



COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

Please complete a form for each new proposal review request.

Work Proposal Name:

MMSD Conservation Easement at Brown Deer Park

Date of Request:

5/14/24

Requesting Department:

Parks

Department Contact Name:

Robert Senglaub

High Org:

900

Low Org:

9000

Approval Signature of Department Head:
Guy Smith

5/14/2024

DESCRIPTION

Please provide a detailed description of the request:

MMSD provided funding for the installation of green infrastructure to be incorporated into a capital improvement project at Brown Deer Park. In return for the funding, MMSD requires Parks to grant a twenty year conservation easement, with Parks obligation to maintain the green infrastructure

How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?

Increased storm water management capacity at Brown Deer Park, adds to County's overall storm water management obligations

How does this proposal align with the County's objectives on racial equity?

Please see the County's Vision/Mission/Values and strategic focus areas attached

Desired Timeline:
Begin Date:

6/1/24

End Date:

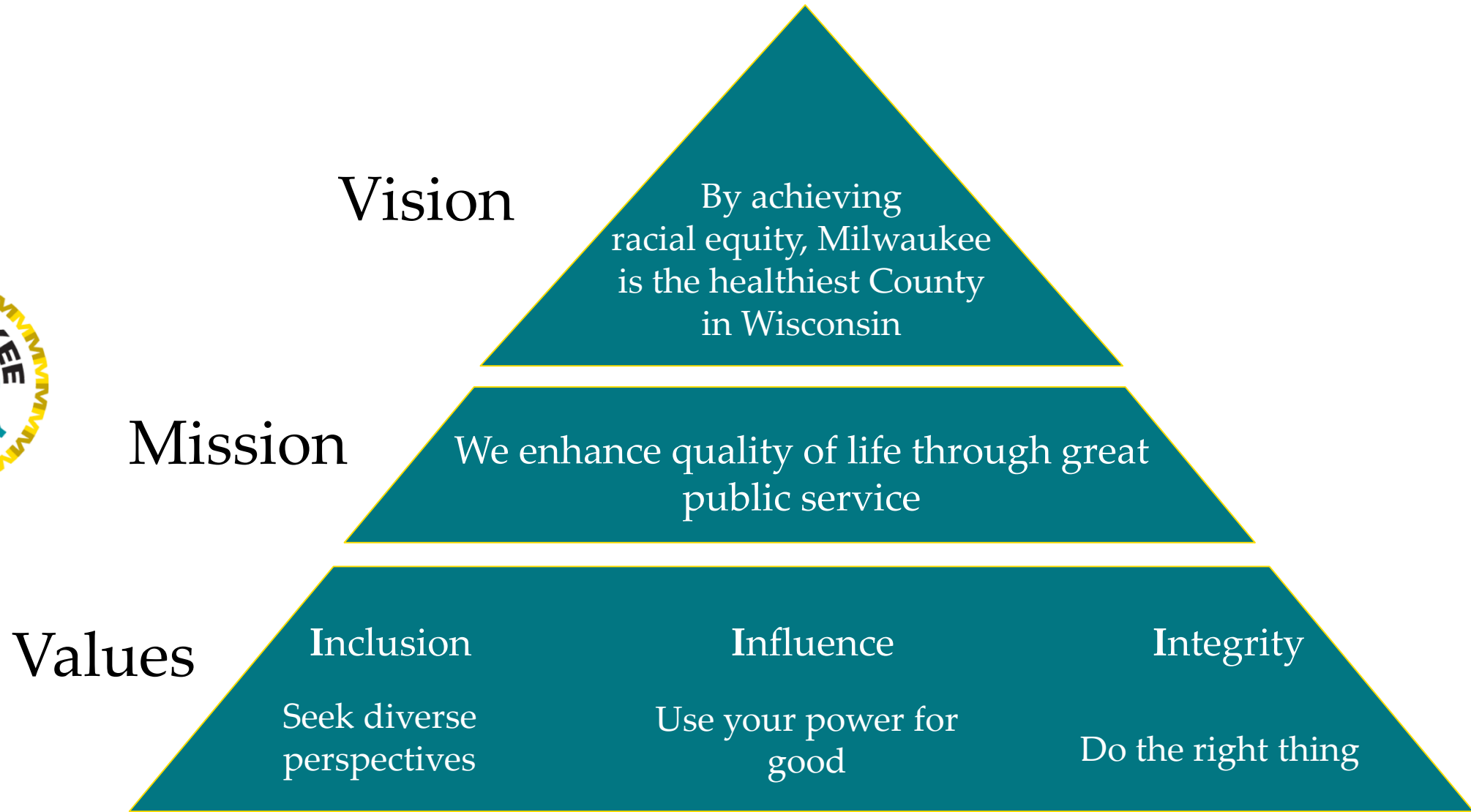
5/31/44

Duration:

Twenty Years

Anticipated Funding Source *(check all that apply and include amount allocated under each category):*
Operating Budget:
Capital Budget:
Other *(i.e. grants, donations, etc.; please describe):*
Request Involves:
 Parks Property
 BHD Property

The Basics



Strategic Focus Areas

1. Create Intentional Inclusion

1A: Reflect the full diversity of the County at every level of County government

1B: Create and nurture an inclusive culture across the County government

1C: Increase the number of County contracts awarded to minority and women-owned businesses

2. Bridge the Gap

2A: Determine what, where and how we deliver services based on the resolution of health disparities

2B: Break down silos across County government to maximize access to and quality of services offered

2C: Apply a racial equity lens to all decisions

3. Invest in Equity

3A: Invest “upstream” to address root causes of health disparities

3B: Enhance the County’s fiscal health and sustainability

3C: Dismantle barriers to diverse and inclusive communities





COUNTY FACILITIES PLANNING WORK INITIATION REQUEST DETERMINATION

CFPSC ACTION FOR CFPSC USE ONLY

CFPSC Project Tracking #:

TYPE OF REQUEST (Refer to paragraph 4.3 of the CFPSC charter for more details)

- | | | |
|--|--|---|
| <input type="checkbox"/> 1. Asset Management | <input type="checkbox"/> 2. Move Management | <input type="checkbox"/> 3. Facility Improvements |
| <input type="checkbox"/> 4. New Footprint | <input type="checkbox"/> 5. Contractural Obligations | <input type="checkbox"/> 6. Centralized Facilities Management Process Improvement |

CFPSC Review Comments:

FOR EASEMENTS ONLY

Reviewed & Recommended for Approval:

DAS — FM, AE&ES (Legal Description)

Director, DAS

Corporation Counsel

Note:

- Easements affecting lands zoned "Parks" require County Board approval.*
- Forward a copy of the recorded easement to AE&ES.*

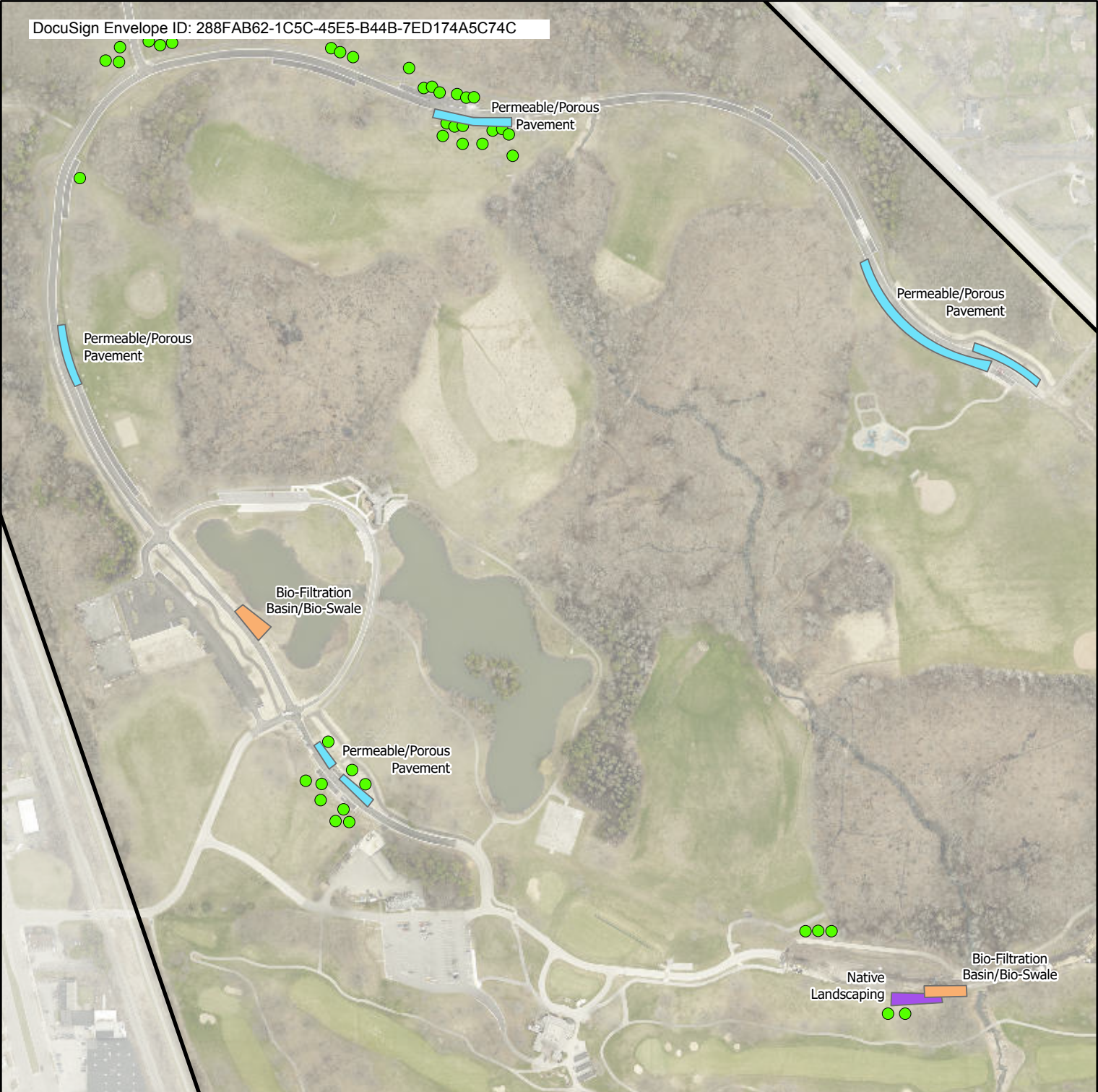
CFPSC RECOMMENDATION

The County Facilities Planning Steering Committee reviewed this proposal on . As evidenced by the authorized signature below, the County Facilities Planning Steering Committee approval of this proposal.

Chair or Vice-Chair:

Date:

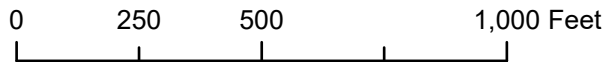
County Facilities Planning Steering Committee



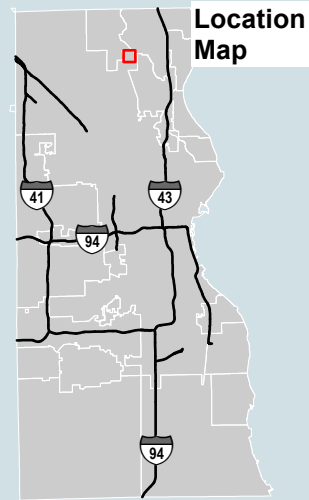
Brown Deer Park Phase 3 Green Infrastructure

Proposed Green Infrastructure

- Bio-Filtration Basin/Bio-Swale
- Native Landscaping
- Permeable/Porous Pavement
- Stormwater Trees
- Park Boundary



5/3/2024



DOCUMENT NO.

**LIMITED TERM
CONSERVATION
EASEMENT AGREEMENT
FOR GREEN
INFRASTRUCTURE**

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (“Easement Agreement”) is granted on the 3rd day of May, 2024, by Milwaukee County Parks (“Landowner”) to the Milwaukee Metropolitan Sewerage District (“Easement Holder”).

RECITALS

A. Property. The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (“Property”). The Property is located at 2700 West Hope Road, 7835 North Green Bay Road, and 3501 West Bradley Road.

This Limited Term Conservation Easement Agreement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (“Green Infrastructure”). Exhibit C shows the area within the Property that is subject to this Limited Term Conservation Easement Agreement (“Easement Area”).

B. Conservation Values. In its present state, the Easement Area has Conservation Value because it has the following features:

- Bioswales, 4,198 square feet, 31,845 gallons;
- Porous Pavement, 20,318 square feet, 60,954 gallons;
- Trees, 48 count, 1,200 gallons;
- Native Landscaping, 878 square feet, 351 gallons;
- Total Capacity = 94,350 gallons

C. Baseline Documentation. The condition of the Easement Area and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation Values (“Baseline Report”), which is on file at the office of the Easement Holder and incorporated into this Easement Agreement by reference. This Baseline Report consists of reports, maps,

Recording Area

Name and Return Address: Milwaukee Metropolitan Sewerage District Attention: Michael Hirsch 260 West Seeboth Street Milwaukee, Wisconsin 53204
Parcel Identification Number: 1019997100 0879999100 0869999100

photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Easement Area at the time of the conveyance of the Easement described herein and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement Agreement.

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic, and open space values of real property; assure its availability for agriculture, forestry, recreation, or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

E. Qualified Organization. The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) of the Wisconsin Statutes because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

F. Conservation Intent. The Landowner and Easement Holder share the common purpose of preserving the Conservation Values for a period of twenty (20) years. The Landowner intends to place restrictions on the use of the Easement Area to protect those Conservation Values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by Easement Holder. The Easement Holder has provided funding to the Landowner for the installation of the Green Infrastructure within the Easement Area. The Landowner acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily conveys to the Easement Holder an Easement over the Easement Area (“Easement”) for a period of twenty (20) years on the Property. This Easement consists of the following terms, rights, and restrictions:

1. Purpose. The purpose of this Limited Term Conservation Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed on the Easement Area, with a total area of 25,394 square feet.

2. Effective Dates. This Limited Term Conservation Easement becomes effective on May 31, 2024 and ends on June 1, 2044. (“Termination Date”).

3. Recording of Easement. The Easement Holder will record this Easement at the Easement Holder’s expense.

4. Operation and Maintenance. The Landowner will operate and maintain the Green Infrastructure located in the Easement Area so that it remains functional for the entire term of this Easement. The Landowner is solely responsible for operation, maintenance, and evaluating performance.

5. Additional Reserved Rights of the Landowner. The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by this Easement Agreement or inconsistent with the purpose of this Easement Agreement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Easement Area.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions:

5.1 The encumbrance or conveyance is subject to the terms of this Easement Agreement.

5.2 The Landowner incorporates the terms of this Easement Agreement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Easement Area.

5.3 The Landowner notifies the Easement Holder of any conveyance in writing within 15 days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement Agreement or limit its enforceability in any way.

6. Easement Holders Rights and Remedies. To accomplish the purpose of this Easement Agreement, the Landowner expressly conveys to the Easement Holder an Easement over the Easement Area consisting of the following rights and remedies.

6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Easement Area.

6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the Easement Area that is inconsistent with the purpose of this Easement Agreement and to require the restoration of areas or features of the Easement Area that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.

6.3 Enter the Easement Area. The Easement Holder has the right to enter the Easement Area to inspect it and monitor compliance with the terms of this Easement Agreement; obtain evidence for use in seeking judicial or other enforcement of this Easement Agreement; and otherwise exercise its rights under this Easement Agreement. The Easement Holder will provide prior notice to the Landowner before entering the Easement Area, comply with all of the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's activities.

7. Remedies for Violations. The Easement Holder has the right to enforce the terms of this Easement Agreement and prevent or remedy violations through appropriate legal proceedings.

7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively with Landowner. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.

7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement Agreement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation to Landowner and allow the Landowner at least 30 days to correct the violation. If the Landowner fails to respond, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Easement Area or if good faith efforts to notify the Landowner are unsuccessful.

7.3 Remedies. When enforcing this Easement Agreement, the remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of this Easement Agreement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement Agreement, specific performance or declaratory relief, and recovery of damages resulting from a violation of this Easement Agreement or injury to any of the Conservation Values of the Easement Area.

7.4 Enforcement Delays. A delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right of the Easement Holder to take any action necessary to assure compliance with the terms of this Easement Agreement.

7.5 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of this Easement Agreement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.

7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury or change in the Property resulting from causes beyond Landowner's control including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from these causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of this Easement Agreement.

8. General Provisions.

8.1 Amendment. The Landowner and the Easement Holder may amend this Easement Agreement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Easement Area is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder, it:

- a. diminishes the Conservation Values of the Easement Area,
- b. is inconsistent with the purpose of the Easement,
- c. affects the duration of the Easement, or
- d. affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign, or transfer its interests in this Easement Agreement to a unit of federal, state, or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement Agreement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least 30 days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Captions. The captions in this Easement Agreement have been inserted solely for convenience of reference and are not part of this Easement Agreement and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement Agreement. Ambiguities in this Easement Agreement shall be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Property.

8.5 Counterparts. The Landowner and the Easement Holder may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

8.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and the Easement Holder with respect to this Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement Agreement.

8.7 Extinguishment. This Easement Agreement may be terminated or extinguished before the expiration of its term, whether in whole or in part, by (a) the exercise of the power of eminent domain or purchase in lieu of condemnation that takes all or part of the Property; or (b) agreement by the Landowner and the Easement Holder that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Joint Obligation. The obligations imposed by this Easement Agreement upon the Landowner are joint and several.

8.9 Ownership Responsibilities, Costs, and Liabilities. The Landowner retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:

a. *Operation, upkeep, and maintenance*. The Landowner is responsible for the operation, upkeep, and maintenance of the Property.

b. *Control*. In the absence of a judicial decree, nothing in this Easement Agreement establishes any right or ability in the Easement Holder to:

(i) exercise physical or managerial control over the day-to-day operations of the Property;

(ii) become involved in the management decisions of the Landowner regarding the generation, handling, or disposal of hazardous substances; or

(iii) otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.

c. *Permits*. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement Agreement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state, and local laws, regulations, and requirements.

d. *Indemnification*. The Landowner releases and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively “Indemnified Parties”) from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with:

(i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;

(ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any

person other than the Indemnified Parties, in any way affecting, involving, or related to the Property;

(iii) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes*. The Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred in response to this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

8.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement Agreement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement Agreement shall remain valid and binding.

8.12 Successors. This Easement Agreement is binding upon, and inures to the benefit of, the Landowner and the Easement Holder and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running with the Property for the term of this Easement Agreement.

8.13 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement Agreement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.14 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner and the Property comply with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands, or orders; and
- c. The person signing this Easement has authority to grant this Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As County Executive of Milwaukee County, I execute the foregoing Limited Term

Conservation Easement and acknowledge the same on this ___ day of _____, 2024.

By: _____
David Crowley
County Executive

By: _____
George L. Christenson
County Clerk

COUNTY CORPORATION COUNSEL APPROVAL AND AUTHENTICATION

_____, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the County Executive and County Clerk and authenticates the signatures according to Wis. Stat. Sec. 706 so this document may be recorded per Wis. Stat. sec. 706.05(2)(b).

Signature: _____

Printed Name: _____

Title: _____

State Bar Number: _____

Date: _____

ACCEPTANCE OF EASEMENT HOLDER’S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement Agreement on this _____ day of _____, 2024.

By: _____

Kevin L. Shafer, P.E.
Executive Director

STATE OF WISCONSIN, MILWAUKEE COUNTY

On this _____ day of _____, 2024, the person known as Kevin L. Shafer
came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____

Approved as to Form: _____

Vincent R. Bauer
Attorney for the District

ATTACHMENTS

- EXHIBIT A Description of Property
- EXHIBIT B Location of Property
- EXHIBIT C Location of Easement Area

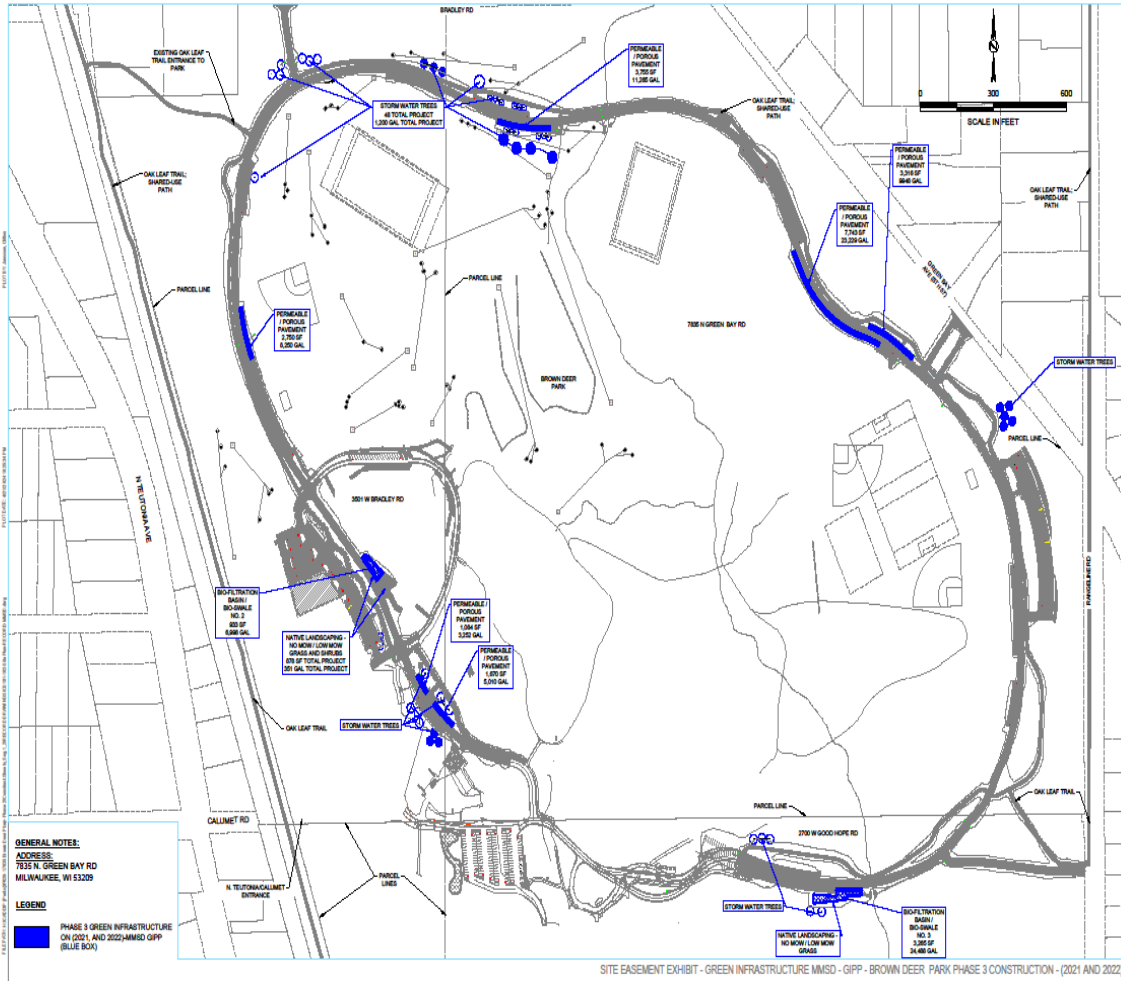
EXHIBIT A
DESCRIPTION OF PROPERTY

Tax Key	Address	Legal Description
1019997100	2700 West Good Hope Road	That part of the Southeast $\frac{1}{4}$ of Section 13, Township 8 North, Range 21 East, lying east of the east line of the Wisconsin Electric Power Company right of way, north of the north line of West Good Hope Road, and west of the west line of North Range Line Road, in the City of Milwaukee, Milwaukee County, Wisconsin.
879999100	7835 North Green Bay Road	That part of the Northeast $\frac{1}{4}$ of Section 13, Township 8 North, Range 21 East, lying south of the south line of West Bradley Road and west of the west line of North Green Bay Road, in the City of Milwaukee, Milwaukee County, Wisconsin.
869999100	3501 West Bradley Road	That part of the Northwest $\frac{1}{4}$ of Section 13, Township 8 North, Range 21 East, City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Beginning at the Southeast corner of said Northwest $\frac{1}{4}$; thence North, 2654.30 feet to the Northeast corner of said Northwest $\frac{1}{4}$; thence West along the north line of said Northwest $\frac{1}{4}$, 850.82 feet; thence South, 301.10 feet; thence West, 580.07 feet to the east line of the Wisconsin Electric Power Company right of way; thence Southeasterly along said east line, 2456.60 feet to the south line of said Northwest $\frac{1}{4}$; thence East along said south line, 627.75 feet to the point of beginning.

EXHIBIT B LOCATION OF PROPERTY



EXHIBIT C LOCATION OF EASEMENT AREA



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(ITEM NO.) From the Executive Director of Milwaukee County Parks, requesting authorization to grant a 20-year conservation easement to the Milwaukee Metropolitan Sewerage District for the grant-funded green infrastructure project located at Brown Deer Park, by recommending adoption of the following:

A RESOLUTION

WHEREAS, In March 2021, in File No. 20-250, Milwaukee County Parks requested and was granted authorization by the Milwaukee County Board of Supervisors to apply for Milwaukee Metropolitan Sewerage District (“MMSD”) Green Infrastructure (“GI”) grants to fund applicable project elements in a capital project at Brown Deer Park roadway (Capital project “WP628”); and

WHEREAS, the purpose of the GI is to reduce impervious surfaces to meet Milwaukee County’s stormwater management goals in an innovative approach that is cost-effective, sustainable, and environmentally friendly; and

WHEREAS, the grant provides \$168,000 towards the construction of green infrastructure elements in Brown Deer Park, located at 7835 N. Green Bay Road, City of Milwaukee; and

WHEREAS, the GI project includes installation of 878 sq. ft. native landscaping, 20318 sq. ft. porous pavement, 4198 sq. ft. bioswales, and planting of 48 trees for stormwater treatment, providing a total design detention capacity of 94,340 gallons; and

WHEREAS, grant funding provided by MMSD requires that the project area be protected and maintained through a limited conservation easement to ensure the functionality of the green infrastructure for 20 years; and

WHEREAS, the easement area only applies to specific areas of the Brown Deer Park property that contain the GI elements; and

WHEREAS, the County retains ownership of the land and has to operate and maintain the GI elements for the duration of the easement; and

WHEREAS, the Executive Director of Milwaukee County Parks recommends that MMSD be granted a 20-year conservation easement which requires Parks to keep, preserve, and maintain the green infrastructure as required by the terms of the grant; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Parks Executive Director, the Department of Administrative Services, the Register of Deeds, Corporation Counsel and Risk Management to prepare, review, approve, execute and record all documents, contracts, easements, agreements, and

47 take all actions as required to grant MMSD the required 20-year conservation easement
48 to allow for the keeping, preserving, and maintaining of the green infrastructure on the
49 property at Brown Deer Park, 7835 N. Green Bay Road, City of Milwaukee; and
50

51 BE IT FURTHER RESOLVED, that the County Executive and County Clerk are
52 authorized to execute the easement and other required documents.