

Wisconsin Urban Wood

Use Agreement with the

[CITY OF _____], Wisconsin

[DATE]

DO NOT COPY

USE AGREEMENT

This Use Agreement (the "Agreement") is made and entered into this ___ day of _____, 2016, by and between the [CITY OF _____], Wisconsin, (the "City") and Quarks, Inc., a Wisconsin not-for-profit corporation operating as Wisconsin Urban Wood ("WUW"). When referenced collectively, the City and WUW are the "Parties" to this Agreement.

WHEREAS, under the direction of the Parks, Recreation, and Forestry Department ("Department") the City owns and manages trees, shrubs, and other woody plants (the "Materials") which are periodically removed throughout the City, and stores such Materials at certain locations; and

WHEREAS, the City currently incurs costs to dispose of such Materials and wishes to avoid the potential rising future costs associated with doing so; and

WHEREAS, the Department and the City desire to maximize the use of the Materials in a manner which promotes local use, sustainability, and other similar public purposes; and

WHEREAS, the Department desires to provide access to the Materials for local and regional producers who could utilize the resources as a local and sustainable raw material; and

WHEREAS, WUW is an organization whose mission is to promote highest value uses for urban trees as a sustainable resource and whose members wish to have access to City property and recover the Materials..

NOW, THEREFORE, BE IT MUTUALLY AGREED as follows:

- **USE OF PREMISES.** The City agrees that WUW and its members, as designated by WUW in writing to the Department, shall have access to the City's brush and material storage location on [AGREED UPON SITE OR SITES] in [CITY], or such other locations as may be designated or established by the City in its sole discretion, on the terms and conditions established in this Agreement.

ACQUISITION OF MATERIALS. The City will notify a local designated representative of WUW of the availability of the Materials, and WUW will allocate access and materials among its members. The City will provide access to the premises upon a schedule of dates and times as established by the City in its sole discretion. The City agrees to deliver to members of WUW title to any Materials designated by such members. WUW and its members agree that any such designations presented to the City shall have priority in the order of receipt, and that the City shall not have any responsibility to allocate Materials among members of WUW. The City agrees and acknowledges that the avoidance of costs associated with the processing of the Materials and conversion of the Materials into wood chips is sufficient value and consideration for any such transfer of title. WUW and its individual members shall be responsible for all costs of transportation and removal of such Materials from the [AGREED UPON SITE OR SITES] site or any other site designated by the Parties.

• **TERM OF AGREEMENT.** The term of the Agreement shall be for a period of three (3) years commencing on the date of execution. The Agreement may be terminated at any time by either party on thirty (30) days' written notice.

• **EQUIPMENT AND ACTIVITIES.** Members of WUW may bring portable sawmills and other equipment into the [AGREED UPON SITE OR SITES] site or other such locations and utilize such equipment in connection with their acquisition of the Materials, provided that such equipment and activities do not interfere with the normal City operations at the site(s). At its discretion, the Department may utilize its equipment to facilitate the loading of the Materials for transportation, but under no obligation to do so. WUW shall provide all requests for improvements in writing, including master site plan amendments. WUW shall not use or alter areas in the site without the City's prior approval. At termination of the Agreement, the City shall retain any improvements to the premises. The City disclaims any and all liability and responsibility for items, equipment or other personal property left on the premises by WUW or its members. WUW and its members agree that all activities, including without limitation, hauling, transportation, and all use of the Materials, will comply with any applicable federal, state, or local laws, regulations, and ordinances.

• **PUBLIC ACCESS:** The premises shall remain open for public access as designated by the City and may not be signed or designated as private property or an area of limited public access. WUW and its members shall maintain all personal property on the premises in a secure and safe manner and shall be responsible for any and all claims or damages resulting from any injury to the public associated therewith.

• **MAINTENANCE:** Any damage to the premises caused by WUW or its members shall be repaired to the City's satisfaction. The failure to repair damages shall be grounds for termination of this Agreement provided that the failure continues for a period of time after written notice by the City or the Department as provided below.

• **ACCESS TERMS:** The City agrees to maintain the premises and provide access to the Materials. WUW agrees that its members will utilize the premises solely for the purposes of obtaining Materials or converting such Materials into lumber. WUW agrees that it and its members will assign and allocate Materials in a fair and equitable manner for the benefit of its members, the community, and the environment.

ACTIVITIES, MATERIALS AND IMPROVEMENTS: WUW agrees that it and its members will follow all relevant state and federal laws, City Ordinances and Department policies regarding access to the premises and removal of Materials.

• **ASSIGNMENT:** The City acknowledges that WUW will allocate and assign access to the site and the Materials to its members for the purpose of local development of the Material's highest uses, such as lumber, flooring, furniture, art, and other household goods or items. WUW will assign access fairly, with preference given to local members when possible or practical, and may charge a reasonable fee for use of the

premises and access to the Materials. All such arrangements shall be consistent with the terms and conditions of this agreement, and the City reserves the right to deny, modify, or limit access to the Premises as provided in Paragraph 12 below. The fees received for such membership access will be retained by WUW and not retained by any individual; however, members of WUW may realize and retain any profits obtained from the sale of products created from the Materials acquired under this Agreement.

- **DEFAULT:** The failure or refusal of the other party to observe each and every covenant in the Agreement shall be deemed a breach. Prior to termination, written notice shall be given to the party in breach of the Agreement of the nature of the breach and a reasonable period of time provided within which to correct or eliminate such breach. If, upon the expiration of such period of time, the breach continues to exist, then the party giving notice may declare this Agreement to be terminated and of no further effect; provided, that any financial obligation then outstanding between the parties shall survive this Agreement and shall continue after such termination.

- **INDEMNITY, HOLD HARMLESS:** WUW shall indemnify, save and hold harmless the City, its officers, employees, agents, and representatives, from any liability (including statutory liability and liability under workers compensation, or other occupational disease law), claim, action, loss, cost damage, injury (including death), or expense including attorneys' fees due to the negligence or other fault of WUW, its officers, employees, agents, or representatives, or any members of WUW or their respective officers, employees, agents, or representatives, arising out of this Agreement. To that end, WUW shall obtain a commercial general liability insurance policy, including personal injury, contractual liability, and property damage, with limits of \$ 1million per claim and an umbrella liability insurance policy with limits of \$ 1 million. The policies will name the City as an additional insured and WUW shall provide the City with certificates of this insurance coverage and shall notify the City upon any termination of coverage. Upon notice that coverage will terminate WUW shall obtain replacement coverage in similar amounts in sufficient time to avoid any lapse in coverage. Upon any lapse in coverage, WUW and its members shall suspend all activities under this Agreement until such time as coverage has been obtained and the City has been provided with certificates of coverage; the City may also opt to treat such lapse as a default under Paragraph 10 above.

- **LIMITATIONS AND RESERVATIONS:** The City retains ownership of all public facilities on the premises. The City retains ultimate control over the use of the premises. WUW and its members may use the premises and operate per this Agreement; however, the City may require WUW and its members to modify or discontinue use that is contrary to subsequent legislative enactments or other such laws, codes, and regulations as applicable, and the City reserves the right to deny, modify, limit or restrict access to the Premises to WUW or any individual member of WUW should the City determine, in its sole discretion, that operational or safety concerns dictate such denial, modification, limitation or restriction. Any denial, modification, limitation or restriction of access under this paragraph (i) shall not be subject to any advance notice or right to cure; and (ii) shall be effective immediately or upon such terms as the City, in its sole

discretion, determines to be appropriate. WUW shall maintain itself as an organization open to membership in compliance with applicable local, state, and federal Civil Rights legislation.

- **AMENDMENT:** This Agreement represents the entire agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendment to this Agreement shall be in writing and signed by both parties.

- **NOTICES:** Unless otherwise provided in writing, all notices and writings required or permitted to be given to the parties under the terms of this Agreement shall be transmitted by either personal service, or by depositing the same in the United States mails addressed to the following:

To: City Clerk
[CITY OF _____]
[ADDRESS]

To: Twink Jan-McMahon
Wisconsin Urban Wood
2018 Helena Street
Madison WI 53704

- This Agreement shall be binding on all successors, representatives, and assigns of WUW, provided that WUW may only assign this Agreement with the City's prior consent, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereby affix their signatures, by their duly appointed representatives, at [CITY], Wisconsin, this __ day of _____, 2016.

QUARKS, INC, operating as WISCONSIN URBAN WOOD

By: _____
Twink Jan-McMahon, its President

[CITY OF _____]

By: _____
[City Manager]

Approved as to form:

By: _____
[City Clerk]

By: _____
[City Attorney]