

## AGREEMENT

**THIS AGREEMENT** is made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **City of Oak Creek** (the “City”) and **Wisconsin Energy Corporation**, (“WEC”), on behalf of its subsidiaries, Wisconsin Electric Power Company (“Wisconsin Electric”), W.E. Power, LLC (“We Power”), WISPARK LLC (“WISPARK”), and Wisconsin Gas Company (“Wisconsin Gas”) (collectively referred to as the “Subsidiaries”).

### **W I T N E S S E T H:**

**WHEREAS**, WEC or one of the Subsidiaries is the current owner and operator of coal-based electric generating facilities located in the City.

**WHEREAS**, WEC desires, as a part of its “Power the Future” project for increasing electric generating facilities, to create three coal burning new electric generating facilities at the site of existing facilities in the City.

**WHEREAS**, it is anticipated that the construction and operation of the new facilities may have certain effects on the City.

**WHEREAS**, in order to mitigate any such effects on the City, WEC and the City desire to enter into this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WEC, for itself and the Subsidiaries, and the City agree as follows:

1. AGREEMENT CONCERNING AIR QUALITY ISSUES.
  - A. Purpose. The purpose of this paragraph 1 is to ensure that effective upon the date of this Agreement, the total actual annual air emissions from Oak Creek Units 5-8 (“Existing Facilities”) and Elm Road Units 1-3 (“New Facilities”) will not result in a net increase of the total actual annual air emissions as compared with the baseline condition. The parties recognize that the air pollution requirements established and implemented by the Wisconsin Department of Natural Resources “DNR” are designed to protect public health and welfare and that this Agreement is in furtherance of and not in conflict with those state requirements.
  - B. Baseline Emission Level. For the purpose of establishing that there will be no net increase in total actual annual air emissions, WEC has used calendar year 2000 as the baseline condition, and determined that the baseline emission level from the facility is 38,400 tons per year (“Baseline Emission Level”). The Baseline Emission Level includes the actual annual air emissions in calendar year 2000 of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides (“NO<sub>x</sub>”), particulate matter (“PM”), mercury (“Hg”), volatile organic compounds (“VOC”), hydrochloric acid (“HCl”), hydrofluoric acid (“HF”), and sulfuric acid (“H<sub>2</sub>SO<sub>4</sub>”).

C. Measure of Compliance. WEC agrees that the total actual annual air emissions from the stacks of the Existing Facilities and New Facilities will not exceed the Baseline Emission Level. Compliance with the Baseline Emission Level will be measured on a rolling 12-month basis so that in each 12-month period the emissions shall not exceed the Baseline Emission Level.

D. Implementation and Enforcement.

1. WEC agrees that it will use all reasonable efforts to obtain enforceable limitations in the construction and operation air pollution control permit or equivalent order (state or federal) which includes emission limitations that will ensure that the total actual annual emissions from the Existing Facilities and New Facilities will not exceed the Baseline Emission Level (“Enforceable Permit Condition”).
2. In the event for any reason the Department of Natural Resources or the U.S. Environmental Protection Agency does not include in the construction and operation air pollution control permit or equivalent order (state or federal) emission limitations that will ensure that the total actual emissions from the Existing Facilities and New Facilities will not exceed the Baseline Emission Level, the parties to this Agreement shall meet and agree to a local enforcement mechanism the validity and enforceability of which WEC agrees not to contest in any way.

E. Air Monitoring.

1. Elm Road Monitoring Site. WEC or its contractor agrees to install, maintain and operate an air monitoring station at a location to be mutually agreed upon between WEC and the City within 1200 feet of the intersection of Elm Road and the Chicago and Northwestern Railroad line to monitor for particulate matter measured as Total Suspended Particulates ("TSP"), PM<sub>10</sub> and PM<sub>2.5</sub> consistent with appropriate state and/or federal ambient air quality monitoring requirements except that the monitoring shall occur on a daily basis. Meteorological data including wind speed, wind direction and temperature shall also be collected at this location. The air monitors at this location shall be operational as soon as practicable, but no later than 150 days after the date of this Agreement and shall continue for a period of no less than two years after commencement of construction of the first of any of the New Facilities approved by the PSC. If after two years following

commencement of construction of the first of any of the New Facilities no exceedences of state or national ambient air quality standards attributable to any WEC operations are detected, the frequency of the monitoring can be reduced to a sampling frequency of once every three days for each of the above air pollutants. Monitoring shall continue thereafter unless the provisions of Paragraph E.4 apply.

2. Carrollton Monitoring Site. WEC or its contractor agrees to install, maintain and operate air monitoring station at Carrollton Elementary School (8965 South Carrollton Drive) to monitor for SO<sub>2</sub> and NO<sub>x</sub> consistent with appropriate state and/or federal ambient air quality monitoring requirements. Meteorological data including wind speed, wind direction and temperature shall also be collected at this location. The monitoring shall occur on a frequency consistent with state and/or federal ambient air quality monitoring requirements. The monitoring at this location shall be operational within 150 days of the granting of the CPCN for any of the New Facilities. Monitoring shall continue thereafter unless the provisions of Paragraph E.4 apply.
3. Data Reporting. The air emission and meteorological data from both of the monitoring sites under this paragraph shall be reported to the City after completion of QA/QC checks and shall be summarized in a quarterly report submitted to the City and DNR within 45 days after the end of the quarter. In addition to the Quarterly Report, the data shall also be available at the new Education and Visitors Center and City Hall as soon as practicable after the completion of QA/QC checks. It is anticipated that normal reporting time for PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> will be the first business day within 24 hours after completion of the QA/QC checks, but, in any event, no later than 4 days after the sample date. TSP results will be furnished within 30 days after completion of QA/QC checks.
4. Exceptions to Monitoring Requirements. The monitors shall continue to be operated and maintained until (a) all of the New Facilities authorized by PSC Docket No. 05-CE-130 have been built and have been in operation for a period of not less than five years, (b) the emission data indicates that the emissions and ambient air quality are within state and/or national ambient air quality standards, all applicable permit limits and the Baseline Emission Level of this Agreement for three consecutive years, and (c) the concentration of air pollutants are at or less than the maximum concentrations modeled as part of WEC air modeling calculations submitted with the air pollution control permit

applications for the New Facilities for three consecutive years. If the requirements of this sub-paragraph are satisfied, paragraph E will no longer apply. If none of the New Facilities sought in PSC Docket No. 05-CE-130 has been approved by the PSC for construction in Oak Creek, or if WEC does not proceed with construction of the New Facilities, then the requirements of paragraph E will no longer apply.

## 2. REDEVELOPMENT OF PROPERTY.

- A. Upon the signing of this Agreement and irrespective of whether WEC receives a CPCN from the PSC in docket #05-CE-130 for construction of any New Facilities, pursuant to Sec. 196.491(3), Wis. Stats., WEC shall at its sole cost and expense: (a) complete a Market Study; (b) complete an Environmental Site Conditions Analysis; and (c) develop a Land Use Plan for certain parcels within the City of Oak Creek, which parcels shall be selected by mutual Agreement of the Director of Community Development and WEC. The Environmental Analysis, Market Study and Land Use Plan shall be completed within twelve months of the signing of this Agreement, and shared with the Director of Community Development as soon as they are completed. In the event WEC does not proceed to develop, under paragraph 2B, the parcels studied, then thirty copies of the Environmental Analysis, Market Study and Land Use Plan together with all supporting documents shall be provided to the City of Oak Creek. Notwithstanding anything to the contrary contained herein, WEC's obligations to provide the analysis, study, and plan under this paragraph 2A are contingent upon WEC obtaining all necessary consents and/or access from the owner(s) of the proposed property.
- B. For each of the first two New Facilities for which WEC receives a CPCN from the PSC in docket #05-CE-130, WEC shall be required to invest 10 million dollars, within ten years of the date of the granting of the CPCN by the PSC for each unit, to construct improvements of a type WEC deems appropriate on parcels within the City of Oak Creek, which WEC selects. WEC shall use its best efforts to invest such funds in as expeditious a manner as is reasonably prudent. For purposes of this Agreement, improvements include the following:
1. Demolition of existing structures.
  2. Environmental remediation to the level necessary to construct and occupy the planned building(s), facility(s) and/or uses, in accordance with Wisconsin environmental statutes and Wisconsin Administrative Code Chapters NR 700 – NR 754 requirements and any federal environmental laws, regulations and guidance.
  3. Construction of improvements, including buildings and structures.

4. Installation of public improvements, including, but not limited to sanitary sewer, water main, storm water facilities, streets, including curb and gutter, street lights, landscaping and other amenities all of which shall be as defined under the Oak Creek Municipal Code.
  5. Marketing of properties until initial occupancy.
  6. Other improvements proposed by WEC and agreeable to the City.
  7. Acquiring all parcels necessary to undertake the aforementioned improvements.
3. PAYMENT OF MITIGATION COSTS. During the term (including any applicable extensions) of that certain Facility Lease (the “Facility Lease”) between Elm Road Generating Station LLC and Wisconsin Electric for each unit of the New Facility (the “Lease Term”), We Power shall support, and shall use its best efforts to have approved, an annual mitigation payment to the City in the amount of \$1.5 million for the first unit (Elm Road Unit 1), \$750,000 for the second unit (Elm Road Unit 2), and \$250,000 for the third unit (Elm Road Unit 3), respectively (a “Mitigation Payment”). If, and to the extent, approved by the PSCW, Mitigation Payments will be made on a calendar year basis. The first Mitigation Payment for each unit shall be made thirty days after commencement of construction (commencement of construction shall mean the start of earth moving or excavation at the site) of a unit. Thereafter, Mitigation Payments shall be paid in one annual payment on June 30<sup>th</sup> each year during the Lease Term. Mitigation Payments for partial calendar years during the Lease Term (including the year of the first Mitigation Payment) shall be prorated on a per-diem basis. The obligation to pay Mitigation Payments is independent of the receipt of shared revenue funds from the State of Wisconsin and of any future changes in state law pertaining to utility taxation. Notwithstanding anything to the contrary contained herein, in no event will WEC or any of the Subsidiaries have any obligation under this paragraph 3 in the event that (i) the PSCW determines that the payments described in this Section 3 may not be properly included in the rent payments under the Facility Lease, or (ii) a unit of the New Facility permanently ceases operation after start-up and is decommissioned.
4. NO THIRD PARTY BENEFICIARIES. None of the provisions of this Agreement is intended for the benefit of any person except the parties hereto and their respective successors and permitted assigns. No interest on behalf of any third-party beneficiary is created by this Agreement.
5. REIMBURSEMENT OF CITY EXPENSES. WEC agrees to reimburse the City for its reasonable out-of-pocket expenses incurred by the City in participating in all matters relating to the application for and approval of the New Facilities by the PSCW. The expenses to be reimbursed include the City’s out-of-pocket expenses for attorneys and technical consultants. The expenses to be reimbursed will be

determined based on a budget to be prepared by the City, with a cap established above which WEC and the City will share expenses on an equal basis.

6. CITY APPROVALS. WEC, through the Subsidiaries, and the City agree to cooperate in good faith on all matters involving review and approval of the New Facilities by the City and any agencies or instrumentalities thereof. Without limitation, WEC's Subsidiaries will continue to work through the City's Planning and Conditional Use Permit processes to resolve issues raised by the City pertaining to the New Facility. The parties intend that the resolution of all such issues shall be presented to the PSCW as part of its certification process and included as a condition of the Certificate of Public Convenience and Necessity ("CPCN").
7. CITY SUPPORT. Upon execution of this Agreement, the City agrees to use its best efforts to support the construction of the New Facilities before the PSCW and other applicable regulatory or governmental bodies. Subject to the requirements of this paragraph 7, nothing in this Agreement shall be construed as an agreement by the City to grant City approvals, which shall remain subject to the Planning and Conditional Use Permit processes noted above.
8. COMPROMISE OF CITY CLAIMS. WEC and the City acknowledge and agree that the construction and operation of the New Facility, and other activities related thereto as described in the applications before the PSCW for CPCN approval, are anticipated to have a substantial effect on the City (the "Effects"). Without limitation, the Effects might include safety concerns, noise, or the need for additional fire, police and emergency medical service. WEC and the City agree that the obligations undertaken by WEC in this Agreement are designed to mitigate the Effects, and the City agrees not to sue WEC nor any of its Subsidiaries for the Effects except as set forth herein. Nothing in this Agreement shall be construed to preclude the City from taking any action, including the filing of legal actions, to enforce provisions of its ordinances, permits or approvals, or the provisions of this Agreement related to the New Facility; provided, however, that such actions shall not prevent the continued use or operation of the New Facility in accordance with paragraph 1 and all other state permits.
9. DEFAULT PROVISIONS. A party shall be in default under this Agreement if it fails to perform any of its obligations as set forth herein, and such failure continues for a period of sixty (60) days after the defaulting party's receipt of written notice of such failure from the non-defaulting party. In the event of such default, the non-defaulting party shall be entitled to exercise any or all available rights and remedies at law or in equity.
10. ASSIGNMENT. Neither party may assign its interest under this Agreement without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed.

11. NOTICES. All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To WEC:                      Wisconsin Energy Corporation  
   231 West Michigan Street  
   Milwaukee, WI 53203  
   Attn: Larry Salustro, Esq.  
   Fax No.: (414) 221-2140

To the City:                      City of Oak Creek  
   8640 S. Howell Avenue  
   Oak Creek, WI 53154  
   Attn: Robert Kuftrin  
   Fax: 414-768-6596

12. GOVERNING LAW. This Agreement concerns real property located in the State of Wisconsin, and shall be interpreted and construed according to the laws of the State of Wisconsin.
13. SEVERABILITY OF PROVISIONS. If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by the PSC in a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law, except that as to any such provisions or conditions declared invalid or unenforceable, the parties agree to negotiate a comparable substitute provision.
14. CAPTIONS. The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions hereof.
15. BINDING EFFECT. The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns.
16. ENTIRE AGREEMENT. This Agreement may be modified, amended or terminated only by written instrument signed by both parties.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.
18. ATTORNEYS' AND CONSULTANTS' FEES. In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to court costs, out-of-pocket expenses and reasonable attorneys' and consultants' fees from the unsuccessful party.
19. REPRESENTATIONS AS TO AUTHORITY. Each party to this Agreement represents and warrants as follows:
  - (a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the power and authority to consummate the transactions contemplated by this Agreement.
  - (b) All proceedings necessary for it to consummate the transactions contemplated by this Agreement have been duly taken in accordance with law.
  - (c) The persons executing this Agreement on behalf of it have been duly authorized to execute this Agreement.
20. FAX SIGNATURES. The parties agree that fax signatures shall be binding on the parties hereto.
21. EFFECTIVENESS OF PROVISIONS. Except as specified in this paragraph 21, this Agreement is not effective until, and only so long as, the PSCW issues the CPCN for the New Facilities in the City, except that paragraphs 5, 18, and 21 are effective even if the New Facilities are not approved and survive this Agreement. Paragraphs 1E, 6, and 7 are effective immediately upon approval of the Agreement by WEC and the City, but continue in effect only if one or more New Facilities are approved by the PSCW within Oak Creek and WEC proceeds with the project.



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

**WISCONSIN ENERGY CORPORATION**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF OAK CREEK**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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