

**MEMORANDUM OF UNDERSTANDING
BETWEEN
MILWAUKEE COUNTY
DEPARTMENT OF PARKS, RECREATION AND CULTURE
AND
CITY OF SOUTH MILWAUKEE**

This Memorandum of Understanding (“MOU”) is made and entered into this 20th day of January, 2015, by and between Milwaukee County (hereinafter referred to as “County”), and the City of South Milwaukee (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS, the Oak Creek watercourse has a tributary drainage area of approximately 28 sq. miles with approximately 4.8 sq. miles within City’s municipal boundaries; and

WHEREAS, the watercourse serves as a regional drainage facility within Milwaukee County, and the County is the major riparian owner of the watercourse and adjacent parkway lands; and

WHEREAS, the Parties recognize the benefits of the Oak Creek watercourse and parkway, which consist of natural and improved lands and infrastructure; and

WHEREAS, the City benefits from the watercourse through the stormwater outfalls along the Oak Creek, which serve to collect run-off from public and private land within the watershed; and

WHEREAS, the City also recognizes the benefits of the floodway provided by the watercourse and adjacent lands, which serve to protect the community during storm events; and

WHEREAS, various watercourse improvements have been made as the Oak Creek drainage basin has developed; and

WHEREAS, by written agreement in 1976, the City, the County, and the Metropolitan Sewerage Commission (now the Milwaukee Metropolitan Sewerage District or “MMSD”) improved the watercourse between Nicholson Ave. and Rawson Ave., and as part of that agreement, the City and the County agreed they would jointly operate and maintain the Oak Creek watercourse; and

WHEREAS, the City and the County have completed various tasks to maintain the integrity of the watercourse and facilities; and

WHEREAS, in 2001 the City and the County executed an agreement to exempt Milwaukee County Park Lands from any future stormwater management fees based on the stormwater management benefits provided by the watercourse through the City; and

WHEREAS, in 2007, the City created a storm water utility to help fund requirements of the City's MS4 permit, including maintenance and improvement of stormwater related infrastructure owned by the City and to support activities to reduce stormwater pollution; and

WHEREAS, it has been recommended by City and County officials that the responsibilities pertaining to the maintenance of the watercourse and its infrastructure located within the City be identified and mutually agreed upon.

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

PROVISIONS:

1. **Purpose.** The purpose of this MOU is to acknowledge the division of specific operation and maintenance responsibilities for that portion of the Oak Creek watercourse and supporting infrastructure and adjacent lands located within the City of South Milwaukee.
2. **Term.** The Term of this MOU shall be twenty-five (25) years, commencing on the date recorded with the Milwaukee County Register of Deeds. The MOU will be automatically extended for an additional twenty-five years unless either party to this agreement forwards to the other written notice of intent to terminate this agreement at least one year prior to the expiration of the first twenty-five year period.
3. **Notice.** The City shall provide written notice to the County prior to the commencement of any work on County property. Said notice shall indicate the anticipated start date and duration of the proposed work. When plans and specifications have been prepared in anticipation of the work, such plans showing the location, type of installation or modification, and drawings and specifications detailing construction methodology, the erosion and sedimentation control plan, and the preservation and restoration methods to be employed shall be included with the notice. Any ground disturbing activities require a right-of-entry permit. The aforementioned conditions are not required during periods of emergency; however, within 24 hours of an incident constituting an emergency, the City shall give written notice to the County of such emergency and the work performed as a result thereof.
4. **Westerly Section of Watercourse: S. Nicholson Ave. (S. Pennsylvania) to N. Chicago Ave. (State Trunk Highway 32 ("STH 32"))**
 - a. **City Bridges and Channels.** The City shall be responsible for operation, maintenance, repair, and/or replacement of vehicular bridges and concrete channel sections listed below. Maintenance of channel sections shall include removal of deposited sediment and debris to established bottom of channel.

i. Bridges:

1. Bridge No. P-40-0738 (15th Ave. over Oak Creek north of Oak Creek Parkway).
2. Bridge No. P-40-0735 (Milwaukee Ave. over Oak Creek).
3. Bridge No. P-40-0504 (15th Ave. over Oak Creek).
4. Bridge No. B-40-0672 (15th Ave. over Oak Creek).
5. Bridge No. B-40-0557 (Rawson Ave. & 16th Ave. over Oak Creek).
6. Bridge No. B-40-052 (N. Chicago/STH 32 over Oak Creek).

ii. Concrete Channel Sections:

1. Concrete channel from bridge at Nicholson Ave. to the easterly end of concrete (approximately 95 ft. east of bridge).
2. 100 ft. of concrete channel and confluence of 108" diameter outfall north of Marshall Ave. between 16th Ave. and 17th Ave. (extended), and west of property known as 2424 15th Ave.
3. Concrete channel from 15th Ave. bridge north of Madison Ave. southwesterly to end of concrete (approximately 100 ft. west of bridge).
4. Concrete channel between the 15th Ave. bridge north of Madison Ave. and bridge at Milwaukee Ave.
5. Concrete channel with earth bottom from bridge at Milwaukee Ave. northerly approximately 90 ft. to end of the concrete.
6. Concrete channel with earth bottom from 15th Ave. bridge between Manitoba Ave. and Missouri Ave. to end of concrete approximately 140 ft. southeast of said bridge, and to end of concrete (approximately 100 ft. northwest of said bridge).
7. Concrete channel and triple box culvert at Rawson Ave./16th Ave. from end of concrete, approximately 135 ft. southeasterly of 16th Ave. to end of concrete channel 75 ft. northwesterly of Rawson Ave.

- b. City Outfall Structures. The City shall be responsible for operation, inspection, maintenance, repair or replacement of storm sewer outfalls and emergency sanitary sewer by-pass outfalls, as identified below, including repair of, undercutting outfall, erosion repair and/or sediment removal directly at outfalls.
 - i. Storm Sewer Outfalls. There are 33 known storm sewer outfalls owned by the City within the westerly limits of the watercourse, identified in Section 4 above. These outfalls are listed on Exhibit A attached hereto and shown on the Storm Sewer Outfall Map identified on Exhibit B.
 - ii. Sanitary Sewer (Emergency By-Pass Outfalls). There are 4 emergency sanitary sewer outfalls from by-pass stations or lift stations owned by the City within the westerly limits of the watercourse, identified herein.
- c. County Outfall Structures. County shall be responsible for operation, inspection, maintenance, repair, and replacement of 16 storm sewer outfalls at locations identified on Exhibit A attached hereto and shown on Storm Sewer Outfall Map identified on Exhibit B.
- d. County Bridges. County shall be responsible for operation, repair, regular maintenance, and/or replacement of the pedestrian and vehicular bridges crossing Oak Creek at the locations listed below. These bridges shall continue to be maintained by the County until otherwise agreed by the County and the City.
 - i. Pedestrian Bridges:
 - 1. Pedestrian bridge at Michigan Ave. west of 15th Ave.
 - 2. Pedestrian bridge at Minnesota Ave. east of 15th Ave.
 - 3. Pedestrian bridge at Beech St. west of 17th Ave.
 - 4. Pedestrian bridge at Elm St. south of 11th Ave.
 - ii. Vehicular bridge on Oak Creek Parkway west of Oak St.
- e. County Channel Sections. Unimproved sections of the watercourse and other sections of the watercourse not identified above shall be maintained by the County as follows:
 - i. Fallen trees or natural or artificial debris interfering with the 100 year flood stage as reported to Milwaukee County or otherwise determined to be necessary to remove.
 - ii. Streambank erosion caused by average flow that cannot be directly attributed to the City storm sewer outfalls.

iii. Sediment deposition that interferes with the 100-year storm flow.

5. Easterly Section of Watercourse: N. Chicago Ave. (STH 32) to Lake Michigan.

- a. The City shall be responsible for operation, inspection, maintenance and repair and/or replacement of the 7 storm sewer outfalls listed on Exhibit A and shown on Exhibit B, including repair of outfall undercutting, erosion repair, and removal of debris.
- b. The County shall be responsible for the operation and maintenance of the other storm sewer outfalls identified on Exhibit A and shown on Exhibit B.
- c. County shall be solely responsible for inspection, maintenance, repair and/or replacement of all vehicular and pedestrian bridges, dams, improved and unimproved channel sections.

6. City Facilities under Watercourse. The City owns water and sanitary sewer mains that cross under the watercourse at various locations. The City shall be responsible for the protection of those facilities and shall notify the County in advance of any proposed work affecting those utilities. The City shall be responsible for obtaining County permits for entry, access, and any construction.

7. Floodplain Boundaries. This MOU shall not be construed to obligate the County or the City to protect public or private improvements existing or constructed within floodplain boundaries identified on floodplain/floodway maps prepared by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) or Flood Insurance Rate Maps, effective date September 26, 2008, and any subsequent revisions.

8. Force Majeure. The County and the City recognize that severe storm events can damage the watercourse and adjacent lands which cannot be prevented through regular maintenance by the City or the County. In the event of erosion caused by severe storm events, landslides, or other major events or acts of God that is not anticipated, the County and the City shall coordinate efforts to identify a solution and appropriate funding sources to address needed repairs.

9. Regular Maintenance. This MOU shall not be construed to limit either the County's or the City's regular and prudent maintenance of their own facilities or land.

10. Mutual Indemnification. The parties to this MOU agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses (including reasonable attorney's fees) to the extent such damages including suits at law or in equity are caused by or resulting from any intentional misconduct or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representatives of the indemnifying party which may arise out of or are connected with the activities

covered by this MOU. Each party's liability shall be limited by Wis. Stat. sec. 345.05(3) for automobile liability and sec. 893.80(3) for general liability. Nothing in this agreement shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law. Nothing in this agreement shall be construed to constitute basis for a third-party claim against either party to this agreement which claim would not exist in the absence of this agreement.

11. Termination. Either party may terminate this MOU at any time for any reason by giving the other party six (6) months written notice. The notice shall be recorded with the Milwaukee County Register of Deeds.

12. Independent Contractor. Nothing contained in this MOU shall constitute or be construed to create a partnership between the County and the City. In entering into this MOU, and in acting in compliance herewith, the parties are at all times acting and performing independently, duly authorized to perform the acts required of them hereunder.


SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the day, month and year first above written.


MILWAUKEE COUNTY

By:  Date: 2/17/15
Chris Abele, County Executive


CITY OF SOUTH MILWAUKEE

By:  Date: 1/22/15
Erik Brooks, Mayor


Reviewed by:

By:  Date: 2/2/15
Risk Management

Approved for execution:

By:  Date: 2/2/15
Corporation Counsel

Approved:

By:  Date: 2/9/15
Comptroller

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

By:  Date: 2/9/15
Corporation Counsel

[Signature Page to Watercourse MOU]

EXHIBIT "A"**SOUTH MILWAUKEE / MILWAUKEE COUNTY STORM SEWER OUTFALL LOCATIONS
NICHOLSON AVENUE TO 15TH AVENUE**

OUTFALL ID	LOCATION OF OUTFALL	OUTFALL/ PIPE SIZE
SM1	MARSHALL AVE/WEST SIDE OF CREEK	18"
SM2	MARSHALL CT/EAST SIDE OF CREEK	18"
SM3	CITY HALL/EAST SIDE OF CREEK	108"
SM4	MARQUETTE AVE/WEST SIDE OF CREEK	24"
SM5	MARQUETTE AVE/WEST SIDE OF CREEK	24"
SM6	MICHIGAN AVE/EAST SIDE OF CREEK	15"
SM7	MICHIGAN AVE/WEST SIDE OF CREEK	18"
SM8	MADISON AVE/WEST SIDE OF CREEK	18"
SM9	MADISON AVE/EAST SIDE OF CREEK	21"
SM10	MILWAUKEE AVE/WEST SIDE OF CREEK	15"
SM11	MILWAUKEE AVE/EAST SIDE OF CREEK	12"
SM12	MONROE AVE/EAST SIDE OF CREEK	12"
SM13	MONROE AVE/WEST SIDE OF CREEK	18"
SM14	MINNESOTA AVE/EAST SIDE OF CREEK	12"
SM15	MANITOBA AVE/EAST SIDE OF CREEK	12"
SM16	MISSOURI AVE/WEST SIDE OF CREEK	15"
SM17	RAWSON AVE/WEST SIDE OF CREEK	27"
MC1	RAWSON AVE/EAST SIDE OF CREEK	
SM18	RAWSON AVE/EAST SIDE OF CREEK	12"
MC2	MAPLE AVE/EAST SIDE OF CREEK	15"
SM19	MAPLE AVE/WEST SIDE OF CREEK	12"
SM20	CEDAR 1/WEST SIDE OF CREEK	12"
SM21	CEDAR 2/WEST SIDE OF CREEK	18"
MC3	CEDAR/EAST SIDE OF CREEK	12"
SM22	CHESTNUT ST/WEST SIDE OF CREEK	12"
SM23	CHESTNUT ST/EAST SIDE OF CREEK	18"
MC4	CHESTNUT ST/EAST SIDE OF CREEK	12"
MC5	PINE ST/EAST SIDE OF CREEK	12"
SM24	PINE ST/WEST SIDE OF CREEK	48"
MC6	CHERRY ST/EAST SIDE OF CREEK	15"
SM25	CHERRY ST/WEST SIDE OF CREEK	42"
SM26	WALNUT ST/EAST SIDE OF CREEK	12"
MC7	BEECH ST/EAST SIDE OF CREEK	12"
SM27	OAK ST/WEST SIDE OF CREEK	30"
MC8	OC PKWY/EAST SIDE OF CREEK	12"
SM28	PARKWAY DR/NORTH SIDE OF CREEK	30"
SM29	PARKWAY DR/NORTH SIDE OF CREEK	36"
MC9	OC PKWY/SOUTH SIDE OF CREEK	30"
SM30	PARKWAY DR/NORTH SIDE OF CREEK	54"

15TH AVENUE TO N CHICAGO AVENUE

OUTFALL ID	LOCATION OF OUTFALL	OUTFALL/ PIPE SIZE
SM31	PARK AVE/NORTH SIDE OF CREEK	21"
MC10	OC PKWY/SOUTH SIDE OF CREEK	12"
SD1	OC PKWY/SOUTH SIDE OF CREEK	12"
MC11	OC PKWY/SOUTH SIDE OF CREEK	12"

EXHIBIT "B" SOUTH MILWAUKEE/MILWAUKEE COUNTY STORM SEWER OUTFALL LOCATIONS

- SM - CITY OF SOUTH MILWAUKEE OWNED OUTFALL
- MC - MILWAUKEE COUNTY OWNED OUTFALL
- SD - S.M. SCHOOL DISTRICT OWNED OUTFALL
- CAT - CATERPILLAR OWNED OUTFALL

