

AGREEMENT BETWEEN  
WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
AND MILWAUKEE COUNTY PARKS

THIS AGREEMENT is entered into by and between the State of Wisconsin Department of Natural Resources (Department) and the Milwaukee County Parks (Agency) for the purpose of habitat restoration design and implementation in Sections 1-6 of the Little Menomonee River Corridor in the Milwaukee AOC.

FOR AND IN CONSIDERATION of the terms and conditions contained in this agreement the above-named parties agree:

1. PERIOD OF AGREEMENT: This agreement shall commence upon its signing by both parties and continue until December 31, 2026, during which period all performance as described in this agreement shall be fully completed to the satisfaction of the Department.
2. CANCELLATION: The Department reserves the right to cancel this agreement in whole or in part, without penalty, due to nonappropriation of funds or for failure of the Agency to comply with terms, conditions, and specifications of this agreement.
3. ENTIRE AGREEMENT; AMENDMENTS: This agreement, together with the specifications in the bid request (if any) and referenced parts and amendments, shall constitute the entire agreement and previous communications or agreements pertaining to this agreement are hereby superseded. Any agreement revisions including cost adjustments and time extensions may be made only by a written amendment to this agreement, signed by both parties prior to the ending date of this agreement.
4. ASSIGNMENT SUBCONTRACTS: Neither this agreement nor any right or duty in whole or in part by the Agency under this agreement may be assigned, delegated or subcontracted without the written consent of the Department. If upon the written consent of the Department this agreement or any right or duty in whole or in part is assigned, the Assignee(s) shall expressly agree to assume and perform all relevant obligations expressed under the terms of this agreement and be bound by the terms and conditions of this agreement. Assignment in whole or in part of this agreement does not absolve the Agency of any liability or obligation expressed and agreed to hereunder.
5. DESCRIPTION OF WORK: The Agency agrees to perform the services to the satisfaction of the Department as described in the attached Scope of Work.
6. AGENCY CONTACTS: All communications regarding this agreement will be made

through the designated agency contacts. The designated contacts are:

Agency - Natalie Dutack, Area of Concern Program Supervisor  
Milwaukee County Parks  
9480 W Watertown Plank Road, Wauwatosa, WI 53226  
[Natalie.Dutack@milwaukeecountywi.gov](mailto:Natalie.Dutack@milwaukeecountywi.gov)  
414-257-5064

Department - Kelly Hayden, Project Manager  
WDNR, Office of Great Waters  
1027 W St. Paul Avenue, Milwaukee, WI 53233  
[Kellym.hayden@wisconsin.gov](mailto:Kellym.hayden@wisconsin.gov)  
414-550-7581

7. TERMINATION:

- A. This agreement may be terminated in whole, or in part, in writing by the Department in the event of substantial failure of the Agency to fulfill its obligation under this agreement, provided, that the Department shall give the Agency not less than thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation prior to termination.
- B. If termination is effected by the Department, an equitable adjustment in the price provided for in this agreement shall be made. Any payment due to the Agency at the time of termination may be adjusted to the extent of any additional costs occasioned to the Department by reason of the Agency's default. The equitable adjustment for any termination shall provide for payment to the Agency for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Agency relating to commitments which had become firm prior to the termination.
- C. Upon receipt of a termination action pursuant to paragraph A above, the Agency shall (1) promptly discontinue all services affected (unless the notice directs otherwise); (2) terminate all subcontracts to the extent that they relate to the performance of work terminated by the Department, and (3) deliver or otherwise make available to the Department, all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Agency in performing this agreement, whether completed or in process.
- D. Upon termination pursuant to paragraph A. above, the Department may take over the work and prosecute the same to completion by agreement with another party or otherwise and the Agency is liable for any excess costs for such similar work or services.
- E. The rights and remedies of the Department and the Agency provided in this clause

are in addition to any other rights and remedies provided by law or under this agreement.

8. **PAYMENT**: The Department agrees to reimburse the Agency up to a total of **\$3,000,000.00** for the costs identified in the attached Scope of Work. The Agency is eligible for expenses incurred from October 1, 2023.

Billings by the Agency shall be made on a quarterly itemized basis for the actual net costs incurred for review and acceptance. Invoices should be sent to (email preferred):

[DnrOgwInvoices@wisconsin.gov](mailto:DnrOgwInvoices@wisconsin.gov) AND [Kellym.hayden@wisconsin.gov](mailto:Kellym.hayden@wisconsin.gov)

Or mail to: Wisconsin Department of Natural Resources  
Attn: Melissa Lake – OGW/3  
P.O. Box 7921  
Madison, WI 53707

Final invoices must be submitted within 60 days after the end of the agreement.

9. **RECORDS; ACCESS**: The Agency shall, for a period of three (3) years after completion and acceptance by the Department, maintain books, records, documents, and other evidence directly pertinent to performance on work under this agreement in accordance with generally accepted accounting principles and practices. The Agency shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Department. The Department, U.S Environmental Protection Agency, their agents and their duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Agency shall provide proper facilities for such access and inspection. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such dispute, performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim or exception.
10. **INDEPENDENT AGENCY**: The Agency is an Independent Agency for all purposes and is not an employee or agent of the Department.
11. **INDEMNIFICATION**: The Agency agrees to save, keep harmless, defend and indemnify the State of Wisconsin, Department of Natural Resources and all its officers, employees and agents, against any and all liability, claims and costs of whatever kind and nature, for injury to or death of any person or persons, and for

loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this agreement or omissions of Agency's employees, agents or representatives.

12. INSURANCE: The Agency performing services for the State of Wisconsin shall:
  - A. Maintain worker's compensation insurance or self-insure for all employees engaged in the work.
  - B. Maintain commercial liability and property damage insurance or equivalent protection against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the agreement. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
  - C. Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance certificate is required to be presented prior to the issuance of the purchase order or before commencement of the agreement.
  - D. The state reserves the right to require higher or lower limits where warranted.
13. NONDISCRIMINATION: In connection with the performance of work under this agreement, the Agency agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Agency further agrees to take affirmative action to ensure equal employment opportunities. The Agency agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Agency being declared an "ineligible" agency, termination of the agreement or withholding of payment.
14. AFFIRMATIVE ACTION: If this agreement is for an amount of fifty thousand dollars

(\$50,000) or more the Agency agrees to submit a written affirmative action plan to the Department within 15 business days after the agreement commences if an acceptable plan is not already on file with the State of Wisconsin. (An agency with an annual work force of fewer than fifty employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Agency being declared an "ineligible" agency, termination of the agreement or withholding of payment.

15. GUARANTEED DELIVERY: Failure of the Agency to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Agency liable for all costs in excess of the agreement price when alternate procurement is necessary. Excess costs shall include the Department's administrative costs.
16. FUNDING SOURCE: This agreement is funded in part or wholly by grants from the U. S. Environmental Protection Agency, CFDA # 66.469. This procurement will be subject to regulations contained in 2 CFR 200. Neither the United States nor the U.S. Environmental Protection Agency is a party to this agreement.
17. APPLICABLE LAW: This agreement shall be governed by the laws of the State of Wisconsin. The Agency shall at all times comply with all federal, state and local laws, ordinances, and regulations in effect during the period of this agreement.
18. ANTITRUST ASSIGNMENT: The Agency and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Agency hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this agreement.
19. PAYMENT TERMS AND INVOICING: Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:
  - A. The date specified on a properly completed invoice for the amount specified in the order or agreement, or
  - B. Within thirty (30) days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or agreement or within thirty (3) days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or agreement, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within ten (10) working days after it receives the invoice of the reason it is improperly completed.

20. TAXES: The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of all federal tax and Wisconsin sales or use tax on its purchases. The State of Wisconsin does not issue a tax exempt number for state agencies. The Department may be subject to other states' taxes on its purchases in that state depending on the laws and of that state. An agency performing construction activities are required to pay state use tax on the cost of materials.
21. TAX DELINQUENCY: An agency who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
22. ADDENDUM: Additional conditions are attached as Exhibit A, as part of the federal Grant Agreement No. GL-00E03490 funding this award. It is the responsibility of the agency to determine which, if any, of the Federal Administrative Conditions in Exhibit A may be relevant to the agency or their sub awards, and to apply them accordingly.

The undersigned, as representatives of their respective agencies, hereto agree to this agreement.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

Date \_\_\_\_\_

By \_\_\_\_\_  
Adam N. Payne, Secretary

MILWAUKEE COUNTY PARKS

Date \_\_\_\_\_

By \_\_\_\_\_  
Guy Smith, Executive Director