

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF MILWAUKEE
AND
MILWAUKEE COUNTY**

This Memorandum of Understanding (“MOU”) is entered into as of the last date appearing in the signature block below, by and between the City of Milwaukee (“City”), a municipal body corporate, and the County of Milwaukee (“County”), a municipal body corporate.

RECITALS:

WHEREAS, Dineen Park is a Milwaukee County Park located at 6901 W Vienna Ave in the City of Milwaukee, as shown on the attached map; and

WHEREAS, City properties in the vicinity of the intersection of North 63rd Street and West Melvina Street have experienced repeated surface flooding and basement back-ups during heavy storm events; and

WHEREAS, Dineen Park contains an open channel and lagoon immediately upstream of said properties; and

WHEREAS, Water overtops the banks of the open channel during heavy rain events and causes surface flooding in the park and on City streets, due to an overwhelmed City of Milwaukee storm sewer; and

WHEREAS, Said overtopping also causes flooding on nearby properties and water enters basements by way of basement window wells and foundation drains causing property damage; and

WHEREAS, Said water in basements empties via basement floor drains, contributing excessive amounts of clearwater in local City sanitary sewers and Milwaukee Metropolitan Sewerage District (MMSD) sewers, causing additional basement back-ups in surrounding properties; and

WHEREAS, City, County, and MMSD were desirous of ascertaining the cause of the flooding and basement back-ups, and negotiated an agreement to hire a consultant to perform this work; and

WHEREAS, City, County, and MMSD retained the services of a consultant to prepare the “Dineen Park Neighborhood Storm Water Study,” hereinafter referred to as the “Storm Water Study” and attached to this MOU by reference, and said study recommended the construction of a Storm Water detention facility in Dineen Park to mitigate the aforementioned flooding; and

WHEREAS, In order to facilitate the community’s vision for Dineen Park, a Task Force was created to represent key stakeholders that included City and County officials, and the Dineen Park Neighborhood Association; and

WHEREAS, City selected and funded a consultant to prepare the “Dineen Park Master Plan,” hereinafter referred to as “Master Plan” and attached to this MOU by reference, that incorporated the recommendations of the Storm Water Study; and

WHEREAS, the Master Plan included a “Storm Water Mitigation Area Development,” hereinafter referred to as “Storm Water Project;” and

WHEREAS, the Master Plan included a variety park and recreation elements for the benefit of the community, hereinafter referred to as Park Master Plan; and

WHEREAS, the County has set forth a policy regarding the use of park land in cooperation with other governmental units by which this MOU is governed.

NOW, THEREFORE, it is agreed between City and County (Parties) that in consideration of the mutual promises made hereto:

AGREEMENT:

1. Design and Construction of the Project.

- a. City shall address the guidelines and conditions of the County Board adopted General Policy on Use of Parkland in Cooperation with Other Governmental Units.
- b. City shall design the Storm Water Project and park improvements at City’s cost, however County shall not invoice City for time and materials expended by County providing to City the necessary documents and reviews as discussed below. Said project shall incorporate the amenities described in the Park Master Plan. The Parties agree that should the need arise to amend or modify the scope of work of the Storm Water Project and park improvements, amendment shall be made in writing and executed by the Parties.
 - i. Said detention facility shall be designed to accommodate flood waters from a 4% probability storm (25-year recurrence interval), as defined by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) as of the date of this agreement in accordance with green infrastructure best management practices to mitigate flooding and provide additional storm water storage capacity.
 - ii. Said park lagoon improvement elements associated with the Storm Water Project shall be included in design and construction to include lagoon

dredging and bank stabilization and beautification, improvements to fishing dock and access points around the lagoon, council ring, water control structure at the north end of the lagoon, and connected trail network around the lagoon.

- iii. Said water channel improvements within the creek that divides the west and east portions of the site and flows into and thru the lagoon shall be designed and constructed to enhance park programming, strengthen environmental features with access and crossing points, mitigate flooding and provide additional stormwater management infrastructure.
- iv. Said park improvement features to be designed and constructed within the Storm Water Project include picnic shelter, entry plazas, council ring, fishing dock, native shade trees and shrubs, ornamental trees, and native plantings in the reconstruction areas of the park, site furnishings and features, relocated and realigned 18 hole disc golf course and tee pads, boardwalks and walking paths to include signage and educational spots along the route, creation of hill climb paths and sled hills, and creation of a centrally located festival plaza area and playground area alongside the lagoon pavilion building to be approved by Milwaukee County Parks in accordance with Park Master Plan and Milwaukee County Architecture and Engineering standards.
 1. The proposed playground area alongside the lagoon pavilion building shall be part of an “alternate bid” that identifies the cost of the playground separate from the total bid. Funding of the construction of the playground is not part of this MOU.
- c. City agrees to perform Storm Water Project and all park improvements listed in the 1.b.iv. in accordance with Park Master Plan.
- d. A contract shall be awarded to the lowest responsible bidder whose bid complies with the bid specifications. However, City reserves the right to reject all bids if the lowest bid for the work exceeds City’s available funding. If the contract is to be rejected, City shall notify County within thirty days after the day of bid opening. Alternatively, within forty-five days of the bid opening, City and County retain the option to revise the scope of the bid, obtain additional funding, or both, in order to allow the lowest bid to be awarded.
- e. County agrees to grant City a permanent easement in Dineen Park for the public purpose of flood detention improvements, and inspection, operation, repair and maintenance of storm water facilities. Terms of the easement will restrict modifications to the footprint of the detention facility to that of the original design, except where modifications to said design are agreed to by all parties in writing. Said easement shall be drafted by City and reviewed and approved by County. Said easement may be terminated by mutual agreement between the parties if it is determined the easement no longer serves City’s interests.

- f. Plan Review, Engineering Services and other Engineering Considerations.
- i. County shall provide City with access to maps, plans, and record drawings to assist the design effort.
 - ii. The City shall obtain a Right of Entry Permit from County prior to commencing any construction or maintenance activities on parkland. Prior to the start of any bidding, installation, construction or renovation of the Premises, including any subsequent alterations or renovations to the Project, the City shall submit detailed construction plans and specifications to the Milwaukee County Parks Department and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of the City's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, design drawings which must adhere to Parks Planning and Maintenance standards and which shall be approved by County Parks Planning, County Parks Maintenance and the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, 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 City shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.
 - iii. County shall not unreasonably delay or withhold approval.
 - iv. Upon substantial completion the City shall provide record drawings.
 - v. County shall provide City, at no cost to City, all necessary permits, rights of entry, and temporary easements required for the initial construction of the Storm Water Project, and shall jointly apply for any required State of Wisconsin and Federal permits.
 - vi. County shall furnish to the City a list of approved plant species, tree concentrations and plants per acre per plant community as referenced in 1(b)(iv).
- g. City shall submit Storm Water Project plans, on behalf of the Parties, to the Wisconsin Department of Natural Resources (WDNR) for their approval.
- h. The County does not represent the suitability of the park land for a particular use and will not be responsible for any costs to make the park land suitable for the use. The County will not be responsible for achieving compliance with any Federal, State, or

Local law or zoning, or obtaining any required permit. The City will be responsible for ensuring that the design of the storm water facility will be compliant with all applicable laws and regulations.

2. Maintenance Obligations.

- a. The Storm Water Project shall include a Storm Water Post Construction Warranty and Project Maintenance Plan.
- b. The City shall maintain all infrastructure associated with the Storm Water Project and the lagoon in perpetuity and shall provide a Long Term Maintenance Plan to the County with the final design documents. The City assumes responsibility for the operation and maintenance of the detention facility and lagoon, including, but not limited to:
 - i. The removal of trash, waste, and litter from the detention facility, open channel, and outlet structure after rain events of 2-inches or more. City shall maintain the existing trash rack located near North 63rd Street and West Melvina Avenue. This work shall include periodic inspections of the trash rack during dry weather, and after rain events of 1-inch or more.
 - ii. The repair, maintenance and upkeep of the detention facility including the repair of erosion to the detention facility and open channel caused by storm events.
 - iii. The maintenance, inspection, repair and upkeep of the outlet structure.
 - iv. The dredging, maintenance, inspection, and upkeep of the lagoon; said dredging frequency not to exceed once every 10 years.
 - v. The City shall perform environmental remediation as necessary. However, the City may pursue any third responsible Party, excluding Milwaukee County, to recover such costs.
- c. County shall assume ownership of and be responsible for regular maintenance of the park and recreation amenity features outside of the storm water mitigation facilities and features i.e. those features not built for flood control and mitigation to include routine and regular lawn mowing, tree and shrub tending, trash, waste, and litter removal, maintenance of walkways, and maintenance of site furnishings.
- d. The parties agree that maintenance will be required on the detention facility, for the purposes of maintaining flood storage capacity. City assumes responsibility for the operation and maintenance of all infrastructure associated with the Storm Water Project.

3. Payment. No payments between City and County are anticipated in this MOU.

4. Reports. At the end of every six (6) month period during the Storm Water Project and park improvements, City shall provide a written report to County describing the progress made on the design or construction of the project during the preceding six (6) month period.

5. Materials. City shall furnish all materials, equipment, and supplies needed for the Storm Water Project and park improvements.

6. Independent Contractor. Nothing contained in this MOU shall constitute or be construed to create a partnership or joint venture between City or its successors or assigns and County or its successors or assigns. In entering into this MOU, and in acting in compliance herewith, City and County are at all times acting and performing as independent contractors, duly authorized to perform the acts required of them hereunder.

7. Small Business Enterprise and Resident Preference Program. The Small Business Enterprise (SBE) requirement for this project is xx% of the contract base bid. For a complete listing of City of Milwaukee certified SBE firms, see the Office of Small Business Development (OSBD) website at milwaukee.gov/osbd. The Resident Preference Program (RPP) requirement for this project is 40% of all hours worked on the project.

8. 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 wrongful, intentional or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representative 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 MOU shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.

9. Insurance. During the term of this Agreement, the City will keep in full force and effect a policy of general liability insurance or its equivalent and automobile insurance in an amount not less than \$1,000,000 combined single limit. Also, the City will maintain insurance coverage for worker's compensation (waiver of subrogation endorsement in favor of Milwaukee County) as required by the State of Wisconsin, including employer's liability. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. As its interests may appear, Milwaukee County will be named as an additional insured for general liability. The City will submit a certificate indicating the above coverages for review and approval by the County for the duration of this Agreement.

10. Exclusive Agreement. This MOU contains all the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties hereto, or to vary any of the terms contained herein. Any Amendments or revisions of this MOU shall be made in writing and executed by the Parties.

11. Contract Completion. The Parties agree that the Storm Water Project shall be substantially completed no later than December 31, 2018, excluding the Maintenance Plan requirements.

SIGATURE PAGE FOLLOWS:

DRAFT

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

CITY OF MILWAUKEE

By: _____ Date: _____
Name: Ghassan Korban, P.E.
Title: Commissioner of Public Works

Countersigned

By: _____ Date: _____
Name: Martin Matson
Title: Comptroller

Common Council File No. _____, adopted on _____.

City Attorney Approval/Authentication

By: _____
Name: _____
Assistant City Attorney
State Bar No: _____
Date: _____

MILWAUKEE COUNTY

By: _____
Name: John W. Dargle, Jr. CPRP
Title: _____

Reviewed by:

By: _____ Date: _____
Risk Management

Approved for execution:

By: _____ Date: _____
Corporation Counsel

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

By: _____ Date: _____
Comptroller

Approved:

By: _____ Date: _____
County Executive

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

By: _____ Date: _____
Corporation Counsel

DRAFT