

## LEASE AGREEMENT

### BIRCH HOLLOW DRIVE – MARY BETH DOYLE PARK

This agreement describes the terms of a lease by the **MALLETTS CREEK DRAIN DRAINAGE DISTRICT**, 705 N. Zeeb Road, Ann Arbor, Michigan 48103, (“County”) and the **CITY OF ANN, ARBOR**, a Michigan municipal corporation, 301 E. Huron Street, Ann Arbor, Michigan 48104, (“City”).

#### Recitals

- A. The City park known as Mary Beth Doyle Park has, since 1979, consisted of several parcels owned by the City and one parcel owned by the County, with the entire park operated by the City except for certain stormwater infrastructure maintained by the County;
- B. The County’s predecessor, the Pittsfield-Ann Arbor Drainage District, has leased the County’s portion of the park to the City from January 1, 1979 to December 31, 2003, with a month-to-month holdover thereafter, under a lease dated December 14, 1978 (“First Lease”);
- C. The parties wish to establish this new 25-year lease to replace the existing month-to-month lease;
- D. The parties acknowledge that the Premises contain a storm water detention area and related structures, including inlet and outlet control structures under the jurisdiction of the Washtenaw County Water Resources Commissioner (“Storm Detention Facilities”);
- E. The parties acknowledge that a portion of the Premises is a wetland under a conservation easement granted to the Michigan Department of Environmental Quality and recorded in Liber 4692, Page 644, Washtenaw County Records (“MDEQ Wetland”);

#### Agreement

The City and County agree as follows:

- 1. **Premises.** The premises to be leased under this agreement consists of a parcel of land owned by the County, pictured in Exhibit A, commonly known as 3500 Birch Hollow Drive, Tax Parcel 09-12-10-201-025, Ann Arbor, Michigan (“Premises”).
- 2. **Duration.** The County hereby ratifies the City’s holdover under the First Lease until December 31, 2023 and leases the Premises to City for a term of 25 years beginning on January 1, 2024 and expiring on December 31, 2048.

**3. Rent.** Rent shall be \$1.00 total for the entire lease period including any holdover, the receipt of which hereby acknowledged. City shall not be entitled to any pro rata refund of rent if the lease is terminated early or not renewed for any reason.

**4. Use and Occupancy.**

- (a) The City shall use the Premises solely as a City park, with such accessory and ancillary uses as are consistent with the operation of a park
- (b) The City may install improvements, including buildings, equipment, recreation facilities, bridges, pathways, driveways, grading, and parking areas, for its use of the Premises as a park, provided that City obtains prior approval of the County in order to ensure that such improvements will not obstruct or increase the cost of maintaining the Storm Detention Facilities or the MDEQ Wetland.
- (c) City may remove or plant vegetation including trees and shrubbery outside of the Storm Detention Facilities and MDEQ Wetland.
- (d) All improvements, fixtures, and personal property installed or owned by the City shall not become part of the real estate but shall be and remain the property of the City except as provided herein. Upon termination of this lease:
  - a. if the City wishes to remove some or all of its improvements, fixtures, or personal property, it must do so within 60 days after termination; or
  - b. if the County wishes the City to remove some or all of its improvements or to restore the Premises to the same or like condition as when this lease was executed, the County must make such a request to the City within 60 days after termination and the City shall comply with that request within a reasonable time period, but no later than 1 year after such request
- (e) City improvements, fixtures, and personal property not removed under section 4(d) of this lease shall become the property of the County.

**5. Maintenance.**

- (a) The City shall maintain and keep in good repair the Premises, except that portion of the Premises occupied by the Storm Detention Facilities and MDEQ Wetland.
- (b) The County shall be responsible for maintenance of and retains the right to alter or improve the Storm Detention Facilities and MDEQ Wetland. If such maintenance, alteration, or improvement disturbs City improvements, the County shall restore the disturbed improvements to their prior condition or better.
- (c) The City shall be responsible for all damage to the Storm Detention Facilities or

MDEQ Wetland which results from its use of the Premises. The City shall not be liable for damage to the Storm Detention Facilities or MDEQ Wetland resulting from acts or omissions of third parties or the public.

**6. Insurance.** The Parties to this agreement will each maintain at their own expense appropriate levels of insurance necessary to protect their entity from any liability or loss relating to this lease.

**7. Termination and Holdover.** If either the County or the City desires to terminate this lease at its expiration, the terminating party must notify the other party at least 30 days prior to the lease's expiration, otherwise the City shall hold over after expiration under a month-to-month tenancy, terminable by either party upon 30 days' notice. Either party may terminate this lease upon 30 days' written notice to the other party.

**8. Breach.** If either party breaches any term of this lease, the other party may terminate this lease by giving written notice of the breach to the breaching party at least 30 days prior to the stated date of termination. If the breach is cured within 30 days after such notice is given, the lease shall not terminate.

**9. Governing Law and Severability.** This lease shall be governed and interpreted under the laws of the State of Michigan. The parties agree to venue in a court of appropriate jurisdiction in Washtenaw County for any action arising under this lease. The numbering and headings are not part of this lease and are intended only to assist in locating the relevant lease terms. Whenever possible, each provision of this lease shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this lease is prohibited or invalid under law, that provision will be ineffective only to the extent of the prohibition or invalidity without invalidating the remainder.

**10. Notice.** All notices shall be in writing. Notice shall be deemed to have been properly transmitted when actually delivered or on the date of the first attempted delivery. Notice shall be addressed and sent to the following addresses or to such other address noticed hereafter by either party:

The County:

Washtenaw County Water Resources Commissioner's Office  
705 Zeeb Road  
Ann Arbor, MI 48103

The City:

City of Ann Arbor  
Attn: Josh Landefeld, Parks and Recreation  
301 E. Huron St.

Ann Arbor, Michigan 48104

With a copy to:

City of Ann Arbor  
Attn: Office of the City Attorney  
301 E. Huron St.  
Ann Arbor, Michigan 48104

Washtenaw County  
Attn: Office of the Corporation Counsel  
220 N. Main Street  
PO Box 8645  
Ann Arbor, MI 48107

**11. Entire Agreement; Amendments.** This lease represents the entire understanding between the City and the County and supersedes all prior representations or leases on the subject matter of this lease. Neither party has relied on any prior representations in entering into this lease. The covenants and agreements contained in this lease are binding upon and shall inure to the benefit of the County and the City and their respective successors and assigns. This lease may be altered, amended, or modified only by written amendment signed by the County and the City.

**12. Authority.** By executing this lease the parties acknowledge that their respective governing bodies have adopted the necessary authorization for execution of this lease.

**13. Electronic Transaction.** The parties agree that signatures on this lease may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this lease. This lease may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

**14. Effective Date.** This lease shall become effective when all parties have signed.

*(Signatures on the following pages)*

## **MALLETTS CREEK DRAIN DRAINAGE DISTRICT**

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Evan Pratt, Water Resources Commissioner

## **THE CITY OF ANN ARBOR**

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Christopher Taylor, Mayor

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Jacqueline Beaudry, City Clerk

### **Approved as to substance:**

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Milton Dohoney Jr., City Administrator

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Derek Delacourt, Community Services Area Administrator

### **Approved as to form:**

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Atleen Kaur, City Attorney