

This Use Agreement (this "Use Agreement") is dated this 24 day of JANUARY, 2012, and entered into by and between the **City of Madison**, a Wisconsin municipal corporation (the "City"), and **The Board of Regents of the University of Wisconsin System**, on behalf of the University of Wisconsin-Madison (the "UW").

#### RECITALS

WHEREAS, UW is engaged in a project funded by the National Science Foundation to understand how land use and development affect water resources in the Yahara River Watershed by monitoring air temperature and humidity levels across the watershed; and

WHEREAS, in the Madison area, the Urban Heat Island study part of the project seeks to determine the effect of urban development on local air temperature; and

WHEREAS, UW wishes to install approximately two hundred (200) temperature/humidity sensors ("Equipment") across Dane County, including approximately twenty-five (25) to thirty (30) in the City; and

WHEREAS, UW desires to locate the Equipment on City street lights ("Premises") located in public rights-of-way and on park lands.

#### AGREEMENT

Now, therefore, in consideration of the above recitals, which are incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. The City hereby permits UW to locate, place, attach, install, own, operate, maintain, remove, reattach, reinstall, relocate, and replace its Equipment (as shown in Exhibit A) on the Premises (as shown in Exhibit B) for the purpose of monitoring temperature/humidity levels for the Urban Heat Island study. The Premises shall be subject to change upon agreement of the Parties.
2. The UW use of the Premises shall not damage or interfere in any way with the City's use of the Premises and is subject to the prior and continuing right of the City to use any and all part of the Premises exclusively or concurrently with any other person or entity. Such use shall be further subject to all deeds, easements, dedications, conditions, covenants, restriction, encumbrances and claims of title of record that may affect the Premises.
3. This Use Agreement shall be for an initial term of five (5) years, however it may be renewed for an additional one (1) years upon mutual written agreement of the

parties. The initial term and any renewal term shall be subject to the termination provisions elsewhere in this Agreement.

4. All installation, operation, maintenance, repair, and removal activities shall have appropriate work zone signage and barricading consistent with part VI of the MUTCD, the City of Madison Standards for Sidewalk and Bikeway closures, and the State of Wisconsin Standard Detail Drawings. City shall assist the UW with determining necessary signage and barricading under this section.

5. The City shall not be liable for any damage to the Equipment occasioned by water, ice, snow, knockdowns, lightening, power surges, or any damage caused directly or indirectly by City operations or actions or inaction, of City employees, officers, official and/or agents, including but not limited to any consequential, special, or incidental damages or losses arising from damage to the Equipment.

6. The UW, as a unit within an agency of the State of Wisconsin, shall maintain liability protection to cover the payment of judgments taken against its agents or employees for claims related in any way to the performance of the Agreement that damages the Premises, when such claims are founded upon or grow out of the negligent acts or omissions of any of the agents or employees of the UW while acting within the scope of their agency or employment where protection is afforded by s. 896.46(1) of the Wisconsin Statutes.

7. During peak traffic hours between 7:00-9:00 A.M. and 4:00-6:00 P.M. Monday through Friday, UW shall access the Premises in the public right-of-way only with permission of the City.

8. Any modifications to the Equipment installed on the Premises shall be subject to the prior written approval of the City, however, UW shall have the right to replace any or all of its Equipment installed on the Premises with replacement Equipment of the same kind, which is reinstalled in the same place and position and is of the same size and weight as the replaced Equipment.

9. UW understands and acknowledges that the City may require UW to relocate its Equipment when the City reasonably determines that the relocation is needed for the following reasons: a) if required for the construction, completion, repair, relocation or maintenance of a City operation; b) because the Equipment is interfering with or adversely affecting operation of the Premises; or c) to protect or preserve the public health or safety. The City will cooperate with UW in identifying reasonable alternative sites for the Equipment. Such sites shall become Premises under this Agreement if Equipment is installed. If alternative sites are not available, UW may terminate this Agreement.

10. In the event of a City emergency, the City's work shall take precedence over any and all operations of UW on the Premises. To the extent possible, when responding to such emergency, the City shall take reasonable care to avoid or minimize disruption and interference with operation of the Equipment.

11. UW shall keep all Equipment in safe operating condition. If UW's Equipment is not placed and maintained in accordance with the terms and conditions set forth in this Agreement and UW has not corrected the violation within sixty (60) days from receipt of written notice thereof from the City, or such longer period as may be reasonably necessary under the circumstances, then, in such event, the City may, at its option, correct said condition and notify UW in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of the City's employees or the public, interfere with the performance of the City's service obligations, or pose an immediate threat to the physical integrity of the Premises, and prior notice to UW is not possible under the circumstances, the City may perform such work and/or take such action that it deems necessary without first giving written notice to UW and without subjecting itself to any liability for damage to UW's Equipment. Immediately thereafter, the City shall advise UW in writing of the action taken. UW shall be responsible for all reasonable expenses incurred by the City associated with any action performed by the City pursuant hereto.

12. In addition to any conditions for termination heretofore provided, this Agreement may be terminated at any time upon mutual agreement of the parties.

13. All notices that shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

For Equipment on Premises in the public right-of-way:

Dan Dettmann

Traffic Engineering

205 Martin Luther King, Jr. Blvd.

Madison, WI 53703

For Equipment on Premises on park lands:

Kevin Briski

Parks Superintendent

210 Martin Luther King, Jr., Blvd.

Madison, WI 53703

If to UW:  
Principal Investigator:  
Chris Kucharik  
Department of Agronomy  
College of Agricultural and Life Sciences  
University of Wisconsin-Madison  
457 Moore Hall  
1575 Linden Drive  
Madison, WI 53706

For UW Administrative Matters:  
Research and Sponsored Programs  
21 North Park Street, Suite 6401  
Madison, WI 53715

14. This Agreement shall not be assigned by UW without the express written consent of the City, which consent shall not be unreasonably withheld..

15. This Agreement shall be governed and construed by and in accordance with the laws of the State of Wisconsin.

16. Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

17. This Agreement may be amended by a written instrument signed by duly authorized representatives of both parties.

18. Force Majeure. Neither party shall be responsible for performance of any obligation under this Agreement that is prevented or delayed by reasons outside of its reasonable control, including without limitation floods, fires, hurricanes, tornadoes, earthquakes or other unavoidable casualty, acts of public enemy, insurrection, war, riot, sabotage, epidemic, strike or other labor disputes, freight detentions, acts or omissions of government, utility or other third parties or unusually severe weather conditions.

19. In the performance of work under this Use Agreement, UW 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. UW 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.

IN WITNESS WHEREOF, the parties have entered into this Facilities Use and License Agreement as of the date first set forth above.

**CITY OF MADISON**

By:   
Paul R. Soglin, Mayor

Date: 1-25-12

By:   
Maribeth Witzel-Behl, City Clerk

Date: 1-10-2012

**Approved: Approved:**

  
David Schmiedicke, Comptroller

  
Eric Veum, Risk Manager

Date: 1/24/12

Date: 1/23/12

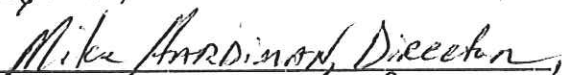
**Approved as to form:**

  
Michael P. May, City Attorney

Date: 24 JAN, 2012

**Board of Regents of the University of Wisconsin System**

By:   
(signature)

  
(print or type name and title) Purchasing

Date: 12/15/2011



Exhibit A



## EXHIBIT B

### Premises

#### Locations of Temperature/Humidity Sensors (Equipment)

##### On City Street lights

Hill Creek Dr.

Plaza Dr.

7483 West Towne Way (REI)

Carns Dr. (near Ritz Dr.)

Jeffers Dr.

Birchstone Dr.

W. Terrace Dr. (near Herzing College)

University Ave. (N. side, between N. Charter and N. Mills

Mifflin St. (between N. Henry and N. Fairchild)

East Washing Ave. (between N. Butler and N. Hancock)

East Towne Blvd. at Eagan Rd. ( W. corner)

Warner Park

Elver Park

James Madison Park