

**DEVELOPMENT AGREEMENT**  
**FOR THE**  
**BOERNER BOTANICAL GARDENS PAVER PROJECT**  
**BETWEEN**  
**MILWAUKEE COUNTY PARKS**  
**AND**  
**THE PARK PEOPLE OF MILWAUKEE COUNTY**

This Development Agreement (this “Agreement”) is made and entered into effective \_\_\_\_\_ (the “Effective Date”), by and between the MILWAUKEE COUNTY PARKS (the “County”), and THE PARK PEOPLE OF MILWAUKEE COUNTY (“Park People”). Referenced together, County and Park People are the parties (the “Parties”) to this Agreement.

**WITNESSETH:**

**WHEREAS**, Park People is a private non-profit corporation organized under Wisconsin statutes chapter 181 with a tax exempt status under the Internal Revenue Code section 501(c)(3), whose mission is to promote and enhance public parks in Milwaukee County; and

**WHEREAS**, Park People from time to time receives grants and donations to make improvements in the parks; and

**WHEREAS**, Park People has funds available to assist in making park improvements to the Boerner Botanical Gardens (the “Gardens”) to include the installation of brick pavers along the walking paths within the Gardens which will enhance accessibility of the Gardens; and

**WHEREAS**, The County desires such park improvements to be made to enhance the Gardens.

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

1. Availability of Grants and Donations: Park People has \$241,438.36 available in grants and/or charitable donations that it desires to use for the installation of brick pavers along the walking paths within the Gardens as proposed by Breckenridge Landscape (the “Project”). Park People will, to the extent it has funds available from grants and/or charitable donations dedicated to the project, pay the expenses associated with the Project described below.

2. Project Details. The work to be performed in connection with the Project is described in proposal of Breckenridge Landscape (the “Contractor”) attached hereto as Exhibit

A. The Park People will have its Contractor acknowledge and agree that the scope of work will include, but not be limited to, the following:

- a. Excavation - Machine and hand excavation of the Garden pathways to include the removal of the traffic bond material and hauling off site. Wells will be created on site to reduce risk of flooding. Excavator, skidsteer, power wheelbarrows, and quad-axle dump trucks will be used as needed.
- b. Permeable Base - A clear stone base will be installed and compacted. Once base is down it will be securely covered until pavers are ready for installation. Skidsteer, power wheelbarrows, quad-axle dump truck, compactor, and roller will be used as needed.
- c. Paver Installation – Permeable pavers will be installed and used for the new surface of the walkways. Pavers will match what was used in the Rotary Gardens. A granite chip to be used through the joints. Skidsteer with power-broom and paver laying machine will be used as needed. Material samples will be provided to the County for approval prior to installation.

3. County Approval: Subject to the terms, conditions, and acknowledgments in the Agreement, the County approves the Project work described on Exhibit A.

4. Construction: The Park People will have its Contractor acknowledge and agree to the following:

- a. The Contractor is responsible for obtaining all permits and any other required approvals and authorizations from regulatory or governmental agencies necessary for the Project.
- b. Neither the Park People nor the County have made any representation or warranty that the site of the Project, including but not limited to the land, electrical and other mechanical systems: (a) meet and comply with all federal, state, and local laws, ordinances and regulations; and (b) are in workable and sanitary order and state of repair.
- c. The Contractor has inspected the site of the Project, is aware of its general overall condition, and is satisfied that the site conditions are suitable for the Project.
- d. The Contractor is responsible, at its sole cost, for disconnection and/or hookup of Utilities in conjunction with the Project. “Utilities” will include sewer, water, gas and electricity.

- e. The funds allocated for the Project by the Park People are sufficient to complete the Project. The County is under no obligation to budget or pay for the improvements to the Gardens but the work may require County staff time and advisory support.
- f. All of Contractor's work will be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. All of Contractor's work will be performed in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises.
- g. Any modification of the construction plans and specifications must be approved by the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services.
- h. If there is any inconsistency between the terms of this Agreement and the proposal attached as Exhibit A, the language of this Agreement controls.

5. Park People's Obligations: To ensure that the Project is completed and to provide financial assurances:

- a. The Park People agrees to provide all funds necessary to complete this project.
- b. The Park People will indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor with whom it contracts for work on the Project.
- c. Park People agrees to provide evidence satisfactory to the County that the total amount of funds necessary to complete 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 the Contractor. Park People will deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises. Any such evidence of the Park People's financial capacity will also include a copy of a bank statement demonstrating 100% of the funds necessary.
- d. Temporary Signage. Park People may display appropriate signage relating to the Project with County's prior written consent, which may not be unreasonably withheld (the "Signage"). Park People hereby covenants and

agrees that Park People will, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage; (iii) insure the Signage as part of its property and will also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage retains an attractive appearance at all times; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

6. Construction: In addition to any of its other obligations, the Park People, through its Contractor, agrees as follows:

- a. Insurance. The Park People will ensure its Contractor will provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with the County and the Park People as additional insureds and loss payees on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed. Prior to construction, the Contractor will supply the Parks Director and the Park People with written evidence of Builder's Risk insurance. The Contractor will not commence construction activities without written approval from the Parks Director and his/her designee.
- b. County Approval. Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, Park People, through its Contractor, shall submit detailed construction plans and specifications to the Parks and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of The Park People's proposed contractor(s), for review and approval. Submittals shall include, but not be limited to, shop drawings containing product information and materials and products shall be approved by County. Conditions for approval shall include, but not be limited to provision that the Park People shall ensure its Contractor obtains and complies with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities. The County's approval shall not be unreasonably withheld, conditioned, or delayed.

- c. Licensed Tradespersons. The Park People, through its Contractor, agrees that all work will be performed by fully licensed contractors and subcontractors who will utilize industry standard supplies, equipment, and construction methods in the performance of their duties. The Park People will ensure its Contractor will require its subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Park People by County. The Park People, through its Contractor, is responsible for enforcing compliance with these insurance requirements and for providing evidence of insurance for any contractor or subcontractor as acceptable to the County.
- d. Construction Documents. The Park People, through its Contractor, agrees that within sixty (60) days after the conclusion of the Project, the Contractor will 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) Hales Corner's final occupancy permits, if applicable.
- e. Permits, Licenses and Other Costs. The Park People, through its Contractor, will procure and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.
- f. Removal of Equipment and Supplies. Within three (3) days of the completion of the work on the Project, the Park People will ensure its Contractor removes, at its costs, all of its equipment, supplies, and related items from site of the Project and will restore the site to a parklike condition (subject to any improvements performed by the Contractor), satisfactory to the Parks Director or his/her designee. Damage caused to the site by any removal of personal property or improvements to the site will be repaired by the Contractor. If for any reason the Contractor does not comply in a timely manner with its obligations under this paragraph, then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Contractor any and all reasonable costs, as determined by the County, related to this Section.

- g. Collection and Removal of Trash. The Park People will ensure the Contractor is responsible for the collection and removal of all trash, litter and garbage associated with the Contractor's activities.
- h. Cleanliness of Surrounding Areas. The Park People will ensure the Contractor is responsible for maintaining the areas surrounding the site of the Project during construction in a state of cleanliness to prevent injuries to the public. The Contractor will agree not to store or accumulate unused or excess materials, supplies, or equipment which may create a hazard to the public or result in unsightly surroundings.
- i. Indemnification. To the fullest extent permitted by law, the Park People will ensure its Contractor indemnifies the Park People and the County for, and hold both Parties 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 Contractor, its agents, or employees. The Park People will ensure its Contractor will, 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 will be limited by Wis. Stats. § 345.05(3) for automobile and for § 893.80(3) general liability.
- j. Environmental Indemnification. The Park People will ensure its Contractor will, 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 site of the Project or surrounding areas by the Contractor or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any improvements made by the Contractor, located at the site of the Project, that are discovered or disturbed as a result of the Contractor's activities on, at, or near the site. The Park People will ensure its Contractor indemnifies, defends and holds the Park People and the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. "Hazardous Materials" as the term is used herein means any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes

defined as a “hazardous waste” or “hazardous substance” under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

7. County Rights of Access and Audit. The Park People, its Contractor, or other party to the contract, its officers, directors, agents, partners and employees will 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 Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts will include a statement that the Contractor, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

8. Record Keeping. The Park People and its Contractor will retain and make available for County's inspection and request all records pertaining to this Agreement, the installation of improvements, the maintenance of improvements, and any other obligation of this Agreement during the Term. The rights and obligations set forth under this provision will survive the termination of the Agreement for a period of three (3) years.

9. Insurance. The Park People, its Contractor, and their respective consultants, contractors, and subcontractors will have and maintain in connection with any work being performed through this agreement insurance policies with at least the following coverages and limits (Limits can be obtained through Umbrella and/or Excess policies that follow form to the underlying policy) listed below. Acceptable proof of such coverage will be furnished to the County prior to commencement of activities under this agreement.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation and Employer's Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000

General Liability \$5,000,000 Per Occurrence  
Bodily Injury and Property Damage to include: \$5,000,000 General Aggregate  
Personal Injury, Fire, Products and Completed  
Operations

Automobile Liability – Bodily Injury & \$1,000,000 Per Accident  
Property Damage  
All Autos

Professional Liability (If applicable, required \$2,000,000 Per Occurrence  
for Construction Managers, Architects, \$2,000,000 General Aggregate  
Engineers and Designers)

The Park People, the Contractor, and their respective consultants, contractors, and subcontractors will name Milwaukee County as an additional insured on the General, Automobile, and Employer’s Liability policies and provide a waiver of subrogation in favor of Milwaukee County on the Workers’ Compensation as respects to the services provided in this agreement. All Carriers must be approved to do business in the State of Wisconsin and be A rated or better per AM Best’s Rating Guide. Certificates of insurance will be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement. A thirty (30) day written notice of cancellation or non-renewal will be afforded to Milwaukee County. Any deviations or waiver of required coverages or minimums will be submitted in writing and approved by Milwaukee County’s Risk Manager as a condition of this agreement.

10. Term. The term of this Agreement will commence on the Effective Date and end upon the County’s acceptance of the improvements contemplated herein (the “Term”).

11. Termination. The County may terminate this Agreement: (a) if the Park People fails to comply with any provision in this Agreement, and such failure continues for forty-five (45) days after a written notice from County setting forth in reasonable detail the nature of such default; or (b) if Park People ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Park People’s assets or the Park People’s interest in this Agreement. Park People may terminate this Agreement at its sole and absolute discretion upon one hundred eighty (180) days' prior notice to County.

23. Partnership. Nothing contained herein will be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no



provision contained in this Agreement nor any acts of the parties hereto will be deemed to create any relationship other than that defined in this Agreement.

24. Notices. All notices with respect to this Agreement will be in writing, and e-mail will constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice will be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the Party addressed as follows:

To: Park People

To County: Milwaukee County Parks  
Jeff Orłowski, Senior Recreation Manager  
9480 Watertown Plank Rd.  
Wauwatosa, WI 53226  
[Jeffrey.Orłowski@milwaukeecountywi.gov](mailto:Jeffrey.Orłowski@milwaukeecountywi.gov)

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

*[Signature page follows]*

**IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:**

The Park People of Milwaukee County

By: \_\_\_\_\_ Date: \_\_\_\_\_

Milwaukee County Parks

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Guy Smith, Director

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

*Approved for execution:*

*Reviewed by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

*Approved by:*

*Approved as to funds available per  
Wisconsin Statutes Section 59.255 (2)(e):*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive Chris Abele

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller Scott B. Manske

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

By: Corporation Counsel Date: \_\_\_\_\_

## Exhibit A

### Project Description

#### Entrance Area (#1 and #2)

- Excavate as needed to create a 12” deep clear stone base
- Add drainage pits as needed
- Supply and install Unilock Eco Priora permeable paver in a standard finish
- Sweep limestone chip stone into joints
- Supply and install permeable snap edge, remove existing edging as needed

#### Shrub Mall (#11)

- Excavate as needed to create a 12” deep clear stone base
- Add drainage pits as needed
- Supply and install Unilock Eco Priora permeable paver in a standard finish
- Sweep limestone chip stone into joints
- Supply and install permeable snap edge, remove existing edging as needed

#### Perennial Garden (#3)

- Excavate as needed to create a 12” deep clear stone base
- Add drainage pits as needed
- Supply and install Unilock Eco Priora permeable paver in a standard finish
- Sweep limestone chip stone into joints
- Supply and install permeable snap edge, remove existing edging as needed

