

## LAND USE AGREEMENT

This Land Use Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_ 2019 ("Effective Date"), by and between the Board of Regents of the University of Wisconsin System, doing business on behalf of the University of Wisconsin-Parkside (hereinafter referred to as the "UNIVERSITY"), a Wisconsin body corporate established under Wis. Stats. sec. 36.07 (1), and Kenosha County, Wisconsin (hereinafter referred to as "COUNTY").

### RECITALS

WHEREAS, the UNIVERSITY is a member of the University of Wisconsin System which is a system of higher education institutions in the State of Wisconsin and is comprised of 13 campuses state-wide;

WHEREAS, the COUNTY is one of 72 counties in the State of Wisconsin;

WHEREAS, an ongoing partnership between the UNIVERSITY and the COUNTY will continue to improve and protect external natural spaces, preserving them for faculty and student research and learning opportunities. Significant community development near campus will strengthen the UNIVERSITY's appeal as a regional destination;

WHEREAS, the Board of Regents of the University of Wisconsin System owns 139-acres of undeveloped land (hereinafter referred to as "PROPERTY"), which is located on the UW-Parkside campus and whose mission is dedicated to protecting and restoring the natural communities and currently serves as an outdoor classroom for learning and related missions of the UNIVERSITY;

WHEREAS, the PROPERTY on the UW-Parkside campus is adjacent to the Pike River and approximately 76-acres of the PROPERTY is located in the floodplain, with the natural areas being densely wooded and featuring diverse native species;

WHEREAS the COUNTY has been committed to improving the Pike River watershed within Kenosha County to better manage, among other things, flood mitigation, erosion, storm water runoff, water quality and habitat improvements;

WHEREAS, the COUNTY also manages lands proximate to campus for a variety of uses and outdoor recreational activities, and is interested in providing additional opportunities to support local and regional quality of life resources for the community;

WHEREAS, the COUNTY wishes to continue the Pike River Restoration work within the PROPERTY and to construct and maintain recreational trails on the PROPERTY which such public use of the trails shall be consistent and comply with Wis. Admin. Code chs. 18 and 21; and

WHEREAS, the COUNTY and the UNIVERSITY shall mutually agree to allow the County to develop and manage the Pike River Restoration efforts and to allow public use within the

PROPERTY for recreational activities that consist of, among other things, hiking, cross-country skiing, snow-shoeing, walking dogs on-leash, educational programming, and mountain biking on designated single-track trails.

NOW THEREFORE, in consideration of the premises and of other good and valuable considerations herein mentioned, the UNIVERSITY and the COUNTY hereby covenant and agree as follows:

## AGREEMENT

1. **Purpose.** To clearly define the relationship between the COUNTY and the UNIVERSITY in order to provide guidance and direction to manage the approximately 139 acres of natural resources located on Board of Regent property. This Agreement will also develop and expand a framework for the COUNTY to plan and implement land management and Pike River Restoration initiatives, programs, projects, mountain bike trails, pedestrian trails, and public usage opportunities within the defined area as shown in Exhibit A and incorporated herein by reference; and develop a Natural Resource Inventory and Ecological Management Plan, in partnership and approval of the UNIVERSITY, to guide future maintenance and restoration efforts with the PROPERTY.

2. **Natural Resources and Land Management.** To manage the PROPERTY and guide future maintenance and restoration efforts within the PROPERTY, the COUNTY has the authorization to develop and implement a Natural Resource Inventory and Ecological Management Plan. This shall be developed in concert with the UNIVERSITY mission, faculty consultation, and campus master plan. The COUNTY plan will consist of the following:

A. Natural Resource Inventory:

1. Identify and map existing ecological communities (including bodies of water) and important ecological features.
2. Develop descriptions of the condition of each ecological community including dominant species, rare species, and invasive weedy species that require management.
3. Develop restoration needs and management techniques to reach target ecological communities.

B. Ecological Management Plan

1. Prepare a management plan with the goal of improving the ecological condition of the PROPERTY. The information in the report will help guide the COUNTY's and UNIVERSITY's action plan and budget for the management of the site in the future.

C. Ecological Restoration

1. UNIVERSITY shall allow the COUNTY, volunteers, or contractors, in concert with UNIVERSITY researchers and scientists, to conduct invasive species removal identified on the Ecological Management Plan. These volunteers shall not be considered Contractors and are not required to have or maintain the levels of insurance set forth in paragraphs nineteen (19) and twenty (20) of this Agreement.

D. Education and Public Outreach

1. The UNIVERSITY and the COUNTY shall have the authorization to utilize the Natural Resource Inventory, Ecological Management, and Restoration Plans as an educational tool. These plans and restoration efforts shall be conducted in conjunction with the UNIVERSITY's environmental educational curriculum and allow for hands-on instruction and programming for school groups throughout the community.

- E. Notwithstanding the above plan, if at any time the COUNTY allows or condones activities that are in violation of Wis. Admin. Code chs. 18 and 21, or neglects to obtain approval for any plan, this Agreement shall be terminated.

3. **Pike River Restoration.** The UNIVERSITY and the COUNTY are committed to working together to improve the Pike River watershed within Kenosha County to better manage flood mitigation, erosion, storm water runoff from impervious surfaces, water quality, and habitat improvements. Through this Agreement, the COUNTY is authorized to continue Pike River Restoration work within the PROPERTY. The UNIVERSITY shall allow the COUNTY to work with consultants to study, engineer, design, and develop construction documents to improve the Pike River within the PROPERTY in a manner not inconsistent with law, regulation, and policy. As funding becomes available and in a manner not inconsistent with this agreement, the UNIVERSITY shall allow the COUNTY to manage the Pike River Restoration efforts within Parkside property to include but not be limited to in-stream habitat features, retention/detention basins and flood mitigation features, and impervious surfaces. The goals of the Pike River Restoration shall be as follows:

- A. In down-cut and eroding portions of the existing streambank, the bank will be graded to an appropriate, stable incline. That slope will be further stabilized with turf reinforcement matting (short-term) and native vegetation (long-term).
- B. In areas of the river with natural changes in flow velocity or direction, such as bends in river, the plan may install stone revetments to prevent future erosion during normal high flow conditions.
- C. Instream structures (primarily J-hooks) will be installed to re-direct flows away from sensitive slopes as well as increase the diversity of aquatic streambed. Such structures will create riffles and pools that are well documented as assets to a healthy fishery. J-hooks are also compliant with the low maintenance design desired by the County.
- D. Planting of native vegetation will occur in association with the restoration actions listed above to stabilize banks long-term as well as to enhance habitat values. Live stakes of native woody shrub species (e.g., dogwoods, Viburnums) will be added to these revetment areas to aesthetically "soften" their appearance as well as enhance riparian habitat values.

Project Outcomes. The expected outcomes of the project are (1) reductions of ongoing and future bank erosion, (2) mitigate stormwater events, (3) reduction of stormwater velocity, (4) enhancement of filtration and infiltration through restoration of the riparian zone, (5) restoration and enhancement of riparian and in-stream wildlife habitat, (6) support of sustainable green infrastructure management through effective, low maintenance stormwater solutions, and (7) increased environmental awareness of Kenosha county residents and park visitors.

4. **Funding.** Construction by the COUNTY of the trails and restoration efforts shall be funded by multiple private and public sources. The COUNTY may solicit donations to aid in the maintenance and expansion of the trails within the PROPERTY. All such donations will be expended on the management, maintenance, and promotion of the PROPERTY's amenities such as trails, river maintenance, and natural resource management. The COUNTY may install a donation box to collect donations from trail users. All revenue from the donations will go directly back into the COUNTY's property maintenance account and utilized at the discretion of the Parks Director for trail improvements on the PROPERTY.

5. **Trail Development.** All trails shall be managed by the COUNTY and the COUNTY shall have the right to develop a strategic trail plan based on the natural terrain of the PROPERTY. All trails will be managed in a sustainable manner as to not be intrusive nor destructive to native vegetation or the Pike River corridor and shall be developed pursuant to Wis. Admin. Code chs. 18 and 21. The trails will be designed as to meet the mission of the UNIVERSITY and promote scientific research and observation objectives, while at the same time promoting public use and enjoyment of the trails. The UNIVERSITY must approve trail plans prior to construction which approval shall not be unreasonably withheld. It is understood that the PROPERTY has environmentally sensitive areas. The UNIVERSITY shall identify these environmentally sensitive areas for COUNTY by June 1, 2019. If the COUNTY has any concerns with the areas identified as environmentally sensitive, it shall ask for additional information from the UNIVERSITY within thirty (30) days of receipt. Once the environmentally sensitive areas are mutually agreed upon by the parties, the COUNTY and University agree to limit the impact of these areas in the design and restoration of the trails. If unauthorized trails or trail features or structures are constructed on the PROPERTY, the UNIVERSITY and/or the COUNTY shall have the right to remove these structures as they see fit. Use of the trails shall be in compliance with Wis. Admin. Code chs. 18 and 21 and shall be in alignment with the natural and scientific objectives of the UNIVERSITY. All trails shall remain open to the public at all times during normal Kenosha County Park hours per County Ordinance § 10.04 (6), except in times of inclement weather when trail conditions could be hazardous to the public use, or to preserve and minimize damage to the trails. The UNIVERSITY shall not interfere with the public use and enjoyment of the trails other than as allowed by this Agreement and it is the intent of the parties that these trails continue as a viable resource to the public even after this Agreement may cease.

A. Multi-Use Trails – These trails shall remain open to the general public for walking, hiking, on-leash dog walking, biking, cross-country skiing, and snowshoeing. The COUNTY shall provide appropriate number and size of waste containers for dog-waste.

B. Single Track Trails – Dedicated Mountain Bike trails

1. These trails will be developed and maintained by volunteers through an established community organization with the direct oversight by the COUNTY. The purpose and design of the single track trails serve a sole purpose to accommodate beginner and intermediate mountain bicyclists. These volunteers shall not be considered Contractors and are not required to have or maintain the levels of insurance set forth in paragraphs nineteen (19) and twenty (20) of this Agreement.

2. The COUNTY may enter into an agreement with a community organization for the maintenance, construction, and supervision of these trails. The COUNTY shall obtain UNIVERSITY approval in the event that the COUNTY does enter into such an agreement, such approval shall not be unreasonably withheld.
3. For the safety of the general public, all other users are encourage to stay off single track trails. To better maintain single track trails, the COUNTY or its authorized community organization has the right to close these trails to the public when conditions are poor to minimize damage to the trails and if hazardous to the public. Trail closures will be posted by the COUNTY or its volunteers at the park entrance and at trail heads.

6. **Licenses.**

- A. In furtherance of the Purpose, the UNIVERSITY hereby grants to the COUNTY a construction license (“Construction License”) to construct the trails and perform restoration efforts of the Pike River. Following the Effective Date of this Agreement but prior to commencement of construction, the parties shall execute a letter of addendum hereto which will designate the exact commencement and end dates of the Construction License term (“Construction License Term”).
- B. The UNIVERSITY hereby grants to the COUNTY a license to use the PROPERTY (“Land Use License”) at the rates and for the Purpose set forth herein starting on the day immediately following expiration of the Construction License Term and ending fifty (50) consecutive years later (“Land Use Term”).

7. **Term.** The initial term of this Agreement (“Agreement Term”) shall start on the Effective Date and end a full fifty years (50) after. The parties may extend this Agreement for an additional term of fifty years (50) upon express written agreement by the parties.

8. **Termination.**

- A. Failure to comply with any part of the Agreement may be considered cause for termination. Failure to abide by the COUNTY Park rules, COUNTY Ordinances, Board of Regent Policies, State Statutes, or State Administrative Codes may be considered cause for termination. Each party shall give the other party at least 30 days written notice of any such breach and the opportunity to cure the breach within such 30 days or face termination of this agreement.
- B. Either party may terminate the Agreement for reasons of program or budget, by giving the other party at least 180 days written notice. The parties shall have the right to terminate this Agreement under this provision if the intent and purpose of the Agreement can no longer be achieved.
- C. The UNIVERSITY represents that to the fullest extent practical and as permitted by law, it will provide public access to the PROPERTY for the length of the Agreement, even if the Agreement itself is terminated.
- D. The parties’ obligations as stated in the Agreement may be contingent on obtaining approval from the Kenosha County Board, the Chancellor for UW-Parkside, and the Board of Regents for the University of Wisconsin System. In the event that these governing bodies fail to appropriate necessary funds or

withhold approval for the projects described herein, said Agreement shall be terminated without damages or costs for such termination.

9. **Rent.** The COUNTY shall pay as rent to UNIVERSITY during the Term one dollar (\$1.00), payable on the first day of the Land Use Term and on the first day of each subsequent year thereafter for the duration of the Land Use Term. Rent shall be payable in lawful money of the United States, without deduction or offset, to the UNIVERSITY at the address for notices set forth below.

10. **Covenants of UNIVERSITY.**

- A. The UNIVERSITY shall work with the COUNTY and its affiliates to identify appropriate cooperative opportunities, such as Pike River Restoration projects, trail addition or improvement projects, administrative studies, educational programs, tourism initiatives, and Special Events. Contingent upon availability of funds and personnel, both agree to jointly pursue these projects.
- B. The UNIVERSITY will work cooperatively with the COUNTY on various grant applications and other funding requests including developing policies, procedures, management plans, or other required submittals and may be requested.
- C. The UNIVERSITY agrees to work with the COUNTY on storm water management issues that may arise in the Pike River corridor and floodplain which would possibly impact the PROPERTY and to take acts deemed appropriate or necessary in any applicable environmental studies conducted by the COUNTY or UNIVERSITY regarding the Pike River.
- D. The UNIVERSITY shall review plans that are submitted by the COUNTY for the Pike River Restoration and for the development, restoration or abandonment of trails on the PROPERTY to determine if it interferes with the UNIVERSITY's educational objective or use of the PROPERTY. The UNIVERSITY shall raise any concerns or ask for additional information from the COUNTY within thirty (30) days of receipt of the plans and provide necessary approvals to the COUNTY within forty-five (45) days of receipt of the plans.
- E. The UNIVERSITY shall allow the COUNTY to manage the Pike River Restoration project and not arbitrarily withhold necessary permits or permissions without reasonable accommodations.
- F. The UNIVERSITY shall make PROPERTY information available to the COUNTY, especially activities with potential to generate incidents necessitating COUNTY services, including but not necessarily limited to: property development, forestry activities, competitive or other user community group events, and educational programming.
- G. The UNIVERSITY shall promptly notify the COUNTY of the presence of unlawful, illegal, or unapproved structures discovered on the PROPERTY. The UNIVERSITY has the right to remove said structures if use of the structures pose a threat to the safety of the public.
- H. The UNIVERSITY shall be primarily responsible for any education and outreach programs including programming for school groups throughout the community, although nothing shall prohibit the County from conducting its own education and outreach programs in the community.

- I. The UNIVERSITY shall share past and future research, data and findings pertaining to the PROPERTY with the COUNTY including but not limited to Pike River water quality analysis, ecological inventories, invasive species reports, natural resource inventories, GIS inventories, existing trail maps, and local habitat data.
- J. The UNIVERSITY shall approve all necessary permit applications for construction related projects within this Agreement.

11. **Covenants of COUNTY**

- A. The COUNTY shall work with the UNIVERSITY and its affiliates to identify appropriate cooperative opportunities, such as Pike River Restoration projects, trail addition or improvement projects, administrative studies, educational programs, tourism initiatives, and Special Events. Contingent upon availability of funds and personnel, both agree to jointly pursue these projects.
- B. The COUNTY shall be responsible for developing a strategic trails plan, Natural Resource Inventory, Ecological Management Plan Ecological Restoration Plan, and plan for the Pike River Restoration. These plans will be shared with and approved by the UNIVERSITY prior to the restoration of the Pike River or construction of new trails, restoration of trails, abandonment of undesirable, unsustainable, or unsafe trails; such approval shall not be unreasonably withheld.
- C. The COUNTY shall be responsible for all normal maintenance of the trails and surrounding property. When extraordinary maintenance is required, COUNTY shall employ best practices for maintenance and coordinate the maintenance with the UNIVERSITY.
- D. The COUNTY shall maintain supervision of all groups, including volunteers, which may use or maintain the PROPERTY.
- E. COUNTY shall be the point-of-contact for all groups who wish to use the PROPERTY for Special Events including charitable fundraising events, community service events, and others.
- F. The COUNTY shall administer all necessary permits through local, state and federal units of government, with cooperation and signatures from property owner when necessitated. Such requested signatures shall not be unreasonably denied and shall be authorized within 30 days of such notice.
- G. The COUNTY shall share past and future research, data and findings pertaining to County properties with the UNIVERSITY including but not limited to Pike River water quality analysis, ecological inventories, invasive species reports, natural resource inventories, and local habitat data.

12. **Right of Entry.** The UNIVERSITY shall at all reasonable times grant the COUNTY access to the PROPERTY to inspect the PROPERTY and to gather information and determine if any repairs or maintenance are needed. The UNIVERSITY shall also grant right of entry to the COUNTY and affiliated volunteers, contractors, sub-contractors and owner representatives to work on related and authorized projects on the PROPERTY. This includes ecological restoration activities, Pike River Restoration projects and trail improvement/restoration initiatives. Such entry shall be done in a manner that does not unreasonably interfere with UNIVERSITY's ownership and use of the PROPERTY.

Both parties agree that nothing in this Agreement, nor anything granted or stated herein, shall prevent or preclude the UNIVERSITY from using the UNIVERSITY-owned land or property, or developing any such land or property, for purposes deemed appropriate by the UNIVERSITY in the UNIVERSITY's sole discretion. The COUNTY shall permit the UNIVERSITY and the UNIVERSITY's agents and employees to enter into and on the PROPERTY and the Structures, at all times during the Agreement Term for the purposes of inspection, maintenance, repair, and any other purpose the UNIVERSITY deems reasonably necessary. The parties agree to not unreasonably deny access to the PROPERTY or Structures and shall reasonably coordinate as necessary in providing access to same for Special Events or educational programming sponsored in part or in whole by either party.

13. **Normal Maintenance.** The COUNTY shall be responsible for all maintenance of the trails and the PROPERTY surrounding the trails including but not limited to such activities as the removal of limbs, clearing of leaves brush, and other natural debris from the trails, picking up litter, trail maintenance, maintenance of signage and trail markings. Normal maintenance also includes clearing of brush or invasive species limited to less than one (1) acre in size. COUNTY may conduct normal trail maintenance on the PROPERTY without prior notification. The COUNTY shall notify the UNIVERSITY of any maintenance beyond what is considered normal trail maintenance at least 24 hours prior to the maintenance taking place. The COUNTY may designate normal maintenance tasks to volunteers, as allowed within policies established by UNIVERSITY Risk Management. These volunteers shall not be considered Contractors and are not required to have or maintain the levels of insurance set forth in paragraphs nineteen (19) and twenty (20) of this Agreement.

14. **Extraordinary Maintenance.** The COUNTY shall provide a written request and obtain consent from the UNIVERSITY, which shall not be unreasonably withheld, when extraordinary maintenance is required. If the UNIVERSITY denies the COUNTY's written request, the UNIVERSITY must include a written explanation for the denial and what, if any, steps the COUNTY can take to gain permission in the future. Extraordinary maintenance shall include but is not limited to such activities as building or installing bridges, boardwalks, benches, kiosks, building new trails or re-grading existing trails, storm-water management functions, or clearing brush or invasive species that exceeds one (1) acre.

15. **Way-Finding and Other Signage.** The location and design of all trail head identification signage, way-finding, interpretive natural signage, and other signage shall be approved by both parties prior to installation. Kenosha County would pay for the cost of any signage relating to the trails or Pike River restoration.

16. **Special Events.**  
A. A special event is any bike ride, run, or hike/walk that charges any form of entrance fee, tracks time or other results in any fashion, and/or that which resembles a competitive or charitable event. A Special Event also includes any use of the trail or the PROPERTY that is substantially incompatible with use of the trails by the General Public. A Special Event does not include a free informal group outing or run.



- B. Closure of the trails for Special Events requires the need for approval from both the COUNTY and the UNIVERSITY. Priority of applicants for a special event is given first to UNIVERSITY educational and scientific activities. Secondary consideration is given to UNIVERSITY sponsored or aligned events.
- C. If a party other than the COUNTY or the UNIVERSITY is seeking to hold a Special Event within the PROPERTY, both COUNTY and UNIVERSITY must agree to the Special Event in writing; such approval shall not be unreasonably withheld.

17. **Donation Collection.** The COUNTY may solicit donations to aid in the maintenance and design and construction of the trails within the PROPERTY. All such donations will be expended on the management, maintenance and promotion of the PROPERTY's amenities. All donated funds specific to the COUNTY trail system will be retained by the COUNTY and used at the discretion of the COUNTY Parks Directory for the maintenance and improvement of the trail system.

18. **No Liens.** The COUNTY shall not, without prior written consent of the UNIVERSITY, directly or indirectly create or permit to be created or to remain upon the PROPERTY or one or all of the Structures any lien, encumbrance or charge on, or pledge of, the same or any part thereof, and will immediately discharge, or contest the validity of, any lien, encumbrance or charge on, or pledge of, the same or any part thereof. The COUNTY shall defend and indemnify the UNIVERSITY against any liens placed against the COUNTY's interest in any or all of the Structures or that otherwise impairs the UNIVERSITY's title to the PROPERTY and surrounding property; to the extent such liens arise as the result of the acts or omissions of the COUNTY, its agents or employees. In amplification and not in limitation of the foregoing, the COUNTY shall not permit any portion of the PROPERTY or Structures to be used by any person or persons or by the public, as such, at any time or times during the Agreement Term, in such manner as might reasonably tend to, or does, impair the title or interest of the UNIVERSITY in and to the PROPERTY and/or any portion thereof.

19. **Construction License Term Insurance**

A. The COUNTY and its Contractor shall not commence construction of the trails or restoration efforts until the COUNTY and its Contractor, if any, have obtained all the insurance required under this Section and shall require all Subcontractor(s) to be bound by the same obligations as the COUNTY and its Contractor. Such insurance must be approved by UW System Risk Management. The company providing the insurance must be lawfully authorized to do business in Wisconsin. The COUNTY and its Contractor shall provide the following insurance:

1. Worker's Compensation and Employer Liability Insurance:

- a. The COUNTY and its Contractor shall procure and maintain throughout the Agreement Term, and shall require all Subcontractors to maintain, Worker's Compensation Insurance as required by State of Wisconsin Statutes for all employees engaged in Work associated with the construction of the trails or restoration efforts. Minimum coverage is listed in paragraph A.7.
- b. The COUNTY and its Contractor shall procure and maintain during the Construction License Term, and shall require all Subcontractors to maintain, Employer's Liability Insurance. Minimum coverage is listed in paragraph A.7.

2. Commercial General Liability Insurance:
  - a. The COUNTY and its Contractor shall maintain during the Construction License Term, and until two years after completion of such Term, Commercial General Liability (GL) Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Construction License Term. Minimum coverage is listed in paragraph A.7. Such coverage shall be of the "occurrence" type form. The completed operations coverage under the GL coverage should be for a period of not less than 8 years.
  - b. Such Commercial General Liability coverage shall include employees of the COUNTY and its Contractor as insureds.
  - c. The COUNTY and its Contractor shall either (1) require each Subcontractor to procure and maintain Commercial General Liability Insurance equal to that required in subparagraph A.2.a. or (2) insure the activities of the Subcontractor(s) in the COUNTY's and its Contractor's policy.
3. Auto Liability Insurance:
  - a. The COUNTY and its Contractor shall procure and shall maintain during the Construction License Term, Commercial Automobile Liability Insurance for all owned, non-owned and hired vehicles that are used in fulfilling the obligations hereunder. Minimum coverage is listed in paragraph A.7.
  - b. The COUNTY and its Contractor shall require each Subcontractor to procure and maintain Commercial Auto Liability Insurance equal to that required in subparagraph A.3.a.
4. Umbrella Liability Insurance:
  - a. The COUNTY and its Contractor shall procure and shall maintain during the Construction License Term, Commercial Automobile Liability Insurance for all owned, non-owned and hired vehicles that are used in fulfilling the obligations hereunder. Minimum coverage is listed in paragraph A.7.
  - b. The completed operations coverage under the Umbrella Liability coverage should for a period of not less than 8 years.
  - c. The Umbrella Liability insurance shall be on a follow form basis to the GL, Auto Liability and Employers liability.
  - d. The COUNTY and its Contractor shall either (1) require each Subcontractor to procure and maintain Umbrella Liability Insurance equal to that required in subparagraph A.4.a. – c. or (2) insure the activities of the Subcontractor(s) in the COUNTY's and its Contractor's policy.
5. Contractor's Pollution Liability:
  - a. The COUNTY or Contractor shall procure and maintain during the Construction License Term Contractor Pollution Liability (CPL) Insurance on an occurrence basis.
  - b. The CPL policy shall have a completed operations coverage of not less than 8 years.
  - c. The COUNTY or its Contractor shall either (1) require each Subcontractor to procure and maintain CPL Insurance equal to that required in subparagraph A.5.a. -b. or (2) insure the activities of the Subcontractor(s) in the COUNTY's and its Contractor's policy.
6. Scope of Insurance and Special Hazards: The insurance required under subparagraphs A.2. and A.5. shall provide adequate protection for the COUNTY, Contractor and Subcontractor(s) respectively, against damage claims which may

arise from operations under this Agreement, whether such operation be by the insured and also against any of the special hazards which may be encountered in the performance of this Agreement.

7. Minimum Limits Required:

TYPE	Limits
Commercial General Liability	\$1,000,000 General Aggregate (applies per project) \$1,000,000 Products Aggregate \$1,000,000 Personal Injury \$1,000,000 Each Occurrence \$50,000 Fire Damage \$5,000 Medical Expense Per Person
Contractor's Pollution Liability	\$3,000,000
Automobile Liability	\$1,000,000 Combined Single Limit
Umbrella Liability	\$3,000,000

Worker's Compensation/Employers Liability Insurance

- State: Statutory
- Federal: As Applicable
- Employers Liability Limit: \$500,000
- All Employees, partners, individuals, any managers on the construction project site/ PROPERTY must be included for coverage.

8. The Commercial General Liability policy described in section A.2. shall include the State of Wisconsin and the UNIVERSITY as Additional Insureds as respects the activities carried out under this Agreement. Additional coverage on the COUNTY and Contractor Umbrella policy can be used to make up the required limits.
  9. Proof of Insurance: The COUNTY and Contractor shall provide a certificate of insurance to UW System Risk Management from a company lawfully authorized to do business in the State of Wisconsin indicating coverage is in place at the limits set forth in this Section. The insurer shall give UW System Risk Management thirty (30) day notice of cancellation or changes in coverage. The insurance certificate shall be provided before commencement of the Agreement. If the COUNTY or the Contractor is self-insured, audited financial records will need to be provided that clearly demonstrate the financial ability to cover losses up to the limits of insurance required. COUNTY and Contractor shall also be required to disclose deductibles or Self-Insured Retention's (SIR).
  10. All insurance carried under this Section shall contain a provision making it primary and non-contributory to any other coverage available to the State of Wisconsin.
- B. The COUNTY and Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Wisconsin, property insurance in the

amount of, at least, the value of the entire Construction License Term at the site on a replacement cost basis.

1. Policy Form: Property Insurance shall be written so that it includes coverage to physical loss or damage to County Property.
  2. Deductible: The risk of loss within the deductible amount will be borne by the COUNTY.
  3. Such insurance shall include the interests of the COUNTY, State of Wisconsin, Board of Regents, Wisconsin Department of Administration and all subcontractors as their interests may appear.
  4. Policy Review: A copy of the Property Insurance policy or policies will be provided to UW System Risk Management.
- C. COUNTY, Contractor, any subcontractor(s), and, subject to Section 19 (“Governing Law”) below, the UNIVERSITY waive all rights against each other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This waiver shall be effective only to the extent any policy of insurance is not impaired thereby.

20. **Post Construction Insurance**

- A. The COUNTY shall maintain a Commercial General Liability insurance policy with limits as set forth in COUNTY’s current policy of \$1,000,000 per occurrence inclusive of the amount of the deductible.
- B. The Property and Commercial General Liability policies required in this section shall include the State of Wisconsin and the UNIVERSITY as Additional Insureds. The COUNTY and shall provide a certificate of insurance to UW System Risk Management from a company lawfully authorized to do business in the State of Wisconsin indicating coverage is in place at the limits set forth in this Section. The insurer shall give UW System Risk Management thirty (30) day notice of cancellation or changes in coverage.

21. **No Indemnification.** Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, officers, officials, agents, boards and committees, commissions, agencies, and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations involving joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.

Notwithstanding any other provision of this Agreement to the contrary, the provisions of this Section shall survive the termination or earlier expiration of this Agreement with respect to any events occurring after the Effective Date and prior to the termination or expiration of the Agreement, regardless of whether Claims relating thereto are asserted before or after such termination or expiration.

22. **Independent Parties; No Discrimination.** This Agreement does not form a partnership or joint venture between the parties. The COUNTY and UNIVERSITY are separate legal entities and shall remain so. This Agreement does not give any right or benefits to any third parties and shall be enforced only by the parties who are signatories herein. Both parties agree not to unlawfully discriminate against any user of the PROPERTY on the basis of age, race, religion, national origin or ancestry, gender or any other basis protected under State or Federal law. By entering into this Agreement, neither party waives any of it statutorily guaranteed immunities and defenses as municipalities of the State of Wisconsin.

23. **Whole Agreement.** This Agreement incorporates and describes all of the license, undertakings, conditions and considerations of the parties with respect to the subject matter herein. Each party has full authority to enter into this Agreement. COUNTY represents that it has not relied upon any promises, inducements, or representations of UNIVERSITY or its agents or employees, other than those expressly stated in this instrument.

24. **Severability.** Invalidity of any one of the provisions of this Agreement by judgement or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

25. **Future Parties.** Notwithstanding the foregoing, and with the exception of lawful successors under state law, neither party shall assign this Agreement or the licenses granted herein to any third party/ies without the express prior written consent of the other party.

26. **Governing Law.** This AGREEMENT shall be governed by the laws of the State of Wisconsin. For the avoidance of doubt and notwithstanding anything stated herein to the contrary, nothing herein is intended, nor shall it be construed, as UNIVERSITY agreeing to any term or condition which it cannot agree to by, or which is contrary to, applicable laws, rules, regulations or UNIVERSITY policies, procedures or practices.

27. **Public Record Compliance.** The Parties acknowledge that Kenosha County, is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see Sections 19.32-19.39, & 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws.

28. **Authorization.** Each of the person executing this Agreement on behalf of the COUNTY and UNIVERSITY do hereby covenant and warrant that they have the right and authority to enter into this Agreement.

29. **Notices.** All notices required under the instrument shall be by electronic mail with a delivery receipt requested. A party may change the address to which notices are to be sent at any time by providing notice of such change to the other party by electronic mail. All notices, requests, or other communication herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when the sending party possesses a delivery receipt of such communication to the addresses below, or

as specified in this section.

UNIVERSITY: University of Wisconsin–Parkside  
Chancellor  
Wyllie Hall 353  
900 Wood Road  
PO Box 2000  
Kenosha, WI 53141-2000

BOARD OF REGENTS: Board of Regents of the University of Wisconsin  
System  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

In care of: Office of General Counsel  
[board@uwsa.edu](mailto:board@uwsa.edu)

COUNTY: Office of the Kenosha County Executive  
1010 56<sup>th</sup> Street  
Kenosha, WI 53140

Either party may from time to time, by written notice to the other, expressly designate a different address to which notices shall be sent.

IN WITNESS WHEREOF, the UNIVERSITY and COUNTY have entered into this Agreement as of the date last signed below. This instrument may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute but one and the same instrument.

UNIVERSITY:  
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM on behalf of the  
University of Wisconsin-Parkside

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

Robert G. Cramer, Vice President for Administration

STATE OF WISCONSIN )

) ss.

COUNTY OF DANE )

Personally came before me this \_\_\_\_ day of April, 2019, the above-named Robert G. Cramer known to me to be the Vice President for Administration of the University of Wisconsin System Administration, who executed the foregoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

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

Matt Lind, Notary Public, State of Wisconsin

My Commission is permanent.

UNIVERSITY:  
UNIVERSITY OF WISCONSIN-PARKSIDE

By: \_\_\_\_\_  
Deborah Ford, Chancellor Date

COUNTY:  
KENOSHA COUNTY

By: \_\_\_\_\_  
Jim Kreuser, Kenosha County Executive Date

STATE OF WISCONSIN       )  
                                      )       ss.  
COUNTY OF KENOSHA       )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, the above-named \_\_\_\_\_ known to me to be the \_\_\_\_\_ who executed the foregoing instrument and acknowledged that she executed the same in the capacity therein stated and for the purpose therein contained.

By: \_\_\_\_\_  
\_\_\_\_\_, Notary Public, State of Wisconsin  
My Commission is permanent.



