

**OPERATING AGREEMENT  
BETWEEN THE CITY OF MILWAUKEE AND MILWAUKEE MARATHON, INC.  
FOR STAGING OF 2016  
MILWAUKEE RUNNING FESTIVAL**

This Agreement is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”), by and between the City of Milwaukee, Wisconsin, a municipal corporation, (“City”), acting through its Commissioner of Public Works (“Commissioner”) and Chief of Police, or designee, and Milwaukee Marathon, Inc., a Wisconsin non-stock corporation, d/b/a Milwaukee Running Festival, whose address is 27351 Foxhaven Drive, Wind Lake, Wisconsin 53185 (collectively, “Parties”).

WHEREAS, Milwaukee Marathon, Inc. has proposed the staging of a large marathon, half-marathon, 5K, and one-mile distance-running event (the “Milwaukee Running Festival” or the “Event”) entirely within the boundaries of the City of Milwaukee; and

WHEREAS, The Parties executed an Operating Agreement Between the City of Milwaukee and Milwaukee Marathon, Inc. for Staging of Inaugural Milwaukee Running Festival, effective March 1, 2015 (“2015 Operating Agreement”);

WHEREAS, The inaugural Milwaukee Running Festival took place on October 31, 2015 and November 1, 2015, with the marathon and half-marathon starting and finishing at the lakefront; and

WHEREAS, Approximately \_\_\_\_\_ runners participated in the inaugural Milwaukee Running Festival and Milwaukee Marathon, Inc. has a goal of attracting 20,000 runners annually within five years; and

WHEREAS, The economic impact of this type of event on Milwaukee would be substantial, with thousands of participants and their families using or visiting Milwaukee’s hotels, restaurants and tourist attractions; and

WHEREAS, The staging of the Milwaukee Running Festival would also require significant City resources, particularly Milwaukee Police Department (“MPD”) and Department of Public Works (“DPW”) resources relating to traffic control before, during and after the event; and

WHEREAS, DPW has determined that it does not have sufficient traffic control equipment needed for the Event; and

WHEREAS, Section 105-55.5 of the Code of Ordinances defines a “special event” as “any planned extraordinary, temporary use of the public right of way or public premises of 25 people or more including but not limited to parades, processions, demonstrations, bicycle or foot races, festivals and block parties”; and

WHEREAS, Any person, group, organization or association, other than a city official for city business, desiring to hold a special event on the public right-of-way shall apply for a special event permit under Section 105-55.5 of the Code of Ordinances; and

WHEREAS, Section 105-55.5-2-c of the Code of Ordinances establishes the process and criteria for approval or denial of a special event permit application; and

WHEREAS, The Commissioner is authorized to approve or deny special event permit applications according to the criteria set forth in Section 105-55.5-2-c-1 to c-11; and

WHEREAS, In the absence of an Operating Agreement between the City and Milwaukee Marathon, Inc., a special event permit would not meet the criteria in Section 105-55.5-2-c-1 because the Milwaukee Running Festival is of such a size or nature requiring the diversion of so great a number of police officers, ambulances or other emergency services as to deny reasonable emergency services to the city as a whole; and

WHEREAS, In the absence of an Operating Agreement between the City and Milwaukee Marathon, Inc., a special event permit would not meet the criteria in Section 105-55.5-2-c-2 because the time, route, size and nature of the Milwaukee Running Festival will unreasonably disrupt the safe and orderly use of any street or any public, or material portion thereof, which is ordinarily subject to great congestion or traffic at the proposed time, or substantially interrupt the safe and orderly movement of other traffic; and

WHEREAS, By City of Milwaukee Common Council Resolution 141123, adopted on November 25, 2014, the Common Council found that City of Milwaukee taxpayers should not be required to bear the costs of City services provided to support the Milwaukee Running Festival, formerly Milwaukee Marathon, but, rather, that the City should fully recover those costs from the event sponsor; and

WHEREAS, Pursuant to the 2015 Operating Agreement, Milwaukee Marathon, Inc. has paid for all DPW services provided for the 2015 Milwaukee Running Festival; and

WHEREAS, Pursuant to the 2015 Operating Agreement, MPD invoiced Milwaukee Marathon, Inc. for MPD services totaling \$55,775.57 and received payment of \$37,504.32; and

WHEREAS, By letter dated January 4, 2016, MPD invoiced Milwaukee Marathon, Inc. for the remaining total amount due of \$18,271.25, which outstanding balance (“2015 Unpaid Balance”) remains unpaid; and

WHEREAS, MPD anticipates that the costs for MPD services for the 2016 Milwaukee Running Festival will be approximately 18 percent higher than the 2015 MPD costs because the 2015 MPD costs were based on 2012 wage rates; and

WHEREAS, Not including the 2015 Unpaid Balance, preliminary estimates of costs for MPD and DPW services relating to the 2016 Milwaukee Running Festival are \$60,000-\$85,000 and \$20,000, respectively, based on the preliminary marathon and half-marathon route map identified

on *milwaukeeerunningfestival.com* (last visited on March 22, 2016) and are subject to change by the City; and

WHEREAS, Pursuant to City of Milwaukee Common Council Resolution \_\_\_\_\_, adopted on \_\_\_\_\_, 2016, the proper City officials are authorized to execute this Agreement.

**NOW, THEREFORE**, In consideration of the mutual covenants and agreements contained herein, the Parties mutually agree as follows:

**I. MILWAUKEE MARATHON, INC. RESPONSIBILITIES**

**A. Representations and Warranties.** In order to induce the City to enter into this Agreement, Milwaukee Marathon, Inc. represents and warrants to the City that Milwaukee Marathon, Inc. is a nonstock, nonprofit corporation duly organized and validly existing under the laws of the State of Wisconsin and (a) no filing has been made with the Wisconsin Department of Financial Institutions (“DFI”) of a decree of dissolution with respect to Milwaukee Marathon, Inc., (b) the Board of Directors of Milwaukee Marathon, Inc. has not taken any action authorizing the liquidation or dissolution of Milwaukee Marathon, Inc., (c) Milwaukee Marathon, Inc. has filed with the Wisconsin Department of Financial Institutions the required annual report for its most recently completed report year and (d) Milwaukee Marathon, Inc. is not the subject of a proceeding under Wisconsin Statutes section 180.1421 or 181.561 to cause its dissolution and no determination has been made that grounds exist for such action.

Milwaukee Marathon, Inc. has the corporate power to own its properties and carry on its business as currently being conducted.

Milwaukee Marathon, Inc. has furnished to the City a copy of its Articles of Incorporation on file with DFI.

**B. Permit Application.** No later than July 1, 2016, Milwaukee Marathon, Inc. shall submit a complete permit application (“Application”) containing all information required in MCO Section 105-55.5-2-b. In addition to the information required in MCO Section 105-55.5-2-b, Milwaukee Marathon, Inc. shall submit the following information as part of its Application:

1. Organizational Capacity. Milwaukee Marathon, Inc. shall provide evidence of its capability to organize and stage a large, successful marathon, including its possession of sufficient funding to organize and hold a large marathon and sufficient staffing for safe and efficient staging of the Event. Such evidence shall include, but not be limited to:

- a. Identification of race management company selected for the Event;
- b. Identification of Event sponsors;

- c. Milwaukee Marathon, Inc.'s annual report, upon filing with DFI; and
- d. Milwaukee Marathon, Inc.'s most recent bank statement.

2. Routes. Milwaukee Marathon, Inc. shall provide a detailed map of the proposed route for the marathon, half-marathon, 5k, and one-mile races ("Routes"), which shall be subject to the satisfaction of the Commissioner of the Department of Public Works. The Commissioner shall have the authority to modify the Routes, time and place of the Event to facilitate crowd control in the interest of relieving congestion and promoting public safety, pursuant to Section 105-55.5-2-c. Milwaukee Marathon, Inc. shall make no changes to the Routes without the approval of the Commissioner.

3. Traffic Control Plan. Milwaukee Marathon, Inc. shall provide a detailed traffic control plan, satisfactory to the Commissioner, including, but not limited to:

- a. A timeline of street closures;
- b. Identification of the type and location of all traffic control signs and barricades along the proposed Routes; and
- c. Identification, including contact information, of the entity that will implement the traffic control plan.

4. Security Plan. Milwaukee Marathon, Inc. shall provide a detailed description of the provisions it will make for security during the Event, satisfactory to the Commissioner of Public Works and the Chief of the Milwaukee Police Department.

5. Emergency Plan. Milwaukee Marathon, Inc. shall provide a detailed description of the provisions it will make for first aid and emergency medical treatment during the Event, satisfactory to the Commissioner of Public Works, the Chief of the Milwaukee Police Department, and the Chief of the Fire Department.

6. Notification Plan. Milwaukee Marathon, Inc. shall publicize the Event throughout the city, particularly in the aldermanic districts in which the Event will be held, and shall provide information to alert residents and motorists along the Event Routes of street closings, detours, potential delays, and Milwaukee Marathon, Inc.'s contact information. Milwaukee Marathon, Inc. shall submit with its Application a detailed notification plan, which shall include but not be limited to, provisions to notify by mail all property owners at least one block in each direction of the Routes and all those within the boundaries of the Routes. Such notification shall be performed no later than 15 days before the Event.

7. Clean Up Plan. Milwaukee Marathon, Inc. shall provide a detailed description of the provisions it will make for Event clean-up, satisfactory to the Commissioner of Public Works and the Chief of the Milwaukee Police Department.

8. Mitigation of Impacts on Lakefront Properties. Milwaukee Marathon, Inc. shall provide written proof that it has met and conferred with affected Lakefront entities, including Discovery World Museum, Milwaukee Art Museum, Milwaukee World Festivals, Inc, and Harbor House, concerning the Application and efforts to mitigate the impacts of the Event on the Lakefront entities.

9. Permits. Milwaukee Marathon, Inc. shall provide proof that it has obtained all permits or approvals from all other governmental authorities, including Milwaukee County, necessary or required to proceed with the Event. If such permits have not been obtained as of the filing of the Application, Milwaukee Marathon, Inc. shall include in its Application a report on the status of such approvals. Failure to obtain the permits or approvals within 60 days of the Event shall be grounds for termination of this Agreement and revocation of a special event permit issued pursuant to this Agreement.

**C. Payment for City Services.** To ensure full cost recovery by the City, Milwaukee Marathon, Inc. unconditionally and irrevocably agrees to pay the City without defense, set-off, counterclaim or delay, for City staff time and expenses relating to the staging of the 2016 Milwaukee Running Festival, except where refunds are specifically provided for in this Agreement.

1. Payment for 2015 Unpaid Balance. Milwaukee Marathon, Inc. shall pay to the City the 2015 Unpaid Balance by July 15, 2016.

2. Payment for 2016 Police Services. Except as expressly stated otherwise in this Agreement, Milwaukee Marathon, Inc. shall pay the City for MPD services pursuant to the terms of the Extra-Duty Employment Statement of Intent and Extra Duty Letter of Agreement, which are attached to and made a part of this Agreement as Exhibits A and B, respectively.

a. Prior to filing its Application, Milwaukee Marathon, Inc. shall submit a complete Extra-Duty Employment Statement of Intent form to MPD.

b. Prior to filing its Application, Milwaukee Marathon, Inc. shall execute an Extra-Duty Letter of Agreement with MPD.

c. Notwithstanding Paragraph 20 of the Extra-Duty Letter of Agreement, within 30 days of approval of the Application, MPD shall invoice Milwaukee Marathon, Inc. for the estimated police resources and equipment relating to the staging of the Milwaukee Running Festival

(“MPD Estimate”), as determined by MPD. Payment in full is required within ten days of receipt of invoice.

d. Notwithstanding Paragraph 18 of the Extra-Duty Letter of Agreement, payment for police services shall be based upon the contractual wages of the assigned officer(s) at the time of the Event.

e. Post-Event Reconciliation.

(i) If MPD’s actual expenses exceed the MPD Estimate, Milwaukee Marathon, Inc. shall pay the remaining balance within 30 days of invoice by MPD.

(ii) If MPD’s actual expenses are less than the MPD Estimate, MPD shall reimburse Milwaukee Marathon, Inc. for the balance of the overpayment within 60 days of receipt of the Event.

f. Refund of MPD Estimate.

(i) If the City terminates this Agreement prior to the Event but after payment of the MPD Estimate, the City shall refund the MPD Estimate.

(ii) Notwithstanding Paragraph 14 of the Extra-Duty Letter of Agreement, Milwaukee Marathon, Inc. shall provide 10 working days written notice of Event cancellation. If Milwaukee Marathon, Inc. provides 10 working days written notice of cancellation, the City shall refund the MPD Estimate. If Milwaukee Marathon, Inc. fails to provide 10 working days written notice of cancellation, the City shall refund the MPD Estimate minus an Administrative Fee provided for in the Extra-Duty Letter of Agreement, the amount to be determined by MPD, which amount shall not exceed \$1,000.

3. DPW and Other (Non-MPD) City Services.

a. Within 30 days of approval of the Application, DPW shall invoice Milwaukee Marathon, Inc. for the costs of DPW and other (non-MPD) City resources and equipment relating to the staging of the Milwaukee Running Festival, as determined by DPW and according to the fee schedules set forth in ch. 81 of the Milwaukee Code of Ordinances. Payment in full is required within ten days of receipt of invoice.

b. If, following payment of the DPW costs, Milwaukee Marathon, Inc. requests additional DPW services or equipment, Milwaukee Marathon, Inc. shall pay those costs upon invoice by DPW.

c. If the City terminates this Agreement prior to the Event but after payment of DPW costs, the City shall refund the amounts paid for DPW costs. If Milwaukee Marathon, Inc. provides 10 working days written notice of cancellation, the City shall refund the amounts paid for DPW costs, except for a \$50 permit processing fee, pursuant to MCO § 105-55.5-2-g.

**D. Traffic Control Equipment.** Milwaukee Marathon, Inc. shall provide all necessary traffic control signs and barricades, to be determined by the City, with such signs and barricades meeting any specifications established by the City. If Milwaukee Marathon, Inc. provides written notice, at least 30 days before the Event, demonstrating its inability to procure all necessary traffic control barricades, as determined by the City, then the City shall supplement, at Milwaukee Marathon's expense, the traffic control barricades in an amount not to exceed 150 barricades.

**E. Indemnification.** In case any action in court, claim, or proceeding before an administrative agency is brought against the City or any of its officers, agents, or employees for the negligent acts, errors and omissions of the Milwaukee Marathon, Inc. during the performance of any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused in whole or in part by the negligence of Milwaukee Marathon, Inc., its officers, agents and employees, arising from, in connection with, or as a consequence of granting a special event permit for the Event, Milwaukee Marathon, Inc. shall defend, indemnify, and save harmless the City and its officers, agents, and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The City shall tender the defense of any claim or action at law or in equity to Milwaukee Marathon, Inc. or the Milwaukee Marathon, Inc.'s insurer, and upon such tender, it shall be the duty of Milwaukee Marathon, Inc. or Milwaukee Marathon, Inc.'s insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. Milwaukee Marathon, Inc. shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom.

**F. Insurance.**

1. **General Requirements.** Milwaukee Marathon, Inc. shall submit with the Application a certificate(s) of insurance acceptable to the City stating that the issued insurance policies meet the requirements as outlined below. In addition, Milwaukee Marathon, Inc. shall submit with the Application written documentation evidencing that a fully-executed, complete copy of this Agreement has been provided to the underwriter of the issued insurance policies. If such certificate(s) and documentation are not received, the City has the authority to declare this Agreement terminated.

All policies shall state that the City shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by City for the duration of this Agreement.

Insurance companies must be acceptable to the City and must have a current A.M. Best rating of A- VIII or better.

All policies shall be written on an occurrence form.

If subcontractors are used, each must meet all requirements in sections 1 and 2.

2. Minimum Insurance Requirements. The minimum insurance requirements are as follows:

**a. Workers' Compensation and Employer's Liability:**

Workers' Compensation	Statutory Coverage
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

(i) Employer's Liability at limits noted above or higher limits if needed to meet Umbrella underlying insurance requirements.

(ii) Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

**b. Commercial General Liability:**

Commercial General Liability	\$1,000,000 each occurrence
General Aggregate	\$3,000,000 aggregate
Personal & Advertising Injury Limit	\$1,000,000 each occurrence
Products - Completed Operations Aggregate	\$3,000,000 aggregate
Medical Expense	\$ 10,000 each person

(i) Coverage shall be equivalent to ISO form CG0001 or better, as determined by the City.

(ii) The City of Milwaukee shall be added as an additional insured using ISO form CG2026 or its equivalent.

(iii) Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of the City including its directors, officers, agents, employees and volunteers.

(iv) The policy shall include independent contractors (owners/contractors protective) and contractual liability.

(v) Coverage shall apply on a primary and non-contributory basis and the policy shall contain the following wording, or substantially similar terms, as determined by the City:

“If you have agreed in a written contract that this policy will be primary and without right of contribution from any



insurance in force for an Additional Insured for liability arising out of your operations, and the contract was executed prior to the bodily injury, property damage, personal injury or advertising injury, then this insurance will be primary over, and we will not seek contribution from, such insurance.”

(vi) Coverage shall apply to the risks associated with or arising out of this Agreement.

**c. Auto Liability:**

Combined Single Limit \$1,000,000 each accident

Medical Expense \$ 10,000 each person

(i) If Milwaukee Marathon, Inc. owns or has any long-term leased vehicles, coverage must be for Any Auto (Symbol 1). If there are no owned or long term leased vehicles, then coverage must be for Hired and Non-Owned Auto Liability (Symbols 8 and 9).

(ii) Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of the City including its directors, officers, agents, employees and volunteers.

(iii) The City of Milwaukee shall be added as an additional insured.

(iv) Coverage shall include contractual liability for risks assumed in this contract.

(v) Coverage shall apply to the risks associated with or arising out this contract.

(vi) If Federal or State government(s) require a Motor Carrier filing, such filing shall be made available to City upon request.

**d. Umbrella (Excess) Liability:**

Umbrella (excess) Liability \$5,000,000 per occurrence

\$5,000,000 aggregate

(i) The Umbrella Liability insurance shall provide coverage excess of Milwaukee Marathon, Inc.’s Workers’ Compensation and Employer’s Liability, Commercial General Liability and Auto Liability Coverages, including the amendments stated above.

**e. Professional Liability (if providing professional services such as medical).**

Combined Single Limit \$1,000,000 each accident

\$3,000,000 aggregate

(i) Coverage must remain in effect for a period of not less than two years beyond the termination date of this Agreement.

(ii) If a claims-made form is used and a change of insurer occurs during the term of this Agreement, continuity of coverage must be maintained by either retaining the original retroactive date or exercising the extended reporting period endorsement option from the expired policy for a period of not less than two years, if the replacement insurer will not preserve the original retroactive date.

(iii) Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

## II. CITY RESPONSIBILITIES

**A. Permit Application Review.** The Commissioner shall grant or deny the Application within 60 days after the filing of the Application. Issuance of a special event permit by the City shall be contingent upon Milwaukee Marathon, Inc. satisfying its obligations under this Agreement.

**B. City Services.** In the event that the Commissioner issues a special event permit, the City shall provide the following special-event support:

1. Police Services. The City, acting through MPD, shall provide police services pursuant to the terms of this Agreement and the Extra-Duty Letter of Agreement, as modified by this Agreement.

2. DPW Services. The City, acting through its DPW, shall provide Milwaukee Marathon, Inc. with the following special-event support, which Milwaukee Marathon, Inc. shall pay for pursuant to paragraph I.C.2 of this Agreement:

- a. Parking meter hooding; and
- b. Temporary parking signs

## III. GENERAL PROVISIONS

**A. Term of Agreement.** This Agreement is effective as of the above-referenced Effective Date and terminates upon performance of the Parties' obligations under this Agreement or on December 31, 2016, whichever occurs later.

**B. Disclaimer.** In entering into this Agreement, the City is in no way holding itself out as a sponsor, partner, organizer, or promoter of the Milwaukee Running Festival and this Agreement shall not be construed to create such status. Milwaukee Marathon, Inc. shall make no representations to that effect. Milwaukee Marathon, Inc. is prohibited from identifying the City as a sponsor, partner, organizer, or promoter in any promotional

materials and shall not use the City logo or seal in any materials to promote the Milwaukee Running Festival.

**C. Notices.** Any and all notices shall be in writing and deemed served upon depositing the same in the United States Postal Service as “Certified Mail, Return Receipt Requested,” addressed as follows:

**To Milwaukee Marathon, Inc. at:**

Milwaukee Marathon, Inc.  
27351 Foxhaven Dr.  
Windlake, WI 53185  
Attn: Mr. Christopher G. Ponteri

**With a copy to:**

Frank DeGuire  
2000 Beaver Lane  
Brookfield, WI 53045

**To City (DPW) at:**

Department of Public Works  
841 N. Broadway, Room 501  
Milwaukee, WI 53202  
Attn: Commissioner

**To City (MPD) at:**

Milwaukee Police Department  
Tactical Planning & Logistics  
749 W. State Street  
Milwaukee, WI 53233  
Attn: Sergeant David Muehl

**D. Assignability.** This Agreement shall be binding upon the parties hereto, but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, sublet, or transferred by Milwaukee Marathon, Inc. without the prior written consent of the City. If the City gives such consent, the terms and conditions of this Agreement shall bind the party to whom the Agreement is assigned, sublet, or transferred.

**E. Records.** Records shall be maintained by Milwaukee Marathon, Inc. in accordance with requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of seven years after termination of this Agreement. In addition, both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all

of the terms of the Agreement are subject to and conditioned on the provisions of Wis. Stat. §§ 19.21-39. Milwaukee Marathon, Inc. 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 failure to do so shall constitute a material breach of this Contract. Milwaukee Marathon, Inc. shall agree to cause others under its control to cooperate with the City in the event that any of them receive a request under Wisconsin's Public Records Law for this Agreement or for any record relating to, or produced or collected under this Agreement which is subject to the Public Records Law.

**F. Audit.** At any time during normal business hours and as often as the City, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to the City or such agency for examination all of Milwaukee Marathon, Inc.'s records with respect to all matters covered by this Agreement and Milwaukee Marathon, Inc. shall permit the City or such agency to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, and materials relating to all matters covered by this Agreement.

**G. Conflict of Interest.**

1. Interest in Agreement. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any of the matters to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement.

2. Interest of Other Local Public Officials. 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.

3. Interest of Milwaukee Marathon, Inc. and Employees. Milwaukee Marathon, Inc. covenants, acknowledges, and agrees that no person who exercises any functions or responsibilities in connection with the Agreement has any personal financial interest, direct or indirect, in this Agreement. Milwaukee Marathon, Inc. further covenants and acknowledges that it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance under this Agreement. Milwaukee Marathon, Inc. further covenants that, in the performance of its obligations under this Agreement, no person having any such conflicting interest shall be employed.

**H. Discrimination Prohibited.**

1. In all hiring or employment made possible by or resulting from this Agreement there will not be any discrimination against any qualified employee or qualified applicant for employment because of race, color, religion, sexual orientation, sex, national origin or ancestry, age, disability, lawful source of income, marital status, gender identity or expression, past or present membership

in the military service, or familial status, or based upon affiliation with or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause.

2. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

3. Milwaukee Marathon, Inc. agrees it will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

4. Milwaukee Marathon, Inc. shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or raw materials.

**I. Notice of Breach and Right to Cure.** In the event that Milwaukee Marathon, Inc. fails to comply with any of the terms or provisions of this Agreement, it shall cure or remedy such breach within five working days of receipt of notice of breach from the City. If Milwaukee Marathon, Inc. fails to cure the breach within five working days, the City may immediately terminate this Agreement and revoke any special event permit issued pursuant to this Agreement.

**J. Termination for Public Safety.** The City may terminate this Agreement and revoke any special event permit issued pursuant to this Agreement, effective immediately, at any time for reasons of public safety as deemed necessary by either the Commissioner or the Chief of Police or his designee. The Parties agree and acknowledge that the City shall in no way be responsible for legal or equitable damages alleged by Milwaukee Marathon, Inc. in consequence of termination under this section, provided that the City shall refund payments made for police services and DPW costs under the terms of Section I.C. of this Agreement.

**K. Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of Wisconsin, without regard to the principles of conflict of law. Any litigation relating to the formation, interpretation, or alleged breach of this Agreement must be

brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin and Milwaukee Marathon Inc. consents to the jurisdiction of such courts.

**L. Severability.** If any term or provision of this Agreement shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law

**M. Entire Agreement/Amendment.** This Agreement sets forth all of the covenants, provisions, agreements, conditions, and understandings between the Parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, other than are herein set forth. This Agreement may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the Parties to this Agreement.

**N. Waiver.** The City shall not be deemed to have waived any of its respective rights hereunder unless the City shall have signed such waiver in writing.

**O. Titles.** The titles of sections in this Agreement are for convenience only and do not limit or construe the meaning of any section.

**P. Regulations.** Milwaukee Marathon Inc., agrees to comply with all of the requirements of all federal, state, and local laws related thereto.

**Q. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, and shall become effective on the date indicated after one or more counterparts have been signed by each of the parties and delivered to the other party.

**IN WITNESS WHEREOF**, The Parties have executed this Agreement the day and year as set forth above.

**CITY OF MILWAUKEE**

**MILWAUKEE MARATHON, INC.**

By: \_\_\_\_\_  
Commissioner of Public Works

By: \_\_\_\_\_  
Christopher G. Ponteri,  
Executive Director

By: \_\_\_\_\_  
Chief of Police (or Designee)

Approved as to form, execution, and  
content this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Assistant City Attorney

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