement has been terminated as provided herein.

5.18 Parking. The Operator shall manage and control the parking in or on the Property for all Sports Park Events. The Operator or its designee may charge patrons of Sports Park Events a fee in an amount to be determined on an event basis for the right to park within the Sports Park Property. The Operator is further authorized to grant, within its reasonable

commercial discretion, to any promoter of Sports Park Events the right to collect and keep for its own account any and all parking fees.

5.19 Parking Overflow. In the event that the Sports Park does not have adequate parking available during an event, the County may assist the Operator in locating sufficient parking in a nearby location. Under no circumstances, however, shall the County be legally obligated to expend funds or resources to secure or staff additional parking areas outside of the Sports Park Property for Sports Park Events nor shall it be liable for any uses or activities that may occur on or at any such alternative parking locations it may identify for the Sports Park.

5.20 Naming Rights.

(a) General. The County acknowledges that the marketing and sale of naming rights of the field(s) within the Sports Park (as distinguished from naming rights for the Sports Park as a whole or any other non- field structures) is to be an integral component for the Sports Park to achieve its primary objective of positive cash flow. The Operator may receive money or other consideration in exchange for granting to such third party(s) the right to name all or any part of the Sports Park. The County grants to the Operator the right to market and to sell the naming rights for the Sports Park during the Term of this Agreement. The Operator shall have the right to sell the rights to any third party or parties or to any the Operator's Affiliate, and to receive all monies. The County grants the Operator the right to market and to license or assign any other advertising or promotional rights within the Sports Park Property. The provisions of this Section are subject to the County's written approval. No agreements entered into by the Operator with any third party or parties or to any the Operator's Affiliate relating to the Naming Rights specified herein shall extend beyond the Term of this Agreement.

(b) Effect Of Grant. Upon the grant of the Naming Rights to any third party or parties and the determination of a name or names for the Sports Park or for any other part of the Sports Park Parcel, the County agrees that it shall recognize such name(s) and shall use such name(s) in all correspondence and promotional activity of the County with regard to the Sports Park or the Sports Park Property. Further, the County agrees that upon the determination of a name(s) for the Sports Park and for any other part of the Sports Park Property as a result of the sale or exercise of the Naming Rights, the County shall use such descriptive name(s) on street signs, maps, promotional materials, and other similar items, to the extent that a descriptive name shall be necessary or appropriate, provided, however, that this provision shall apply only to street signs, maps, promotional materials and other similar items which are erected or produced subsequent to the determination of the descriptive name or names for the Sports Park and the Sports Park Property and shall not require the County to incur any costs with regard to modifying or replacing existing signs, maps, promotional materials, or similar items.

5.21 Premises Advertising.

(a) Grant Of Rights. As part of the rights granted to the Operator under this Agreement, the County hereby also grants to the Operator the right to undertake any and all advertising or marketing of any kind on the Property including but not limited to any advertisements or marketing distributed through the signage and any related media, whether

printed, transmitted on a video screen or message board transmitted verbally, or otherwise, whether presently available or made available in the future, for Sports Park Events, and at all other times during the Term hereof, and to contract with third parties and grant to such third parties the right to exercise such advertising rights for Sports Park Events, and at all other times during the Term hereof. The Operator agrees to allow for placement of signage within the Sports Park or Sports Park Parcel agreeable to the County identifying the name of the County and contact information or other material for the County's use in tourism development.

(b) Quality And Control. The Operator agrees that all advertising of Sports Park Events and related activities shall be accurate, straightforward, and in good taste. The Operator shall have responsibility for and control over the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Sports Park(except for County promotional material).

5.22 County Organized Sports League Events. The County shall have the right to use the Sports Park for County Organized Sports League Events that are scheduled with the prior approval of the Operator, in the Operator's reasonable discretion (each of which shall be considered a "County Organized Sports League Event"), but no less than one calendar day Monday through Thursday per week. The Sports Park shall be available to the County for County Organized Sports League Events free of any facility rental or admission charge, except the County reserves the right to collect and keep for its own account any and all league/rental fees.

5.23 Outreach. To provide increased baseball and softball programming in under-served areas of Milwaukee County, the Operator agrees to commit not less than TWENTY THOUSAND DOLLARS (\$20,000.00) in funding annually (the "Outreach Funding") to develop and implement programming and scholarships for low income minority and low income children who reside in Milwaukee County. Eligibility shall be based on the criteria set forth for Milwaukee Public Schools low-income school lunch program, and may include a sliding-scale basis for determining the amount of the scholarships. The Outreach Funding is to subsidize the cost of participation in local little leagues for low-income children.

5.24 Control And Supervision. The Operator shall have the sole responsibility for, and sole right of control and supervision of its employees and the methods, details and all other aspects of its operation of the Sports Park pursuant to this Agreement, subject, however, to any provision to the contrary in this Agreement and to the following additional terms and conditions:

(a) Control. The Operator shall have the right to eject or cause to be ejected from the Sports Park any person whose conduct is unlawful or otherwise objectionable. In addition, the County and the Operator shall each have the right to make announcements at any time during Park Events and activities in the interest of public safety, proper operation of the Sports Park, crowd control and compliance with applicable laws, ordinances, regulations and rules.

(b) No Waste. The Operator shall not allow any waste, nuisance or ultra-hazardous activities at the Sports Park, or engage in, or permit others to engage in, any activity which may cause physical damage to the Sports Park or discredit Milwaukee County.

(c) Periodic Meetings And Communications. The Operator shall meet with the County at such reasonable times and places as may be mutually agreed for the purpose of presenting any issues or resolving problems related to the Sports Park.

(d) Schedule Of Park Events. The Operator shall provide the County, on a quarterly basis, with an updated twelve (12) month schedule of upcoming Park Events for the Sports Park, including but not limited to twelve tentative dates for future events in negotiation.

5.25 Disadvantaged Business Enterprise (DBE) Utilization. Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise (DBE) participation goals, consistent with Milwaukee County DBE goals of 25% for construction and 17% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist the Operator in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Operator's contact regarding DBE participation is Freida Webb, Director, CBDP, at 414-257-5248 or freida.webb@milwcnty.com. Operator will provide an annual DBE report to the CBDP office during the year(s) of construction.

5.26 Non-Discrimination. There shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the sale, agreement, transfer or use of the Sports Park, and the Operator (or any Person claiming under or through the Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Sports Park or the Property.

5.27 Form of Non-discrimination and Non-segregation Clauses. The Operator covenants and agrees for itself, its successors, its assigns, that the Operator, such successors and such assigns shall refrain from restricting the use of all or any part of the Sports Park or the Property on the basis of gender, race, color, religion, creed, ancestry or national origin of any Person. All agreements or contracts pertaining to the Sports Park or the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.27.1 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, gender, national origin, or ancestry, in the sale, agreement, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or agreement, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

## ARTICLE VI

### **OPERATOR FISCAL RESPONSIBILITIES; COMPENSATION; SPORTS PARK REVENUE ALLOCATIONS**

6.1 Capital Improvement Plan. Beginning with the Operating Year following the completion of each construction phase, subject to upgrades and improvements, the Operator agrees to prepare a three (3) year capital improvement plan for approval by the County, which will be contingent upon a capital improvement commitment from the City of Franklin.

6.2 Fixed County Revenue. Within the first month of each Operating Year, Commencing on the first day of the last month of Operating Year 1, the Operator shall pay to the County, without Notice, the Fixed County Revenue agreed to within this Agreement.

6.3 Contingent County Revenue. The Contingent County Revenue shall be paid annually, without Notice, within one hundred twenty (120) calendar days following the end of each Operating Year, with the first payment of Contingent County Revenue occurring during Operating Year 2, based on the Sports Park net income from the immediately preceding Operating Year.

6.4 County Revenue Payment. The Operator shall pay all County Revenues payable to the County in lawful money of the United States, by good and sufficient check payable to the County or in immediately available funds, at such address as the County shall designate, from time to time. Checks shall constitute payment only when collected.

## ARTICLE VII

### **SPORTS PARK EXPENSES**

7.1 Operator to Pay All Sports Park Expenses. In addition to the County Revenue, the Operator shall pay all Sports Park Expenses, regardless of the amount of Sports Park revenues or whether or not there are any Sports Park revenues at all.

7.2 Pre-Opening Expenses and Operating Losses. The Operator acknowledges that it will be responsible for the initial capitalization of the Operator's business operations at the Sports Park and will be responsible for start-up expenses in connection with such business operations, including, without limitation, hiring and training of employees, acquisition of inventory and pre-opening marketing expenses, without any reimbursement or contribution from the County. The Operator further acknowledges and agrees that it will be solely responsible for operating losses or deficits arising in its operation of the Sports Park and that any such losses or deficits shall not abate any obligations of the Operator under this Agreement.

7.3 Taxes. Due to the fact that the Sports Park Property is owned by the County, a political subdivision of the State of Wisconsin and as such are exempt from property taxes and that the use of the Property as a Sports Park is for the public purpose of promoting and enhancing

tourism and business development within the County, the County and Operator intend that no ad valorem taxation will apply to the Sports Park or use thereof in accordance with this Agreement by the Operator. In the event that the Sports Park or the Operator is held to be subject to ad valorem, real property, intangible or other taxes or for any other reason arising in connection with Operator's operation or interest in the Sports Park, the Operator will be legally obligated for such taxes.

The Operator shall pay and discharge all other Taxes payable or accruing for all period(s) within the Term. The Operator shall also pay all interest and penalties any Government assesses for late payment of any Taxes. The Operator shall, within a reasonable time after Notice from the County, give the County reasonable proof that the Operator has paid any Taxes that this Agreement requires the Operator to pay.

7.4 Assessments in Installments. To the extent Law allows, the Operator may apply to have any assessment payable in installments. Upon approval of such application, the Operator shall pay and discharge only such installments as are attributable to the Term.

7.5 Direct Payment by the County. If any Sports Park Expenses must be paid directly by the County, then: (a) the County appoints the Operator as the County's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from the Operator, then the Operator shall Notify the County and shall pay such amount to the County in a timely manner with reasonable instructions on remittance of such payment. In such event, the County shall with reasonable promptness comply with the Operator's reasonable instructions.

7.6 Utilities. The Operator shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, cable or satellite television and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Sports Park during the Term of this Agreement.

## ARTICLE VIII

### RECORDS, REPORTS AND AUDITS

8.1 Sales Recording and Records. The Operator shall keep:

8.1.1 full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits and withdrawals of Sports Park revenues; and

8.1.2 detailed original records of any Sports Park revenues Exclusions.

8.2 Annual Income Statements.

8.2.1 Annual Net Income Statement. Within ninety (90) calendar days after the end of each Operating Year, including the Operating Year ending in the month in which the Term ends, the Operator shall furnish the County with an Annual Net Income Statement for the just concluded Operating Year.

8.2.2 Accounting And Bookkeeping. The Operator agrees to maintain separate accounting and bookkeeping records for the operations of the Sports Park pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. The Operator shall, at reasonable times and upon request, permit the County's auditors to inspect, examine and copy any and all of the Operator's books, papers, reports, correspondence, sales tax returns, federal and state tax returns memoranda, cash register records and other records of the Operator which are pertinent to this Agreement for purposes of verifying the Sports Park revenues for any given Operating Year.

8.3 Audit and Examination Rights.

8.3.1 Audit Procedures.

(a) Annual Audit. Pursuant to Milwaukee County Ordinance section 56.30(6)(e), Operator and its Affiliates shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Operator or its Affiliates, including handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Operator in performing the duties described under this Agreement shall subject the subcontractor or its associates to the same audit terms and conditions as Operator. The County shall preserve the confidentiality of such information to the extent permitted by Wisconsin law, as determined by County's Corporation Counsel. If any Net Income Statement for any Operating Year is found to be less than the amount of the Operator's actual Net Income for such Operating Year, the Operator shall immediately pay to the County any earned but unpaid amounts of County Revenues due to the County.

8.4 Retention of Books and Records. The Operator and its Affiliates shall, for a period of five (5) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Sports Park pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, the Operator shall furnish copies of the Operator's State and local sales and use tax returns and federal and state income tax return.

**ARTICLE IX**

**COMPLIANCE**

9.1 Generally. The Operator shall during the Term, at the Operator's sole expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

9.2 Copies of Notices. The County shall promptly give the Operator a copy of any notice of any kind regarding the Sports Park or any Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that the County receives from any Government, utility company, insurance carrier or insurance rating bureau.

## **ARTICLE X**

### **NO ALTERATIONS TO SPORTS PARK**

10.1 The Operator shall have the right to alter the facility as needed to allow for success of the facility, subject to the provisions contained in Article IV.

10.2 Alterations, Renovations And Additions. Operator shall not, without the advance written approval of the County, remove from the Sports Park, or permit the removal of, any equipment, furnishings and other property of the County. If at any time the County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of the County, the Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property.

## **ARTICLE XI**

### **HAZARDOUS SUBSTANCES**

11. Restrictions. The Operator shall not during the Term: (a) knowingly allow any violation of any Environmental Law at the Sports Park, (b) knowingly permit the introduction, onto the Property of any Hazardous Substance.

## **ARTICLE XII**

### **COUNTY'S SPECIAL RIGHTS**

12.1 County's Right to Utilize the Sports Park During Local State of Emergency. In those situation where a local state of emergency has been declared by the County pursuant to its authority under Wisconsin law or County code, or is continuing to exist within the County, the County shall have the right to exercise sole control over the Sports Park Property and to implement such emergency measures and to make such use of the Sports Park Property as it deems necessary for the health, safety and welfare of the residents of the County. the County, in taking such action, will attempt at all times to minimize any damage to the Sports Park and will repair or provide funds for the Operator to effect repairs for any Capital Repairs that may be required as a result of such emergency use(s).

12.2 County's Access to the Sports Park.

(a) Notwithstanding anything to the contrary in this Agreement, the County, its agents, representatives or designees may enter the Sports Park to: (a) ascertain whether the Operator is complying with this Agreement; (b) cure the Operator's Defaults; (c) inspect the Sports Park; (d) perform such tests, borings, and other analyses as the County determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) operate, maintain, test, and repair the County's gas control system and monitoring wells. In entering the Sports Park, the County and its designees shall not unreasonably interfere with operation of the Sports Park. The County shall Indemnify the Operator against any claims arising from the County's related to the entry upon the Sports Park from the County's negligence, except to the extent arising from the willful misconduct or negligence of the Operator Parties or upon termination of this Agreement or the occurrence of an Event of Default.

(b) Operator understands and acknowledges that the Property is a former County landfill. Should the County need to access the Property for the purposes described in this Section, the County shall notify the Operator and schedule its repairs in coordination with the Operator in an attempt to minimize the County's impacts to Sports Park Events while achieving the primary goals of protecting the health, general welfare, and safety of the public and placing the gas control system back into operation.

### **ARTICLE XIII**

#### **INDEMNIFICATION; LIMIT ON LIABILITY OF COUNTY**

13.1 General Indemnification. The County and the Operator shall each Indemnify the other and their respective shareholders, elected officials, officers, directors, partners, employees, attorneys and other agents against any claims, actions or suit arising from: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their shareholders, directors, officers, elected officials, partners, attorneys, agents or employees which may arise out of or are connected with the activities covered by this Agreement; (b) breach or default by the Indemnitor under this Agreement; or (c) breach of any representation or warranty the Indemnitor makes in this Agreement. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence. Milwaukee County's liability shall be limited by Wis. Stat. §§ 345.05(3) for automobile and 893.80(3) for general liability.

13.2 Operator is solely responsible for conducting its own geotechnical investigation to determine soil bearing capacity and for all site development expenses. In the event that Operator reasonably determines as a result of its own investigation that Hazardous Substances exist or may possibly exist in or on the Property, Operator shall have the right, at its sole option, by written notice to County, to terminate this Agreement. Operator may keep the results of its investigations confidential, unless otherwise required by law or court order. In no event shall the discovery or disturbance of any Hazardous Substances by Operator preclude the Operator from performing its remediation responsibilities as contained in this Section.

13.3 Environmental Indemnification. Operator shall to the fullest extent provided for under any Environmental Laws be responsible for any repair, cleanup, Remediation or detoxification arising out of: (1) any Hazardous Substance brought onto or introduced into the Property or surrounding area by Operator, its agents or guests, or (2) any Hazardous Substance whose presence pre-exists the Effective Date of this Agreement, located in or on the Property, that are discovered or disturbed as result of Operator's construction activities on, at or near the Property. Operator shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Prior to the Commencement Date, Phase 1 or other environmental reports and geotechnical reports may be obtained at Operator's expense to help determine anticipated remediation requirements and expenses, as well as for identifying structural issues on, in and under the site, or to provide recommendations or suggestions for further review.

13.4 Limitation on Liability. During the Term: (a) the Operator is and shall be responsible for operation of the Sports Park; and (b) the County shall not be liable for any injury or damage to any property (of the Operator or any other Person) or to any Person occurring on or about the Sports Park, except to the extent caused by the County's intentional or negligent act or omission. Provisions of this Agreement regarding the County's ownership of or access to the Sports Park shall not impose upon the County any liability to third Persons.

13.5 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees. The indemnification obligations of an Indemnitor shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an Indemnitee was proximately caused by the negligence or willful misconduct of that Indemnitee.

13.6 Independent of Insurance Obligations. The Operator's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Operator's insurance or other obligations under this Agreement and is independent of the Operator's insurance and other obligations under this Agreement. The Operator's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Operator's indemnification obligations under this Agreement and are independent of the Operator's indemnification and other obligations under this Agreement.

13.7 Survival of Indemnification and Defense Obligations. The indemnification and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statutes of limitations.

13.8 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies

immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Agreement.

13.9 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

13.9.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice and such failure materially prejudices the Indemnitor in providing indemnity for a particular claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

13.9.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

13.9.3 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle the claim. The Indemnitee's consent shall not be required for any settlement by which: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Agreement is not jeopardized in any way; and (d) the Indemnitee's interest in the Sports Park is not jeopardized in any way.

13.9.4 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

## **ARTICLE XIV**

### **INSURANCE**

14.1 Operator to Insure. The Operator shall, at its sole expense, during the Term, maintain the insurance specified in this Article.

14.2 Nature of Insurance Program. All Property Insurance and Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VIII"; and (b) are admitted to do business in

the State of Wisconsin by the State Department of Insurance. **The Operator may provide any Property Insurance or Liability Insurance coverage under a “blanket” or “umbrella” insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Sports Park, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.**

14.3 Policy Requirements and Endorsements. Operator agrees to evidence and maintain or cause its contractors to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws or vicarious liability arising from employees at least to the minimum limits established now and in the future by Milwaukee County's Risk Manager. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u><b>Type of Coverage</b></u>	<u><b>Minimum Limits</b></u>
Wisconsin Workers' Compensation Or Proof of All State Coverage	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000
Commercial General Liability	
Bodily Injury & Property Damage (Incl. Personal Injury, Fire, Legal Contractual and Products/Completed Operations)	\$1,000,000 Per Occurrence \$5,000,000 Aggregate
Professional Liability (Errors and Omissions) (required for Constructions Managers, Architects, Engineers and Designers)	\$1,000,000 Per Occurrence or Claim
Liquor Liability	\$1,000,000 Per Occurrence
Environmental Impairment Insurance	\$1,000,000 Aggregate
Automobile Liability	
Bodily Injury & Property Damage All Autos-Owned, non-owned or hired Uninsured Motorists	\$1,000,000 Per Accident  Per Wisconsin Requirements

Milwaukee County shall be named as an additional insured for General Liability and Automobile Liability; in the event there is a General Contractor, then the Operator and Milwaukee County shall be named as additional Insureds. A waiver of subrogation for Workers

Compensation by endorsement in favor of Milwaukee County shall be provided. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by Milwaukee County.

14.4 No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

## **ARTICLE XV**

### **LOSSES AND LOSS PROCEEDS**

15.1 Notice. If either Party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such Party shall promptly Notify the other.

15.2 Effect of Casualty. If any Casualty occurs, then: (a) the Operator's obligation to make any payments under this Agreement shall not abate; (b) this Agreement shall not terminate or be impaired; and (c) the Operator shall Restore with reasonable promptness regardless of cost. If, however, the Casualty is a Substantial Casualty, then the Operator may, by Notice to the County, given within thirty (30) days after the occurrence of the Casualty, (i) invoke the indemnity procedures outlined in Article XIII, or (ii) terminate this Agreement effective ninety (90) days after such Notice, provided that the Operator assigns to the County all of the Operator's right, title and interest in and to any Property Insurance Proceeds (and rights thereto) arising from the Casualty.

15.3 Substantial Condemnation. If a Substantial Condemnation occurs, then this Agreement (except as it relates to allocation of the Condemnation Award and other matters surviving termination of this Agreement) shall terminate on the Condemnation Effective Date. The Condemnation Award shall be the sole and exclusive property of the County, except the portion of any such award applicable to the Operator's FF&E or other personal property, if any.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to the County to be applied first for Restoration in the same manner as Property Insurance Proceeds. The Operator shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

15.5 Temporary Condemnation. If a Temporary Condemnation relates to a period longer than ninety (90) days and more than twenty five percent (25%) of the Sports Park, then the Operator may, by Notice within sixty (60) days after notice of such Temporary Condemnation, terminate this Agreement effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if the Operator does not terminate this Agreement, then the Operator shall receive any Condemnation Award (to the extent

compensating for periods within the Term) for use for Restoration, without affecting the Operator's obligations under this Agreement in any way.

15.6 Immaterial Loss. If an Immaterial Loss occurs, then the Operator shall receive any Condemnation Award in trust to be applied first to Restoration. The Operator shall Restore in accordance with this Agreement. After Restoration, the County shall receive any remaining Condemnation Award as its sole and exclusive property.

15.7 Voluntary Conveyance Under Threat of Condemnation. A voluntary conveyance by the County of title to all or a part of the Property or the Sports Park to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take such property by eminent domain proceedings shall be considered a Condemnation of the subject part of the Property or the Sports Park, for the purposes of this Agreement.

15.8 Rights and Obligations Governed by Agreement. If during the Term there is any taking of all or any part of the Sports Park or any interest in this Agreement by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section.

## ARTICLE XVI

### REPRESENTATIONS AND WARRANTIES

16.1 No Litigation. Operator represents and warrants to that there is no existing or, to the Operator's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Operator, any holder of an Equity Interest in the Operator or any Affiliate that would, if adversely determined, materially adversely affect the Operator, this Agreement or the Operator's ability to perform its obligations under this Agreement.

16.2 Litigation; Environmental Claims. County represents and warrants to that there is no existing or, to the County's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the County, that would, if adversely determined, materially adversely affect the County, this Agreement or the County's ability to perform its obligations under this Agreement.

## ARTICLE XVII

### COUNTY TRANSFERS

17.1 County's Right to Convey. The County may Transfer the Fee Estate from time to time, but only if the County promptly Notifies the Operator of such Transfer. Notwithstanding the forgoing, in the event the County decides to sell the Property and the County receives an offer to purchase acceptable to the County, during the Term of the Agreement, the County, prior to acceptance thereof, shall give the Operator, with respect to such offer, written notice thereof and a copy of said offer; and Operator shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Property on the terms of said offer. If Operator shall elect to purchase the Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period.

Operator's failure to exercise its option under this paragraph shall not affect this Agreement and the continuance of Operator's rights under this and any other paragraph contained herein.

17.2 Release of the County. Upon any Transfer of the entire Fee Estate in compliance with this Agreement, provided such Transfer does not adversely affect the Operator's rights under this Agreement, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by the County after the Transfer, provided that the successor to the County assumes the County's future obligations under this Agreement. This Agreement shall bind the County only while the County owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

## **ARTICLE XVIII**

### **OPERATOR TRANSFERS**

18. The Operator's Limited Right. The Operator may Transfer this Agreement to any Affiliate. The Operator may Transfer this Agreement to a non-Affiliate with the County's prior written consent, which may be given or withheld in the County's sole and absolute discretion, prior to the effective date of any such Transfer. Any permitted transferee, franchisee or assignee of the Operator shall assume all obligations and liabilities of the Operator under this Agreement in a writing reasonably satisfactory to the County, prior to the effective date of any such Transfer. The Operator shall pay all transfer and other taxes payable on account of any Transfer by the Operator or any holder of any Equity Interest in the Operator. The Operator shall promptly Notify the County at least ninety (90) days in advance of the effective date of any proposed Transfer by the Operator. After the Operator assigns this Agreement and the assignee, franchisee or transferee assumes the Operator's obligations under this Agreement, in accordance with this Agreement, the assignor shall have no obligation or liability under this Agreement, except: (a) any obligation to hold and apply Restoration Funds held by the assignor at the date of the assignment (unless transferred to the assignee); and (b) any unperformed obligations that arose before the assignment (unless assumed in writing, in recordable form, by the assignee). If the Operator assigns this Agreement, then as between the County and the Operator, the Operator shall be deemed to have assigned to the assignee, franchisee or transferee all claims against the County then existing, and the assignee, franchisee or transferee shall be deemed, by assuming this Agreement, to have assumed all liabilities and obligations of the Operator then existing or thereafter arising under this Agreement (except as this Agreement otherwise expressly states).

## **ARTICLE XIX**

### **EVENTS OF DEFAULT; REMEDIES**

19.1 Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

19.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from the County, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 Bankruptcy or Insolvency. If the Operator ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Operator's assets or the Operator's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

19.1.3 Non-Monetary Default. If any Non-Monetary Default occurs and the Operator does not cure such Non-Monetary Default within sixty (60) days after Notice from the County describing the Default in reasonable detail.

19.2 Remedies. If an Event of Default occurs, then the County shall, at the County's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at Law or in equity or under any other terms of this Agreement. The County's remedies shall include:

19.2.1 Termination of the Operator's Rights. The County may terminate this Agreement by written Notice of termination of this Agreement to the Operator or by any other lawful means, in which case this Agreement and the Term shall terminate, such Termination Date shall be considered the Expiration Date of the Agreement, and the Operator shall immediately vacate the Sports Park. Additionally, the County may bring an action to recover any or all of the following from the Operator:

- (a) any unpaid County Revenues earned as of the Expiration Date; and
- (b) any other amount necessary to compensate the County for all detriment proximately caused by the Operator's failure to perform the Operator's obligations under this Agreement.

19.2.2 Suits Before Expiration Date. The County may sue the Operator for damages or to recover County Revenues, from time to time, at the County's election, without terminating this Agreement.

19.2.3 Receipt of Moneys. No receipt of money by the County from the Operator after the Expiration Date, or after the giving of any Notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice previously given to the Operator, or waive the County's right to enforce payment of any amount payable or later falling due, or the County's right to enter the Sports Park, except as this Agreement expressly states otherwise, it being agreed that after service of Notice of termination of this Agreement or the commencement of suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected

being deemed payments on account of use of the Sports Park or, at the County's election, on account of the Operator's liability to the County.

19.2.4 No Waiver. No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial County Revenues during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the Operator, and no Default, shall be Modified, except by a written instrument executed by the County. No waiver of any Default shall Modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

19.2.5 Injunction of Breaches. Whether or not an Event of Default has occurred, the County may obtain a court order enjoining the Operator from continuing any Default or from committing any threatened Default. The Operator specifically and expressly acknowledges that damages would not constitute an adequate remedy to the County for any Non-Monetary Default.

19.2.6 Continue Agreement. The County may, at the County's sole option, allow the Operator to continue operating the Sports Park after an Event of Default. In that case, this Agreement shall continue and the County may continue to enforce it, including the right to collect County Revenues when due and exercise any remedies for nonpayment.

19.2.7 Restoration Funds. Upon any termination of this Agreement, to the extent that the County then holds any Restoration Funds, they shall be the sole property of the County and may be applied solely as the County directs.

19.3 Accord and Satisfaction; Partial Payments. No payment by the Operator or receipt by the County of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by the Operator. Any endorsement or statement on any check or letter accompanying any check or payment of County Revenues or any other amount shall not be deemed an accord or satisfaction. The County may accept any such check or payment without prejudice to the County's right to recover the balance of such County Revenues or other payment or pursue any other remedy.

19.4 Survival. No expiration or termination of this Agreement and no entry into or onto the Sports Park by the County after such expiration or termination shall relieve the Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

## ARTICLE XX

### DISPUTE RESOLUTION

20.1 Mediation. As a condition precedent to filing any action in law or equity on any claim against the County that may be arise out of this Agreement or the subject thereof, the

Operator agrees to provide advance notice to the County of its intent to file a lawsuit or other action against the County. Each of the other parties further agrees to submit the dispute in good faith to non-binding mediation before a single mediator, pending completion of which any lawsuit or other action that may have been filed by or on behalf of, either Party shall be tolled. The costs for such mediation shall be equally split between the Parties.

(a) Venue for Mediation. The mediation shall be conducted within Milwaukee County at a venue agreed to by both parties.

(b) Selection of Mediator. The mediator shall be selected from the official list of certified mediators and shall possess a minimum of ten (10) years experience in handling commercial transactions and litigation.

(c) Rules and Administration. Unless otherwise contrary to this Agreement, to any subsequent written expression of mutual intent executed by the parties, or to any provision of the law, the mediation shall be administered by the rules of the American Arbitration Association.

## ARTICLE XXI

### **END OF TERM; OPERATOR CONDITIONS**

21.1 Upon any Expiration or Termination Date: (a) the Operator shall vacate the Sports Park (including removal of all of the Operator's personnel and property), in the condition this Agreement requires, subject to any Loss that this Agreement does not require the Operator to Restore; (b) the Operator shall deliver title to the Sports Park including all permanent alternations, modifications, additions and improvements to the Property necessary and appropriate for the continued operation of the Property, free and clear of all claims, except claims that the County or any of its agents caused; (c) the Operator shall remit to the County all remaining amounts in the Endowment Fund; (d) the Operator shall assign to the County, without recourse, and give the County copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Sports Park; (e) the Parties shall cooperate to achieve an orderly transition of operation of the Sports Park from the Operator to the County or a designee of the County, without interruption, including delivery of such books and records (or copies thereof) as the County reasonably requires; and (f) the Parties shall adjust for all other expenses and income of the Sports Park and any prepaid County Revenues and shall make such payments as shall be appropriate on account of such adjustment (but any sums otherwise payable to the Operator shall first be applied to cure any Default). Notwithstanding anything to the contrary in this Section, the Operator may remove from the Sports Park any Operator FF&E, but the Operator must do so, if at all, before the Expiration Date. The Operator shall repair any material damage from any such removal of Operator FF&E. Should the Operator fail to make such repairs, the County reserves the right to perform the work involved and to seek compensation as otherwise provided herein. Any Operator FF&E not removed before the Expiration Date or Termination Date shall be deemed the sole and exclusive property of the County. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third Person (excepting permitted successors or assigns of the Operator or the County pursuant to the terms of this Agreement) any right to claim damages or to bring any suit, action

or other proceeding against either the County or the Operator because of any breach of this Agreement or to enforce any term, covenant, condition, restriction, reservation, provision or agreement contained in this Agreement.

21.2 Operator Conditions. This Agreement is conditioned on the obtainment of all Approvals required to operate the Sports Park, Concession Facility and all related activities described in this Agreement within a reasonable time after the final approval of the County as set forth in Section 22.19. County agrees to use reasonable efforts to assist Operator in obtaining all such Approvals.

## ARTICLE XXII

### MISCELLANEOUS

22.1 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Agreement.

22.2 No Waiver by Silence. Failure of either Party to complain of any act or omission on the part of the other Party shall not be deemed a waiver by the noncomplaining Party of any of its rights under this Agreement. No waiver by either Party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

22.3 Performance Under Protest. If a dispute arises about performance of any obligation under this Agreement, the Party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to determine the Parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with Default Interest.

22.4 Survival. All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

22.5 Unavoidable Delay. Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

22.6 Recitals. The recitals are incorporated herein as true and correct and made part of this Agreement.

22.7 Captions. The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

22.8 Counterparts. This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

22.9 Delivery of Drafts. Neither Party shall be bound by this Agreement unless and until the authorized representative(s) and such Party has/have executed, at least, one counterpart original of this Agreement and delivered such executed counterpart original to the other Party. The submission of draft(s) or comment(s) on drafts shall not bind either Party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Agreement. Submission of this Agreement document for examination or signature by the Parties does not constitute an option or offer regarding the Property on the terms in this document or a reservation of the Property in favor of the Operator. This document shall not be binding on either Party, unless and until all of the conditions of this Section are satisfied.

22.10 Entire Agreement. This Agreement contains all of the terms, covenants, conditions and agreements between the Parties regarding the Sports Park. The Parties have no other understandings or agreements, oral or written, about the Sports Park.

22.11 Modification. Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both the County and the Operator to be binding on either Party.

22.12 Governing Law and Venue. This Agreement, its interpretation and performance, the relationship between the Parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Wisconsin, without regard to principles of conflicts of laws.

22.13 Partial Invalidity/Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

22.14 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of the following terms shall be interpreted as if followed by the words “(or any part of it),”

22.15 Reasonableness. Wherever this Agreement states that a Party’s approval shall be “reasonable” or not unreasonably withheld: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

22.16 Time of Essence. Time is of the essence with respect to the performance of each term, provision, covenant or agreement contained in this Agreement.

22.17 Independent Contractor/Disclaimer of Partnership. The relationship of the Parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that the County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with the Operator in the conduct of the Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between the County and the Operator.

22.18 Condition; Final Approval. This Agreement is expressly conditioned upon and subject to the approval of the Milwaukee County Board of Supervisors and shall not be or become effective or binding on either the County or the Operator, unless and until formally approved by the Milwaukee County Board of Supervisors and fully executed by the authorized representative(s) of each Party.

22.19 No Third Party Beneficiaries. This Agreement shall bind and benefit the County and the Operator and their successors and assigns. Nothing in this Agreement is intended to confer on any Person (except the County and the Operator or the Operator's approved successor or assign) any right to insist upon, or to enforce against the County or the Operator, the performance or observance by either Party of its rights or obligations under this Agreement.

22.20 Notices. All Notices shall be in writing and addressed to the County or the Operator (and their designated copy recipients) as set forth in Exhibit "B". Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth in Exhibit "B", in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either Party may change its address for delivery of Notices by written Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any Party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of their client.

22.21 Nor Brokers. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of such representation.

22.22 Attachments. The following attachments are intended to be incorporated into and made part of this Agreement:

- Exhibit "A" = Property Legal Description
- Exhibit "B" = Notice Addresses
- Exhibit "C" = Milwaukee County Due Diligence Requirements
- Exhibit "D" = Sports Park Pro Forma

**SIGNATURE PAGE  
TO  
SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT**

IN WITNESS WHEREOF, the County and the Operator have executed this Agreement as of the Effective Date.

**COUNTY: DEPARTMENT OF PARKS,  
RECREATION AND CULTURE**

**OPERATOR: THE ROCK SPORTS  
COMPLEX, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Corporation Counsel

Reviewed by: \_\_\_\_\_  
Risk Management

**EXHIBIT "A"**

**PROPERTY LEGAL DESCRIPTION**

**EXHIBIT "B"**

**NOTICE ADDRESSES**

<b>Party:</b>	<b>Notice Address:</b>	<b>With a copy to:</b>
County	Department of Parks, Recreation and Culture Attn: Sue Black 9480 Watertown Plank Road Wauwatosa, WI 53226	
Operator	The Rock Sports Complex, LLC Attn: Mike Zimmerman 4600 W. Loomis Road, Suite 310 Milwaukee, Wisconsin 53220	

## EXHIBIT “C”

### MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE  
MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

#### Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

**EXHIBIT "D"**

**SPORTS PARK PRO FORMA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

(ITEM NO. ) From the Director, Department of Parks, Recreation and Culture, seeking authorization to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC for that portion of the Root River Parkway (South), commonly known as Crystal Ridge, to allow for the construction, maintenance, operation and management of athletic fields and related amenities, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, The Rock Sports Complex, LLC ("RSC") has approached the Department of Parks, Recreation and Culture ("DPRC") with a proposal to develop at no cost to the County athletic fields and related amenities at a site along the Root River Parkway (South), commonly known as Crystal Ridge (the "Property"); and

WHEREAS, the Property is made up of a former County dump site and an adjacent piece of the County park land at the intersection of South 76<sup>th</sup> Street and Loomis Road; and

WHEREAS, the dump sites at and adjacent to the Property have been capped to the satisfaction of the Wisconsin Department of Natural Resources ("WDNR"); however, because of potential methane gas migration and differential settling within the waste, DPRC's ability to develop these properties for anything other than outdoor recreational activities is severely restricted; and

WHEREAS, in 1983 DPRC entered into a lease agreement with the Midwest Development Corporation ("MDC") permitting MDC to build a down-hill ski facility on the park land; and, on the adjacent capped dump site, MDC was permitted to build support facilities, including a parking lot, storage building, ski chalet and restaurant; and

WHEREAS, the eastern and western areas of the Property have been basically unused; and

WHEREAS, the MDC lease expired in 2008; and

WHEREAS, since that time, the ski hill has continued to be operated by MDC on a year-to-year basis as DPRC has explored both the sale and development of the Property; however, because of the environmental liabilities and use restrictions, no buyers or financially able developers have come forward, until now; and

45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88

WHEREAS, in 2012 RSC approached DPRC with its proposal to develop at no cost to the County athletic fields and related amenities at the Property, requiring an agreement between DPRC and RSC to allow RSC to construct and manage its improvements on the Property; and

WHEREAS, all of the constructions costs, maintenance costs, and operating and management expenses are the responsibility of RSC; and

WHEREAS, the terms of the agreement provide that no construction activities can take place at the Property unless and until, (1) the condition of Property is satisfactory to WDNR, DPRC and the Department of Administrative Service - Architecture and Engineering Division ("DAS-A&E"), and (2) WDNR, DPRC and DAS-A&E approve RSC's plans and specifications for its improvements at the Property; and

WHEREAS, the agreement is for an initial fifteen (15) year term with an option to renew for an additional ten (10) years; and

WHEREAS, for allowing RSC to construct and manage its improvements at the Property, DPRC will receive an annual base rental payment of \$25,000, plus five percent (5%) of RSC's annual net earnings before taxes in years 1-5, eight percent (8%) in years 6-15, and ten percent (10%) in years 16-25; and

WHEREAS, RSC is also required to populate an endowment fund with \$50,000, to be used for capital repairs and major maintenance; and

WHEREAS, upon termination or expiration of the agreement, Milwaukee County shall acquire title to the improvements and any equipment necessary to operate the facilities, as well as any remaining endowment fund reserves; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Parks Director to execute a maintenance and operations services agreement with The Rock Sports Complex, LLC to allow for the construction, maintenance, operation and management of athletic fields and related amenities at Crystal Ridge; and

BE IT FURTHER RESOLVED, that execution of the agreement is contingent upon the Department of Administrative Services completing its due diligence review of the project and the Office of the Comptroller completing its review of County debt related to County improvements located at Crystal Ridge; and

BE IT FURTHER RESOLVED, that no construction activities can be

89 undertaken at Crystal Ridge by The Rock Sports Complex, LLC without written  
90 approval from the Wisconsin Department of Natural Resources and Milwaukee  
91 County.  
92  
93

**MILWAUKEE COUNTY WISCONSIN**

**SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT  
(Multi-Purpose Sports Complex)**

THIS SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT (this “Agreement”) is entered into by and between MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin, as represented through its Department of Parks, Recreation and Culture (the “County”), and The Rock Sports Complex, LLC (the “Operator”), with reference to the following recited facts:

**RECITALS**

A. The County met with the Operator to discuss the idea of building and operating a multi-purpose sports complex on land owned by the County with the Operator to provide certain services including but not limited to operational services relating to the design, construction, management, operation and maintenance of a multi-purpose sports complex (hereinafter referred to as the “Sports Park” and as more specifically described and defined in ARTICLE I) to be located on County-owned land commonly referred to as Crystal Ridge with a property identification number(s) of: 744-8980-001; 745-8998-000; 744-8985-02; 744-8985-001, and comprising approximately 140 total acres.

B. The County represents and warrants that it owns that certain real property specifically described in Exhibit “A” attached to this Agreement (the “Property”), subject to certain reservations, covenants, conditions or restrictions relating to the use of the Property.

C. The County and Operator desire to construct a top quality, for-profit, self-supporting multi-purpose Sports Park facility on the Property.

D. The County and the Operator (hereinafter collectively the “Parties”) desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Operator’s operation and maintenance of the Sports Park for the County following construction and installation of the Sports Park on the Property, if at all.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES OF THE COUNTY AND THE OPERATOR SET FORTH IN THIS AGREEMENT, THE COUNTY AND THE OPERATOR AGREE, AS FOLLOWS:

**ARTICLE I**

**DEFINITIONS**

1. The following definitions apply in this Agreement:

1.1 “***Affiliate***” means with respect to any Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Operator, such Person or (ii) any general partner, officer or director of such Person or of any other Person described in clause (i). As used in the previous sentence,

“control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “Affiliated” shall have the correlative meaning.

1.2 “Annual Net Income Statement” means a financial statement, prepared in accordance with generally accepted accounting principles and in accordance with Operator’s accounting policies.

1.3 “Application” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any activity on the Property that this Agreement allows, including any application for any building permit, certificate of occupancy, utility service or connection, easement, covenant, condition, restriction, subdivision plat, or such other instrument as the Operator may from time to time reasonably request in performing services under this Agreement; (b) to enable the Operator from time to time to seek any Approval or to use or operate the Sports Park in accordance with this Agreement; or (c) otherwise reasonably necessary and appropriate to permit the Operator to perform its services under this Agreement.

1.4 “Approvals” means any and all licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any use, maintenance, repair or operation of the Sports Park.

1.5 “Bankruptcy Law” means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.6 “Bankruptcy Proceeding” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.7 “Building Equipment” means all fixtures incorporated into the Sports Park, whether acquired by the County or the Operator and used, useful, or necessary to operate the Sports Park as such (including, but not limited to, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes) as opposed to operating any business in the Sports Park.

1.8 “Capital Repair” means any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or any other component of the Sports Park.

1.9 “Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any part of the Sports Park, whether or not insured or insurable.

1.10 “Commencement Date” means the earliest of the following dates to occur, if at all: (a) the Operator issues a certificate of completion to its designated contractor(s) performing the design-build or construction activities required for installation of the Sports Park and, unless

waived by the Operator, the Operator has obtained all Approvals as set forth in Section 21.2; or (b) the Operator opens all or any part of the Sports Park for use by members of the public.

1.11 “**Concession Facility**” means the family-style, sports-themed food and beverage restaurant type concession facility to be constructed as part of the Sports Park.

1.12 “**Condemnation**” means any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding.

1.13 “**Condemnation Award**” means any award(s) paid or payable (whether or not in a separate award) to either Party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

1.14 “**Condemnation Effective Date**” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any part of the Sports Park subject to the Condemnation.

1.15 “**Contingent County Revenue**” means a percentage of Operator’s net earnings before taxes generated by its use of the Property, payable to the County in the following amounts: (i) Years 1 through 5, five percent (5%), (ii) Years 6 through 15, eight percent (8%), (iii) Years 16 through 25, ten percent (10%). Operator shall calculate Contingent County Revenue on a cash accounting basis.

1.16 “**County**” has the definition set forth in the Preamble.

1.17 “**County Approval**” when used in this Agreement, any requirement of the “County’s approval” or “prior written approval” or “consent” or words of similar import shall be deemed satisfied by the written approval of the Director of Milwaukee County Department of Parks, Recreation and Culture (the “Parks Director”) or designee.

1.18 “**County Existing Infrastructure**” means the existing ski chalet, other buildings, utility infrastructure and any other non-real property on the Property, whether or not owned by the County, as of the date of this Agreement.

1.19 “**County Parties**” means and refers to, collectively, the County, its elected officials, County Commission, officers, employees, agents and legal representatives.

1.20 “**County Party**” means and refers to, individually, the County and each of its elected officials, officers, employees, agents and legal representatives.

1.21 “**County Representative**” means an employee, employees or agent of the County designated in writing by the Parks Director for the purpose of facilitating the review of the Sports Park Plans and Specifications and for post-Commencement Date coordination including scheduling of Public Events with the Operator.

1.22 **“County Revenues”** means, collectively, the Fixed County Revenue, and the Contingent County Revenue.

1.23 **“Default”** means any Monetary Default or Non-Monetary Default.

1.24 **“Default Interest”** means interest at an annual rate equal to the lesser of: (a) five percent (5%) per annum; or (b) the Usury Limit.

1.25 **“Effective Date”** means and refers to the first date on which all of the following have occurred: (1) this Agreement has been approved by the Milwaukee County Board of Supervisors and, (2) this Agreement has been executed by the authorized representative(s) of each Party.

1.26 **“Environmental Claim”** means any written complaint, summons, action, citation, notice of violation, directive, order, claim, litigation, investigation, judicial or administrative proceeding or action, judgment, lien, demand, letter or communication from any Person alleging non-compliance with any Environmental Law relating to any actual or threatened Hazardous Substance Discharge.

1.27 **“Environmental Laws”** means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Hazardous Substance Discharge or threatened Hazardous Substance Discharge, transport or handling of Hazardous Substances.

1.28 **“Equity Interest”** means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity, nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.29 **“Expiration Date”** means the date when this Agreement terminates or expires in accordance with its terms.

1.30 **“Fee Estate”** means the County’s fee estate in the Property.

1.31 **“FF&E”** means all movable furniture, furnishings, equipment, and personal property (excluding Building Equipment) that may be removed without material damage to the Sports Park and without adversely affecting: (a) the structural integrity of the Sports Park; (b) any electrical, plumbing, mechanical, or other system of the Sports Park; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Sports Park. FF&E includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

1.32 **“Fixed County Revenue”** means a guaranteed rent of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) per Operating Year payable during the Initial Term of this Agreement. In the event Operator exercises its option to renew this Agreement, the County and Operator agree that further negotiation regarding the Fixed County Revenue may be appropriate at that time, and said revenue amount shall be negotiated and agreed upon in good faith as between the Parties; provided that if the Parties cannot agree on such revenue amount, such amount will be THIRTY ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$31,250.00) per Operating Year.

1.33 **“Government”** means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property (or any activity this Agreement requires or allows), including the United States government, the State and County governments and their subdivisions and municipalities, including the City, and all other applicable governmental agencies, authorities, commissions, boards, department and subdivisions thereof.

1.34 **“Hazardous Substance”** includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (iii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law; (v) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (vi) defined as “hazardous waste” under 40 C.F.R. Part 260; (vii) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT)Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as “hazardous waste” or, as a “hazardous substance” under Wisconsin Statutes or the Wisconsin Administrative Code; (ix) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations

adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

1.35 “Hazardous Substance Discharge” means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from the Property whether or not caused by a Party to this Agreement and whether occurring before or after the Commencement Date.

1.36 “Immaterial Loss” means a Casualty or Condemnation resulting in a loss of ten thousand dollars (\$10,000) or less.

1.37 “Indemnify” means, where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor’s indemnity.

1.38 “Indemnitee” means any Party entitled to be Indemnified under this Agreement and its agents, directors, employees, Equity Interest holders, mortgagees, officers and elected officials.

1.39 “Indemnitor” means the Party that agrees pursuant to this Agreement to Indemnify the other Party to this Agreement.

1.40 “Initial Term” shall have the meaning set forth in Section 3.1.

1.41 “Insubstantial Condemnation” means any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

1.42 “Law” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Sports Park or this Agreement in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Sports Park, or relating to any Taxes, or otherwise relating to this Agreement or any Party’s rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.43 “Legal Costs” of any Party means all reasonable costs and expenses such Party incurs in any legal proceeding (or other matter for which such Party is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses.

1.44 “Loss” means any Casualty or Condemnation.

1.45 “Loss Proceeds” means any Condemnation Award(s) or Property Insurance Proceeds.

1.46 **“Monetary Default”** means the Operator’s failure to pay any County Revenues.

1.47 **“Naming Rights”** shall mean the exclusive right (subject to County’s written approval) to name through the use of sponsor logo(s), trade name(s), trademark(s), or service mark(s), the fields within the Sports Park to be constructed on the Property and the Concession Facility to be constructed in the Sports Park but not including any Facilities or areas outlying the Sports Park or the Sports Park as a whole as further provided in Section 5.20.

1.48 **“Non-Monetary Default”** means the Operator’s: (a) failure to comply with any materially affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) material breach of any representation or warranty (as of the date made or deemed made).

1.49 **“Notice”** means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default.

1.50 **“Notify”** means give a Notice.

1.51 **“Notice of Default”** means any Notice claiming or giving Notice of a Default or alleged Default.

1.52 **“Operating Year”** means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term. In this Agreement, Operating Years are referred to in consecutive numerical order starting with the Operating Year commencing on the first day of the first full calendar month after the Commencement Date being referred to as “Operating Year 1” and followed by “Operating Year 2,” “Operating Year 3,” etc.

1.53 **“Operator”** has the meaning set forth in the Preamble.

1.54 **“Operator FF&E”** means all FF&E used or located at the Sports Park and purchased by the Operator or anyone claiming through the Operator.

1.55 **“Operator Parties”** means and refers to, collectively, the Operator, its shareholders, directors, officers, employees, agents and legal representatives.

1.56 **“Operator Party”** means and refers to, individually, the Operator and each of its shareholders, directors, officers, employees, Affiliates, agents and legal representatives.

1.57 **“Parties”** means and refers, collectively, to the County and the Operator.

1.58 **“Party”** means and refers, individually, to either the County or the Operator, as applicable.

1.59 **“Person”** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.60 **“Pro Forma”** means and refers to that certain pro forma gross revenue and sports team participation projections for the Sports Park prepared by the Operator based on the facility and its related amenities to be constructed on the Property attached hereto and incorporated herein as Exhibit “D” to this Agreement.

1.61 **“Property”** means that certain real property specifically described in Exhibit “A” attached to this Agreement.

1.62 **“Property Insurance”** means insurance providing coverage for the Sports Park, all of the Sports Park, and all Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of all of the Sports Park and all Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage.

1.63 **“Property Insurance Proceeds”** means net proceeds (after reasonable costs of paid premiums, adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the County or the Operator, excluding proceeds of the Operator’s business interruption insurance in excess of the County’s Revenues.

1.64 **“Remediation”** or **“Remedial Action”** and their derivatives (such as **“Remediate”**) means and includes any investigation, clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of “removal” and “remedial” actions as those terms are defined in applicable Environmental Laws.

1.65 **“Renewal Term”** shall have the meaning ascribed to the term in Section 3.

1.66 **“Retail Facility”** means one or more retail merchandise sales facility to be constructed as part of the Sports Park.

1.67 **“Restoration”** means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration and safeguarding of the damaged or remaining Sports Park, substantially consistent with their condition before the Loss, subject to any changes in Law that would limit any such activities.

1.68 **“Restoration Funds”** means any Loss Proceeds to be applied to Restoration.

1.69 **“Restore”** means accomplish a Restoration.

1.70 **“Scheduled Expiration Date”** has the meaning set forth in Section 3.01.

1.71 **“Sports Park”** means, collectively the facilities constructed or installed by Operator on the Property as described in Section 4.1.2 and any improvements, additions or renovations thereto, all constructed and installed in accordance with the Sports Park Plans and Specifications.

1.72 **“Sports Park Events or Sports Park Event”** shall mean sports events and any and all other sports contests, tournaments, music concerts, corporate sponsored events or other events of any kind which may be scheduled and exhibited at the Sports Park, except for those Public Events scheduled in coordination with the Operator on days or at times when there are no conflicting Sports Park Event or Sports Park Events.

1.73 **“Sports Park Expenses”** means all costs of operating and maintaining the Sports Park pursuant to the terms and conditions of this Agreement, after the Commencement Date.

1.74 **“Sports Park Plans and Specifications”** means the final landscaping plans, grading plans and construction drawings for construction and installation of the Sports Park as prepared by the Operator’s design-build team and approved by the Parties pursuant to Article IV, subject to minor field changes in response to construction or property conditions during construction.

1.75 **“State”** means the State of Wisconsin.

1.76 **“Substantial Casualty”** means a Casualty that: (a) renders 25% or more of the Concession Facility not capable of being used or occupied for more than sixty (60) days; (b) renders, at least, two (2) of the Sports Park baseball fields significantly unusable for more than ninety (90) days; (c) renders 25% or more of the ski hill significantly unusable for more than ninety (90) days; (d) requires Restoration whose cost the County reasonably estimates in writing would exceed One Hundred Thousand Dollars (\$100,000); or (e) pursuant to Law, prevents the Sports Park from being Restored to the same bulk, and for the same use(s), as before the Casualty. Notwithstanding anything to the contrary, anything giving rise to an Environmental Claims, invoking the environmental indemnification obligations under Article XIII, or requiring Remediation, will be deemed a Substantial Casualty.

1.77 **“Substantial Condemnation”** means any Condemnation that (a) takes the entire Sports Park; (b) in the Operator’s reasonable determination renders the remaining Sports Park uneconomic; or (c) occurs less than six (6) months before the end of the Term.

1.78 **“Taxes”** means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), possessory interest taxes, assessments, municipal water and sewer fees, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect to any of the foregoing, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Sports Park, or the sidewalks or streets in front of or adjoining the Sports Park, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Sports Park, or any FF&E, Building Equipment or other facility used in the operation of any of the foregoing, or the fee or income received from the Sports Park, or any use or occupancy of the Sports Park. If at any time during the Term the method of taxation prevailing at the Commencement Date is altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Sports Park and

imposed upon the County, then all such new taxes, assessments, levies, Taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term “Taxes,” to the extent that such amount would be payable, if the Sports Park were the only property of the County subject to such Taxes.

1.79 **“Temporary Condemnation”** means a Condemnation of the temporary right to use or occupy all or any portion of the Sports Park.

1.80 **“Term”** means the Initial Term and, if applicable, the validly exercised Renewal Term.

1.81 **“Transfer”** of any property, right or obligation under this Agreement means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation under this Agreement, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in clause “b” affecting any Equity Interest(s) or any other interest in such property, right or obligation under this Agreement or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “b” through “d,” shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party to this Agreement has received Notice of such occurrence) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State of Wisconsin real estate transfer tax; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (c) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.82 **“Unavoidable Delay”** means delay in performing any obligation under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption (excluding the County’s as a Party to this Agreement), war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency.

1.83 **“Usury Limit”** means the highest rate of interest, if any, that Law allows under the circumstances.

## ARTICLE II

### **OPERATION AND MAINTENANCE COVENANT**

2. Exclusive License. The County hereby grants to the Operator and the Operator hereby accepts from the County an exclusive license to occupy the Property to use, to operate, to manage and to market the Sports Park, TO HAVE AND TO HOLD, subject to all the terms and conditions herein, throughout the Term for the sole purpose of managing and operating the Sports Park in accordance with the terms and conditions herein.

## ARTICLE III

### **TERM**

3.1 Term. The term of this Agreement (the “Initial Term”) shall: (a) commence, if at all, on the Commencement Date; and (b) shall continue for a period of fifteen (15) years thereafter (the “Scheduled Expiration Date”), unless terminated sooner as provided under this Agreement.

3.2 Renewal Option. The Operator shall provide the County written notice of intent to renew no later than three (3) months prior to the Scheduled Expiration Date. Upon such Notice, this Agreement may be renewed on the same terms and conditions, for one additional successive period of ten (10) years (the “Renewal Term”) commencing at the expiration of the Initial Term and for such other additional renewal periods thereafter as may be mutually agreed upon by the Parties.

## ARTICLE IV

### **SPORTS PARK CONSTRUCTION; EXISTING INFRASTRUCTURE**

#### 4.1 Condition of the Property.

4.1.1 The Parties agree that Operator accepts the Property subject to all existing easements or restrictions on the Property and surrounding area, and Operator shall obtain any and all Approvals necessary for the construction of the Sports Park and its use of the Property, including from the Wisconsin Department of Natural Resources (“WDNR”), as contemplated herein. The County does not represent that the Property is suitable to Operator’s proposed use. County is not responsible for any required Approvals, zoning changes, building permits or other required authorizations from regulatory agencies, without limitation; provided, however, County agrees to use reasonable efforts to assist Operator in obtaining any such Approvals, changes, permits or authorization.

4.1.2 Based on the foregoing, the Operator understands that it cannot undertake any construction activities at the Property unless and until the condition of the Property is satisfactory to the County and the WDNR.

## 4.2 Construction.

4.2.1 This Agreement and the obligations of the County and the Operator hereunder are contingent upon Operator successfully meeting the Milwaukee County “Due Diligence” requirements (see attached as Exhibit “C”) and upon Operator obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the proposed Sports Park. All costs associated with the construction, maintenance and operation of the Sports Park are the responsibility of Operator.

4.2.2 Prior to the start of any construction activities, including any subsequent alterations, renovations or improvements to the Property, Operator shall submit any, every and all detailed Sports Park Plans and Specifications, and any revisions thereto, to the County, to the Architecture and Engineering Division of the Milwaukee County Department of Administrative Services, and to the WDNR, together with the name of Operator’s proposed contractor(s) for review and approval, which approval shall not be unreasonably delayed or withheld. Operator shall reimburse County for the actual and out-of-pocket cost of a Milwaukee County Project Manager during construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

It is understood by the Parties that the Operator anticipates that its improvements to the Property may proceed in stages with the installation of the fields, fencing, and Concession Facility being financed, submitted for approval, and constructed first; and with the other improvements, to be financed, submitted for approval, and constructed at a later date, dependent on the timing of Operator’s financing. The provisions and requirements of this Article IV and its subparts shall apply with equal force and effect to any later construction.

4.2.3 Conditions for approval specified in Section 4.1.2 shall include, but not be limited to, provision that: (1) Operator shall obtain, prior to commencing any alterations, additions or improvements, all necessary permits and licenses from the appropriate governmental authorities, including the WDNR; and (2) Operator shall commence construction of the Sports Park described in the approved plans and specifications as soon as reasonably practicable following the County’s and the WDNR’s approval and shall complete the applicable construction within a reasonable time thereafter (subject to extension by reason of force majeure). As of the date of this Agreement the Parties agree that, with regard to the phases of construction, such reasonable time for completion is eighteen (18) months after the commencement of construction.

4.2.4 All development and landscaping shall be completed in a manner consistent with standards acceptable to the County and the WDNR. The County and the WDNR shall have the right to inspect the work at reasonable times provided it does not interfere with Operator’s construction and improvements. Any and all alterations, additions and additional improvements shall be made in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Property, including the WDNR. Operator shall also indemnify and hold County harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alternation, addition or improvement to the Property undertaken by or on behalf of Operator. Any structures, alterations, additions or improvements installed on the

Property by Operator that are necessary for the continued operation of the Sports Park shall become the property of the County upon the expiration or termination of this Agreement. In no event shall Operator make any alterations or additions to the Property without the prior written consent of the County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter, provided further that routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed \$25,000 in cost.

4.2.5 Operator or its general contractor shall provide Builders Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Property is ready for occupancy.

4.2.6 Operator agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Operator shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Franklin final occupancy permits, if applicable.

4.2.7 County shall use reasonable efforts to assist Operator in finding funding for the repair or replacement, and maintenance of the road commonly known as Crystal Ridge Drive, and all entrances therefrom into the Sports Park.

4.3 Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for capital repairs of the Property, which shall total FIFTY THOUSAND DOLLARS (\$50,000.00). as additional consideration, Operator agrees to augment the Fund by depositing the interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the Fund falls below \$50,000.00 at any time, Operator shall add to the Fund enough assets to maintain a minimum balance of \$50,000.00. Failure to maintain a balance of \$50,000.00 shall be grounds for termination of this Lease by County, provided Operator fails to cure any such shortage within thirty (30) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

(a) Capital repairs and major maintenance to assure upkeep of the Property and the improvements to be constructed on the Property.

(b) Additional improvements or non-routine maintenance to the Property as may be agreed upon by Lessee and Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

Management of the Fund shall include the establishment of an interest bearing account(s), changing investment strategies, monitoring account activity, and providing joint

written approval of all payments from account assets, which approval by County shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall have the right to make withdrawals from the Fund without County's approval, but upon notice to County, for up to \$10,000 for any item described in clause (a) above, provided that the Fund does not fall below \$50,000 as a result thereof and the aggregate amount so withdrawn from the Fund without County approval in any twelve (12) month period does not exceed \$25,000. Operator shall provide County with quarterly reports relating to Fund activities, including funds received, monies spent, and any long-term obligations, including an annual report prepared by independent auditors.

## **ARTICLE V**

### **SPORTS PARK OPERATION AND MAINTENANCE**

5.1 General. The Operator shall have the right to operate, manage and market the Sports Park subject to the terms and conditions set forth in this Agreement. Such operation and management shall be conducted in a manner that will maximize opportunities to achieve and sustain a profit for each Operating Year from the operations of the Sports Park and the promotion of tourism in the County by attracting, promoting, and contracting for tournaments, outdoor activity and other sport related events and non-sport activities.

5.2 Except to the extent that this Agreement otherwise expressly provides or allows, the Operator shall, during the Term, keep and maintain the Sports Park in good order, condition, and repair, subject to Loss, reasonable wear and tear, and any other condition that this Agreement does not require the Operator to repair or Restore. The Operator shall remove trash, water, mud, sand and debris from the Sports Park.

5.3 Continuous Operation Covenant. The Operator covenants to the County to cause the Sports Park to be continuously operated as weather and Seasons permit throughout the Term.

5.4 General Operational Responsibilities. The Operator shall have the following described general responsibilities regarding operation of the Sports Park, which the Operator shall perform at its sole expense:

5.4.1 enter into and pay any costs associated with arrangements, if any, with concessionaires, vendors licensees, tournament promoters, contractors or other providers of services to or intended users of the Sports Park;

5.4.2 enter into and pay any costs associated with contracts for the furnishing of ongoing utilities and telecommunications services, maintenance, repair and other services to the Sports Park;

5.4.3 incur and pay such expenses as shall be reasonably necessary for the proper operation of the Sports Park, including, without limitation, employee salaries and benefits and applicable taxes and withholdings, and rental expenses for leased FF&E, as necessary;

5.4.4 maintain a level of Operating Inventory as applicable and reasonably appropriate for supplying the needs of the Sports Park and its customers;

5.4.5 apply for, obtain and maintain all licenses and permits required of the Operator in connection with the operation of the Sports Park, including beer and wine licenses and sign permits. The County shall reasonably cooperate with the Operator in the application for, obtaining and maintenance of such licenses and permits; provided that such cooperation by the County is legally permitted and does not result in any direct or indirect cost to the County;

5.4.6 use commercially reasonable efforts to do, or cause to be done, all acts in and about the Sports Park as shall be reasonably necessary to comply with any applicable insurance policies or Law;

5.4.7 pay initial activation charges for utilities and services for the Sports Park, after initial construction of the Sports Park in accordance with the Sports Park Plans and Specifications;

5.4.8 offer a reasonable schedule of recreational sports programming in adult and youth softball, baseball, soccer, lacrosse, mountain biking and such other sports activities as approved by the County, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all of the seasons of the year; and

5.4.9 operate the ski hill as a ski hill.

5.5 Operational Services. Subject to the terms of this Agreement the Operator shall have the responsibility to: (a) determine, establish, and implement the policies, standards, prices and schedules for the operation of the Sports Park and all matters affecting customer relations; (b) hire, train, and supervise all employees; (c) supervise and direct advertising, sales and business promotion; and (d) establish accounting and payroll procedures and functions.

5.6 Personnel. The number of employees working at the Sports Park, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by the Operator, but minimum staffing levels shall be comparable to those at similar recreational sports parks at other similar locations in Wisconsin.

5.7 Specific Operating Procedures. In addition to the more general responsibilities of the Operator for operation of the Sports Park described in 6.01, the Operator shall operate the Sports Park in accordance with the following operating procedures:

5.7.1 Sports Park Operating Hours. The Operator shall operate the Sports Park on days and at hours consistent with similar recreational sports parks at other similar locations in Wisconsin, subject to closure due to inclement weather, Substantial Casualty, Substantial Condemnation or Unavoidable Delay. The hours of operation of the Sports Park shall not allow any game or event to be scheduled to begin later than 9:00 p.m. on any night and all field lighting at the Sports Park shall be turned off and all use of the Sports Park fields and batting

cages shall be concluded by 10:30 p.m. every night. The Concession Facility and any other parts of the Sports Park shall close by 2:00 a.m. every night. The County has the authority to adjust the hours of operation of County parks, including the Sports Park, in the County's sole discretion, and nothing in this Agreement is intended to limit or abrogate such authority.

5.7.2 Fees and Charges. All fees, charges and prices for services at the Sports Park shall be set by the Operator at amounts comparable to those of similar recreational sports parks at other similar locations in Wisconsin. If the County finds that the Operator is setting Fees and Charges at a rate the County determines in its reasonable discretion are excessive, the County and the Operator agree to negotiate in good faith Fees and Charges mutually acceptable to both Parties.

5.7.3 Limitation on Consumption of Alcoholic Beverages in the Sports Park. The Operator shall restrict users of the Sports Park to consuming alcoholic beverages in the Concession Facility, the sidewalks, patios, picnic areas and spectator seating areas within the Sports Park. Alcoholic beverages shall not be allowed to be consumed in any other areas of the Sports Park such as the playing surfaces, dug-outs, or playground areas.

5.7.4 Smoking Areas. The Operator shall designate reasonable smoking areas within the Sports Park, subject to the County's reasonable approval and in compliance with applicable Law.

5.7.5 Sports Park Operating Expenses. The Operator shall, at its sole expense, timely pay and discharge all Sports Park Expenses, in accordance with the provisions of this Section 5.7.

5.8 Noise. The Operator shall not use or permit the use of the Sports Park in any manner that creates or maintains any noise or sound in violation of the County's or any noise ordinance of the City of Franklin and the Village of Greendale, as applicable to the Property or to the Sports Park.

5.9 Nuisance. The Operator shall not itself and shall not allow any other Person to use the Sports Park for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Sports Park that would result in a nuisance or a violation of any Law, as the same may now or hereafter be in force and effect.

5.10 Permits, Licenses, Etc. The Operator shall, for the full Term, at the Operator's cost and expense, maintain all franchises, permits, contractual arrangements, licenses, and registrations required for the Operator to conduct all sales, operations relating to the Sports Park that are contemplated in this Agreement to be undertaken by the Operator. The County shall use reasonable efforts in assisting Operator in maintaining all franchises, permits, contractual arrangements, licenses and registrations.

5.11 Abandonment. The Operator shall not abandon or surrender the operation of all or any part of the Sports Park during the Term, except as otherwise expressly provided in herein.

5.12 Contracts and Agreements. All equipment leases, financing agreements, contracts and agreements relating to the Sports Park (including contracts for utility services, telecommunications services, Maintenance and Repair services, pest control, supplies, landscaping services, and agreements for tournaments, banquets and other group functions), entered into during the Term shall be entered into by the Operator as the contracting party. The Operator shall not have any authority to enter into any equipment lease, financing agreement, contract or agreement that extends beyond the Term of this Agreement, that is not terminable on thirty (30) days or less notice, if the Operator defaults under the terms of this Agreement, or that is secured by all or any part of the Sports Park or the Property. All contracts entered into by the Operator regarding the Sports Park shall automatically expire on the Expiration Date.

5.13 Business Name. During the entire Term, the Operator shall conduct business in the Sports Park under the name “The Rock Sports Complex” (or something similar); provided that the Operator may change the operating name of the Sports Park and the Operator shall notify the County of any such name change.

5.14 Security. The Operator may, at its own discretion, provide such security for the operation of the Sports Park to protect the customers, employees, guests, contractors and other invitees of the Sports Park.

5.15 Signage.

5.15.1 All such signage must be approved by the County and comply with the County Code and any applicable code of the City of Franklin and the Village of Greendale.

5.15.2 All signs on or in the Sports Park will be maintained by the Operator in good condition during the Term.

5.15.3 The Operator agrees to provide the County with prominent acknowledgment signage using the County Parks Logo as integral part of all promotions. The acknowledgment signage must be prominently displayed at the entrance to the Sports Park and in all of Operator’s print, digital, and TV promotions and advertising related to the activities covered by this Agreement.

5.15.4 The Operator will remove all signs containing the Operator’s name or logo installed in or on the Sports Park by the Operator on or before the Expiration Date, except as otherwise agreed between the Operator and the County, and will repair and restore any damage caused by installation or removal of such signs. The Operator shall not cause or allow the display of any advertising of tobacco products or adult entertainment on, in or about the Sports Park.

5.16 Event Programs And Merchandising. The County grants to the Operator the sole and exclusive right to sell, lease, or contract for the sale or lease of event programs, yearbooks, novelties, pendants, hats, clothing, sporting equipment, cameras, film, binoculars, headsets, or any other items, goods, or equipment which the Operator may desire to offer for sale or lease at

the Sports Park. The County shall also grant to the Operator or its designee the right to set up carts, kiosks, and other similar temporary structures for the sale of such items at locations within the Sports Park selected by the Operator in its reasonable discretion, taking into consideration public safety and access. Further, the Operator shall have the right to grant any of the rights held by the Operator under this Section to a single supplier or to enter into multiple agreements with multiple suppliers. The County agrees that the Operator may determine the items of merchandise to be offered for sale or lease in such areas and the prices to be charged for such items of merchandise and shall select any suppliers for such merchandise. The County has the right to offer complimentary materials at the Sports Park during the Sports Park Events solely for the purpose of promoting tourism or economic development within the County.

#### 5.17 Concessions.

5.17.1 Right To Sell. Milwaukee County hereby grants to the Operator the sole and exclusive right to sell or contract others, including without limitation the Operator Affiliates, to sell, all food, beverages, and other concessions within the Sports Park and to operate the Concession Facility and concessions stands. The rights granted to the Operator with regard to concessions pursuant to this Agreement shall also include the right (without limitation) to grant to third party(s) any and all so-called "pouring rights" or similar beverage designations with regard to the use of the Sports Park at all times.

5.17.2 Food And Beverage. Any concessionaire contracted by the Operator shall be entitled to bring a reasonably sufficient number of workers into the Sports Park, free of charge, in order to operate the concessions, pursuant to this Agreement. The Operator shall have the right to determine items of food or beverage offered for sale, the prices to be charged for such items of food or beverage, or the concessionaire or concessionaires selected to provide such food and beverage concessions. The County agrees that the Operator may determine the items of to be offered for sale or lease in such areas and the prices to be charged for such items and shall select any suppliers. Except for Public Events, the County shall have no right to offer any food or beverage items for sale at any Sports Park Events without the consent of the Operator. The Operator shall have the right to determine the location of concession stands for the sale of food and beverage concessions and staging areas for the storage and preparation of food and beverages prior to sale, both within the Sports Park and elsewhere on the Sports Park Property, in its reasonable discretion, subject to considerations for public safety and access.

5.17.3 Access To Facility. The Operator shall establish all policies relating to access to the Sports Park including, but not limited to, entry to Sports Park with consumables, parking rates, and signs and banners subject to applicable Law. The County shall entrust the Operator with keys to the Sports Park, and the Operator shall at no time be denied access to the Sports Park by the County unless the Operator is in default or the Agreement has been terminated as provided herein.

5.18 Parking. The Operator shall manage and control the parking in or on the Property for all Sports Park Events. The Operator or its designee may charge patrons of Sports Park Events a fee in an amount to be determined on an event basis for the right to park within the Sports Park Property. The Operator is further authorized to grant, within its reasonable

commercial discretion, to any promoter of Sports Park Events the right to collect and keep for its own account any and all parking fees.

5.19 Parking Overflow. In the event that the Sports Park does not have adequate parking available during an event, the County may assist the Operator in locating sufficient parking in a nearby location. Under no circumstances, however, shall the County be legally obligated to expend funds or resources to secure or staff additional parking areas outside of the Sports Park Property for Sports Park Events nor shall it be liable for any uses or activities that may occur on or at any such alternative parking locations it may identify for the Sports Park.

5.20 Naming Rights.

(a) General. The County acknowledges that the marketing and sale of naming rights of the field(s) within the Sports Park (as distinguished from naming rights for the Sports Park as a whole or any other non- field structures) is to be an integral component for the Sports Park to achieve its primary objective of positive cash flow. The Operator may receive money or other consideration in exchange for granting to such third party(s) the right to name all or any part of the Sports Park. The County grants to the Operator the right to market and to sell the naming rights for the Sports Park during the Term of this Agreement. The Operator shall have the right to sell the rights to any third party or parties or to any the Operator's Affiliate, and to receive all monies. The County grants the Operator the right to market and to license or assign any other advertising or promotional rights within the Sports Park Property. The provisions of this Section are subject to the County's written approval. No agreements entered into by the Operator with any third party or parties or to any the Operator's Affiliate relating to the Naming Rights specified herein shall extend beyond the Term of this Agreement.

(b) Effect Of Grant. Upon the grant of the Naming Rights to any third party or parties and the determination of a name or names for the Sports Park or for any other part of the Sports Park Parcel, the County agrees that it shall recognize such name(s) and shall use such name(s) in all correspondence and promotional activity of the County with regard to the Sports Park or the Sports Park Property. Further, the County agrees that upon the determination of a name(s) for the Sports Park and for any other part of the Sports Park Property as a result of the sale or exercise of the Naming Rights, the County shall use such descriptive name(s) on street signs, maps, promotional materials, and other similar items, to the extent that a descriptive name shall be necessary or appropriate, provided, however, that this provision shall apply only to street signs, maps, promotional materials and other similar items which are erected or produced subsequent to the determination of the descriptive name or names for the Sports Park and the Sports Park Property and shall not require the County to incur any costs with regard to modifying or replacing existing signs, maps, promotional materials, or similar items.

5.21 Premises Advertising.

(a) Grant Of Rights. As part of the rights granted to the Operator under this Agreement, the County hereby also grants to the Operator the right to undertake any and all advertising or marketing of any kind on the Property including but not limited to any advertisements or marketing distributed through the signage and any related media, whether

printed, transmitted on a video screen or message board transmitted verbally, or otherwise, whether presently available or made available in the future, for Sports Park Events, and at all other times during the Term hereof, and to contract with third parties and grant to such third parties the right to exercise such advertising rights for Sports Park Events, and at all other times during the Term hereof. The Operator agrees to allow for placement of signage within the Sports Park or Sports Park Parcel agreeable to the County identifying the name of the County and contact information or other material for the County's use in tourism development.

(b) Quality And Control. The Operator agrees that all advertising of Sports Park Events and related activities shall be accurate, straightforward, and in good taste. The Operator shall have responsibility for and control over the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Sports Park(except for County promotional material).

5.22 County Organized Sports League Events. The County shall have the right to use the Sports Park for County Organized Sports League Events that are scheduled with the prior approval of the Operator, in the Operator's reasonable discretion (each of which shall be considered a "County Organized Sports League Event"), but no less than one calendar day Monday through Thursday per week. The Sports Park shall be available to the County for County Organized Sports League Events free of any facility rental or admission charge, except the County reserves the right to collect and keep for its own account any and all league/rental fees.

5.23 Outreach. To provide increased baseball and softball programming in under-served areas of Milwaukee County, the Operator agrees to commit not less than TWENTY THOUSAND DOLLARS (\$20,000.00) in funding annually (the "Outreach Funding") to develop and implement programming and scholarships for low income minority and low income children who reside in Milwaukee County. Eligibility shall be based on the criteria set forth for Milwaukee Public Schools low-income school lunch program, and may include a sliding-scale basis for determining the amount of the scholarships. The Outreach Funding is to subsidize the cost of participation in local little leagues for low-income children.

5.24 Control And Supervision. The Operator shall have the sole responsibility for, and sole right of control and supervision of its employees and the methods, details and all other aspects of its operation of the Sports Park pursuant to this Agreement, subject, however, to any provision to the contrary in this Agreement and to the following additional terms and conditions:

(a) Control. The Operator shall have the right to eject or cause to be ejected from the Sports Park any person whose conduct is unlawful or otherwise objectionable. In addition, the County and the Operator shall each have the right to make announcements at any time during Park Events and activities in the interest of public safety, proper operation of the Sports Park, crowd control and compliance with applicable laws, ordinances, regulations and rules.

(b) No Waste. The Operator shall not allow any waste, nuisance or ultra-hazardous activities at the Sports Park, or engage in, or permit others to engage in, any activity which may cause physical damage to the Sports Park or discredit Milwaukee County.

(c) Periodic Meetings And Communications. The Operator shall meet with the County at such reasonable times and places as may be mutually agreed for the purpose of presenting any issues or resolving problems related to the Sports Park.

(d) Schedule Of Park Events. The Operator shall provide the County, on a quarterly basis, with an updated twelve (12) month schedule of upcoming Park Events for the Sports Park, including but not limited to twelve tentative dates for future events in negotiation.

5.25 Disadvantaged Business Enterprise (DBE) Utilization. Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise (DBE) participation goals, consistent with Milwaukee County DBE goals of 25% for construction and 17% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist the Operator in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Operator's contact regarding DBE participation is Freida Webb, Director, CBDP, at 414-257-5248 or freida.webb@milwcnty.com. Operator will provide an annual DBE report to the CBDP office during the year(s) of construction.

5.26 Non-Discrimination. There shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the sale, agreement, transfer or use of the Sports Park, and the Operator (or any Person claiming under or through the Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Sports Park or the Property.

5.27 Form of Non-discrimination and Non-segregation Clauses. The Operator covenants and agrees for itself, its successors, its assigns, that the Operator, such successors and such assigns shall refrain from restricting the use of all or any part of the Sports Park or the Property on the basis of gender, race, color, religion, creed, ancestry or national origin of any Person. All agreements or contracts pertaining to the Sports Park or the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.27.1 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, gender, national origin, or ancestry, in the sale, agreement, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or agreement, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

## ARTICLE VI

### **OPERATOR FISCAL RESPONSIBILITIES; COMPENSATION; SPORTS PARK REVENUE ALLOCATIONS**

6.1 Capital Improvement Plan. Beginning with the Operating Year following the completion of each construction phase, subject to upgrades and improvements, the Operator agrees to prepare a three (3) year capital improvement plan for approval by the County, which will be contingent upon a capital improvement commitment from the City of Franklin.

6.2 Fixed County Revenue. Within the first month of each Operating Year, Commencing on the first day of the last month of Operating Year 1, the Operator shall pay to the County, without Notice, the Fixed County Revenue agreed to within this Agreement.

6.3 Contingent County Revenue. The Contingent County Revenue shall be paid annually, without Notice, within one hundred twenty (120) calendar days following the end of each Operating Year, with the first payment of Contingent County Revenue occurring during Operating Year 2, based on the Sports Park net income from the immediately preceding Operating Year.

6.4 County Revenue Payment. The Operator shall pay all County Revenues payable to the County in lawful money of the United States, by good and sufficient check payable to the County or in immediately available funds, at such address as the County shall designate, from time to time. Checks shall constitute payment only when collected.

## ARTICLE VII

### **SPORTS PARK EXPENSES**

7.1 Operator to Pay All Sports Park Expenses. In addition to the County Revenue, the Operator shall pay all Sports Park Expenses, regardless of the amount of Sports Park revenues or whether or not there are any Sports Park revenues at all.

7.2 Pre-Opening Expenses and Operating Losses. The Operator acknowledges that it will be responsible for the initial capitalization of the Operator's business operations at the Sports Park and will be responsible for start-up expenses in connection with such business operations, including, without limitation, hiring and training of employees, acquisition of inventory and pre-opening marketing expenses, without any reimbursement or contribution from the County. The Operator further acknowledges and agrees that it will be solely responsible for operating losses or deficits arising in its operation of the Sports Park and that any such losses or deficits shall not abate any obligations of the Operator under this Agreement.

7.3 Taxes. Due to the fact that the Sports Park Property is owned by the County, a political subdivision of the State of Wisconsin and as such are exempt from property taxes and that the use of the Property as a Sports Park is for the public purpose of promoting and enhancing

tourism and business development within the County, the County and Operator intend that no ad valorem taxation will apply to the Sports Park or use thereof in accordance with this Agreement by the Operator. In the event that the Sports Park or the Operator is held to be subject to ad valorem, real property, intangible or other taxes or for any other reason arising in connection with Operator's operation or interest in the Sports Park, the Operator will be legally obligated for such taxes.

The Operator shall pay and discharge all other Taxes payable or accruing for all period(s) within the Term. The Operator shall also pay all interest and penalties any Government assesses for late payment of any Taxes. The Operator shall, within a reasonable time after Notice from the County, give the County reasonable proof that the Operator has paid any Taxes that this Agreement requires the Operator to pay.

7.4 Assessments in Installments. To the extent Law allows, the Operator may apply to have any assessment payable in installments. Upon approval of such application, the Operator shall pay and discharge only such installments as are attributable to the Term.

7.5 Direct Payment by the County. If any Sports Park Expenses must be paid directly by the County, then: (a) the County appoints the Operator as the County's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from the Operator, then the Operator shall Notify the County and shall pay such amount to the County in a timely manner with reasonable instructions on remittance of such payment. In such event, the County shall with reasonable promptness comply with the Operator's reasonable instructions.

7.6 Utilities. The Operator shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, cable or satellite television and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Sports Park during the Term of this Agreement.

## ARTICLE VIII

### RECORDS, REPORTS AND AUDITS

8.1 Sales Recording and Records. The Operator shall keep:

8.1.1 full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits and withdrawals of Sports Park revenues; and

8.1.2 detailed original records of any Sports Park revenues Exclusions.

8.2 Annual Income Statements.

8.2.1 Annual Net Income Statement. Within ninety (90) calendar days after the end of each Operating Year, including the Operating Year ending in the month in which the Term ends, the Operator shall furnish the County with an Annual Net Income Statement for the just concluded Operating Year.

8.2.2 Accounting And Bookkeeping. The Operator agrees to maintain separate accounting and bookkeeping records for the operations of the Sports Park pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. The Operator shall, at reasonable times and upon request, permit the County's auditors to inspect, examine and copy any and all of the Operator's books, papers, reports, correspondence, sales tax returns, federal and state tax returns memoranda, cash register records and other records of the Operator which are pertinent to this Agreement for purposes of verifying the Sports Park revenues for any given Operating Year.

8.3 Audit and Examination Rights.

8.3.1 Audit Procedures.

(a) Annual Audit. Pursuant to Milwaukee County Ordinance section 56.30(6)(e), Operator and its Affiliates shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Operator or its Affiliates, including handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Operator in performing the duties described under this Agreement shall subject the subcontractor or its associates to the same audit terms and conditions as Operator. The County shall preserve the confidentiality of such information to the extent permitted by Wisconsin law, as determined by County's Corporation Counsel. If any Net Income Statement for any Operating Year is found to be less than the amount of the Operator's actual Net Income for such Operating Year, the Operator shall immediately pay to the County any earned but unpaid amounts of County Revenues due to the County.

8.4 Retention of Books and Records. The Operator and its Affiliates shall, for a period of five (5) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Sports Park pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, the Operator shall furnish copies of the Operator's State and local sales and use tax returns and federal and state income tax return.

**ARTICLE IX**

**COMPLIANCE**

9.1 Generally. The Operator shall during the Term, at the Operator's sole expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

9.2 Copies of Notices. The County shall promptly give the Operator a copy of any notice of any kind regarding the Sports Park or any Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that the County receives from any Government, utility company, insurance carrier or insurance rating bureau.

## **ARTICLE X**

### **NO ALTERATIONS TO SPORTS PARK**

10.1 The Operator shall have the right to alter the facility as needed to allow for success of the facility, subject to the provisions contained in Article IV.

10.2 Alterations, Renovations And Additions. Operator shall not, without the advance written approval of the County, remove from the Sports Park, or permit the removal of, any equipment, furnishings and other property of the County. If at any time the County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of the County, the Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property.

## **ARTICLE XI**

### **HAZARDOUS SUBSTANCES**

11. Restrictions. The Operator shall not during the Term: (a) knowingly allow any violation of any Environmental Law at the Sports Park, (b) knowingly permit the introduction, onto the Property of any Hazardous Substance.

## **ARTICLE XII**

### **COUNTY'S SPECIAL RIGHTS**

12.1 County's Right to Utilize the Sports Park During Local State of Emergency. In those situation where a local state of emergency has been declared by the County pursuant to its authority under Wisconsin law or County code, or is continuing to exist within the County, the County shall have the right to exercise sole control over the Sports Park Property and to implement such emergency measures and to make such use of the Sports Park Property as it deems necessary for the health, safety and welfare of the residents of the County. the County, in taking such action, will attempt at all times to minimize any damage to the Sports Park and will repair or provide funds for the Operator to effect repairs for any Capital Repairs that may be required as a result of such emergency use(s).

12.2 County's Access to the Sports Park.

(a) Notwithstanding anything to the contrary in this Agreement, the County, its agents, representatives or designees may enter the Sports Park to: (a) ascertain whether the Operator is complying with this Agreement; (b) cure the Operator's Defaults; (c) inspect the Sports Park; (d) perform such tests, borings, and other analyses as the County determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) operate, maintain, test, and repair the County's gas control system and monitoring wells. In entering the Sports Park, the County and its designees shall not unreasonably interfere with operation of the Sports Park. The County shall Indemnify the Operator against any claims arising from the County's related to the entry upon the Sports Park from the County's negligence, except to the extent arising from the willful misconduct or negligence of the Operator Parties or upon termination of this Agreement or the occurrence of an Event of Default.

(b) Operator understands and acknowledges that the Property is a former County landfill. Should the County need to access the Property for the purposes described in this Section, the County shall notify the Operator and schedule its repairs in coordination with the Operator in an attempt to minimize the County's impacts to Sports Park Events while achieving the primary goals of protecting the health, general welfare, and safety of the general public and placing the gas control system back into operation.

### **ARTICLE XIII**

#### **INDEMNIFICATION; LIMIT ON LIABILITY OF COUNTY**

13.1 General Indemnification. The County and the Operator shall each Indemnify the other and their respective shareholders, elected officials, officers, directors, partners, employees, attorneys and other agents against any claims, actions or suit arising from: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their shareholders, directors, officers, elected officials, partners, attorneys, agents or employees which may arise out of or are connected with the activities covered by this Agreement; (b) breach or default by the Indemnitor under this Agreement; or (c) breach of any representation or warranty the Indemnitor makes in this Agreement. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence. Milwaukee County's liability shall be limited by Wis. Stat. §§ 345.05(3) for automobile and 893.80(3) for general liability.

13.2 Operator is solely responsible for conducting its own geotechnical investigation to determine soil bearing capacity and for all site development expenses. In the event that Operator reasonably determines as a result of its own investigation that Hazardous Substances exist or may possibly exist in or on the Property, Operator shall have the right, at its sole option, by written notice to County, to terminate this Agreement. Operator may keep the results of its investigations confidential, unless otherwise required by law or court order. In no event shall the discovery or disturbance of any Hazardous Substances by Operator preclude the Operator from performing its remediation responsibilities as contained in this Section.

13.3 Environmental Indemnification. Operator shall to the fullest extent provided for under any Environmental Laws be responsible for any repair, cleanup, Remediation or detoxification arising out of: (1) any Hazardous Substance brought onto or introduced into the Property or surrounding area by Operator, its agents or guests, or (2) any Hazardous Substance whose presence pre-exists the Effective Date of this Agreement, located in or on the Property, that are discovered or disturbed as result of Operator's construction activities on, at or near the Property. Operator shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Prior to the Commencement Date, Phase 1 or other environmental reports and geotechnical reports may be obtained at Operator's expense to help determine anticipated remediation requirements and expenses, as well as for identifying structural issues on, in and under the site, or to provide recommendations or suggestions for further review.

13.4 Limitation on Liability. During the Term: (a) the Operator is and shall be responsible for operation of the Sports Park; and (b) the County shall not be liable for any injury or damage to any property (of the Operator or any other Person) or to any Person occurring on or about the Sports Park, except to the extent caused by the County's intentional or negligent act or omission. Provisions of this Agreement regarding the County's ownership of or access to the Sports Park shall not impose upon the County any liability to third Persons.

13.5 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees. The indemnification obligations of an Indemnitor shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an Indemnitee was proximately caused by the negligence or willful misconduct of that Indemnitee.

13.6 Independent of Insurance Obligations. The Operator's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Operator's insurance or other obligations under this Agreement and is independent of the Operator's insurance and other obligations under this Agreement. The Operator's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Operator's indemnification obligations under this Agreement and are independent of the Operator's indemnification and other obligations under this Agreement.

13.7 Survival of Indemnification and Defense Obligations. The indemnification and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statutes of limitations.

13.8 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies

immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Agreement.

13.9 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

13.9.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice and such failure materially prejudices the Indemnitor in providing indemnity for a particular claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

13.9.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

13.9.3 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle the claim. The Indemnitee's consent shall not be required for any settlement by which: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Agreement is not jeopardized in any way; and (d) the Indemnitee's interest in the Sports Park is not jeopardized in any way.

13.9.4 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

## **ARTICLE XIV**

### **INSURANCE**

14.1 Operator to Insure. The Operator shall, at its sole expense, during the Term, maintain the insurance specified in this Article.

14.2 Nature of Insurance Program. All Property Insurance and Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VIII"; and (b) are admitted to do business in

the State of Wisconsin by the State Department of Insurance. **The Operator may provide any Property Insurance or Liability Insurance coverage under a “blanket” or “umbrella” insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Sports Park, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.**

14.3 Policy Requirements and Endorsements. Operator agrees to evidence and maintain or cause its contractors to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws or vicarious liability arising from employees at least to the minimum limits established now and in the future by Milwaukee County's Risk Manager. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation Or Proof of All State Coverage	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000
Commercial General Liability	
Bodily Injury & Property Damage (Incl. Personal Injury, Fire, Legal Contractual and Products/Completed Operations)	\$1,000,000 Per Occurrence \$5,000,000 Aggregate
Professional Liability (Errors and Omissions) (required for Constructions Managers, Architects, Engineers and Designers)	\$1,000,000 Per Occurrence or Claim
Liquor Liability	\$1,000,000 Per Occurrence
Environmental Impairment Insurance	\$1,000,000 Aggregate
Automobile Liability	
Bodily Injury & Property Damage All Autos-Owned, non-owned or hired Uninsured Motorists	\$1,000,000 Per Accident  Per Wisconsin Requirements

Milwaukee County shall be named as an additional insured for General Liability and Automobile Liability; in the event there is a General Contractor, then the Operator and Milwaukee County shall be named as additional Insureds. A waiver of subrogation for Workers

Compensation by endorsement in favor of Milwaukee County shall be provided. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by Milwaukee County.

14.4 No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

## **ARTICLE XV**

### **LOSSES AND LOSS PROCEEDS**

15.1 Notice. If either Party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such Party shall promptly Notify the other.

15.2 Effect of Casualty. If any Casualty occurs, then: (a) the Operator's obligation to make any payments under this Agreement shall not abate; (b) this Agreement shall not terminate or be impaired; and (c) the Operator shall Restore with reasonable promptness regardless of cost. If, however, the Casualty is a Substantial Casualty, then the Operator may, by Notice to the County, given within thirty (30) days after the occurrence of the Casualty, (i) invoke the indemnity procedures outlined in Article XIII, or (ii) terminate this Agreement effective ninety (90) days after such Notice, provided that the Operator assigns to the County all of the Operator's right, title and interest in and to any Property Insurance Proceeds (and rights thereto) arising from the Casualty.

15.3 Substantial Condemnation. If a Substantial Condemnation occurs, then this Agreement (except as it relates to allocation of the Condemnation Award and other matters surviving termination of this Agreement) shall terminate on the Condemnation Effective Date. The Condemnation Award shall be the sole and exclusive property of the County, except the portion of any such award applicable to the Operator's FF&E or other personal property, if any.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to the County to be applied first for Restoration in the same manner as Property Insurance Proceeds. The Operator shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

15.5 Temporary Condemnation. If a Temporary Condemnation relates to a period longer than ninety (90) days and more than twenty five percent (25%) of the Sports Park, then the Operator may, by Notice within sixty (60) days after notice of such Temporary Condemnation, terminate this Agreement effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if the Operator does not terminate this Agreement, then the Operator shall receive any Condemnation Award (to the extent

compensating for periods within the Term) for use for Restoration, without affecting the Operator's obligations under this Agreement in any way.

15.6 Immaterial Loss. If an Immaterial Loss occurs, then the Operator shall receive any Condemnation Award in trust to be applied first to Restoration. The Operator shall Restore in accordance with this Agreement. After Restoration, the County shall receive any remaining Condemnation Award as its sole and exclusive property.

15.7 Voluntary Conveyance Under Threat of Condemnation. A voluntary conveyance by the County of title to all or a part of the Property or the Sports Park to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take such property by eminent domain proceedings shall be considered a Condemnation of the subject part of the Property or the Sports Park, for the purposes of this Agreement.

15.8 Rights and Obligations Governed by Agreement. If during the Term there is any taking of all or any part of the Sports Park or any interest in this Agreement by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section.

## ARTICLE XVI

### REPRESENTATIONS AND WARRANTIES

16.1 No Litigation. Operator represents and warrants to that there is no existing or, to the Operator's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Operator, any holder of an Equity Interest in the Operator or any Affiliate that would, if adversely determined, materially adversely affect the Operator, this Agreement or the Operator's ability to perform its obligations under this Agreement.

16.2 Litigation; Environmental Claims. County represents and warrants to that there is no existing or, to the County's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the County, that would, if adversely determined, materially adversely affect the County, this Agreement or the County's ability to perform its obligations under this Agreement.

## ARTICLE XVII

### COUNTY TRANSFERS

17.1 County's Right to Convey. The County may Transfer the Fee Estate from time to time, but only if the County promptly Notifies the Operator of such Transfer. Notwithstanding the forgoing, in the event the County decides to sell the Property and the County receives an offer to purchase acceptable to the County, during the Term of the Agreement, the County, prior to acceptance thereof, shall give the Operator, with respect to such offer, written notice thereof and a copy of said offer; and Operator shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Property on the terms of said offer. If Operator shall elect to purchase the Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period.

Operator's failure to exercise its option under this paragraph shall not affect this Agreement and the continuance of Operator's rights under this and any other paragraph contained herein.

17.2 Release of the County. Upon any Transfer of the entire Fee Estate in compliance with this Agreement, provided such Transfer does not adversely affect the Operator's rights under this Agreement, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by the County after the Transfer, provided that the successor to the County assumes the County's future obligations under this Agreement. This Agreement shall bind the County only while the County owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

## **ARTICLE XVIII**

### **OPERATOR TRANSFERS**

18. The Operator's Limited Right. The Operator may Transfer this Agreement to any Affiliate. The Operator may Transfer this Agreement to a non-Affiliate with the County's prior written consent, which may be given or withheld in the County's sole and absolute discretion, prior to the effective date of any such Transfer. Any permitted transferee, franchisee or assignee of the Operator shall assume all obligations and liabilities of the Operator under this Agreement in a writing reasonably satisfactory to the County, prior to the effective date of any such Transfer. The Operator shall pay all transfer and other taxes payable on account of any Transfer by the Operator or any holder of any Equity Interest in the Operator. The Operator shall promptly Notify the County at least ninety (90) days in advance of the effective date of any proposed Transfer by the Operator. After the Operator assigns this Agreement and the assignee, franchisee or transferee assumes the Operator's obligations under this Agreement, in accordance with this Agreement, the assignor shall have no obligation or liability under this Agreement, except: (a) any obligation to hold and apply Restoration Funds held by the assignor at the date of the assignment (unless transferred to the assignee); and (b) any unperformed obligations that arose before the assignment (unless assumed in writing, in recordable form, by the assignee). If the Operator assigns this Agreement, then as between the County and the Operator, the Operator shall be deemed to have assigned to the assignee, franchisee or transferee all claims against the County then existing, and the assignee, franchisee or transferee shall be deemed, by assuming this Agreement, to have assumed all liabilities and obligations of the Operator then existing or thereafter arising under this Agreement (except as this Agreement otherwise expressly states).

## **ARTICLE XIX**

### **EVENTS OF DEFAULT; REMEDIES**

19.1 Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

19.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from the County, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 Bankruptcy or Insolvency. If the Operator ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Operator's assets or the Operator's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

19.1.3 Non-Monetary Default. If any Non-Monetary Default occurs and the Operator does not cure such Non-Monetary Default within sixty (60) days after Notice from the County describing the Default in reasonable detail.

19.2 Remedies. If an Event of Default occurs, then the County shall, at the County's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at Law or in equity or under any other terms of this Agreement. The County's remedies shall include:

19.2.1 Termination of the Operator's Rights. The County may terminate this Agreement by written Notice of termination of this Agreement to the Operator or by any other lawful means, in which case this Agreement and the Term shall terminate, such Termination Date shall be considered the Expiration Date of the Agreement, and the Operator shall immediately vacate the Sports Park. Additionally, the County may bring an action to recover any or all of the following from the Operator:

- (a) any unpaid County Revenues earned as of the Expiration Date; and
- (b) any other amount necessary to compensate the County for all detriment proximately caused by the Operator's failure to perform the Operator's obligations under this Agreement.

19.2.2 Suits Before Expiration Date. The County may sue the Operator for damages or to recover County Revenues, from time to time, at the County's election, without terminating this Agreement.

19.2.3 Receipt of Moneys. No receipt of money by the County from the Operator after the Expiration Date, or after the giving of any Notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice previously given to the Operator, or waive the County's right to enforce payment of any amount payable or later falling due, or the County's right to enter the Sports Park, except as this Agreement expressly states otherwise, it being agreed that after service of Notice of termination of this Agreement or the commencement of suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected

being deemed payments on account of use of the Sports Park or, at the County's election, on account of the Operator's liability to the County.

19.2.4 No Waiver. No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial County Revenues during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the Operator, and no Default, shall be Modified, except by a written instrument executed by the County. No waiver of any Default shall Modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

19.2.5 Injunction of Breaches. Whether or not an Event of Default has occurred, the County may obtain a court order enjoining the Operator from continuing any Default or from committing any threatened Default. The Operator specifically and expressly acknowledges that damages would not constitute an adequate remedy to the County for any Non-Monetary Default.

19.2.6 Continue Agreement. The County may, at the County's sole option, allow the Operator to continue operating the Sports Park after an Event of Default. In that case, this Agreement shall continue and the County may continue to enforce it, including the right to collect County Revenues when due and exercise any remedies for nonpayment.

19.2.7 Restoration Funds. Upon any termination of this Agreement, to the extent that the County then holds any Restoration Funds, they shall be the sole property of the County and may be applied solely as the County directs.

19.3 Accord and Satisfaction; Partial Payments. No payment by the Operator or receipt by the County of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by the Operator. Any endorsement or statement on any check or letter accompanying any check or payment of County Revenues or any other amount shall not be deemed an accord or satisfaction. The County may accept any such check or payment without prejudice to the County's right to recover the balance of such County Revenues or other payment or pursue any other remedy.

19.4 Survival. No expiration or termination of this Agreement and no entry into or onto the Sports Park by the County after such expiration or termination shall relieve the Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

## ARTICLE XX

### DISPUTE RESOLUTION

20.1 Mediation. As a condition precedent to filing any action in law or equity on any claim against the County that may be arise out of this Agreement or the subject thereof, the

Operator agrees to provide advance notice to the County of its intent to file a lawsuit or other action against the County. Each of the other parties further agrees to submit the dispute in good faith to non-binding mediation before a single mediator, pending completion of which any lawsuit or other action that may have been filed by or on behalf of, either Party shall be tolled. The costs for such mediation shall be equally split between the Parties.

(a) Venue for Mediation. The mediation shall be conducted within Milwaukee County at a venue agreed to by both parties.

(b) Selection of Mediator. The mediator shall be selected from the official list of certified mediators and shall possess a minimum of ten (10) years experience in handling commercial transactions and litigation.

(c) Rules and Administration. Unless otherwise contrary to this Agreement, to any subsequent written expression of mutual intent executed by the parties, or to any provision of the law, the mediation shall be administered by the rules of the American Arbitration Association.

## ARTICLE XXI

### **END OF TERM; OPERATOR CONDITIONS**

21.1 Upon any Expiration or Termination Date: (a) the Operator shall vacate the Sports Park (including removal of all of the Operator's personnel and property), in the condition this Agreement requires, subject to any Loss that this Agreement does not require the Operator to Restore; (b) the Operator shall deliver title to the Sports Park including all permanent alternations, modifications, additions and improvements to the Property necessary and appropriate for the continued operation of the Property, free and clear of all claims, except claims that the County or any of its agents caused; (c) the Operator shall remit to the County all remaining amounts in the Endowment Fund; (d) the Operator shall assign to the County, without recourse, and give the County copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Sports Park; (e) the Parties shall cooperate to achieve an orderly transition of operation of the Sports Park from the Operator to the County or a designee of the County, without interruption, including delivery of such books and records (or copies thereof) as the County reasonably requires; and (f) the Parties shall adjust for all other expenses and income of the Sports Park and any prepaid County Revenues and shall make such payments as shall be appropriate on account of such adjustment (but any sums otherwise payable to the Operator shall first be applied to cure any Default). Notwithstanding anything to the contrary in this Section, the Operator may remove from the Sports Park any Operator FF&E, but the Operator must do so, if at all, before the Expiration Date. The Operator shall repair any material damage from any such removal of Operator FF&E. Should the Operator fail to make such repairs, the County reserves the right to perform the work involved and to seek compensation as otherwise provided herein. Any Operator FF&E not removed before the Expiration Date or Termination Date shall be deemed the sole and exclusive property of the County. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third Person (excepting permitted successors or assigns of the Operator or the County pursuant to the terms of this Agreement) any right to claim damages or to bring any suit, action

or other proceeding against either the County or the Operator because of any breach of this Agreement or to enforce any term, covenant, condition, restriction, reservation, provision or agreement contained in this Agreement.

21.2 Operator Conditions. This Agreement is conditioned on the obtainment of all Approvals required to operate the Sports Park, Concession Facility and all related activities described in this Agreement within a reasonable time after the final approval of the County as set forth in Section 22.19. County agrees to use reasonable efforts to assist Operator in obtaining all such Approvals.

## ARTICLE XXII

### MISCELLANEOUS

22.1 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Agreement.

22.2 No Waiver by Silence. Failure of either Party to complain of any act or omission on the part of the other Party shall not be deemed a waiver by the noncomplaining Party of any of its rights under this Agreement. No waiver by either Party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

22.3 Performance Under Protest. If a dispute arises about performance of any obligation under this Agreement, the Party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to determine the Parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with Default Interest.

22.4 Survival. All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

22.5 Unavoidable Delay. Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

22.6 Recitals. The recitals are incorporated herein as true and correct and made part of this Agreement.

22.7 Captions. The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

22.8 Counterparts. This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

22.9 Delivery of Drafts. Neither Party shall be bound by this Agreement unless and until the authorized representative(s) and such Party has/have executed, at least, one counterpart original of this Agreement and delivered such executed counterpart original to the other Party. The submission of draft(s) or comment(s) on drafts shall not bind either Party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Agreement. Submission of this Agreement document for examination or signature by the Parties does not constitute an option or offer regarding the Property on the terms in this document or a reservation of the Property in favor of the Operator. This document shall not be binding on either Party, unless and until all of the conditions of this Section are satisfied.

22.10 Entire Agreement. This Agreement contains all of the terms, covenants, conditions and agreements between the Parties regarding the Sports Park. The Parties have no other understandings or agreements, oral or written, about the Sports Park.

22.11 Modification. Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both the County and the Operator to be binding on either Party.

22.12 Governing Law and Venue. This Agreement, its interpretation and performance, the relationship between the Parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Wisconsin, without regard to principles of conflicts of laws.

22.13 Partial Invalidity/Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

22.14 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of the following terms shall be interpreted as if followed by the words “(or any part of it),”

22.15 Reasonableness. Wherever this Agreement states that a Party’s approval shall be “reasonable” or not unreasonably withheld: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

22.16 Time of Essence. Time is of the essence with respect to the performance of each term, provision, covenant or agreement contained in this Agreement.

22.17 Independent Contractor/Disclaimer of Partnership. The relationship of the Parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that the County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with the Operator in the conduct of the Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between the County and the Operator.

22.18 Condition; Final Approval. This Agreement is expressly conditioned upon and subject to the approval of the Milwaukee County Board of Supervisors and shall not be or become effective or binding on either the County or the Operator, unless and until formally approved by the Milwaukee County Board of Supervisors and fully executed by the authorized representative(s) of each Party.

22.19 No Third Party Beneficiaries. This Agreement shall bind and benefit the County and the Operator and their successors and assigns. Nothing in this Agreement is intended to confer on any Person (except the County and the Operator or the Operator's approved successor or assign) any right to insist upon, or to enforce against the County or the Operator, the performance or observance by either Party of its rights or obligations under this Agreement.

22.20 Notices. All Notices shall be in writing and addressed to the County or the Operator (and their designated copy recipients) as set forth in Exhibit "B". Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth in Exhibit "B", in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either Party may change its address for delivery of Notices by written Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any Party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of their client.

22.21 Nor Brokers. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of such representation.

22.22 Attachments. The following attachments are intended to be incorporated into and made part of this Agreement:

- Exhibit "A" = Property Legal Description
- Exhibit "B" = Notice Addresses
- Exhibit "C" = Milwaukee County Due Diligence Requirements
- Exhibit "D" = Sports Park Pro Forma

**SIGNATURE PAGE  
TO  
SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT**

IN WITNESS WHEREOF, the County and the Operator have executed this Agreement as of the Effective Date.

**COUNTY: DEPARTMENT OF PARKS,  
RECREATION AND CULTURE**

**OPERATOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Corporation Counsel

Reviewed by: \_\_\_\_\_  
Risk Management

**EXHIBIT "A"**

**PROPERTY LEGAL DESCRIPTION**

**EXHIBIT "B"**

**NOTICE ADDRESSES**

<b>Party:</b>	<b>Notice Address:</b>	<b>With a copy to:</b>
County	Department of Parks, Recreation and Culture Attn: Sue Black 9480 Watertown Plank Road Wauwatosa, WI 53226	
Operator	The Rock Sports Complex, LLC Attn: Mike Zimmerman 4600 W. Loomis Road, Suite 310 Milwaukee, Wisconsin 53220	

## EXHIBIT “C”

### MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE  
MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

#### Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

**EXHIBIT "D"**

**SPORTS PARK PRO FORMA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

(ITEM NO. ) From the Director, Department of Parks, Recreation and Culture, seeking authorization to enter into a maintenance and operations services agreement with The Rock Sports Complex, LLC for that portion of the Root River Parkway (South), commonly known as Crystal Ridge, to allow for the construction, maintenance, operation and management of athletic fields and related amenities, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, The Rock Sports Complex, LLC ("RSC") has approached the Department of Parks, Recreation and Culture ("DPRC") with a proposal to develop at no cost to the County athletic fields and related amenities at a site along the Root River Parkway (South), commonly known as Crystal Ridge (the "Property"); and

WHEREAS, the Property is made up of a former County dump site and an adjacent piece of the County park land at the intersection of South 76<sup>th</sup> Street and Loomis Road; and

WHEREAS, the dump sites at and adjacent to the Property have been capped to the satisfaction of the Wisconsin Department of Natural Resources ("WDNR"); however, because of potential methane gas migration and differential settling within the waste, DPRC's ability to develop these properties for anything other than outdoor recreational activities is severely restricted; and

WHEREAS, in 1983 DPRC entered into a lease agreement with the Midwest Development Corporation ("MDC") permitting MDC to build a down-hill ski facility on the park land; and, on the adjacent capped dump site, MDC was permitted to build support facilities, including a parking lot, storage building, ski chalet and restaurant; and

WHEREAS, the eastern and western areas of the Property have been basically unused; and

WHEREAS, the MDC lease expired in 2008; and

WHEREAS, since that time, the ski hill has continued to be operated by MDC on a year-to-year basis as DPRC has explored both the sale and development of the Property; however, because of the environmental liabilities and use restrictions, no buyers or financially able developers have come forward, until now; and

45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88

WHEREAS, in 2012 RSC approached DPRC with its proposal to develop at no cost to the County athletic fields and related amenities at the Property, requiring an agreement between DPRC and RSC to allow RSC to construct and manage its improvements on the Property; and

WHEREAS, all of the constructions costs, maintenance costs, and operating and management expenses are the responsibility of RSC; and

WHEREAS, the terms of the agreement provide that no construction activities can take place at the Property unless and until, (1) the condition of Property is satisfactory to WDNR, DPRC and the Department of Administrative Service - Architecture and Engineering Division ("DAS-A&E"), and (2) WDNR, DPRC and DAS-A&E approve RSC's plans and specifications for its improvements at the Property; and

WHEREAS, the agreement is for an initial fifteen (15) year term with an option to renew for an additional ten (10) years; and

WHEREAS, for allowing RSC to construct and manage its improvements at the Property, DPRC will receive an annual base rental payment of \$25,000, plus five percent (5%) of RSC's annual net earnings before taxes in years 1-5, eight percent (8%) in years 6-15, and ten percent (10%) in years 16-25; and

WHEREAS, RSC is also required to populate an endowment fund with \$50,000, to be used for capital repairs and major maintenance; and

WHEREAS, upon termination or expiration of the agreement, Milwaukee County shall acquire title to the improvements and any equipment necessary to operate the facilities, as well as any remaining endowment fund reserves; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors has reviewed the Department of Administrative Services – Fiscal Affairs Division's due diligence report; and

BE IT FURTHER RESOLVED, that the Board of Supervisors hereby authorizes the Parks Director to execute a maintenance and operations services agreement with The Rock Sports Complex, LLC to allow for the construction, maintenance, operation and management of athletic fields and related amenities at Crystal Ridge; and

BE IT FURTHER RESOLVED, that no construction activities can be undertaken at Crystal Ridge by The Rock Sports Complex, LLC without written

89 approval from the Wisconsin Department of Natural Resources and Milwaukee  
90 County.  
91  
92



CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE  
SUE BLACK, DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: July 10, 2012

To: Chairwoman Marina Dimitrijevic, Milwaukee County Board of Supervisors

From: Sue Black, Director, Department of Parks, Recreation and Culture

**Subject: Authorization to Submit a State of Wisconsin Department of Natural Resources County Snowmobile Trails Aids Grant Application – ACTION**

### POLICY

The Department of Parks, Recreation and Culture ("DPRC") is seeking authorization to submit a State of Wisconsin Department of Natural Resources ("WDNR") County Snowmobile Trails Aids grant application.

### BACKGROUND

WDNR's County Snowmobile Trails Aids Program is designed to provide a statewide system of well signed and groomed snowmobile trails for public use and enjoyment. Funded activities include signing, grading, brushing, and bridge construction.

Because only counties are eligible to apply for these grants, DPRC acts as a state approved agent, providing the program grant funding to local snowmobile organizations/clubs so that the organizations/clubs can make necessary improvements to county trails. The process works as follows:

1. A snowmobile organization/club submits costs associated with trail development or maintenance to WDNR.
2. WDNR reviews these expenses and issues a check to DPRC for those costs that are eligible for reimbursement.
3. After receiving the reimbursement check from WDNR, DPRC issues a check to the snowmobile organization for the same amount.
4. No additional out-of-pocket costs are incurred.

DPRC has, with County Board authorization, applied for snowmobile grants on behalf of local snowmobile clubs in the past, and the local clubs have operated and maintained trails without any reported problems, and without any expense to the County.

**RECOMMENDATION**

The Parks Director respectfully recommends that DPRC be authorized to submit a WDNR County Snowmobile Trails Aids grant application, and to undertake all actions and activities necessary to accept and implement the grant if awarded to the County.

Prepared by: Bill Waldron, Natural Resources Specialist/DPRC

**Recommended by:**

**Approved by:**

---

Laura Schloesser, Chief of  
Administration and External Affairs

---

Sue Black, Parks Director

Cc: County Executive Chris Abele  
Amber Moreen, Chief of Staff, County Executive's Office  
Kelly Bablitch, Chief of Staff, County Board  
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee  
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee  
Vince Masterson, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS  
Janelle Jensen, Parks, Energy & Environment Committee Clerk  
Glenn Bultman, Research Analyst, County Board  
Jessica Janz-McKnight, Research Analyst, County Board

(ITEM NO. ) From the Director, Department of Parks, Recreation and Culture, seeking authorization to submit a State of Wisconsin Department of Natural Resources County Snowmobile Trails Aids grant application, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, the Wisconsin Department of Natural Resources' (WDNR's) County Snowmobile Trails Aids Program is designed to provide a statewide system of well signed and groomed snowmobile trails for public use and enjoyment; and

WHEREAS, funded activities include signing, grading, brushing, and bridge construction; and

WHEREAS, only counties are eligible to apply for the grants; and

WHEREAS, the Department of Parks, Recreation and Culture (DPRC) acts as a State approved agent, providing program grant funding to local, i.e. county, snowmobile organizations/clubs so that the organizations/clubs can make necessary improvements to county trails; and

WHEREAS, DPRC has, with County Board authorization, applied for snowmobile grants on behalf of local snowmobile organizations/clubs in the past, and the local clubs have operated and maintained trails without any reported problems or expenses to Milwaukee County; and

WHEREAS, the Parks Director respectfully recommends that DPRC be authorized to submit a WDNR County Snowmobile Trails Aids grant application, and to undertake all actions and activities necessary to accept and implement the grant if awarded to the department; now, therefore

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby authorize DPRC to submit a State of Wisconsin Department of Natural Resources County Snowmobile Trails Aids grant application, and to undertake all actions and activities necessary to accept and implement the grant if awarded to Milwaukee County.

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** June 28, 2012

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Authorization to submit a State of Wisconsin Department of Natural Resources County Snowmobile Trails Aids Grant Application.

**FISCAL EFFECT:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact                                     | <input type="checkbox"/> Increase Capital Expenditures |
| <input checked="" type="checkbox"/> Existing Staff Time Required                                       | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues     |
| <input type="checkbox"/> Absorbed Within Agency's Budget   | <input type="checkbox"/> Decrease Capital Revenues     |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget   |  |
| <input type="checkbox"/> Decrease Operating Expenditures   | <input type="checkbox"/> Use of contingent funds       |
| <input type="checkbox"/> Increase Operating Revenues   |  |
| <input type="checkbox"/> Decrease Operating Revenues   |  |

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	<b>Expenditure or Revenue Category</b>	<b>Current Year</b>	<b>Subsequent Year</b>
<b>Operating Budget</b>	Expenditure		
	Revenue		
	Net Cost		
<b>Capital Improvement Budget</b>	Expenditure		
	Revenue		
	Net Cost		

## DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. <sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. DPRC is requesting authorization to apply for State of Wisconsin Department of Natural Resources County Snowmobile Trails Aids Programs grants on behalf of local snowmobile organizations/clubs. DPRC accepts the grant awards and distributes the funds to the organizations to provide for the necessary improvements to county trails managed and maintained by the organizations/clubs.

B. None.

C. No Impact.

D. None.

Department/Prepared By Bill Waldron/DPRC

Authorized Signature \_\_\_\_\_

Did DAS-Fiscal Staff Review?  Yes  No

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.



CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE  
SUE BLACK, DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: July 10, 2012  
To: Gerry Broderick, Chair, Parks, Energy and Environment Committee  
From: Sue Black, Director, Department of Parks, Recreation and Culture  
Subject: **South Shore Park Improvement Project – INFORMATIONAL**

#### ISSUE

South Shore Park improvement project.

#### BACKGROUND

Oral presentation by the Department of Parks, Recreation and Culture, updating the committee on status of the South Shore Park improvement project.

#### RECOMMENDATION

No action requested. Informational item unless further action required.

Prepared by: Paul Kuglitsch, Contract Services Officer/DPRC

**Recommended by:**

**Approved by:**

---

Laura Schloesser, Chief of  
Administration and External Affairs

---

Sue Black, Parks Director

Cc: County Executive Chris Abele  
Amber Moreen, Chief of Staff, County Executive's Office  
Kelly Bablitch, Chief of Staff, County Board  
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee  
Vince Masterson, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS  
Janelle Jensen, Parks, Energy & Environment Committee Clerk  
Glenn Bultman, Research Analyst, County Board  
Jessica Janz-McKnight, Research Analyst, County Board





OFFICE OF THE COUNTY EXECUTIVE

*Milwaukee County*

CHRIS ABELE COUNTY EXECUTIVE

Date: June 29, 2012  
To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors  
From: Chris Abele, County Executive  
Subject: Appointment to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Don Tyler to serve on the War Memorial Corporation Board of Trustees. Don Tyler's term will expire on April 30, 2016.

Attached is a copy of his biography for your review.

Your consideration and confirmation will be appreciated.

A handwritten signature in black ink, appearing to read "Chris Abele".

Chris Abele  
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee  
Milwaukee County Board of Supervisors  
Kelly Bablitch, Chief of Staff, County Board  
Dave Drent, Executive Director, War Memorial Corp.  
Don Tyler

**DONALD G. TYLER**  
4480 North Maryland Avenue  
Shorewood, Wisconsin 53211  
Home: (414) 962-9870 Cell: (414) 217-8595

### **BACKGROUND SUMMARY**

**SENIOR EXECUTIVE** with more than 20 years of progressive experience in organizational leadership, administration, marketing and sales specifically in the financial services industry. Skilled in P&L management and development of new business, product and distribution opportunities. Demonstrated performance in:

Product Development  
General Management  
Strategic Planning

Marketing Communications  
Marketing Plans  
Distribution Strategies

New Business Development  
Sales Management  
Budgeting

### **PROFESSIONAL EXPERIENCE**

**MILWAUKEE SYMPHONY ORCHESTRA (MSO)**, Milwaukee, WI **2010**  
Wisconsin's largest and most significant performing arts organization, the MSO plays a vital cultural, education and economic role in shaping the vitality of Milwaukee and the surrounding area.

#### **Interim President & Executive Director**

Reporting to the Chairman of the Board, responsibilities include the overall leadership, direction and management of the MSO. The MSO has a staff of approximately 35 professionals and 88 professional fulltime musicians performing over 140 concerts each season.

#### ***Leadership***

- Work closely with the Board and the Music Director, staff and other key constituents in the continued implementation of the strategic business plan during a nine month interim period.
- Actively engages in MSO Board meetings and Board committees; assists the MSO Board in establishing policy and manages governance and compliance.

#### ***Administration***

- Manages day-to-day business operations and develops effective and measurable operations, business and financial performance metrics.
- Oversees all personnel activities for staff and artistic, including hiring, development, retention and implementation;
- Works closely with the Chief Financial Officer, manages and directs all activities related to cash flow, annual budgets and revenue projections;

#### ***Development & External Relations***

- Directs and actively participates in the development and stewardship of major donors, including individuals, corporations, institutions and foundations;
- Builds effective relationships with business leaders, influential members of the community, media, other arts groups and vendor and banking relationships in an effort to positively influence and represent the presence and brand of the MSO.

**NORTHWESTERN MUTUAL & NORTHWESTERN MUTUAL INVESTMENT SERVICES,  
Milwaukee, WI** **2003 to 2010**

One of the largest mutual insurance and independent broker-dealer firms in the country.

**Vice President, Executive Officer**

As Vice President of Investment Products & Services (IPS), responsibilities include overseeing the product and vendor research, negotiation and management, development and maintenance of Brokerage and Advisory Services, Annuities, Mutual Funds, and Business Retirement Products and Services, Business Development (including a premier Investment Specialist Program), Consulting, Training, Sales Support, Marketing and Field Communications as well as Affinity Funds Distribution & Planning.

***Products and Services Development & Management***

- Responsible for the management and direction of research, product pricing, structure and compensation design, development and management of all brokerage and advisory products and services for the broker-dealer and Trust company.
- Responsible for the management and direction of key strategic relationships related to both brokerage clearing and advisory services platforms, Northwestern Mutual's Affinity Funds program and other ancillary support relationships, including Morningstar, Albridge, FRC, etc.

***Business Development, Marketing, Training & Communications***

- Responsible for the management and direction of all broker-dealer and Trust company business development activities through Northwestern Mutual's field force of approximately 6,000 registered representatives and investment advisors. Business development activities included Managing Partner (branch manager) investment platform consultations, integrated practice management resources, investments and annuities wholesaling activities and management of the Investment Specialist program.
- Responsible for the management and direction of all broker-dealer and Trust company field force and client marketing, training and communications. Marketing activities included the development and distribution of broker-dealer and Trust company marketing campaigns and materials, recognition and awards programs and conferences; training activities included the development, distribution of broker-dealer and Trust company field training ranging from required product training to business and practice management training through web-based learning, onsite, conference and schools.

***Executive Officer***

- Reporting directly to an Executive Vice President on the Management Committee, responsible for all typical business line activities, including staff hiring, training and management; revenue growth and expense management; active member of various corporate committees including Compliance Best Practices, Business Integration and Investment Products & Services/Agencies.

**PRECISION MARKETING PARTNERS & THE ACADEMY OF FINANCIAL SERVICES  
STUDIES, Milwaukee, WI** **1998 to 2002**

Privately-held consulting firms serving the financial services industry.

**President and Co-founder**

1998 to 2002

Responsible for general management of two service firms focused on providing strategic sales and marketing and education and training services to mid- to large-size financial services firms. Developed and implemented marketing and sales plans for multiple distribution channels and multiple product lines. Accountabilities included P&L, strategic and business planning, budgeting, staffing, new product development, sales, marketing, finance and operations.

### ***Sales and Marketing***

- Co-founded and developed a comprehensive marketing plan to position our firms strategically as a leading provider of sales and marketing consulting services and education and training capabilities.
- Worked jointly in developing a significant client base representing more than 100 financial services firms.

### ***General Management***

- Directed and managed many of the consulting, operations and financial aspects of the firms.
- Key participant as President and Board Member in all significant management decisions related to the management and operation of the firms.

**WELLS CAPITAL (STRONG CAPITAL MANAGEMENT), Milwaukee, WI** **1995 to 1998**  
Privately-held mutual fund company with over \$32 billion in assets under management.

#### **Senior Vice President**

1998

#### **Vice President, National Sales Manager**

1995 to 1997

Responsible for general management of the \$10 billion, 34 employee Intermediary Services division established to service defined contribution, variable insurance products and mutual fund wrap and supermarket relationships through broker-dealer, insurance and consultant channels. Accountabilities included P&L, strategic and business planning, managing a \$16 million budget, staffing, new product development, sales, marketing, finance and operations.

### ***General Management***

- Directed strategies which expanded division assets at 60% annualized rate, from \$1.5 to \$10 billion between 1995 and 1998.
- Increased division's percentage of company's net sales from 15% to over 90%.
- Served on the Senior Management Committee, formulating corporate business strategy.
- Selected to serve on industry advisory boards including Fidelity, Schwab and First Trust.

### ***Sales and Marketing***

- Created unique, growth-oriented sales and marketing strategies, positioning Strong as a recognized leader in broker-dealer, insurance, bank and consultant intermediary channels.
- Built regional sales force, increasing company visibility in financial advisor, broker-dealer and insurance marketplaces.
- Designed and implemented comprehensive marketing strategies including creation of industry standard setting collateral materials, advisor forums, conference calls.
- Created innovative marketing strategy with Fidelity which increased Strong's 1998 FundsNetwork assets from \$1 to \$2 billion and established Strong as #1 in net sales.

**THRIVENT (AAL CAPITAL MANAGEMENT), Appleton, WI** **1994 to 1995**  
\$12 billion mutual fund subsidiary of Aid Association for Lutherans (AAL).

#### **Vice President of Marketing and Sales**

Responsible for all marketing and sales support activities related to AAL Mutual Funds, Variable Annuities and brokerage unit. Managed staff of 23 and marketing budget of \$3.5 million.

- Upgraded collateral marketing material and corporate image, improving company visibility in the marketplace while reducing costs. Developed and launched AAL's first variable annuity.

<b>AMERICAN FINANCE GROUP (AFG), Boston, MA</b>	<b>1985 to 1994</b>
\$1 billion asset management company offering investments to individuals and institutions.	
<b>Senior Vice President, National Marketing Director</b>	1987 to 1993
<b>Regional Vice President (Wholesaler)</b>	1985 to 1987
<b>ANGELES CORPORATION, Los Angeles, CA</b>	<b>1983 to 1985</b>
\$500 million diversified asset management investment company.	
<b>Marketing Manager, Regional Sales Director (Wholesaler)</b>	
<b>CAMPRO SYSTEMS, Denver, CO</b>	<b>1977 to 1983</b>
\$1 million advertising production company.	
<b>Principal and Co-founder</b>	

#### **EDUCATION**

**BA, Business/Marketing**, University of St. Thomas, St. Paul, MN, 1977  
**BA, Journalism**, University of St. Thomas, St. Paul, MN, 1977

#### **LICENSES**

Past NASD Series 7, 24, 65 and 63

#### **CURRENT AND PAST AFFILIATIONS**

Current Board, Executive Committee and Finance Committee Member of the Milwaukee Symphony Orchestra; Current Board Member of Repairers of the Breach, a Milwaukee-based homeless resource center, Current Board Member of Eagle Capital Growth Fund, Former Trustee for Northwestern Mutual's 401(k) and Defined Benefit Plans, Former Committee Member, Private Client Group Committee of SIFMA; Former Committee Member, LIMRA Broker-Dealer Committee; Former Board Trustee, Quintara Funds; Former Board Member of SEED, a community non-profit for the local school district; Past President, Shorewood Little League