



MARKETING AND LICENSING AGREEMENT

This Marketing and License Agreement (this “Agreement”) is entered into by and between Just Walk! Inc., an Ohio corporation (“Just Walk”), with offices at 495 Cooper Road Westerville, OH, and the City of Madison, a Wisconsin municipal corporation, with offices at 210 Martin Luther King, Jr. Blvd., Madison, WI 53703 (the “City”). Just Walk and the City are sometimes referred to herein collectively as the “parties” or individually as a “party.” This Agreement is effective as of the date upon which both parties have signed hereunder (the “Effective Date”).

RECITALS:

WHEREAS, Just Walk provides, among other things, free walking programs to encourage healthy physical activity in people of all ages (the “Walking Program”);

WHEREAS, the City desires to organize a Walking Program in Madison, WI;

WHEREAS, to facilitate the City in organizing a Walking Program, Just Walk shall provide to the City a toolkit consisting of a “How-To-Guide;” digital files including logos, forms, signs and templates; promotional materials; a pedometer and t-shirt (the “Toolkit”); and

WHEREAS, the parties desire to enter into this Agreement to set forth the terms and conditions for the Walking Program and certain marketing activities;

NOW, THEREFORE, in consideration of the above premises, the representations, warranties and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Marketing and Promotional Activities. To the extent indicated on Exhibit A hereto, the City agrees to engage in the marketing and promotional activities described on Exhibit A hereto.

2. License; Reservation of Rights.

2.1 License by Just Walk. Subject to the terms and conditions of this Agreement, Just Walk hereby grants to the City a non-exclusive, non-assignable, non-sublicenseable, royalty-free, limited license in Madison, Wisconsin to use and display the Just Walk trademark and logo

indicated on Exhibit B hereto (the “Marks”) in connection with a Walking Program solely as necessary to perform City’s obligations under this Agreement and as specifically described on Exhibit A.

2.2 Trademark Guidelines. In its use of the Marks, the City will comply with any trademark usage guidelines that Just Walk may communicate to the City from time to time. The City will provide Just Walk with copies of any materials bearing any of Just Walk’s Marks as requested by Just Walk from time to time. If the City’s use of any of Just Walk’s Marks, or if any material bearing such Marks, does not comply with the then-current trademark usage policies provided in writing by Just Walk, the City will promptly remedy such deficiencies upon receipt of written notice of such deficiencies from Just Walk. Other than the express licenses granted herein with respect to Just Walk’s Marks, nothing herein will grant to the City any other right, title or interest in Just Walk’s Marks. All goodwill resulting from the City’s use of Just Walk’s Marks will inure solely to Just Walk. The City will not, at any time during or after this Agreement, register, attempt to register, claim any interest in, contest the use of, or otherwise adversely affect the validity of any of Just Walk’s Marks (including, without limitation, any act or assistance to any act, which may infringe or lead to the infringement of any such Marks). Except as set forth in Exhibit A, the City may not use any trademarks or logos other than the Marks in conjunction with the Walking Program without the prior written approval of Just Walk. The City further agrees not to use or register the Marks as part of any trade name, corporate name, business name or domain name.

2.3 Copyright Rights. All artwork, designs, reproductions, and derivative works thereof that are created by the City and which include or are derived from the Marks or materials included in the Toolkit are, for copyright purposes, works made for hire for Just Walk. In no event will any works be considered a joint work. If any work does not qualify as a work made for hire, then the City hereby assigns to Just Walk all rights to such work, including, but not limited to, all copyright rights and other intellectual property rights.

2.4 Reservation of Rights. The parties acknowledge and agree that, except for the rights and licenses expressly granted by Just Walk to the City under this Agreement, Just Walk will retain all right, title and interest in and to its products, services, Marks, and all content, information and other materials on its website or contained in the Toolkit, and nothing contained in this Agreement will be construed as conferring upon the City, by implication, operation of law or otherwise, any other license or other right.

3. Warranties; Limitation of Liability.

3.1 Warranties. Each party represents and warrants to the other that (a) it has the full power to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, and (c) this Agreement does not contravene, violate or conflict with any other agreement of such party.

3.2 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, JUST WALK DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY

REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, ANY WARRANTIES ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE, AND THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION.

3.3 Limitation of Liability. EXCEPT FOR THE PARTIES' OBLIGATIONS PURSUANT TO SECTION 5, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

4. No Agency; No Disparagement. Notwithstanding anything in this Agreement, neither party will make any claims, representations or warranties on behalf of the other party or bind the other party, and neither party is authorized to do so by this Agreement. The relationship between the parties will be that of independent contractors. Nothing contained herein will be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party will have the right, power or authority to bind or create any obligation, express or implied, on behalf of the other party. During the term of this Agreement, the City shall not make any public statements disparaging Just Walk's Marks, products or services.

5. Indemnification. In the performance of their duties under this Agreement, each party shall be responsible for the consequences of its own acts or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies and representatives and be responsible for losses, claims and liabilities, which are attributed to such acts or omissions. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, 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 that portion of the consequences due to 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.

6. Term and Termination.

6.1 Term. This Agreement will be in effect for a one (1) year term commencing on the Effective Date unless earlier terminated pursuant to this Section 6.

6.2 Termination. Either party without cause may terminate this Agreement upon thirty (30) days prior written notice to the other party.

6.3 Survival. Sections 2.3, 2.4, 3.2, 3.3, 4, 5, 6.3, and 7 will survive any expiration or termination of this Agreement. Notwithstanding the foregoing, the expiration or termination of this Agreement will not relieve the parties of any liability or obligation that accrued prior to such expiration or termination. Upon the expiration or termination of this Agreement, the City will immediately cease the display and use of Just Walk's Marks and the marketing and promotional activities as described on Exhibit A.

7. General.

7.1 Confidential Information. Each party acknowledges and agrees that in connection with this Agreement each will be exposed to information relating to the other and the other's businesses and agents that is confidential in nature and/or proprietary, including trade secrets. During the term of this Agreement and thereafter each (A) shall treat as confidential any and all information disclosed or made known to it by the other (whether through actual disclosure or observance) and all other information relating to the other and its agents and business; (B) shall not publish or disclose such information in any manner or fashion to any third party without the other's prior written consent; and (C) shall not use such information for any purpose except in connection with performing the obligations hereunder. The confidential information and trade secrets of each party include, without limitation, information relating to each party's respective business methodologies, marketing, contacts, relations, finances and operations (including, without limitation, cost and pricing figures and statistics, business projections, marketing strategies and plans) not generally known to the public. The foregoing obligations do not apply to any information that is or becomes generally known to the public apart from disclosure by a party or its affiliates or its or their present or former employees or agents, or which was known to or used by a party or its affiliates in the conduct of its business operations prior to the Effective Date. The obligations of this section do not apply to any information maintained by the City which is subject to the Wisconsin open records law, Wis. Stat. Sec. 19.35, as it may be amended from time-to-time.

7.2 Governing Law; Venue. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

7.3 Waiver; Severability. No waiver of a party's rights shall be effective unless such waiver is in writing signed by the waiving party. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, illegal, against public policy or is otherwise unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

7.4 Assignment. The City may not assign its rights or obligations under this Agreement without the prior written consent of Just Walk, which may be granted or withheld in Just Walk's sole discretion. Just Walk shall have a complete and unrestricted right to transfer its rights and interests under this Agreement.

7.5 Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and sent to each party at its address or facsimile number set forth in the first paragraph of this Agreement, or such new address or facsimile number as may from time to time be supplied by the parties hereto in accordance with this Section 7.5.

7.6 Captions; Entire Agreement; Amendment. The captions or headings of the Sections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement. This Agreement constitutes the complete understanding and agreement of the parties and supersedes all prior and contemporaneous negotiations, understandings and agreements with respect to the subject matter of this Agreement. Any modification or amendment of any provision of this Agreement will be effective only if in writing and signed by an authorized representative of both parties.

7.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument.

8. Non-Discrimination. In the performance of work under this Agreement, Just Walk agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Just Walk further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

9. Insurance.

9.1 Just Walk. Just Walk will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Just Walk shall not commence work under this Agreement, nor shall Just Walk allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability. Just Walk shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Just Walk's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Just Walk shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. Just Walk shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Just Walk shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. Just Walk shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

Just Walk and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

9.2 City. The City will maintain its current liability insurance during the term of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Marketing and License Agreement as of the date first written above.

JUSTWALK! INC.

By: _____
Name: _____
Title: _____

**CITY OF MADISON, WISCONSIN
a municipal corporation**

By: _____
Paul R. Soglin, Mayor

Date: _____

Approved:

David P. Schmiedicke, Finance Director

Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk

Date: _____

Approved as to Form:

Eric T. Veum, Risk Manager

Date: _____

Michael P. May, City Attorney

Date: _____

Exhibit A

Marketing and Promotional Activities

1. Each Walking Program must include a regular walk (at minimum, monthly) and the participation of a board-certified physician in each walk.
2. The board-certified physician is encouraged to provide a three to eight minute informational talk prior to each walk.
3. The board-certified physician must, at a minimum, commit to a sixty minute commitment for each walk.
4. The City may provide fruit, granola, water and coffee for the participants of each walk.
5. The City must display JustWalk's logo at each walk.
6. The City will display Anthem Blue Cross and Blue Shield as a sponsor on marketing and promotional materials provided to it by JustWalk. (as seen on tool-kit)
7. The City must first approve any additional sponsors with JustWalk.
8. JustWalk shall provide the City with fifty (50) shirts and pedometers free of charge prior to the commencement of the Walking Program.
9. The City must offer its participants the option to sign-up for the National JustWalk newsletter.
10. The City shall not through itself or through any third party or entity, including, but not limited to, a physician affiliated with the City, such physician's practice, or a health system affiliated with the City, advertise, promote, sell or distribute any products at any walk unless previously approved in writing by JustWalk.
11. The City must receive prior written approval from JustWalk of the content, message and delivery of any disclosures, posts or messages it or its affiliates, representatives or employees intend to disseminate to the media, social media or the press, in any form or format, prior to making such disclosures to the media, social media or press. JustWalk may, in its sole discretion, withhold or decline such approval.

Exhibit B

Marks

A) Logo word mark with stylization



B) Word mark without stylization

JustWalk