

Intergovernmental Cooperation Agreement

Wilson Park Project

This intergovernmental cooperation agreement is between the Milwaukee Metropolitan Sewerage District (the “**District**”) and Milwaukee County, acting through its Department of Parks, Recreation, and Culture (the “**County**”).

The County stewards 15,500 acres of managed and natural land, which includes Wilson Park and Wilson Recreation Center (together, the “**Parkland**”).

Wilson Park occupies approximately 76 acres of green space located at 1301 West Howard Avenue in Milwaukee between South 13th Street and South 20th Street.

Wilson Park has many features including a playground, picnic area, baseball and little league diamonds, paved paths, a boathouse with restroom facilities, and Wilson Park lagoon, a 9-acre body of water up to approximately 4.5’ deep.

Wilson Recreation Center sits just across South 20th Street between West Plainfield Avenue and West Van Beck Avenue; its features include softball diamonds, volleyball courts, tennis courts, outdoor pools, picnic areas, paved paths, a senior center, and an ice arena.

The Wilson Park Creek (the “**Creek**”) is a 3.6-mile tributary of the Kinnickinnic River that flows through the Parkland.

The District is a special-purpose unit of local government authorized under Wis. Stat. ch. 200 subch. II to manage wastewater and floodwater in its service area.

The District is undertaking a comprehensive program to address flood risk and improve the riparian corridors of the Kinnickinnic River watershed (the “**KK Watershed**”), including the Creek and other tributary streams under District jurisdiction, pursuant to its authority.

The KK Watershed is the most urbanized watershed in Wisconsin. Increased development and impervious surfaces, especially in watersheds developed before stormwater and surface water rules, increase stream flows and flooding problems. The Southeastern Wisconsin Regional Planning Commission, in its 2024 Milwaukee County Hazard Mitigation Plan Update, determined that 624 structures in the KK Watershed are in the 1% annual probability floodplain with potential direct and indirect flood damage costs estimated over \$66 million.

The District completed a watershed management plan for the KK Watershed in 2017 to address the structures at risk of flooding. The Parkland is a key piece of the flood mitigation solution for the Creek and the KK Watershed. The plan recommended concrete channel lining removal, bridge modifications, and the addition of approximately 220 acre-feet of new flood storage capacity in the Parkland by reshaping areas of the park as well as dredging and lowering the water surface in the lagoon.

The District's work on the Creek requires coordination upstream and downstream of the Parkland to avoid exacerbating flood risk. The District must complete preliminary engineering and modeling for all the District's projects on the Creek and its tributary streams to submit together to the Federal Emergency Management Agency, or FEMA, prior to constructing these projects.

The District's and the County's cooperative action maximizes the public benefit and service to the communities, and the District and the County (together, the "**Parties**") desire to collaborate on the environmental improvements outlined in this agreement that will mitigate flood risk and redress any negative impact to the Parkland or amenities.

The District and the County previously entered an Access Agreement for Watercourse Maintenance Assistance in Milwaukee County Parks (Watercourse Maintenance Assistance Agreement), giving the District access to respond to requests to remove watercourse debris in accordance with Chapter 13 of the District's Rules.

The County and the District enter this agreement pursuant to Wis. Stat. §§ 66.0301 and 59.794.

The District and the County therefore agree as follows.

1. Effective Dates

This agreement becomes effective upon execution by the Parties and approval by the Parties' governing bodies.

2. Planning

A. Updated Flood Models

- i. The District shall update the flood storage analysis and confirm flood storage volume in the Parkland required to mitigate flood risk.
- ii. The District shall provide the updated flood models to the County.

B. Park Comprehensive Plan

- i. The District shall engage a consultant to conduct preliminary engineering and create a comprehensive plan (the "**Plan**") for the Parkland affected by the District's project.
- ii. The County may prepare a project charter to outline the Plan's scope. The project charter will outline the specific issue the project is trying to remedy, clarify roles and responsibilities, and include a forecast for all permits that need to be secured. The District shall provide any information requested by the County for the project charter.
- iii. The District shall use a qualifications-based consultant selection process with a County representative on the selection panel.
- iv. The Plan will include recommendations to achieve the flood risk mitigation improvements defined for the Creek and Parkland in the Kinnickinnic River

watershed management plan and restoration of the recreational and public assets within the Parkland affected by the District's work. Such restoration efforts may be implemented either within the Parkland or at an alternative site, as close as practicable to Wilson Park, owned or operated by the County to offset any negative impact within the Parkland.

- v. The District may phase the work described in the Plan across multiple design and construction contracts as it deems appropriate for budgetary, public access, or other concerns.
- vi. The Plan will not include recommendations for any improvements not funded by the District.
- vii. The Plan will include the cost of any required restoration efforts for any Parkland amenity negatively impacted by the project.
- viii. The Plan will identify the anticipated boundaries of construction for the project (the "**Project Area**").
- ix. The District shall communicate regularly with the County and include the County in key decision-making processes during the development of the Plan, including workshops, review of the draft Plan, and materials for public outreach and engagement.
 - a. The County shall review the draft Plan and other major deliverables and return all comments within 30 days of receipt.
- x. The County shall assist the District as requested in obtaining a Conditional Letter of Map Revision from the FEMA as it pertains to the Parkland.
- xi. Commission Approval for Expenditures
 - a. The District shall award and amend contracts to execute the Plan according to its procurement procedures and Commission Policy 1-78.02, which may require approval by the Milwaukee Metropolitan Sewerage Commission (the "**Commission**").
 - b. The Parties shall participate as needed in obtaining approval of the Commission.

3. Community Engagement

- A. The District shall seek public input in developing the Plan. The District shall lead and manage and the County shall participate in public outreach.
- B. The County shall review and provide any comments on outreach materials and messaging prior to events.
- C. The District shall pay for all community engagement work it undertakes.

4. Design

- A. The District shall engage (a) consultant(s) to design the project identified for the Parkland to achieve the flood resilience and restoration of the recreational and public assets within the Parkland affected by the District’s work according to the Plan.
- B. The District shall use a qualifications-based consultant selection process with a County representative on the selection panel.
- C. The County shall provide any comments to the District throughout design development, and the District shall include the County in meetings with the design consultant at key milestones throughout the project.
- D. The District shall provide the County 60% complete and 90% complete plans and specifications from the design contracts. The County shall return all comments within 30 days of receipt of each plan set. The District shall provide final plans and specifications within three years of execution of its design consultant contract.
- E. The District has up to three years to develop detailed design plans. During the development of these plans, the County hereby grants the District access to the Parkland at no cost to perform investigatory work such as subsurface investigations, surveys, and archaeological study.

5. Construction

- A. Once detailed design plans are agreed upon and final, the County hereby grants the District access to the Parkland at no cost for up to six years to construct all elements of the Plan.
- B. The District shall let the contract(s) for construction created pursuant to the Plan for sealed bids and notify the County of the lowest responsive, responsible bidder awarded the contract(s).
- C. The County may request the District include additional work not provided in the Plan. If the District does additional work not provided in the Plan, the County shall pay the District for the additional work.
- D. Tree Fund
 - i. The District shall compensate the County for the value of trees removed according to the Plan under the following conditions and process:
 - a. The value of the trees removed for the work under this agreement will be assessed from the valuation methodology defined in the latest edition of the Council of Tree and Landscape Appraisers “Guide for Plant Appraisal.”
 - b. Only those living trees 4” or more in diameter at breast height and removed from the Project Area will be included in the calculation.
 - c. Trees identified as invasive species under Wis. Admin. Code ch. NR 40 have zero value in the tree fund under this agreement.

- d. The District shall inventory the trees anticipated to be removed from the Project Area and provide the inventory to the County. The County may audit the inventory and, with the District's concurrence, make corrections.
 - e. The County shall provide the District a list of at least three County-approved companies with certified arborists. The District shall procure the professional services from one of these companies to establish the value of the Project Area trees to be removed. All exercise of judgment by the arborist in the tree valuation is final. The District shall pay for the arborist's valuation.
 - f. The District shall reimburse the County the value of trees removed as part of the work under this agreement. The amount owed to the County will be offset by a credit for the cost of replacement trees planted as part of the work under this agreement.
 - g. The County shall place all tree reimbursement funds in an account designated for habitat improvement projects, tree planting and maintenance, and stormwater green infrastructure projects in County parks.
 - h. The District shall, in a manner satisfactory to the County, distinguish trees to be removed from trees to remain within the Project Area.
- E. The District shall restrict access to the Project Area during construction of the project and maintain the Project Area until substantial completion (as defined in the District construction contract), including mowing and snow removal.
- F. The District shall not restrict public access to the Parkland outside the Project Area.
- G. The District shall provide construction oversight at its sole cost, and the County may inspect the construction at any time with reasonable prior notice to the District.
- H. The District shall solicit County review and approval of any proposed contract change orders pertaining to the Parkland prior to approval. The County shall review as quickly as possible but shall respond within 10 working days. If the County has not responded within 5 working days, the District must email and call the Parks Director of Planning. If the District calls and emails as provided in the previous sentence, the County's failure to respond within 10 working days will be deemed its approval. If the County provides notice of disapproval or otherwise conditions or qualifies its approval within the 10 days, then the County and the District shall meet with the contractor to resolve the issue.
- I. The District shall conduct a substantial completion inspection of the project(s) with the contractor and the County, at which point the County may offer any punch-list tasks for the District to require the contractor complete before final completion.
- J. The District shall require its contractor to repair any damage caused by its contractor or subcontractors during construction of the project.
- K. The District shall oversee the completion of any punch-list items within a reasonable time following substantial completion.

- L. The District shall provide the County record drawings and operations and maintenance manuals within 60 days of the substantial completion date of the project(s).

6. Project Costs; Permits and Access; Ownership

A. Project Costs

- i. The District shall pay for all elements identified in the Plan, including disposal costs as needed for excavated soil and dredged sediment.
- ii. The County shall pay for any additional work not in the Plan that the District performs at County request.

B. Permits

- i. The District shall obtain any necessary permits from the County and other entities required to perform the obligations under this agreement, including rights of entry and temporary and permanent easements.
- ii. The County shall provide all County permits at no cost to the District.
- iii. The County shall process and grant District requests for access to the Parkland as quickly as practicable but within 10 working days.

C. Ownership

- i. Nothing in this agreement modifies the ownership of the Parkland. The County will remain the owner of the Parkland and all undisturbed assets.
- ii. Any replacement assets constructed by the District under this agreement because of disturbance to County assets on the Parkland are the property of the County upon substantial completion.
- iii. The County shall grant to the District a permanent flood easement for the Parkland identified in the 1% annual probability floodplain defined in the FEMA approved Conditional Letter of Map Revision. The County shall also grant to the District a permanent maintenance easement for the maintenance defined in section 7 of this agreement. The County shall grant both easements upon final completion and shall not charge the District for either easement.

7. Post-Project Vegetation Maintenance

- A. The District shall permanently maintain the Creek and naturalized banks. The District shall provide post-flood-event remediation of any areas of the park impacted by out-of-bank river flooding, including flood-related debris removal, vegetation reestablishment, erosion repair, and pond dredging.
- B. The County shall otherwise maintain the Parkland, including but not limited to ordinary mowing, forestry, and litter collection outside of the Creek channel, in accordance with its ordinary procedures.

C. The County shall provide the District access to the Project Area at no cost for five years after substantial completion to promote vegetation establishment.

8. District Assistance with County Parks Watercourse Maintenance

A. During the construction of the project until substantial completion, the District shall remove accumulated woody or other large debris between the watercourse banks on all County property that risks blocking the District's jurisdictional waterways' ability to convey floodwaters.

B. The County shall alert the District if it becomes aware of such woody or other large debris.

C. The District shall perform such removal at its sole expense up to a total annual cost of \$250,000. The County is responsible for its own such removal at County expense after the District expends the annual capped cost. The County shall provide the District with any required right of entry permits at no cost.

D. Nothing in this agreement changes the District's authority under Chapter 13 of its Rules or in law.

9. Notices

The District shall provide notices to:

Guy Smith, Executive Director (or his successor in that role)
Milwaukee County Parks
9480 Watertown Plank Road
Wauwatosa, Wisconsin 53226
guy.smith@milwaukeecountywi.gov
(414) 254-5691

with a copy to:

Office of Corporation Counsel
901 North 9th Street, Suite 303
Milwaukee, Wisconsin 53233
corpcounselgeneralinquiries@milwaukeecountywi.gov
(414) 278-4300

The County shall provide notices to:

Kevin Shafer, Executive Director (or his successor in that role)
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
kshafer@mmsd.com

(414) 225-2181

10. Miscellaneous

- A. Any modification to this agreement must be in writing and signed by the Parties.
- B. If a court of competent jurisdiction finds any part of this agreement unenforceable, then the remainder of the agreement continues in effect.
- C. If a dispute arises under this agreement, then the Parties shall try to resolve it with the help of a mutually acceptable mediator in Milwaukee County. The Parties shall equally share any costs and fees associated with the mediation, except that each of the Parties shall pay its own attorney fees and staff time. If the dispute is not resolved within 30 days after the mediation session, then either of the Parties may take the matter to court. Venue in any action brought under this agreement is proper only in the Milwaukee County Circuit Court. Any dispute arising under or related to this agreement will be governed by the laws of Wisconsin.
- D. Neither of the Parties will be responsible to the other for any resulting losses and it will not be a default of this agreement if the fulfillment of any obligations under this agreement is delayed or prevented by events beyond the reasonable control of the District or the County, whosoever's performance was interfered with and which by the exercise of reasonable diligence the District or the County is unable to prevent. The time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of such a force majeure event, written notice must be given as provided under Article 9 of this agreement with updates as appropriate under the circumstances.
- E. The failure of either of the Parties to enforce any terms of this agreement will not be deemed a waiver of that party's rights under this agreement for future or continued events of default.
- F. This agreement does not create a partnership, and neither of the Parties may enter into contracts on behalf of the other.
- G. Both of the Parties are bound by public records law and are therefore subject to the provisions of Wis. Stat. § 19.21 *et seq.* Each of the Parties agrees to assist the other in retaining and timely producing records subject to disclosure under law upon any statutorily sufficient request. The Parties shall maintain records related to this agreement for three years after the termination of this agreement.
- H. The District shall allow the County Audit Services Division and department contract administrators (collectively, the "**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 District related to the terms of this agreement for up to

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Milwaukee County Parks – Milwaukee Metropolitan Sewerage District

three years following the termination of this agreement. Any subcontractors or other parties performing work under this agreement will be bound by the same terms and responsibilities as District. All subcontracts or other agreements for work performed under this agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. District and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

- I. Each person signing this agreement certifies that it is properly authorized by its governing body to execute this agreement.
- J. The Parties will each be liable for their own negligent acts, errors, and omissions. If litigation requires one of the Parties to respond for the acts, errors, or omissions of the other, then the Parties shall hold each other harmless for any losses, damages, costs, or expenses, including but not limited to reasonable attorney fees and litigation expenses. Both of the Parties are permissibly self-insured for general liability and worker's compensation. Nothing in this agreement is a waiver of any otherwise applicable immunity, limited immunity, or limitation of liability under Wisconsin law.
- K. This agreement constitutes the entire agreement between District and County regarding the subject matter hereof and supersedes any prior agreements and negotiations, whether oral, written, or implied.

SIGNATURES ON NEXT PAGE

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

MILWAUKEE COUNTY

By: _____
Kevin L. Shafer, P.E.
Executive Director

By: _____
Guy D. Smith, CPRP
Executive Director, Milwaukee County
Parks

Date: _____
Approved as to form

Date: _____
Approved for Execution

Attorney for the District

Attorney for Milwaukee County

Approved as compliant per Wis. Stat. sec.
59.42(2)(b)5.

Corporation Counsel

Reviewed by:

Risk Management

Approved as to funds available per Wis. Stat.
sec. 59.255(2)(e).

Comptroller

Approved

County Executive

Approved with regards to County Ordinance
Chapter 42

Community Business Development Partners