

RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT
CITY OF SOUTH MILWAUKEE

General Liability

In consideration of being permitted to enter described facilities for any purpose, including, but not limited to observation, use of facilities or equipment or participation in any way, the undersigned hereby acknowledges, agrees and represents that he/she has inspected, or immediately upon entering will inspect such premises and facilities. It is further warranted that such entry in described facilities for observation, participation or use of any facilities or equipment constitutes and acknowledgement that such premises and all facilities or equipment thereon have been inspected and that the undersigned finds and accepts same as being safe and reasonably suited for the purposes of such observation or use.

In further consideration of being permitted to enter described facilities for any purpose including, but not limited to, observation, use of facilities or equipment, or participation in any way, the undersigned hereby agrees to the following:

The undersigned hereby releases, waives, discharges and covenants not to sue the City of South Milwaukee, its elected and appointed officials, officers, employees, or authorized representatives or volunteers (hereinafter referred to as "releasees") from all liability to the undersigned for any loss or damage, and any claim or demands thereof on account of injury to the person or property or resulting death of the undersigned, whether caused by the negligence of the releasees or otherwise, while the undersigned is in, upon, or about the premises of any facilities or equipment therein.

The undersigned hereby assumes full responsibility for and risk of bodily injury, death or property damage due to the negligence of releasees or otherwise while in, about, or upon described facilities and/or while using the premises or any facilities or any equipment thereon.

INDEMNIFICATION

To the fullest extent allowable by law, the undersigned hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after the usage of City of South Milwaukee property and facilities and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the undersigned or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. The undersigned's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of the undersigned, any sub-lessee, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the undersigned or any sub-lessee under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict of ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

The undersigned shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The undersigned's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the undersigned shall, at its sole expense, maintain in effect at all times during the usage of the facility/area, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

A. Worker's Compensation and Employers Liability Insurance – The undersigned shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The undersigned shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

B. Commercial General Liability – The undersigned shall provide and maintain the following commercial general liability insurance:

Coverage – Coverage for commercial general liability insurance shall be at least as broad as the following:

Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)

Limits – The undersigned shall maintain limits no less than the following:

General Liability – One million dollars (\$1,000,000) per occurrence (\$2,000,000 general aggregate if applicable) for bodily injury, personal injury and property damage.

C. Required Provisions - The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2101, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the undersigned; products and completed operations of the undersigned; premises occupied or used by the undersigned; and vehicles owned, leased, hired or borrowed by the undersigned. The

coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

2. For any claims related to this lease or facility usage, the undersigned's insurance shall be primary insurance as respects the City, its elected and appointed officials, officers, employees or authorized representatives of volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officials, officers, employees, or authorized representatives or volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
4. The undersigned's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the undersigned, except after sixty (60) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
6. Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the undersigned for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.
7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
8. All of the insurance shall be provided on policy forms and through companies satisfactory to the City, and shall have a minimum A.M. Best's rating of A-VII.

D. Deductibles and Self-Insured Retentions – Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

E. Evidence of Insurance – Prior to execution of the agreement, the undersigned shall file with the City a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence **shall include** an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

F. Sub-Lessees – In the event that the undersigned employs other lessees (sub-lessees) as part of the work covered by this agreement, it shall be the undersigned's responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.

The undersigned further expressly agrees that the foregoing release, waiver and indemnity agreement is intended to be as broad and inclusive as is permitted by the laws of the State of Wisconsin and that if any portion thereof is held invalid, it is agreed that the balance shall continue in full legal force and effect.

The undersigned has read and voluntarily signs this release and waiver of liability and indemnity agreement, and further agrees that no oral representations, statements or inducements apart from the foregoing written agreement have been made.

I have read, understand and agree with this release.

Description of event and location, including dates and times, as used herein the "premises":
