



## Green Infrastructure Funding Agreement G98024P03

### Universal Park

#### 1. The Parties

This Agreement involves:

- A. the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204;
- B. AFAR, Inc., doing business as the Ability Center (Center), 10300 West Wisconsin Avenue, Wauwatosa, Wisconsin 53226; and
- C. Milwaukee County, Department of Parks, Recreation and Culture (County), 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226.

#### 2. Basis for this Agreement

- A. The District is responsible for collecting and treating wastewater from local sewerage systems.
- B. During wet weather events, stormwater enters local sewerage systems, increasing the volume of wastewater that the District must convey and treat and directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding.
- C. Green infrastructure includes, but is not limited to, bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.
- D. Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface water.
- E. The District's wastewater discharge permit includes a goal of 50 million gallons of green infrastructure detention capacity by March 31, 2024.

F. In the District's 2035 Vision, a strategic objective is capturing the first half inch of rainfall in green infrastructure.

G. The County owns land at 10300 West Wisconsin Avenue, Wauwatosa, (Land) and wants the Center to install green infrastructure on the Land.

### **3. Date of Agreement**

This Agreement becomes effective when signed by both parties and ends December 31, 2025, except for the access to maintenance records required by sec. 4.F, the annual maintenance reports required by sec. 5.C, the operation and maintenance requirements of sec. 10, and the transfer of ownership notification requirement of sec. 11.

### **4. The Green Infrastructure**

The Center will:

A. install 12,200 square feet of porous pavement; 5,000 square feet of bioswale; and 128,500 square feet of synthetic turf with an underlayer of stone storage, providing a total design detention capacity of 596,064 gallons (Green Infrastructure);

B. complete construction before December 31, 2025;

C. install educational signage that:

(1) is either designed and provided by the District or provided by the Center and approved by the District,

(2) is in a location approved by the District, and

(3) identifies the District as funding the Green Infrastructure, by name, logo, or both;

D. identify the District as funding the Green Infrastructure in any printed matter, web sites, social media posts, and any other informational materials regarding the Green Infrastructure;

E. install all Green Infrastructure components described in the application for funding;

F. allow the District to inspect the Green Infrastructure and review maintenance records until the expiration of the conservation easement required by sec. 6;

G. allow the District to identify the Center and describe the Green Infrastructure in publicity regarding green infrastructure;

H. inform the District of any promotional events for the Green Infrastructure arranged by the Center and allow the District to participate; and

I. allow the District to access the Green Infrastructure at reasonable times for promotional events arranged by the District, after notice from the District.

## 5. Reports

A. The Center will provide to the District:

- (1) a project schedule within 30 days after this Agreement becomes effective;
- (2) monthly progress reports, describing the actions initiated and completed since the preceding report, until the completion of construction. These reports are due before the 10<sup>th</sup> day of each month, starting with the month after submission of the project schedule;
- (3) plans, including planting plans, and specifications for the Green Infrastructure at least three weeks before the commencement of construction;
- (4) a Baseline Report, using forms provided or approved by the District. This report is due after the conclusion of construction. This report will include:
  - (a) a site drawing, showing the completed Green Infrastructure;
  - (b) A map showing all parcels with where the Green Infrastructure is located and the surrounding streets;
  - (c) a legal description of all parcels where the Green Infrastructure is located and the parcel identification numbers;
  - (d) design specifications for all Green Infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
  - (e) photographs of the completed Green Infrastructure;
  - (f) a maintenance plan;
  - (g) an itemization of all design, construction, and education and outreach costs, with supporting documentation;
  - (h) a W-9 Tax Identification Number form;
  - (i) a Small, Women's, and Minority Business Enterprise Report;
  - (j) an Economic Impact Report, showing the total number of people and the estimated number of hours worked on design and construction of the Project by the Center, contractors, consultants, and volunteers; and
  - (k) if the work was publicly bid, a tabulation of bids received, including bidder name and price for all bids received.

B. To provide the reports required by par. (A), the Center may use the U.S. mail, another delivery service, or electronic mail. The Center will send reports to:

Chris Schultz, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1466  
[cschultz@mmsd.com](mailto:cschultz@mmsd.com)

- C. The Center will provide annual maintenance reports. These reports will summarize Green Infrastructure performance and maintenance activities during the preceding twelve months. This report is due December 31 of each year. The District must receive these reports for the ten calendar years following the completion of construction. The Center will use the reporting form available from the District and submit the form as directed by the District.
- D. The Center will provide the required reports, not a consultant or contractor.
- E. Reports that are late, incomplete, or missing may be a basis for rescinding this Agreement or making the Center ineligible for future funding.

## **6. Conservation Easement**

After the completion of construction, the County will execute a conservation easement in favor of the District. The extent of the conservation easement will be limited to the Green Infrastructure. The duration of the conservation easement will be twenty years. The District will draft and record the conservation easement.

## **7. District Funding**

- A. The District will reimburse Green Infrastructure installation costs up to \$1,162,325 or 75% of total Green Infrastructure installation costs, whichever is less.
- B. The District will reimburse costs at the rate of \$1.95 per gallon of as-built detention capacity, except the District will reimburse the cost of rain barrels at a rate of \$0.90 per gallon and reimburse the cost of pavement removal at a rate of \$0.50 per gallon.
- C. The basis for reimbursement will be the detention capacity identified in the Baseline Report, as approved by the District.
- D. Beyond financial support for the Green Infrastructure, the District will not be involved in design, construction, maintenance, or operation.

## **8. Procedure for Payment**

- A. Along with or after the Baseline Report required by sec. 5.A(4), the Center will submit an invoice to the District for the amount to be reimbursed.
- B. The District will provide reimbursement only if:

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- (1) The Center provides the schedule, monthly reports, and Baseline Report required by sec. 5(A);
  - (2) The Center completes construction before December 31, 2025;
  - (3) the District receives the invoice before December 31, 2025; and
  - (4) The Center executes the Conservation Easement after the completion of construction.
- C. The Center will electronically submit the invoice as directed by the District. If unable to submit the invoice electronically, the Center may submit the invoice by mail to the address in sec. 5.B.

### **9. Green Infrastructure Changes**

- A. The District will not pay for green infrastructure not described in the application for funding unless the District has provided prior written approval.
- B. The Center must notify the District before decreasing Green Infrastructure detention capacity. The District may reduce the reimbursement amount or terminate this Agreement in response to a reduction of detention capacity.
- C. The District will not provide additional funding for additional detention capacity not requested in the application for funding.

### **10. Operation and Maintenance**

The Center will operate and maintain the Green Infrastructure for at least twenty years. If the Green Infrastructure fails to perform as anticipated or if maintaining the Green Infrastructure is not feasible, then the Center will provide a report to the District explaining the failure of the Green Infrastructure or why maintenance is not feasible. Failure to maintain the Green Infrastructure will make the Center ineligible for future District funding until the Center corrects the maintenance problems.

### **11. Transfer of Ownership or Maintenance Responsibilities**

Until the expiration of the conservation easement required by sec. 6, either the Center or the County will notify the District before transferring ownership of the Land or maintenance responsibilities for the Green Infrastructure. The District must receive this notice at least 30 days in advance.

### **12. Opportunities for Disadvantaged Businesses**

The Center will give disadvantaged business enterprises an opportunity to compete for work on this Green Infrastructure by soliciting quotes or bids from those businesses to the maximum

extent possible. Disadvantaged businesses include small businesses and businesses owned by women, minorities, or veterans. The District's procurement office will provide a list of these businesses upon request.

### **13. Responsibilities of The Center**

The Center is solely responsible for:

- A. planning, designing, constructing, and maintaining the Green Infrastructure, including selecting and paying consultants, contractors, and suppliers;
- B. the safety of its employees, contractors, and guests;
- C. compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Green Infrastructure; and
- D. insurance. The District will not provide any insurance coverage of any kind for the Green Infrastructure or the Center.

### **14. Indemnification**

The Center will defend, indemnify, and hold harmless the District and the District's Commissioners, employees, and agents against any damages, costs, liability, and expense whatsoever, including attorney's fees and related disbursements, arising from or connected with the planning, design, construction, operation, or maintenance of the Green Infrastructure. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities set forth in Wis. Stats. sec. 893.80.

### **15. Modifying this Agreement**

Any modification to this Agreement will be in writing and signed by the District and the Center.

### **16. Terminating this Agreement**

- A. The District may terminate this Agreement at any time before the commencement of construction. After construction has commenced, the District may terminate the Agreement only for good cause, including, but not limited to, breach of this Agreement by the Center.
- B. The Center may terminate this Agreement at any time but will not receive any payment from the District if the Green Infrastructure is incomplete.

### **17. Exclusive Agreement**

This Agreement is the entire agreement between the Center and the District regarding reimbursement for the Green Infrastructure.

## **18. Severability**

If a court holds any part of this Agreement unenforceable, then the remainder of the Agreement will continue in effect.

## **19. Applicable Law**

The laws of the State of Wisconsin govern this Agreement.

## **20. Resolving Disputes**

If a dispute arises under this Agreement, then the parties will try to resolve the dispute with the help of a mutually acceptable mediator in Milwaukee County. The parties will equally share the costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after a mediation session, then either party may take the matter to court.

## **21. Notices**

All notices and other communications related to this Agreement will be in writing and will be considered given as follows:

- A. when delivered personally to the address stated in this Agreement; or
- B. three days after being deposited in the United States mail, with postage prepaid to the address stated in this Agreement.

The District, the Center, or the County may specify a different address for receipt of notices by giving the other party notice as provided in this Agreement.

## **22. Independence of the Parties**

This Agreement does not authorize any party to make promises binding upon the other party or to contract on the other party's behalf.

## **23. Assignment**

The Center may not assign any rights or obligations under this Agreement without notice to the District.

## **24. Public Records**

The Center will produce any records in the possession of the Center that relate to this Agreement and are requested from the District pursuant to the State of Wisconsin's Open Records Law, Wis. Stats. secs. 19.31 to 19.39. The Center will indemnify the District against any claims, demands, and causes of action resulting from a failure to comply with this requirement.

