

**Agreement between the
Milwaukee Metropolitan Sewerage District and Milwaukee County for
Kinnickinnic River Watercourse Restoration in Pulaski Park**

This Agreement (Agreement) is made by and between the Milwaukee Metropolitan Sewerage District (District), acting through its Executive Director, and Milwaukee County (County), acting through its Director of Parks, Recreation and Culture. This Agreement becomes effective upon execution by the District and the County.

RECITALS

WHEREAS, the purpose of this Agreement is to identify the responsibilities of the District and the County related to a watercourse restoration project in Pulaski Park (“the Project”). The Project includes removing the concrete channel lining from a segment of the Kinnickinnic River in Pulaski Park (“the River Segment”), modifying the riverbed and surrounding areas to reduce the impacts and frequency of flooding, and restoring the impacted park and recreation areas of Pulaski Park; and

WHEREAS, the Kinnickinnic River passes through the County-owned Pulaski Park located at 2701 S 16th Street in the City of Milwaukee (Attachment A); and

WHEREAS, the District is undertaking a comprehensive program to address flood risks and improve water quality on the Kinnickinnic River, pursuant to its authority under Wis. Stat. §200.35(8). The District engaged an engineering design firm to prepare a Kinnickinnic River Watershed Flood Management Plan, hereinafter referred to as KKRWFMP and attached to this Agreement by reference (Attachment B), and said study recommended restoration of the River Segment in Pulaski Park to mitigate the aforementioned flooding and water quality issues; and

WHEREAS, the KKRWFMP recommends changes to the Kinnickinnic River from 16th Street through Pulaski Park; and

WHEREAS, the District’s implementation of the work recommended by the KKRWFMP will directly impact areas and structures inside Pulaski Park, including but not limited to the playground, basketball court, pedestrian bridge, park trails and other recreation facilities and natural areas (Attachment C); and

WHEREAS, the District and the County desire to cooperate to implement the KKRWFMP recommendations for this area and to restore all impacted areas of Pulaski Park, according to current County policies and the terms and conditions of this Agreement.

NOW, THEREFORE, the following tasks and responsibilities are agreed to between the District and the County (Parties):

AGREEMENT

1. Rights Granted

The County through this Agreement grants the District the right to construct flood control and mitigation measures and park improvements within Pulaski Park along the Kinnickinnic River according to plans and specifications to be reviewed and approved by the County. The County, in granting this right to the District, reserves the right of final review and approval of all plans and Construction Documents, for any material deviation from previously approved plans and any significant substitution of improvements or materials (construction, vegetative, or otherwise). The Parties agree that should the need arise to amend or modify the scope of work of the Project, an amendment to this Agreement shall be made in writing and executed by the Parties.

2. County Approval

- a. The County grants the District permission to enter Pulaski Park and to construct and maintain the Project as further set forth herein.
- b. Prior to solicitation of bids for construction of the Project, and prior to any modifications to the Project, the District shall submit detailed construction plans and specifications to the Milwaukee County Department of Parks, Recreation and Culture (DPRC) and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services for review and approval. Submittals shall include, but not be limited to, design drawings, shop drawings containing product information and materials and products, a description of the scope of work to be performed, and the means by which such work will be performed. Conditions for approval shall include, but not be limited to, provision that the District shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.
- c. The District will select a Contractor using a public bid procedure in compliance with Wis. Stat. §66.0901. After selection, the Contractor shall obtain a Right of Entry Permit from the County prior to commencing any work on County Land. The County shall issue the Right of Entry Permit at no cost.
- d. The County will act in good faith with the District and the construction Contractor(s) to determine the sites to be used for construction staging which may include the playing field on the north side of river (near Harrison Avenue). However, the County reserves the right of final approval of the authorized temporary access and construction sites whereby District will be responsible to restore those staging areas to like new condition according to County specifications.
- e. The District is granted the rights specifically stated in this Agreement and only these specific rights. In addition, the County retains all other rights of use so long as the District has the ability to carry out its duties and responsibilities. The County retains the

ability and right to grant access to third parties for non-conflicting purposes. The County retains the right to have the area open to the public for their use and enjoyment except as necessary for safety or for security. The County must concur with the District for exclusion of the public to occur in any area.

3. Suitability of County Land for the Purpose

The County makes no representation as to the suitability of the land for the intended purpose. The District assumes full responsibility and cost to make the land suitable for the intended purpose. The County makes no representation regarding any conflicting existing use and the District agrees to resolve at its costs any such conflicts. The County makes no representation as to the environmental conditions and the District assumes full responsibility for any remediation work that is necessary to complete the Project. The District will be responsible for achieving compliance with any Federal, State, or Local law and obtaining any required permits. The District will be responsible for ensuring that the design of the Project will be compliant with all applicable laws and regulations.

4. District Responsibilities

- a. The District shall manage and fund the design and construction of all approved improvements consistent with the KKRWFMP, and make park improvements as set forth below in accordance with all DPRC and Milwaukee County Architecture and Engineering standards and specifications. Management includes District labor and expenses for planning, designing, bidding, construction, change orders, and post construction documentation and maintenance as set forth below (“Post Construction Obligations”).
- b. The District shall sequence construction of the Project to minimize disruptions to the public’s use of park amenities impacted by the Project.
- c. All amenities that will be displaced shall be relocated during the Project. The Parties shall work cooperatively to determine the appropriate location of relocated amenities and features.
- d. Restoration or replacement of impacted park amenities shall improve the facilities, but the facilities shall be generally equivalent in size and character to the park facilities currently in place.
- e. The District will restore all existing driveways, parking lots, park pedestrian or multi-use recreation trails or other related amenities damaged during construction activities to like new condition. County specifications and designs will be followed during repair or reconstruction of the trails.
- f. The District will be responsible for all necessary activities, including design, bid, construction, and permits for new access trails to the reconstructed flood plain and revised channel in the Kinnickinnic River and Pulaski Park.
- g. Design, construct, restore and/or replace impacted park amenities to include but not limited

to:

- i. Remove and replace the pedestrian bridge that connects the north and south sides of the park and provides connectivity within the park for pedestrians and bicyclists by being a key point of safe crossing of the KK River.
- ii. Design a permeable plaza space around the Pavilion, which will be included as an Additive Bid Item in the construction contract. The plaza will be constructed by the District's contractor if funding is secured through a Green Infrastructure Grant or other source.
- iii. Grade between the Pavilion and the Kinnickinnic River to be suitable for installation of an amphitheater.
- iv. Replace existing basketball courts including fencing, two standards (poles, backstops and hoops) and lighting system to an approved location outside of the new river channel limits.
- v. Replace existing playground areas outside of the river channel limits that will provide users an improved area to gather and play.
- vi. Install scenic overlooks that are strategically placed along the river segment to give users safe, accessible areas to pause and reflect on the view of the park and river below.
- vii. Repair and/or replace walks or trails that are disturbed by the Project. New walks or trails shall be Universally Accessible and conform to ADA, AASHTO and other applicable standards.
- viii. Construct the new river extension trail for pedestrians and bicycles (KK River Trail) to include signage and educational spots along the Kinnickinnic River.
- ix. Improve and/or restore the natural areas to include native shade trees, ornamental trees, shrubs, and other native plantings in the impacted areas of the park.
- h. Provide public outreach and opportunities for public input on a periodic basis throughout the Project.
 - i. Obtain all regulatory approvals and permits required for the work.
 - j. Notify the County when project construction meetings are scheduled.
 - k. Notify the County upon substantial completion of any portion of the work.
 - l. The District 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.

- m. The District agrees to provide evidence satisfactory to the County that the total amount of funds necessary for the project 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 construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations.
- n. The District agrees that within sixty (60) days after the conclusion of the project, the District shall provide to County a complete set of construction documents to be included as a minimum: (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 of Milwaukee final occupancy permits, if applicable.

5. County Responsibilities

- a. Provide input throughout the project duration, including providing timely review and comment upon designs and construction documents.
- b. Provide the District and its Contractor(s) access to Pulaski Park as necessary to construct the Project, after the Contractor(s) has obtained a Right of Entry Permit.
- c. Provide the District, at no cost to the District, all necessary County permits and rights of entry required for the initial construction of the river segment.
- d. Provide access to maps, plans, and record drawings to assist in design effort.
- e. Assist the District in obtaining public input during the Project.

6. Completion and Post-Construction Maintenance

- a. County agrees to grant District a permanent flood easement consistent with the regulations in Wisconsin Administrative Code NR 116.
- b. The District will be the sole authority to issue acceptance for all work. Before the District will issue its acceptance of any roads, paths, bridges, or park improvements the District will first obtain written communication from the County of its acceptance of the work.
- c. Areas vegetated with turf grass will not be considered "completed" until the vegetation has been established. The District shall have a 5-year landscaping maintenance contract to ensure

establishment of new non-turf vegetation. Any construction or landscaping warranties shall be for the benefit of the County as well as the District.

- d. The District shall maintain the river segment and infrastructure associated with the storm water and channel improvements and shall provide a Long Term Maintenance Plan to the County within 18-months of signing this Agreement and a Final Long Term Maintenance Plan within 14 days following substantial completion. The District assumes responsibility for any specialized operation and maintenance of the channel including, but not limited to repair of erosion caused by storm events, and removal of debris.
- e. County shall be responsible for ordinary mowing, forestry, trash and litter collection of the park outside of the river channel.

7. Contingencies

The District's Responsibilities are contingent upon receiving bids for the Project that are approved by the Metropolitan Sewerage Commission.

8. Reports

At the end of every three (3) month period during the Project, the District shall provide a written report to County describing the progress made on the design or construction of the project during the preceding three (3) month period.

9. Materials

The District shall furnish all materials, equipment, and supplies needed for the Project.

10. Notices

- a. The District will provide notices to:

John Dargle, Jr., CPRP, Director
Milwaukee County Department of Parks, Recreation and Culture
9480 Watertown Plank Road
Wauwatosa, Wisconsin 53226
john.dargle@milwaukeecountywi.gov
414-254-5691

- b. The County will provide notices to:

Patrick Elliott, Senior Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street Milwaukee, Wisconsin 53204-1446
pelliot@mmsd.com
414-225-2168

11. Modifying this Agreement

Any modification to this Agreement will be in writing and signed by both Parties.

12. Severability

If a court finds any part of this Agreement unenforceable, then the remainder of this Agreement continues in effect.

13. Applicable Law

The laws of the State of Wisconsin apply to this Agreement.

14. Resolving Disputes

If a dispute arises under this Agreement, then the Parties will try to resolve it with the help of a mutually acceptable mediator in Milwaukee County. The Parties will equally share any costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after the Parties refer it to a mediator, then either Party may take the matter to court. Venue in any action brought under this Contract is proper only in the Circuit Court for Milwaukee County.

15. Termination

Either Party may terminate this Agreement at any time. To terminate this Agreement, a Party will provide written notice to the other Party. This notice will indicate the effective date of termination and the reasons for termination.

16. Independence of the Parties

This Agreement does not create a partnership. Neither Party may enter into contracts on behalf of the other Party.

17. Authority of Signatories

Each person signing this agreement certifies that the person is properly authorized by the Party's governing body to execute this Agreement.

18. Indemnification

To the fullest extent permitted by law, the District 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 Project, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the District, its agents, or employees.

The District 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.

19. Environmental Indemnification

The District 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 the District or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any improvements made by the District, located in the Project, that are discovered or disturbed as a result of the District's activities connected to the Project.

20. Insurance

District is a special purpose municipal entity with the authority to levy taxes, and as such, is self-insured for general liability and workers compensation under Wisconsin Statutes §§102, 893.80 and 895.46(1).

SIGNATURES ON NEXT PAGE

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

By: [Signature]
Kevin L. Shafer, P.E.
Executive Director

Date: 6/16/17

Approved as to form
[Signature]
Attorney for the District

MILWAUKEE COUNTY

DocuSigned by:
By: [Signature]
John D. Darga, CPRP
Director of Parks, Recreation, and Culture

Date: 4/19/2017

Approved for Execution
DocuSigned by:
[Signature] 4/11/2017
Attorney for Milwaukee County

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

DocuSigned by:
[Signature] 5/26/2017
Corporation Counsel

Reviewed by:
DocuSigned by:
[Signature] 4/11/2017
Risk Management

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

DocuSigned by:
[Signature] 4/12/2017
Comptroller

Approved
DocuSigned by:
[Signature] 5/25/2017
County Executive

Approved with regards to County Ordinance Chapter 42

DocuSigned by:
[Signature] 4/11/2017
Community Business Development Partners

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From the Director, Department of Parks, Recreation, and Culture, requesting authorization to execute an Agreement with the Milwaukee Metropolitan Sewerage District to remove the concrete channel from a segment of the Kinnickinnic River in Pulaski Park, to restore a more natural riverbed, while improving impacted park and recreation areas, by recommending adoption of the following:

A REVISED RESOLUTION

WHEREAS, the Kinnickinnic (KK) River watershed is located on the south side of Milwaukee and is the most urbanized watershed in the State of Wisconsin.

WHEREAS, the Milwaukee Metropolitan Sewerage District (MMSD) developed the Kinnickinnic River Watershed Flood Management Plan to reduce the flood risk, restore natural function back to the streams and riparian corridors, and leverage additional improvements within the community; and

WHEREAS, one of the first phases of this work is a project on the KK River within Pulaski Park located at 2677 South 16th Street in the City of Milwaukee; and

WHEREAS, the project will replace 1,900 feet of concrete-lined channel with a rock-lined main channel and an expanded vegetated floodplain along the segment of the KK River within Pulaski Park and replace a playground, basketball courts, pedestrian bridge, and park trails; and

WHEREAS, MMSD will design, construct, restore, and replace impacted park amenities to include, but not limited to, the pedestrian bridge, playground, basketball courts, permeable plaza space, scenic overlooks, and park trails; and

WHEREAS, the Committee on Parks, Energy, and Environment, at its meeting of March 14, 2017, recommended adoption of File No. 17-224 (vote 2-1); now, therefore,

BE IT RESOLVED, the Department of Parks, Recreation, and Culture (DPRC), is hereby authorized to execute an Agreement with the Milwaukee Metropolitan Sewerage District to remove the concrete channel from a segment of the Kinnickinnic River in Pulaski Park, restoring a more natural riverbed, and restoring the impacted park and recreation areas of Pulaski Park; and

BE IT FURTHER RESOLVED, the Milwaukee County Board of Supervisors hereby authorizes the DPRC, the Department of Administrative Services, the Office of Corporation Counsel, and any other Department that may be necessary to execute and record all documents and perform all actions as required to effectuate the Agreement.

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03/14/17

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