

**AGREEMENT
BETWEEN
MILWAUKEE COUNTY DEPARTMENT OF PARKS
AND
LAKE PARK FRIENDS
FOR THE MAINTENANCE OF THE WAHL AVENUE BLUFF**

Pursuant to County Board Resolution (County Board File No. _____), adopted _____, this Agreement (Agreement) is made and entered into this _____ by and between MILWAUKEE COUNTY DEPARTMENT OF PARKS (County) 9480 Watertown Plank Road, Wauwatosa, WI 53226, and the LAKE PARK FRIENDS, LTD., a Wisconsin 501(c)3 non-profit corporation ("LPF"). Attn: *President, P.O. Box 71197, Milwaukee, Wisconsin 53211*. Together, these agencies constitute the "Parties" to this Agreement.

WITNESSETH:

The County's 2023 budget directed the County to take the following actions with respect to the Wahl Avenue Bluff (as defined below): (i) coordinate with the appropriate parties to finalize agreements necessary for the advancement of the initial cycle of work and report back to the Milwaukee County Board of Supervisors, and (ii) work with LPF and other relevant parties on this work, ensuring transparency, open lines of communication, and swift resolution. The County's 2023 budget further recognized that such directives were made to benefit the entire Milwaukee Community, alleviate certain financial constraints with the County, and ensure the continued upkeep and tidiness of the County's parks. This Agreement is being entered into under that same ethos.

In furtherance of these directives, on August 8, 2024, the County approved an Entry Permit for the LPF to perform maintenance to the Wahl Avenue Bluff situated in Lake Park roughly in the boundary of Bradford Avenue on the south and E. Bellevue Pl. on the north, as described in more detail in the Entry Permit. To perform such maintenance, LPF contracted with a private landscaping professional to perform the scope of work identified in the Entry Permit and pursuant to a proposal dated July 11, 2024, at LPF's sole cost and expense. The Parties agree that the work performed pursuant to the Entry Permit has been a great success. The Parties wish to continue to maintain the Wahl Avenue Bluff to preserve the investment and work that has already been completed through this Agreement.

As a result, the Parties in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. **PROJECT SITE, PREMISES:** The Project site and Premises are identified in Exhibit A.
2. **TERM:** This Agreement shall be for an initial term of ten (10) years commencing upon execution of this Agreement (Initial Term), unless sooner terminated as provided herein. This Agreement will be extended or renewed for an unlimited number of five (5) year periods by mutual agreement of the Parties.

3. SCOPE OF WORK: LPF will contract with landscape providers (Contractors) to provide maintenance activities as detailed in future mutually agreeable scopes of work between LPF and the Contractor. All such scopes of work must be approved by County, and will serve as addenda to this Agreement. The scopes of work are contemplated to be routine maintenance and landscaping activities, including but not limited to, applying herbicide, and taking weed prevention measures, such as additional seeding as may be needed to maintain the seeded ground cover, ensuring the canopy allows for sufficient sunlight to promote the growth of seed and native vegetation, and preventing regrowth of invasive and other vegetation throughout the Premises. Within each contemplated scope of work, the contractor shall provide a specific proposal describing and estimating the cost of the work to be performed under the proposed contract. It is expected that the nature and extent of the required maintenance will evolve as the groundcover fills in and the Premises mature. Changes or additions to the scope of work presented by the Contractor are to be made in writing. Such contemplated scopes of work must be approved by the County before the performance of any additional work, which approval shall not be unreasonably withheld or delayed by the County. County agrees to provide the review and comments within ten (10) days of the receipt of any changes or additions. If the County takes no action within fifteen (15) days, it shall have approved the changes in the scope of work. Maintenance work will begin during Spring 2025. Nothing herein shall be construed to relieve the County from its existing legal duty to maintain the Premises.
4. COST AND PAYMENT: Before commencing any work associated with this Agreement, LPF shall have funds in hand from donations designated for bluff maintenance in an amount of not less than one hundred percent (100%) of the estimated cost of the work contemplated for that calendar year. Before commencing any work, LPF shall provide evidence satisfactory to the County that the total amount of funds necessary to perform the contemplated maintenance activities for that calendar year are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of the maintenance activities to pay for all expenses necessary for the maintenance work. If LPF does not obtain such funding, it shall have no obligations to perform maintenance activities under this Agreement. The County will not incur any costs, pay any expenses, or issue any debt associated with the maintenance being performed under this Agreement.
5. COPY OF CONTRACT: LPF shall provide the County a copy of the contract which it has entered into with the Contractor before the commencement of any work by the Contractor. To the extent there is a conflict between this Agreement and the contract between LPF and the Contractor, the terms of this Agreement shall control.
6. CONTROL: The County shall have complete day-to-day administrative and operational control of all work performed by the Contractor, including meeting with Contractor representatives, on-site monitoring of the scope and quality of work, approving modifications to the project timelines or work methods, and/or establishing requirements, procedures and guidelines for all work to be performed. In addition, the County shall be the final determinant as to whether any or all work performed has been completed to its satisfaction.
7. REPORTING: Contractor shall submit a summary of work completed under this Agreement within twenty (20) days to the designated Manager at the County (Parks Manager) and to LPF. Such a summary can be provided in the form of an invoice for the work performed. At all times, LPF will be responsible for payment of the invoice, not the County or the Parks Manager.

8. **INDEMNITY:** To the Fullest Extent permitted by law, Contractor shall indemnify County for and hold it harmless for 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 with this Agreement, based on any injury, damage or loss being caused by the negligence or other fault of the contractor. Contractor 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.
9. **WAIVER OF LIABILITY:** It is understood and agreed that LPF is serving solely in the role of a pass-through contracting entity. LPF is not responsible for reviewing or approving any work performed, all of which has been or will be approved by the county and performed by contractors. LPF (including its officers, directors, and employees) shall not be liable for any claim, damage, harm or injury to any person or property arising from or related to this agreement, including any activity or work performed hereunder. The foregoing includes any damage to the bluff or surrounding areas, any failure on the part of any contractor, and any other harm, injury or damage similar or dissimilar to the foregoing. The county hereby waives any and all claims or rights to sue or recover anything from LPF (its officers, directors, and employees) even if damage or injury is alleged or found to be the result of negligence of LPF, LPF agrees, however, to cooperate with the county (within reason) in any effort to recover for the county any claims, damage, harm, or injury alleged to be caused by another person or entity.
10. **INSURANCE:** LPF shall require the Contractor to provide continuous insurance coverage throughout its contract as indicated in the Insurance section below. The Contractor shall provide evidence of the required coverage in the form of a certificate of insurance naming both LPF and the County as "additional insured" under the terms of the policy.

Every Contractor furnishing services or products to Milwaukee County (County) or any of its subsidiary companies must provide County 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 required to maintain insurance shall maintain the following:

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. 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 coverage is elective in that state.

D. Employers' Liability Insurance:

Such insurance shall provide limits of not less than \$100,000 per occurrence for bodily injury; \$100,000 per employee for bodily injury by disease, and \$500,000 policy aggregate.

Additional Requirements:

E. If any of the coverage noted above is provided on a claims-made basis, coverage shall be maintained for not less than 2 years (24 months) after the end of the Contract by either an extended reporting period (ERP) provision or by maintaining the coverage in force.

F. The insurance specified in (A.), (B.), and (D.), above shall: (a) name Milwaukee County 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. Milwaukee County should also be granted a waiver of subrogation in its favor on the insurance specified under the insurance policy terms of in (A.), (B.), (C.), and (D.) above.

H. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance.

I. 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 County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

J. 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 the County 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 a current A. M. Best rating of A X or better.

11. COUNTY RIGHTS OF ACCESS AND AUDIT: The Contractor, 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, 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, or other party to the contract, 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

12. NO PARTNERSHIP: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors or assigns and LPF or its successors or assigns.
13. DEFAULT: Failure of either Party to this Agreement to comply with the conditions of this Agreement shall constitute a Default.
14. TERMINATION OF AGREEMENT: This Agreement may only be terminated for cause and only upon thirty (30) days' written notice to the other party. In the event of termination, LPF shall pay the Contractor for any work approved pursuant to Paragraph #6 and properly performed prior to the date of termination (not notice).
15. LEGALITY: Each party agrees that it will perform its obligations under this Agreement in accordance with all applicable laws, governmental rules, and regulations now or hereinafter in effect.
16. SEVERABILITY: If any provision of this Agreement is found to be illegal or unenforceable, the remaining provisions of this Agreement shall not be affected, thereby, and shall remain in full force and effect as though the illegal or unenforceable provisions were not contained herein; provided that, if said illegal or unenforceable provisions go to the heart of this Agreement, then the Agreement is terminated.
17. AMENDMENT: This Agreement may not be modified, amended, rescinded, canceled, or waived in whole or in part, except by written instrument signed by both of the parties.
18. UNANTICIPATED EVENT: If either Party is delayed or prevented from performing any of its obligations under this Agreement due to an unanticipated event beyond either Party's reasonable control, then that Party's time allowed for the performance of obligations directly impacted by such event shall be extended for a period of time equal to the duration of the delay or prevention caused by the event.
19. LAW AND VENUE: This Agreement is made pursuant to and shall be construed in accordance with the laws of the State of Wisconsin. Any litigation between the Parties regarding the subject matter of this Agreement will be brought in the court of competent jurisdiction located in Milwaukee County.
20. MERGER: This Agreement constitutes the entire agreement between County and LPF regarding the subject matter hereof, and supersedes any prior agreements and negotiations, whether oral, written, or implied.

21. NOTICES: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party as addressed as follows:

Lake Park Friends
President
P.O. Box 71197
Milwaukee, WI 53211

Milwaukee County Dept of Parks
Guy Smith, Executive Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

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

22. AUTHORITY: LPF warrants that the individual executing this Agreement on its behalf has the authority to bind LPF to the conditions of this Agreement. County is authorized by the County Board to enter this Agreement through the signatories below by

SIGNATURE PAGE TO FOLLOW:

SIGNATURE PAGE

**Exhibit A
Premises**

[Insert Aerial/Map]