

LEASE
PREMISES AT 123 NORTH 25TH STREET
CITY OF MILWAUKEE
(approximately 25th & Canal Streets)

This Lease made between the Milwaukee Metropolitan Sewerage District, of 260 West Seeboth Street, Milwaukee, Wisconsin, a municipal body corporate of the State of Wisconsin referred to as **Lessor**, and the City of Milwaukee (Buildings and Fleet Division), of Room 602, 841 North Broadway, Milwaukee, Wisconsin, referred to as **Lessee**.

RECITALS

The parties recite and declare:

A. Lessor is the sole owner of a 3.9 acre site improved with a truck repair and maintenance building and various other sewerage conveyance facilities and their appurtenances, located at 123 North 25th Street, Milwaukee, Wisconsin, and desires to lease a portion of the site and the entire maintenance facility building, hereinafter referred to as "**Leased Premises**", to **Lessee**. However, **Lessor** desires to retain certain rights to the **Leased Premises** for maintenance, repair and, if necessary, reconstruction of existing and future planned sewerage facilities, and for flood management purposes and recreational access along the Menomonee River.

B. Lessee desires to lease the improved portion of the site that includes the truck repair and maintenance facility building to locate its parking checker operation, fleet maintenance and miscellaneous Department of Public Works functions and to include vehicle storage and repair, locker rooms for personnel, limited storage and offices.

In consideration of the mutual covenants contained in this lease agreement, the parties agree to the following Terms and Conditions. All referenced Exhibits A thru D are attached hereto and made a part of this Lease.

TERMS AND CONDITIONS OF LEASE

1. DESCRIPTION OF LEASED PREMISES

Lessor leases to **Lessee** that part of the entire site (hereinafter referred to as "**Leased Premises**"), which consists of approximately 1.5 acres and includes the truck repair and maintenance building. The building consists of 18,240 square feet of ground floor space including 4,800 square feet of finished and office area plus an additional 4,800 square feet of mezzanine space. The **Leased Premises** are more clearly shown on the attached Exhibit A.

The **Lessor** reserves access to the northern and western part of the **Leased Premises** for access to **Lessor's** existing or future planned sewerage, flood management and recreational facilities (i.e. Henry Aaron Bike Trail) in, under, upon, over and across the **Leased Premises**. **Lessor** reserves the right to change from time to time the dimensions and location of the access route to existing facilities to accommodate the planned extension and construction of Canal Street and **Lessor's** sewer and flood management projects. **Lessor**, may temporarily close any part of the **Leased Premises** for such periods of time as may be necessary to make repairs or alterations to its facilities.

2. TERM AND EXTENSION OF LEASE

The Term of the Lease is to be for a Ten (10) year period under the below described terms and conditions. The **Leased Premises** are to be used, occupied and operated to accommodate the Lessee's parking checker, fleet maintenance and miscellaneous DPW operations which includes vehicle storage and repair, finished locker rooms, offices, personnel assembly areas and maintenance facilities, along with limited site and building storage. This Lease shall commence April 1, 2003, and end March 31, 2013. This Lease may be extended by Lessee for two additional Five (5) year periods pursuant to the terms as shown on **Exhibit B**. Such extension shall be agreed to no later than six (6) months prior to the expiration of the original term of the Lease or extension thereof. **Appropriations Contingency:** In the event that the City of Milwaukee does not include funds, or appropriate funds, to continue the rent payments under this Lease or any extension thereof, the Lessee shall give six (6) months prior written notice to Lessor of such non-appropriation and this Lease shall then terminate at the end of the sixth month from the date of notice.

3. RENTAL AMOUNT AND SECURITY DEPOSIT

Lessee shall pay to Lessor as rent for the **Leased Premises** the sum of One Hundred and Fifteen Thousand Two Hundred Dollars (\$115,200.) annually, payable at the rate of Nine Thousand Six Hundred Dollars (\$9,600) per month. The monthly rental shall be paid by Lessee in advance, on the 1st day of each month. Lessee shall pay the first month's rent at the signing of this lease. No security deposit shall be required from the Lessee. Lessee shall have possession and occupancy January 1, 2003 in order to complete building code compliance requirements (mechanical exhaust, ADA upgrades and miscellaneous items as outlined on the attached **Exhibit C**) and to otherwise prepare the building for full use and occupancy. Lessee may credit a total amount, not to exceed \$80,000, against Lease amount over the first two year period. The monthly rental amount will therefore be reduced by \$3,333.33 for the first 24 month period. Therefore, the net rent to be paid by Lessee for each of the first 24 months of this Lease, subject to the CPI terms in **Exhibit B**, shall be (\$6,266.67).

4. IMPROVEMENTS TO LEASED PREMISES

Upon tender of possession of the **Leased Premises** by Lessor, Lessee shall accept possession and at its cost may proceed to construct and install those items required of Lessee as set forth in **Exhibit C** to facilitate their use of the **Leased Premises**. Should any lien be made, Lessee shall bond against or discharge the same within ten (10) days and hold Lessor harmless against the lien. Lessee's work shall not be started without prior written approval of Lessor to all plans and specifications. All of Lessee's work shall be in conformity with all applicable governmental regulations and shall be done in a good and workmanlike manner. Lessee shall be responsible for securing all approvals, permits and licenses necessary for the work to be done.

5. LESSOR'S RESPONSIBILITIES

- A. Lessor shall be responsible for the long term maintenance of the **Leased Premises** (building and site improvements).
- B. Lessor or its authorized agent retain the right to operate, access, repair, and reconstruct its facilities as needed throughout the term of the lease. Said access and work will be done in such a manner as to minimize the disturbance of Lessee's use of the **Leased Premises**.

1. LESSEE'S RESPONSIBILITIES

- A. Lessee shall be responsible for normal parking lot and paved area maintenance including the removal of snow, ice, trash, asphalt repair/patching, fence and gate repair, etc.
- B. Lessee shall obtain all necessary permits and licenses to conduct its operations.
- D. Lessee is responsible for the normal maintenance of the landscaping on the **Leased Premises**. No changes to any site improvement (landscaping, paving, fencing, etc.) will be allowed without written approval of the Lessor.
- E. Lessee shall be responsible for all security needs which may be required in connection with its use and occupancy of the **Leased Premises**. The Lessor's needs for access to its westerly yard area through Lessee's secure areas will be accommodated if alternate access along Canal Street extended, from the CP Railway, can not be established and maintained or in the case of an emergency. The costs to

establish and maintain Lessor's access on CP Railway property along Canal Street extended shall be the responsibility of the Lessor, except for the realignment and/or replacement of the existing access gate to the Leased Premises from N. 25th Street which shall be the responsibility of the Lessee in conjunction with Lessee's upgraded security measures.

2. UTILITIES

Lessee agrees that it will be responsible for and shall pay, when due, all charges and costs for water, sewer, gas, heat, air conditioning, electricity and any and all other utilities or other services, including telephone service, furnished to the Leased Premises or consumed by Lessee during the term of the Lease.

3. TRADE FIXTURES, PERSONAL PROPERTY AND IMPROVEMENTS

Lessee may furnish, install and maintain any and all trade fixtures, furniture, equipment and other personal property useful in connection with Lessee's operation on the Leased Premises. All such trade fixtures, furniture, equipment and other personal property shall be removed by Lessee upon termination of the Lease. Lessee shall be responsible for repairing any and all damage to the Leased Premises or restoring "in kind" the Leased Premises after such removal. Should Lessee fail to remove said trade fixtures, furniture, equipment and other personal property, they will be considered abandoned and shall become the property of Lessor. Lessor has to the right to recover the costs of any removal and the costs to repair all damages caused by Lessee excepting normal wear and tear. Other improvements not considered to be trade fixtures, furniture, equipment, or other personal property shall remain with the property after the termination of the Lease and belong to the Lessor.

4. SIGNAGE

Lessee shall have the right and privilege of attaching, affixing, painting or exhibiting signs on the exterior of the Building and at the entrances to the Leased Premises, only with the written approval of Lessor which shall not be unreasonably withheld or delayed. Such signs, if and when taken down, shall not damage the Building or surfaces they are attached to. If any damage occurs, Lessee shall promptly repair the same to Lessor's satisfaction. It is expressly understood by Lessee that any such signage shall be subject to the applicable terms and conditions set forth by the City of Milwaukee codes.

5. USE OF SITE AND LEASED PREMISES

Lessee shall use the Leased Premises solely for the purposes stated above and for no other purpose without the prior written consent of the Lessor.

6. TAXES

Lessee agrees to pay personal property taxes due and owing with respect to any improvements made to, installed or located upon Leased Premises. If, during the term of the Lease, any special assessment is levied against the Building or leased site, Lessor shall be responsible for payment of such special assessment. Lessee shall not be responsible for any real estate taxes. It is understood that the entire property is real estate tax exempt.

7. REPAIRS AND MAINTENANCE.

- A. Lessee agrees that it will keep the Leased Premises in a reasonably safe, clean and serviceable condition. Lessee is responsible for necessary repair or replacement to any plumbing, heating, air conditioning or other mechanical system installed in the Building area. Lessee shall also maintain municipal water service and repair any leaking pipes (water, gas, waste pipes, etc.) and roof areas of the Building. Lessee to maintain adequate heat to prevent freezing of pipes and shall otherwise perform all necessary repairs, replacements and maintenance to any Lessee improvements.
- B. Lessor agrees that it will keep the exterior of the Building in a reasonably safe and serviceable condition, and shall perform: (1) all necessary structural repairs and replacements, including the roof, exterior walls, and foundation; (2) repairs or replacements which are necessitated by reason of fire or other natural casualty, which events are governed by Paragraph 16. **Damage or Destruction** set forth below; and (3) repairs or replacements which are necessitated by reason of a defect in the condition of the Building, except for negligent acts of Lessee, employees or assigns.

- C. Both **Lessor** and **Lessee** agree to perform all repairs, maintenance and replacements of the type enumerated above as expeditiously as is possible. **Lessee** will notify (in writing) **Lessor** of any major repair or maintenance items to the Leasehold (exceeding a total of \$1,000) so that **Lessor's** engineer may review and approve the plans and methods to be used for said repair or maintenance.
- D. Notwithstanding anything to the contrary set forth above, **Lessee** shall be responsible for the maintenance and repair of **Lessee's** improvements, trade fixtures, equipment and mechanical systems including such periodic janitorial and preventative maintenance of its improvements, trade fixtures and equipment, as may be required. **Lessee** further agrees to comply with such reasonable rules and regulations as **Lessor** may establish from time to time for the operation and maintenance of the **Leased Premises**.
- E. **Lessee** shall, at its own expense, provide, or cause to be provided, routine cleaning of and janitorial services of the Building in a commercially reasonable manner throughout the term of the Lease.

8. INDEMNIFICATION

The **Lessee** and **Lessor** (either of which may be an "Indemnifying Party") agree to the fullest extent permitted by law, to indemnify, defend and hold each other harmless, and their agents, officers, and employees, harmless from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Indemnifying Party or its agents which may arise out of or are connected with the use and activities covered by the Lease, provided that the party seeking indemnification (an "Indemnitee") notify the other party (an "Indemnitor") in writing of the existence of such loss, liability, claim, injury, damage or expense immediately after the Indemnitee has obtained actual knowledge that such a loss liability, claim, injury, damage or expense is threatened or pending, and further provided that the Indemnitee afford to the Indemnitor the right, but not the obligation, to assume the defense of such loss, liability, claim, injury, damage, costs and expenses, including reasonable attorneys' fees connected therewith or resulting therefrom.

Lessee shall also indemnify and hold **Lessor** 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 alteration, or improvement to the building or site ("**Leased Premises**"). Any alteration, or Leasehold improvement installed on the **Leased Premises** by **Lessee** shall become the sole property of the **Lessor** upon the expiration or termination of the Lease. In no event shall **Lessee** make any alterations or additions to the structure of the Building without the prior written consent of **Lessor**. Any request by **Lessee** for such structural alterations or additions shall also be submitted to the **Lessor** for consideration, approval and appropriate action, if any.

9. INSURANCE

The **Lessee** agrees to make application to place the **Leased Premises** on the schedule of properties that the City of Milwaukee maintains in the Wisconsin Local Government Property Insurance Fund. Since the City of Milwaukee is self-insured for liability purposes, the **Lessor** accepts the statement from the Office of City Attorney (**Exhibit D**) as evidence of financial responsibility.

10. ASSIGNMENT AND SUBLETTING

Lessee may not assign the Lease and its right, title and interest hereunder or sublet the **Leased Premises** without obtaining **Lessor's** prior written consent. No such assignment or subletting shall release **Lessee** from its obligations hereunder unless **Lessee** obtains the written release of **Lessor**.

11. DAMAGE OR DESTRUCTION

If, during the term of the Lease, including any time after which **Lessee** may have given notice to terminate the Lease, the entire **Leased Premises** or such portion thereof as shall render the remaining portion thereof unsuitable for the continued conduct of **Lessee's** activities therein, shall be damaged or destroyed more than 85% by fire or other casualty, **Lessee** shall have the right, for a period of forty-five (45) days thereafter, by giving written notice to **Lessor**, to terminate the Lease, in which event: (a) **Lessor** shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to the buildings and

improvements constructed or paid for by Lessor or Lessee on the Leased Premises; and (b) Lessee shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to Lessee's trade fixtures, furniture, equipment, and other personal property. If Lessee does not elect to terminate the Lease or if the damage or destruction to the Leasehold does not render the remaining portion thereof unsuitable for the continued conduct of Lessee's activities thereon, then the Lease shall continue in full force and effect, and Lessee shall, promptly commence and pursue diligently to completion whatever repairs to the Leased Premises are necessary to restore the Leased Premises to the same condition they were in prior to such damage or destruction, and Lessee shall be entitled to all insurance proceeds relating to fixtures, furniture, equipment, or personal property that were purchased in whole or part by the Lessee. All such repairs shall be performed promptly and in a good and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Leased Premises. Commencing on the date of such damage or destruction and continuing during the period in which Lessee is repairing and restoring the Leased Premises pursuant to this Paragraph, the rental payable by Lessee shall abate in proportion to the floor area of the Leased Premises of which Lessee is deprived for the period in which Lessee is deprived of the use of that floor area.

12. DEFAULT: REMEDIES

- A. **Default by Lessee.** If (i) Lessee fails to pay any of the rental or other sums required hereunder and such failure to pay continues for thirty (30) days after written notice thereof to Lessee; or, (ii) default be made in the performance or observance by Lessee of any other terms, covenants or conditions herein contained and such default shall continue for forty-five (45) days after written notice thereof to Lessee (or if such default is not of a type that can reasonably be corrected within forty-five (45) days, as determined by Lessor, and Lessee fails to commence promptly and in good faith to proceed with due diligence to correct such default), then in any of the above-described events, Lessor may elect to terminate the Lease and declare the term of the Lease ended, to re-enter the Leasehold or any part thereof with judicial process and to expel and remove Lessee or any person or persons occupying the same and again to repossess and enjoy the Leased Premises. Lessor shall also have the right, at its option, to cure any default by Lessee and recover from Lessee the costs and expenses incurred by Lessor in curing such Default. Trade fixtures, personal property and leasehold improvements shall be handled as set forth in Article 10.
- B. **Default by Lessor.** In the event of default by Lessor in the performance or observance of any of the covenants or conditions herein contained and which shall continue for forty-five (45) days after written notice thereof to Lessor (or if such default, is not of a type that can reasonably be corrected within forty-five (45) days, then if Lessee fails to commence promptly and in good faith to proceed with due diligence to correct such default), then in any of the above-described events, Lessee shall have the right at its option to immediately terminate the Lease, to cure any default by Lessor and deduct the costs and expenses incurred by Lessee in curing such default from the rental and any other amounts thereafter accruing to Lessor, or to offset the amount of damages incurred as a consequence of any claim described above from the rental and any other amount thereafter accruing to Lessor. All amounts expended by Lessee in curing Lessor's defaults or as a consequence of any claim shall be paid by Lessor upon demand by Lessee. In the event of any alleged default hereunder by either Lessor or Lessee, the parties shall endeavor, in good faith, to utilize an alternative dispute resolution mechanism which utilizes retired judicial officials prior to the commencement of any litigation. Trade fixtures, personal property and leasehold improvements shall be handled as set forth in Paragraph 8.
- C. **Remedies Not Exclusive.** Any right or remedy conferred on Lessor or Lessee under the Lease shall not be deemed to be exclusive of any other right or remedy which might otherwise be available hereunder or at law or in equity. The rights and remedies hereunder shall be cumulative and may be exercised and enforced concurrently and whenever and as often as the occasion therefore arises.

13. MISCELLANEOUS

- A. **Notices.** Whenever in the Lease it shall be required or permitted that notice be given by any party hereto to the other, such notice shall be given by certified or registered mail, and any notice so sent shall be deemed to have been given on the date that the same is deposited in the United States mail, postage

prepaid. Notices shall be addressed to Lessor at Milwaukee Metropolitan Sewerage District, 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446, (Attn: Real Estate Department) and to Lessee at City of Milwaukee (Buildings and Fleet Division), of Room 602, 841 North Broadway, Milwaukee, Wisconsin, 53202, or at such other address as either party may from time to time specify in writing in lieu thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto a copy of any notice it may receive from any third person which may affect the rights of any party hereunder.

- B. **Access.** Since the **Leased Premises** include operating facilities, **Lessor**, its subcontractors, agents, and representatives including United Water Services Milwaukee LLC, shall, be entitled to enter upon the **Leased Premises** at any time for any purpose, such entry shall be done in a manner so as not to unreasonably interfere with the conduct of **Lessee's** activities thereon.
- C. **Surrender of Leased Premises.** **Lessee** upon termination of the Lease, by lapse of time or otherwise, agrees peaceably to surrender the **Leased Premises** to **Lessor**.
- D. **Holding Over.** If **Lessee**, with the consent or acquiescence of **Lessor**, remains in possession of the **Leased Premises** after the termination of the Lease and without the execution of a new Lease, **Lessee** shall be deemed to be occupying the **Leased Premises** as a Lessee from month-to-month, subject to all the applicable terms, conditions and covenants of the Lease and existing Wisconsin laws.
- E. **Benefit.** The Lease and all of the covenants and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- F. **Provisions Severable.** If any provision of the Lease shall be held or declared to be invalid, illegal or unenforceable under any law applicable thereto, such provision shall be deemed deleted from the Lease without impairing or prejudicing the validity, legality and enforceability of the remaining provisions hereof.
- G. **Governing Law.** This Lease shall be governed by the laws of the State of Wisconsin.
- H. **Unlawful use of Leased Premises.** **Lessee** shall not conduct or permit any conduct on the **Leased Premises** which is contrary to the laws of any governmental authority.

The authorized representatives of the above named parties have executed this Lease at Milwaukee, Wisconsin.

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

CITY OF MILWAUKEE

By: _____

Kevin L. Shafer, P.E.

Executive Director

By: _____

Date: _____

Date: _____

Approved as to form:

Attorney for the District