

**AGREEMENT BETWEEN CITY OF MILWAUKEE AND DEER DISTRICT LLC
FOR ENHANCED HYDRANT PAINTING AND MAINTENANCE SERVICE**

This agreement for enhanced hydrant painting and maintenance service (“Agreement”) is made and effective as of _____, 2018 (“Effective Date”) by and between the City of Milwaukee, operating as a municipal water public utility, (“City”) and Deer District LLC, a Delaware limited liability company, whose principal place of business is 1543 North 2nd Street, Milwaukee, Wisconsin 53212.

Whereas, Milwaukee Water Works (“MWW”) intends to install approximately 15 hydrants in the area immediately surrounding the Milwaukee Bucks basketball arena (“Arena”), as shown on the attached Exhibit A; and

Whereas, pursuant to Rule 2.2.2. of the Milwaukee Water Works Rules and Regulations Governing Water Service (“MWW Rule[s]”), fire hydrants, branch valves, and hydrant branches are installed primarily for the use of the Milwaukee Fire Department; and

Whereas, under Rule 2.2.2, MWW will paint fire hydrants in a standard color code; and

Whereas, MWW typically re-paints fire hydrants every ten (10) years; and

Whereas, Deer District LLC desires to have the fire hydrants around the Arena custom painted to promote the Milwaukee Bucks professional basketball team; and

Whereas, the City has authorized the proper City officials to enter into this Agreement pursuant to Common Council Resolution No. _____, dated _____, 2018;

Now, Therefore, in consideration of the mutual promises set forth herein, the City and Deer District LLC agree as follows:

1. Hydrant Installation, Service, and Maintenance. By August 1, 2018, MWW shall install up to 15 custom-painted fire hydrants, as shown in the attached Exhibit B, in the locations identified in Exhibit A (“Initial Installation”). MWW shall service and maintain the hydrants and, beginning June 30, 2022, MWW shall re-paint the hydrants every four (4) years to restore the hydrants to substantially the same custom-painted appearance as at Initial Installation.
2. Payment. The parties acknowledge that MWW’s ratepayers shall not pay the increased incremental cost of custom painting the hydrants over the typical cost to paint the hydrants in a standard color code.
 - a. Initial Installment. By August 1, 2018, Deer District LLC shall pay MWW \$30,000 for the Initial Installation and routine maintenance of the hydrants during the first four-year period of this Agreement.
 - b. Ongoing Maintenance. By August 1, 2023, and by August 1 of each year thereafter during the term of this Agreement, MWW shall invoice Deer District LLC for the actual costs of ongoing service and maintenance of the hydrants incurred during the previous year. Deer District LLC shall pay MWW for the amount invoiced within 30 days of receipt of the invoice.

- c. Other Consideration. In addition to the payments set forth in this section 2, Deer District LLC agrees to contribute in-kind marketing support and promotion of MWW's Lead-Safe Milwaukee campaign.
3. Ownership of Hydrants. The hydrants shall remain the property of the City. This Agreement confers no rights upon Deer District LLC to access or operate the hydrants except as expressly permitted by MWW pursuant to MWW Rules.
4. Term and Termination. This Agreement is effective as of the Effective Date and will terminate upon the termination of that certain Arena Lease, Management and Operations Agreement by and between Wisconsin Center District and Deer District LLC pursuant to sec. 229.461, Wis. Stats., and dated April 13, 2016, as amended from time to time ("Bucks Lease"). Deer District LLC shall provide MWW with at least 120 days' notice in writing specifying the effective date of the termination of the Bucks Lease.
 - a. Termination for Cause. Either party may terminate this Agreement for cause by giving at least 60 days' notice in writing to the other party specifying the effective date of termination.
 - b. Termination for Convenience. Either party may terminate this Agreement for any reason by giving at least 120 days' notice in writing to the other party specifying the effective date of termination.
 - c. Decommissioning Fee. Within 15 days of receiving or giving notice of termination of this Agreement under this section 4, MWW shall invoice Deer District LLC for the cost to paint the hydrants in a standard color code according to the then-current MWW Rules ("Decommissioning Fee"). Deer District LLC shall pay the Decommissioning Fee within 30 days of invoice.
5. Indemnification. Each party shall be responsible for its own negligence, provided that Deer District LLC shall save and indemnify and keep harmless the City against all liabilities, judgments, attorney fees, costs, and expenses which may be claimed against the City in consequence of any claim that the custom-painted fire hydrants, as shown in Exhibit B, violate the rights of any third party under trademark, trade dress, copyright, or licensing laws or contracts. In the event of such claim, the City shall have the right to tender the defense of any claim or action at law or in equity to Deer District, LLC's insurer, and upon such tender it shall be the duty of Deer District, LLC or Deer District, LLC's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees.
6. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes any and all other agreements, either oral or in writing, between Deer District LLC and the City relating to the subject matter of the Agreement.
7. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof; and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

8. Assignment. This Agreement shall not be assigned without the written consent of the other party.
9. Amendment. This Agreement shall not be amended at any time without the written approval of the parties.
10. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.
11. Notices. All notices shall be in writing and deemed served upon depositing the same in the U.S. Postal Service as “Certified Mail, Return Receipt Requested,” addressed as follows:

If to Deer District LLC:
 Deer District LLC
 1543 North 2nd Street, 6th Floor
 Milwaukee, WI 53212
 Attn: President

If to City:
 Milwaukee Water Works
 841 N. Broadway 4th floor
 Milwaukee, WI 53202-3653
 Attn: Superintendent

12. Public Records. This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin’s Public Records Law (see Wis. Stat. ch. 19, subch. II, and esp. Wis. Stat. § 19.36(3) which includes records produced or collected by Deer District LLC under this Agreement). Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 et. sec. Deer District LLC acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that Deer District LLC must defend and hold the City harmless from liability due to Deer District LLC’s fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after termination of this Agreement.
13. Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement. Deer District LLC covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its obligations hereunder. Deer District LLC further covenants that in the performance of this

Agreement no person having any conflicting interest shall be employed. An interest on the part of Deer District LLC or its employee must be disclosed to the City.

14. Signatures; Counterparts. Facsimile or PDF/email signatures shall be acceptable as originals. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the dates below written.

DEER DISTRICT LLC

CITY OF MILWAUKEE

By: _____
Peter Feigin, President

By: _____
Jennifer Gonda, Superintendent
Milwaukee Water Works

Date Signed: _____

Date Signed: _____

APPROVED AS TO FORM AND EXECUTION:

By: _____
Assistant City Attorney

Date: _____

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