

**DEVELOPMENT AND MAINTENANCE AGREEMENT**  
**FOR**  
**HIGHWAY 41 HISTORIC GARDENS**  
**BETWEEN**  
**MILWAUKEE COUNTY PARKS**  
**AND**  
**SOUTH 27<sup>TH</sup> STREET BUSINESS DISTRICT ASSOCIATION**

This Development Agreement (this “Agreement”) is made and entered into effective \_\_\_\_\_ (the “Effective Date”), by and between Milwaukee County Parks (“Parks” or “County”), and South 27<sup>th</sup> Street Business District Association a/k/a Historic Highway 41 (“BDA”), represented by Tara Cavazos, Executive Director. Referenced together, Parks and BDA are the parties (the “Parties”) to this Agreement.

**WITNESSETH:**

**WHEREAS**, BDA is a non-profit organization that represents three Business Improvement Districts including Milwaukee #43 and Greenfield #1 and #2 and strives to be a driving influence for the business and residential community; and

**WHEREAS**, S. 27<sup>th</sup> BID wishes to construct the Highway 41 Historic Gardens to commemorate the historic Highway 41 area growth and development from the 1950’s to today; and

**WHEREAS**, File 21-199 has directed Parks to support BDA in this endeavor; and

**WHEREAS**, this Agreement was approved by the Milwaukee County Board of Supervisors in File No. \_\_\_\_\_; and

**NOW THEREFORE**, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. Nature of Improvements. BDA shall make \$30,000 worth of improvements to the northwest corner of Wilson Park (area bounded by Van Beck Avenue & Howard Ave) located at 4001 S. 20<sup>th</sup> St. Milwaukee, WI 53221 (the “Premises”). The Premises are further defined in Exhibit A, which is attached and made part of this Agreement. BDA shall specifically make all improvements set forth in the Section 2 below. The Parties agree that BDA shall obtain any and all approvals necessary for the improvements as contemplated by this Agreement. Parks is not responsible for any required approvals relating to the improvements by BDA, without limitation.

2. Scope of Improvements. Parks agrees to use reasonable efforts to assist BDA in their efforts to improve Wilson Park. Using reasonable efforts shall not impose on Parks any obligation to budget or pay for the improvements, but may require County staff time and advisory support. Parks shall not be responsible for securing any required approvals, zoning changes, building permits or other required authorizations from regulatory or governmental agencies, but Parks agrees to assist BDA in obtaining rezoning, licenses, permits or approvals, at BDA's sole cost and expense. The project's scope is limited to the Premises and is currently in conceptual design as outlined in Exhibit B.

3. Ownership of Improvements. Upon termination of this Agreement for any reason, including but not limited to, for cause, by mutual written agreement, or by reason of the expiration of any of the terms of the Agreement, all structural renovations, improvements, or alterations, including generic signage, must be removed by BDA and the Premises must be restored to its original condition.

- a) Financial Report. BDA shall provide Parks with an annual report confirming that it has enough money in reserve to restore the Premises to its original condition. This report will be BDA's annual audit and will be provided to the County by June 30 each year. The report can be e-mailed to [ParksContracts@milwaukeecountywi.gov](mailto:ParksContracts@milwaukeecountywi.gov). The approximate cost to remove the improvements and restore the area is estimated at \$30,000, but BDA understands that it is responsible for the entire cost of removal and restoration, whatever the cost may be.

4. Condition of the Premises. Parks makes no representation or warranty that the Premises, including the land (a) meet and comply with all federal, state, and local laws, ordinances and regulations; and (b) are in workable and sanitary order and state of repair at the time of delivery to BDA. BDA acknowledges that it has been made aware by Parks that BDA may use the Premises on an "as-is" basis which may or may not prove to be suitable for all purposes contemplated by BDA, either now or in the future. BDA further acknowledges that it has freely inspected the Premises and is aware of its general overall condition.

5. Term. The term of this Agreement is three (3) years from the date of execution. The Parties may renew this Agreement in writing for three (3) three-year (3) terms if mutually acceptable.

6. Construction.

- a) Prerequisites. BDA's plans to renovate, improve and alter the Premises, including the construction of the improvements, are contingent upon BDA obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. Proof of funding will be provided to Parks in a format agreeable

between the Parties. All costs associated with the construction and renovation of the Premises, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of BDA. "Utilities" shall include sewer, water, gas and electricity.

b) County Approval. Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, BDA shall submit detailed construction plans and specifications to the Parks and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of BDA's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, shop drawings containing product information and materials and products shall be approved by County. Conditions for approval shall include, but not be limited to provision that BDA shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities. **The County's approval is granted through the issuance of a Right of Entry permit by its Parks Department. No construction may begin without the County issuing a Right of Entry permit.** Once the Premises is developed, the annual planting of the garden beds does not constitute construction or renovation, but is subject to the approved plantings in Exhibit C, any variation in plantings from Exhibit C shall be submitted to Parks by April 1 for review and written approval. Exhibit C will be incorporated into this agreement once the planting list is approved as part of the initial Right of Entry permit.

c) Construction Standards. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. BDA shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of BDA. Any structures, alterations, additions or improvements installed on the Premises by BDA (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of this Agreement. In no event shall BDA make any alterations or additions to the Premises without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed Five Thousand Dollars (\$5000) in cost per year.

d) Builder's Risk. BDA or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with

Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed. Prior to construction, BDA shall supply the Parks Executive Director with written evidence of Builder's Risk insurance. BDA shall not commence construction activities without written approval from the Parks Executive Director and his/her designee. The Parks Executive Director shall provide a written response to the BDA within thirty (30) days of receiving written evidence of BDA's Builder's Risk insurance documents.

e) Licensed Tradespersons. BDA agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. BDA shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of BDA by County. BDA shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

f) Construction Documents. BDA agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, BDA shall provide to County a complete set of construction documents to be included as applicable: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City/Village of [City Name] final occupancy permits, if applicable.

g) Permits, Licenses and Other Costs. BDA shall procure and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.

h) Removal of Equipment and Supplies. Upon expiration or termination of this Agreement, BDA shall remove, at its costs, all of its equipment, supplies, and related items from the Premises within three (30) days of the expiration or termination date, and shall restore the Premises to a parklike condition (subject to any improvements performed by BDA), satisfactory to the Parks Executive Director or his/her designee. Damage caused to the Premises by any removal of personal property or improvements to the Premises will be repaired by BDA. If for any reason BDA does not comply in a timely manner with its obligations under this paragraph (which shall mean within 10 business days of the expiration of the Agreement), then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from BDA any and all reasonable costs, as determined by the County, related to this Section. BDA agrees to surrender the Premises in good condition, subject to ordinary wear and tear and casualty.

7. Maintenance Responsibilities. BDA shall be responsible for all maintenance and operation of the its project improvements within the Premises for the duration of its use, including all landscaping and mowing of the Premises. Landscaping and maintenance will typically take place from April through November. It is the intention of the Parties that snow removal will not be needed as the garden will not be active during the winter months. BDA will still be responsible for maintaining the Premises in good repair throughout the entire term, including December through March. The County takes no responsibility for damage caused by vandalism, weather, or normal wear and tear. County will not be financially responsible for repair, maintenance, or replacement of the project improvements.

8. Volunteers. Volunteers completing work on behalf of BDA are recognized exclusively as volunteers of BDA and are not recognized as Park's volunteers. BDA is responsible for providing oversight of its volunteers. BDA volunteers may not operate machinery, use motorized equipment (including chain saws), or drive vehicles off-road without explicit approval via a Parks' Right-of-Entry permit, or otherwise complete work outside of the scope of this agreement.

9. Compliance with Laws. BDA shall, at BDA's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over BDA's use of the Premises pertaining to: (a) accessibility, ensuring that the Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) BDA's activities on the Premises. BDA shall procure, maintain, and pay the fees for any appropriate federal, state, and local licenses and permits required for its activities.

10. Collection and Removal of Trash. BDA shall be responsible for the collection and removal of all trash, litter and garbage within the Premises.

11. Cleanliness of Surrounding Areas. BDA shall be responsible for maintaining the areas surrounding the Premises during construction in a state of cleanliness to prevent injuries to the public. BDA agrees not to store or accumulate unused or excess materials, supplies, or equipment which may create a hazard to the public or result in unsightly surroundings.

12. Signage and Naming Rights.

- i. Signage. BDA may display appropriate signage relating to the Permitted Use that was approved initially during project development or signage that does not exceed 8"x 11". Signage that was not initially approved and is larger than 8"x11" requires County's prior written consent, which may not be unreasonably withheld (the "Signage"). BDA hereby covenants and agrees that BDA shall, at its own cost and

expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage retains an attractive appearance at all times; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

ii. Naming Rights. BDA shall not sell, advertise, promise, allow, or issue naming rights to any other party for any portion of the Premises without the prior written authorization of the Parks Executive Director.

13. BDA is responsible for all marketing and advertising to promote its activities; provided, however, that the Parks Executive Director or his designee maintains the right to prohibit any advertisement or marketing that he/she deems to be inappropriate, inaccurate or otherwise. BDA shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. Parks logo is accessible at the following URL: <https://goo.gl/77L2vL> Any file in this directory is acceptable for use. BDA shall notify the Parks Department's Marketing Manager or designee as soon as it is aware of any television, radio, print, electronic or other media interviews or reports to be prepared regarding, at or concerning the Premises.

14. County Rights of Access and Audit. The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any

subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

15. Record Keeping. BDA shall retain and make available for County's inspection and request all records pertaining to this Agreement, the installation of Improvements, the Maintenance of Improvements, and any other obligation of the Agreement during the Term. The rights and obligations set forth under this provision shall survive the termination of the Agreement for a period of three (3) years.

16. Insurance.

Every contractor and all parties furnishing services or product to Milwaukee County (Milw. Cty.) or any of its subsidiary companies must provide Milw. Cty. with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

- a) Commercial General Liability Insurance including contractual coverage:  
The limits of this insurance for bodily injury and property damage Combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

- b) Business Automobile Liability Insurance:  
Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.
- c) Workers' Compensation Insurance:  
Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.
- d) Employers Liability Insurance:  
Such insurance shall provide limits of not less than \$500,000 policy limit.

Additional Requirements:

- e) Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.
- f) The insurance specified in (1.) and (2.) above shall: (a) name Milw. Cty. including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.
- g) The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. Milw. Cty. may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.
- h) Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against Milw. Cty., its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.
- i) Contractor shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide Milw. Cty. with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

15. Indemnification. To the fullest extent permitted by law, BDA shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of BDA, its agents, or employees. BDA shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action. Milwaukee County's liability shall be limited by Wis. Stats. § 345.05(3) for automobile and for § 893.80(3) general liability.

16. Environmental Indemnification. BDA shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair,

cleanup, remediation or detoxification arising out of: (a) any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by BDA or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any improvements made by BDA, located in the Premises, that are discovered or disturbed as a result of BDA activities on, at, or near the Premises. BDA shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. "Hazardous Materials" as the term is used herein shall mean any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

17. Assignment and Subletting. BDA may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Executive Director or his designee.

18. Termination. County may terminate this Agreement: (a) if BDA fails to comply with any provision in this Agreement, and such failure continues for forty-five (45) days after a written notice from County setting forth in reasonable detail the nature of such default; or (b) if BDA ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of BDA's assets or BDA's interest in this Agreement. BDA may terminate this Agreement at its sole and absolute discretion upon one hundred eighty (180) days' prior notice to County; or (c) if the improvements outlined in Section 2 are not substantially complete by December 31, 2024, County may terminate this Agreement and BDA will be responsible for removing all improvements and restoring the Premises to its original condition; or (d) by mutual consent of the Parties.

19. Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than that defined in this Agreement.

20. Notices. All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the Party addressed as follows:

To: S 27<sup>th</sup> St. BDA  
Tara Cavazos, Executive Director  
4647 S 27th St  
Milwaukee, WI 53221

To County: Milwaukee County Parks  
Guy D. Smith, Executive Director  
9480 Watertown Plank Rd.  
Wauwatosa, WI 53226

Either Party may designate a new address for purposes of this Agreement by written notice to the other Party.

*Signature Pages Follow*

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*This page reserved for electronic signatures*

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# EXHIBIT A - PREMISES



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 ©M/CAMLIS



**DISCLAIMER:** This map is a user generated static output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

# EXHIBIT B



## Historic Highway 41 Gardens

### Site Plan

Site Area = 2.33 Acres

-  Main Path (Compact Gravel)
-  Secondary Path (Grass)
-  Perennial Garden
-  Wildflower Garden
-  Bioswale
-  Classic Truck
-  Classic Car
-  Existing Tree
-  New Tree
-  Picnic Table
-  Cutout
-  Bench
-  Tree-Wrapping Bench
-  New Park Entrance Sign

EXHIBIT C

*Approved Plantings to be added as Exhibit C once approved through the initial Parks Right of Entry Permit*