

## LIMITED TERM CONSERVATION EASEMENT

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the first day of December 2018 by Milwaukee County (Landowner) to the Milwaukee Metropolitan Sewerage District (Easement Holder).

### RECITALS

**A. Property.** The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the Property). The Property is between North Humboldt Boulevard and the Milwaukee River, south of Capitol Drive, in Milwaukee, Wisconsin.

This Limited Term Conservation Easement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (Green Infrastructure). Exhibit C shows the area within the property that is subject to this Limited Term Conservation Easement.

**B. Conservation Values.** In its present state, the Property has conservation value because it has 3,536 square feet of bioswales and 8,891 square feet of native landscaping. This Green Infrastructure provides a total detention volume of 30,112 gallons.

**C. Baseline Documentation.** The condition of the Property and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation Values (Baseline Report), which is on file at the office of the Easement Holder and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Property at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

#### Recording Area

Name and Return Address:

Milwaukee Metropolitan  
Sewerage District  
Attention: Michael Hirsch  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204

Tax Key Number:

**274-9992-000**  
**274-9999-100**

**D. Public Policies.** The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic, and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

**E. Qualified Organization.** The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

**F. Conservation Intent.** The Landowner and Easement Holder share the common purpose of preserving the Conservation Values for a period of ten years. The Landowner intends to place restrictions on the use of the Property to protect those Conservation Values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

**G. Role of River Revitalization Foundation.** The Landowner and the River Revitalization Foundation executed an agreement effective May 23, 2017, in which the River Revitalization Foundation agreed to be responsible for maintenance of the Green Infrastructure. This agreement is incorporated into this easement as Exhibit D.

**G. Funding Provided by Easement Holder.** The Easement Holder has provided funding to the River Revitalization Foundation for the installation of the Green Infrastructure. The River Revitalization Foundation acknowledges the receipt and sufficiency of this funding.

#### GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily conveys to the Easement Holder a Conservation Easement (the Easement) for a period of ten years on the Property. This Easement consists of the following terms, rights, and restrictions:

**1. Purpose.** The purpose of this Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed on the Property, which is 3,536 square feet of bioswales and 8,891 square feet of native landscaping. This Green Infrastructure provides a total detention volume of 30,112 gallons.

**2. Effective Dates.** This Easement becomes effective on December 1, 2018, and terminates on November 30, 2028.

**3. Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.

**4. Operation and Maintenance.** The River Revitalization Foundation will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. The River Revitalization Foundation is solely responsible for operation, maintenance, and evaluating performance.

**5. Additional Reserved Rights of the Landowner.** The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the purpose of the Easement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions.

5.1 The encumbrance or conveyance is subject to the terms of this Easement.

5.2 The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.

5.3 The Landowner notifies the Easement Holder of any conveyance in writing within fifteen days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement or limit its enforceability in any way.

**6. Easement Holders Rights and Remedies.** To accomplish the purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies.

6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.

6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.

6.3 Enter the Property. The Easement Holder has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder will: provide prior notice to the Landowner before entering the Property, comply with the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's activities.

The Easement Holder will defend, protect, save, and keep the Landowner and its respective members, managers, employees, agents, invitees, and employees, and the holders of any mortgages on the Landowner's Property and their respective successors and assigns (collectively, the "Indemnified Parties") harmless and indemnified from any loss or expense by reason of liability for damages, including suits at law or in equity, brought by third parties and caused by any wrongful, intentional, or negligent act or omission of the Easement Holder that may arise out of or from any accident or occurrence on or near the Easement Area resulting from the use of the Easement Area by the Easement Holder. However, nothing in this Easement is a waiver of any otherwise applicable immunity, limited immunity, or limitation on liability available to the Easement Holder under Wisconsin law.

**7. Remedies for Violations.** The Easement Holder has the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively. The Easement Holder will notify River Revitalization Foundation and the Landowner of the problems and request remedial action within a reasonable time.

7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the Landowner fails to respond, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the Landowner are unsuccessful.

7.3 Remedies. When enforcing this Easement, the Remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property.

7.4 Enforcement Delays. A delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.

7.5 Waiver of Certain Defenses. The Landowner and the River Revitalization Foundation hereby waive any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.



7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner or the River Revitalization Foundation for any injury or change in the Property resulting from causes beyond their control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from these causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of this Easement.

## **8. General Provisions.**

8.1 Amendment. The parties may amend this Easement in a written instrument executed by the parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder, it:

- a. diminishes the Conservation Values of the Property,
- b. is inconsistent with the purpose of the Easement,
- c. affects the duration of the Easement, or
- d. affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign, or transfer its interests in this Easement to a unit of federal, state, or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement. Ambiguities in this Easement shall be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Property.

- 8.5 Counterparts. The parties may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties. Each counterpart shall be considered an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 8.6 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.
- 8.7 Extinguishment. This Easement may be terminated or extinguished before the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) exercise of the power of eminent domain or purchase in lieu of condemnation takes all or part of the Property or (b) the Landowner and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.
- 8.8 Ownership Responsibilities, Costs and Liabilities. The Landowner and the River Revitalization Foundation retain all responsibilities and will bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:
- a. *Operation, upkeep, and maintenance*. The Landowner and the River Revitalization Foundation are responsible for the operation, upkeep, and maintenance of the Property.
  - b. *Control*. In the absence of a judicial decree, nothing in this Easement establishes any right or ability in the Easement Holder to:
    - (i) exercise physical or managerial control over the day-to-day operations of the Property;
    - (ii) become involved in the management decisions of the Landowner regarding the generation, handling, or disposal of hazardous substances; or
    - (iii) otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.
  - c. *Permits*. The Landowner and the River Revitalization Foundation are solely responsible for obtaining applicable government permits and approvals for any

construction or other activity or use permitted by this Easement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations, and requirements.

- d. *Indemnification.* The Landowner and the River Revitalization Foundation release and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with:
- (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
  - (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property;
  - (iii) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.
- e. *Taxes.* Before delinquency, the Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “Taxes”), including any taxes imposed upon or incurred in response to this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

8.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement shall remain valid and binding.

8.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the Property for the term of the Easement.

8.13 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.14 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner and the Property comply with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;
- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
- c. The person signing this Easement has authority to grant this Conservation Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As the County Executive of Milwaukee County, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Chris Abele, Milwaukee County Executive

By: \_\_\_\_\_  
George L. Christenson, Milwaukee County Clerk

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the persons known as Chris Abele and George L. Christenson of Milwaukee County, a municipal corporation, came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, State of \_\_\_\_\_

My Commission expires \_\_\_\_\_.

Approved as to Form by:

\_\_\_\_\_  
Milwaukee County Office of Corporation Counsel

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

Kevin L. Shafer, P.E.  
Executive Director

Approved as to Form: \_\_\_\_\_  
Attorney for the District

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the person known as Kevin L. Shafer  
came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, State of \_\_\_\_\_

My Commission expires \_\_\_\_\_.

## ACKNOWLEDGMENT BY RIVER REVITALIZATION FOUNDATION

The River Revitalization Foundation acknowledges and accepts the terms of the foregoing

Limited Term Conservation Easement on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Kimberly A. Gleffe  
Executive Director

Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this limited term conservation easement.

## ATTACHMENTS

EXHIBIT A Description of the Property

EXHIBIT B Map Showing the Location of the Property

EXHIBIT C Map Showing the Areas Within the Property Subject to this Easement

EXHIBIT D Agreement between the Milwaukee County Department of Parks Recreation and Culture and the River Revitalization Foundation

EXHIBIT A  
DESCRIPTION OF THE PROPERTY

**Tax Key:** 274-9992-000

**Legal Description:** LANDS IN NW 1/4 SEC 9-7-22 BETW MILW RIVER, 1/4 SEC LINE  
ON E & RESERVED LAND (FORMERLY BLK 1 VILL OF  
HUMBOLDT)

**Tax Key:** 274-9999-100

**Legal Description:** RESERVED LAND IN NW 1/4 SEC 9-7-22 RESERVED LAND  
BOUNDED BY E LI 1/4 SEC-NELY LI N HUMBOLDT AVE-SLY LI  
E CAPITOL DR & LANDS FORMERLY BLK 1 VILLAGE OF  
HUMBOLDT VACATED



EXHIBIT B  
MAP SHOWING THE LOCATION OF THE PROPERTY

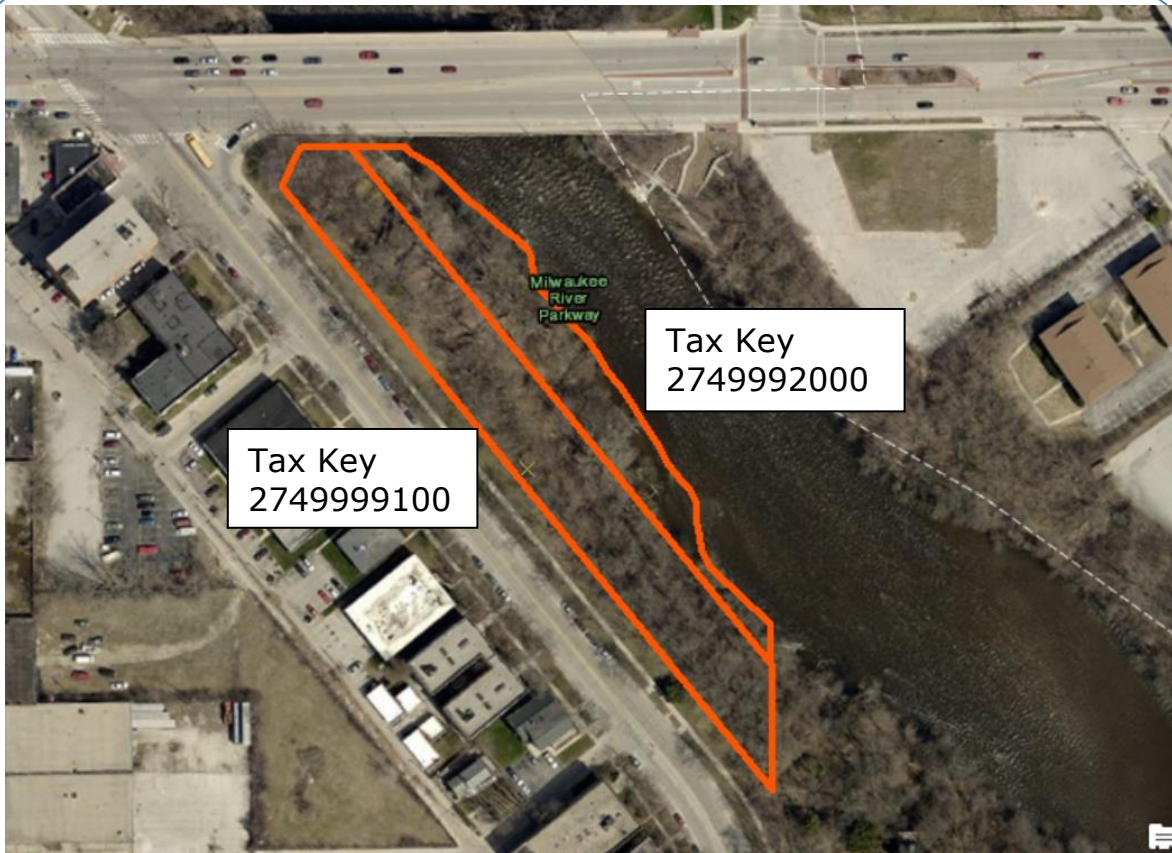
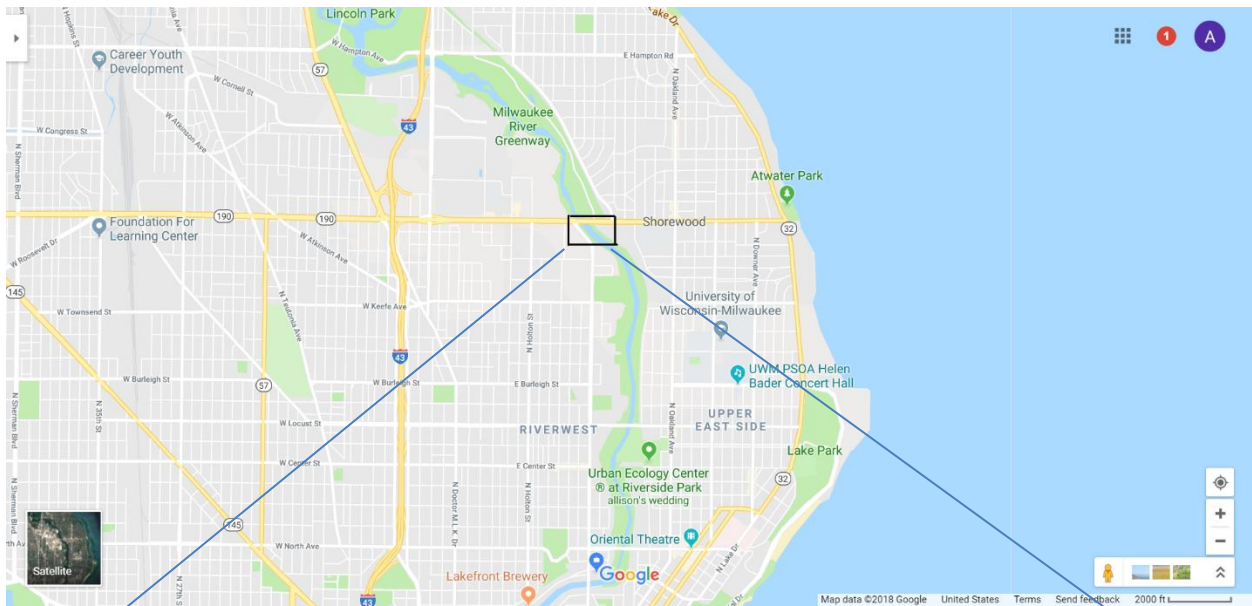
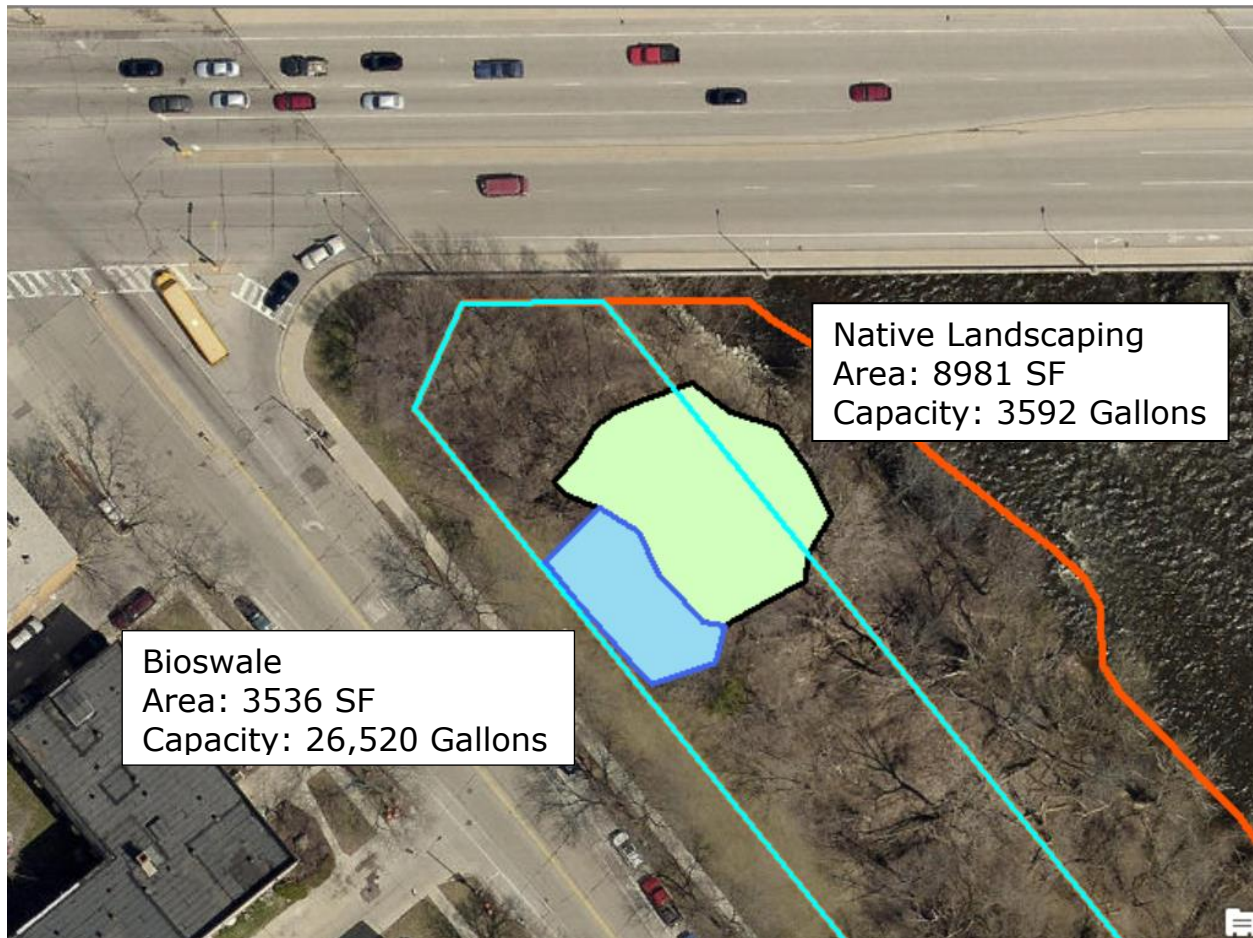


EXHIBIT C  
MAP SHOWING THE AREAS WITHIN THE PROPERTY SUBJECT TO THIS EASEMENT



**EXHIBIT D**  
**AGREEMENT BETWEEN THE MILWAUKEE COUNTY DEPARTMENT OF PARKS  
RECREATION AND CULTURE AND THE RIVER REVITALIZATION FOUNDATION**

DocuSign Envelope ID: C2C5F40A-7A79-433D-AB8A-0E2DBFA4408A

**SERVICES AGREEMENT**  
**BETWEEN**  
**MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE**  
**AND**  
**RIVER REVITALIZATION FOUNDATION**

This services agreement ("Agreement") is made and entered into effective April 1, 2017 by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and the RIVER REVITALIZATION FOUNDATION (the "Contractor"). Referenced together, the County and the Contractor are the "Parties" to this Agreement.

**RECITALS**

**WHEREAS**, in January 2016, the Contractor commissioned a report to analyze the current conditions of the Humboldt Boulevard west of the Milwaukee River and propose solutions to the damages from the 2010 rain storms that caused massive erosion and carved out large eroded slumps along the bluff; and

**WHEREAS**, the Contractor is stabilizing the slope through a multi-phased process to provide long-term riparian and instream habitat, while creating the capacity for human use, and enhancing ecosystem services; and

**WHEREAS**, on February 2, 2017 the Milwaukee County Board of Supervisors authorized the Department of Parks, Recreation, and Culture to award a \$50,000 Parks Amenities Matching Fund award to the Contractor to support the project to restore the bluff near Humboldt Boulevard and Capital Drive along the Milwaukee River (EXHIBIT A). These funds will be matched by \$168,100 from grants in a segregated fund for the purposes of this project; and

**WHEREAS**, the State of Wisconsin (the "State"), Department of Administration, administers the Wisconsin Coastal Management Program and the State has granted the County a Wisconsin Coastal Management Grant in the amount of \$75,840 (the "Grant") dated July 1, 2016 (Grant Number AD169127-017.01) to support the work of the Contractor and help mitigate the bluff erosion. These funds will be matched by \$113,760.00 for eligible activities described in the attached Exhibit B (Exhibit B, Attachment A, Page 4); and

**WHEREAS**, the Milwaukee Metropolitan Sewerage District (MMSD), the County and the Contractor entered into an Agreement on October 20, 2015 whereby MMSD will fund, in the amount of \$48,100, the installation of approximately 5,350 square feet of bioswale, 750 square feet of permeable pavers, and 24,000 square feet of native landscaping, providing a total retention capacity of approximately 51,975 gallons of Stormwater (EXHIBIT C); and

**WHEREAS**, the Contractor assumes all rights, responsibilities, fiscal and maintenance

obligations under the above mentioned Exhibits A, B, and C; and

**WHEREAS**, the Parties to this Agreement have common interests and concerns which they wish to advance and protect with respect to the bluff; and

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

### **AGREEMENT**

**1) INCORPORATION BY REFERENCE:**

All of the “Whereas” clauses contained in the Recitals of the Exhibits are incorporated herein by reference and made a part of this Agreement.

**2) SCOPE OF SERVICES:**

(a) Contractor shall specifically perform all of the responsibilities and meet all requirements set forth in the Exhibits A, B and C.

(b) Contractor’s project outcomes shall include:

- (i) 500 linear feet of river bluff repaired and revegetated
- (ii) 2.5 acres of habitat restored with native species
- (iii) Improved access to the river and trail connection
- (iv) Increased diversity of native plants species

(c) The Parties agree that the Contractor is responsible for managing, maintaining, improving, repairing, and / or supervising all maintenance obligations of the Bluff as they pertain to this Agreement for a period of ten years.

(d) The Contractor shall obtain a Right of Entry Permit from County prior to commencing any construction, improvement or maintenance activities on parkland. Prior to the start of any installation, construction or renovation of the Premises, including any subsequent alterations or renovations to the Project, the Contractor shall submit acceptable 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 proposed contractor(s), for review and approval. Prior to any work the Contractor shall do a site walk with Milwaukee County Parks Department Natural Areas and Planning teams.

(e) Construction Documents. The Contractor agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, the Contractor shall provide to County a complete set of construction documents to be included as a minimum: (i) as-built drawings; (ii) a copy of all work orders and change orders; (iii) a copy of all lien-waivers; (iv) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (v) manufacturer’s warranties or extended warranties; (vi) a copy of all construction permits and signed drawings; (vii) City of Milwaukee final occupancy permits, if applicable.



(e) All development and landscaping shall be completed in a quality manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. The Contractor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other Party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of the Contractor. Any structures, alterations, additions or improvements installed on the Premises by the Contractor shall become the property of County upon the County's acceptance of such structures, alterations, additions or improvements. In no event shall the Contractor make any alterations or additions to the Premises without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter.

(f) The Contractor or their 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 and the Premises are ready for occupancy. Prior to construction, the Contractor shall supply the Parks Director with written evidence of Builder's Risk insurance. The Contractor shall not commence construction activities without written approval from the Parks Director or the Director's designee. The Parks Director shall provide a written response to the Contractor within thirty (30) days of receiving written evidence of the Contractor's Builder's Risk insurance documents.

(g) The Contractor agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. The Contractor shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of the Contractor by County. The Contractor shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

(h) Services to be performed and activities related to these services may be changed, enhanced, or deleted from time to time throughout the term of this Agreement upon mutual agreement between the Parties.

(i) These services are provided pursuant to Grant Number AD169127-017.01, issued by the State of Wisconsin, Department of Administration and governed by that certain Grant Agreement between the State and the County dated July 1, 2016 (the "Underlying Agreement").

3) **STAFFING:**

Contractor shall provide, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of the County. Contractor shall also provide pertinent experience in outreach and education techniques and any necessary certifications earned.

4) **TERM:**

The term of this Agreement shall commence on the Effective Date and terminate on June 30, 2017.

5) **COMPENSATION:**

(a) Contractor shall be paid an amount not to exceed \$50,000 as allotted by Parks Amenities Matching Funds paid pursuant to the Exhibit A Agreement. This shall be a one-time payment and shall be made payable upon the execution of this Agreement.

(b) Contractor shall be paid an amount not to exceed \$75,840.00 as allotted by grant funds paid pursuant to the Underlying Exhibit B Agreement. The compensation set forth in this Section 5 shall be the sole amount payable to Contractor by County during the term. Contractor shall submit invoices on a quarterly basis for services rendered for the previous month. No eligible costs subject to reimbursement by this Grant may be incurred prior to the execution of this Agreement and the execution of Grant Number AD169127-017.01.

(c) Contractor shall be paid an amount not to exceed \$48,100 as allocated by Milwaukee Metropolitan Sewerage District (MMSD) Green Infrastructure Funding Agreement M03064P18 directly by MMSD.

(c) County shall reimburse the Contractor for eligible costs only after the State of Wisconsin Department of Administration reimburses the County for eligible costs under the Contract.

(c) As a matter of practice, the County attempts to pay all invoices in 30 days after reimbursement. If there is any contested billing, County shall pay the uncontested amount within 30 days. Contractor shall provide County with monthly billings, which shall include, but not be limited to, the following:

1. Name
2. Dates and hours worked
3. General task performed from the Scope of Work
4. The percentage of project completion and punch-list of tasks completed and tasks remaining each month
5. Total equipment, material, labor and benefit costs

(d) The Contractor shall provide the County with quarterly reports describing the progress of the work being performed. Additionally, the Parties shall continually address and communicate their observations plus any specific issues requested by the County.

6) **OWNERSHIP OF DATA:**

(a) Upon completion of the work or upon termination of the Agreement, it is understood that all completed or partially completed data, drawings, records, computation, survey information, and all other material that the Contractor has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of County. Therefore, any reports, information and data, given to, prepared or assembled by the Contractor under this Agreement shall not be made available to any individual or organization by the Contractor without the prior written approval of County.

(b) No reports or documents produced in whole or in part under this Agreement shall be the

subject of an application for copyright by or on behalf of the Contractor.

7) **BUSINESS PERMITS, CERTIFICATES, LICENSES:**

Contractor acknowledges that it will comply with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.

8) **REPRESENTATIONS:**

Contractor represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional community practicing under similar conditions at the same time and in the same or similar locality.

9) **AUDIT AND INSPECTION OF RECORDS:**

Pursuant to Milwaukee County ordinance section 56.30(6)(e), Contractor shall allow Milwaukee County, the Milwaukee County Division of Audit, or any other party Milwaukee County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by the Contractor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to Milwaukee County. Any subcontracting by the Contractor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Contractor. The Contractor (or any subcontractor) shall maintain and make available to Milwaukee County the aforementioned audit information for no less than three (3) years after the conclusion of each Agreement term.

10) **INDEMNIFICATION:**

The Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omissions of the Contractor, its agents or employees which may arise out of or are connected with the activities covered by this Agreement. Contractor 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.

11) **INSURANCE:**

Contractor agrees to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation law and/or vicarious liability arising from employees. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including Employer's Liability and insurance covering General and Automobile Liability coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	
Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate
Automobile Liability	
Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements
Wisconsin Workers' Compensation or Proof of All States Coverage	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000

Milwaukee County, as its interests may appear, shall be named as an additional insured for General and Automobile Liability, and be afforded a thirty (30) day written notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Agreement.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

**12) INDEPENDENT CONTRACTOR:**

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors or assigns and Contractor or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

**13) TERMINATION:**

County or Contractor may terminate this Agreement at any time upon thirty (30) days written notice from one party to the other subject to the terms and conditions of the Grant. In the event of termination, the County will only be liable for services rendered through the date of termination



and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Agreement.

14) **SUBCONTRACTS:**

Assignment of any portion of the work by subcontract must have the prior written approval of the County.

15) **ASSIGNMENT LIMITATION:**

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligation hereunder without the prior written consent of the other.

16) **PROHIBITED PRACTICES:**

(a) Contractor, during the period of this Agreement, shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest.

(b) Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

17) **NOTICES:**

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Contractor:

River Revitalization Foundation (RRF)  
Aaron Zeleske, Milwaukee River Greenway Dir.  
2134 N Riverboat Road  
Milwaukee, WI 53212

To County:

Milwaukee County Department of Parks  
Jill Organ, Chief of Planning & Development  
9480 Watertown Plank Rd  
Wauwatosa, WI 53226

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

18) **MISCELLANEOUS:**

This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractor acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

*Signature page follows*

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

**River Revitalization Foundation**

DocuSigned by:  
by Kimberly Gleffe Date 5/23/2017  
196E6745DD6C469  
Kimberly A. Gleffe, Executive Director

**Milwaukee County Dept. of Parks, Recreation & Culture**

DocuSigned by:  
by John Dargle, Jr. Date 4/19/2017  
B44814D7B4E442A  
John Dargle, Jr., CPRP, Director

*Approved with regards to County Ordinance Chapter 42:*

DocuSigned by:  
By: Rick Norris Date: 4/4/2017  
AD4C83D4A22E453  
Community Business Development Partners

*Approved:*

*Approved as to funds available per*

*Wisconsin Statutes Section 59.255 (2)(e):*

DocuSigned by:  
By: Chris Abele Date: 4/19/2017  
2E58B0B0E4E  
County Executive Chris Abele

DocuSigned by:  
By: Scott B. Manske Date: 4/11/2017  
Cmptrmr Scott B. Manske

*Approved as to form and independent status:*

*Reviewed by:*

DocuSigned by:  
By: Paul D. Kuglitsch Date: 4/10/2017  
2E58B0B0E4E  
County Corporation Counsel

DocuSigned by:  
By: Paul Schwegel Date: 4/5/2017  
2E58B0B0E4E  
County Risk Management

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

DocuSigned by:  
By: Paul D. Kuglitsch Date: 5/26/2017  
2E58B0B0E4E  
County Corporation Counsel

**EXHIBIT A**  
**(File No. 17-122)**

File No. 17-122

From the Director, Department of Parks, Recreation, and Culture, requesting authorization to approve a Parks Amenities Matching Fund request from the River Revitalization Foundation, in the amount of \$50,000, for the repair of a section of the bluff above the Milwaukee River that was damaged during the 2010 rain storms, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, in January 2016, the River Revitalization Foundation (the Foundation) commissioned a report to analyze the current conditions of the bluff west of the Milwaukee River and propose solutions to the damages from the 2010 rain storms that caused massive erosion and carved out large eroded slumps along the bluff; and

WHEREAS, the Foundation is stabilizing the slope through a multi-phased process to provide long-term riparian and instream habitat, while creating the capacity for human use, and enhancing ecosystem services; and

WHEREAS, the Committee on Parks, Energy, and Environment, at its meeting of January 24, 2017, recommended adoption of File No. 17-122 (vote 4-0); now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby authorizes the Director, Department of Parks, Recreation, and Culture, to award a \$50,000 Parks Amenities Matching Fund award to the River Revitalization Foundation to support the project to restore the bluff near Humboldt Boulevard and Capitol Drive along the Milwaukee River.

ars  
01/24/17

**EXHIBIT B**

**(See Grant Agreement Number AD169127-017.03)**

Grant No. AD169127-017.01

**GRANT AGREEMENT  
BETWEEN THE  
  
STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF INTERGOVERNMENTAL RELATIONS  
WISCONSIN COASTAL MANAGEMENT PROGRAM  
  
AND  
  
MILWAUKEE COUNTY**

**THIS AGREEMENT** is made and entered into by and between the Division of Intergovernmental Relations ("Division"), Department of Administration ("Department"), representing the State of Wisconsin (collectively "State"), and **MILWAUKEE COUNTY** ("Grantee") with a DUNS Number of 172896383, for the Performance Period of the date this agreement is signed by the State through **June 30, 2017**.

**WHEREAS**, on behalf of the State, the Department administers the Wisconsin Coastal Management Program ("Program") through the Division to provide funds for eligible activities; and

**WHEREAS**, it is the intention of the parties to this Agreement that all activities described herein shall be for their mutual benefit; and

**WHEREAS**, the State has approved an award to the Grantee in the amount of **Seventy-Five Thousand Eight Hundred Forty Dollars (\$75,840.00)** and the Grantee agrees to provide **One Hundred Thirteen Thousand Seven Hundred Sixty Dollars (\$113,760.00)** for eligible activities herein described; and

**WHEREAS**, the terms and conditions herein shall survive the Performance Period and shall continue in full force and effect until the Grantee has completed and is in compliance with all the requirements of this Agreement; and

**WHEREAS**, this Agreement is mutually exclusive and is distinguished from all previous Agreements between the Grantee and the State and contains the entire understanding between the parties;

**NOW, THEREFORE**, in consideration of the mutual promises and dependent documents, the parties hereto agree as follows:

The following documents are part of this Agreement:

- 1) This Agreement (including all attachments)
- 2) Grantee's Proposal (as accepted by the State) See Attachment A

**MILWAUKEE COUNTY**

**STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF INTERGOVERNMENTAL  
RELATIONS**

**BY:** \_\_\_\_\_  
**John Dargle**

**BY:** \_\_\_\_\_  
**Dawn Vick**

**TITLE:** Director

**TITLE:** Administrator

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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## GENERAL TERMS AND CONDITIONS

### **ARTICLE 1. CONTRACT ADMINISTRATION**

The Division employee responsible for the administration of this Agreement shall be **Travis Olson**, or their designee and who shall represent the Department's interest in review of quality, quantity, rate of progress, timeliness of services, and related considerations as outlined in this Agreement.

The Grantee's employee responsible for the administration of this Agreement shall be **John Dargle**, who shall represent the Grantee's interest regarding Agreement performance, financial records and related considerations. The Division shall be immediately notified of any change of this designee.

### **ARTICLE 2. APPLICABLE LAW**

This Agreement shall be governed by the Laws of the State of Wisconsin and the United States. In addition, the Grantee pledges to abide by and comply with the following requirements:

1. Grant funds shall not be used to supplant existing funding otherwise budgeted or planned for projects outside of this program whether under local, state or federal law, without the consent of the State.
2. The Grantee, its agents and employees shall observe all relevant provisions of the Ethics Code for Public Officials under Wis. Stat. Secs. 19.41 *et seq* and 19.59 *et seq*.

### **ARTICLE 3. LEGAL RELATIONS AND INDEMNIFICATION**

The Grantee shall at all times comply with and observe all federal and state laws and published circulars, local laws, ordinances, and regulations which are in effect during the Performance Period of this Agreement and which in any manner affect the work or its conduct.

In carrying out any provisions of this Agreement or in exercising any power or authority contracted to the Grantee thereby, there shall be no personal liability upon the State, it being understood that in such matters the Division and the Department act as agents and representatives of the State.

The Grantee shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Grantee, or of any of its agents or subrecipients, in performing work under this Agreement. The Grantee shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between Grantee and subrecipient(s) to perform services or otherwise supply products or services. The Grantee shall also hold the State harmless for any audit disallowance related to the allocation of administrative costs under this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by the courts.

If an audit is required by federal law and if the Grantee is also the recipient of State funds under the same or a separate contract program, then the State funded programs shall also be included in the scope of the federally required audit.

### **ARTICLE 4. SCOPE OF WORK**

1. The Grantee shall supply or provide for all the necessary personnel, equipment, and materials (except as may be otherwise provided herein) to accomplish the tasks set forth on the attached Scope of Work (Attachment A). In the event of a conflict between the summary in Attachment A and the application and/or other supporting documents previously submitted to the State by the Grantee, Attachment A shall control. Changes to the Scope of Work may be made only by written agreement of both the State and the Grantee.



**Grant No. AD169127-017.01**

2. Special Requirements apply to public access, land acquisition and habitat restoration projects and are detailed in Attachment C.
3. Work Products - The Grantee shall complete all work tasks that they committed to in their application submission (Attachment A). Failure to meet this requirement may result in termination of this contract under "Cancellation for Cause", Article 12 of this contract.

**ARTICLE 5. PERIOD OF PERFORMANCE**

The effective period of this Agreement shall be for the period **July 1, 2016** through **June 30, 2017** (the "Performance Period").

**ARTICLE 6. STANDARDS OF PERFORMANCE**

The Grantee shall perform the project and activities as set forth in the Contract Application and described herein in accordance with those standards established by statute, administrative rule, the Division, and any applicable professional standards.

**ARTICLE 7. SUBLET OR ASSIGNMENT OF AGREEMENT**

The Grantee, its agents, subgrantees or subcontractors shall not sublet or assign all or any part of the work under this Agreement without prior written approval of the State. The State reserves the right to reject any subcontractor or subgrantee after notification. The Grantee shall be responsible for all matters involving any subcontractor or subgrantee engaged under this Agreement, including grant compliance, performance, and dispute resolution between itself and a subcontractor or subgrantee. The State bears no responsibility for subcontractor or subgrantee compliance, performance, or dispute resolution hereunder.

**ARTICLE 8. DISCLOSURE: STATE PUBLIC OFFICIALS AND EMPLOYEES**

If a State public official (as defined in section 19.42, Wis. Stats.) or an organization in which a State public official holds at least a 10% interest is a party to this Agreement, this Agreement shall be voided by the State unless timely, appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Ave., Third Floor, Madison, Wisconsin 53703.

The Grantee shall not engage the services of any person or persons now employed by the State, including any department, commission or board thereof, to provide services relating to this Agreement without the prior written consent of the State and the employer of such person or persons.

**ARTICLE 9. NONDISCRIMINATION IN EMPLOYMENT**

The Grantee shall not 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 as defined in s.111.32(13m), Wis. Stats., or national origin. This includes, but is not limited to, 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 Grantee shall take affirmative action to ensure equal employment opportunities. The Grantee shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the State setting forth the provisions of the nondiscrimination clause.

Grants estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Grantee. An exemption occurs from this requirement if the Grantee has a workforce of less than fifty (50).

Within fifteen (15) working days after this Agreement is executed, the Grantee shall submit the Affirmative Action Plan/exemption statement to the Department of Administration, State Bureau of Procurement, PO Box 7867, Madison, WI 53707, unless compliance eligibility is current. No extensions of this deadline shall be granted.

**Grant No. AD169127-017.01**

Grantee is encouraged to contact this office at (608) 266-2605 for technical assistance on Equal Opportunity requirements.

Failure to comply with the conditions of this clause may result in the declaration of Grantee ineligibility, the termination of this Agreement, or the withholding of funds.

**ARTICLE 10. SMALL BUSINESS AND MINORITY-OWNED BUSINESSES**

The Grantee shall make positive efforts to utilize small business and minority-owned business sources of supplies and services. Such efforts shall allow these sources the maximum feasible opportunity to compete for contracts or subcontracts to be performed utilizing state or federal funds.

**ARTICLE 11. TERMINATION AT WILL**

The Division may terminate this Agreement at any time with or without cause by delivering written notice to the Grantee by Certified Mail, Return Receipt Requested, not less than 30 days prior to the effective date of termination. Date of receipt as indicated on the Return Receipt shall be the effective date of notice of termination. Upon termination, the State's liability shall be limited to the actual costs incurred in carrying out the project as of the date of termination plus any termination expenses having prior written approval of the State.

The Grantee may terminate this Agreement with or without cause by delivering written notice to the Division by Certified Mail, Return Receipt Requested, not less than 30 days prior to effective date of termination. Date of receipt, as indicated on the Return Receipt, shall be the effective date of notice of termination. Upon receipt of termination notice, the Grantee shall make available to the Division program records, equipment, and any other programmatic materials. In the event the Agreement is terminated by either party, for any reason whatsoever, the Grantee shall refund to the Division within forty-five (45) days of the effective date of notice of termination any payment made by the Division to the Grantee which exceeds actual approved costs incurred in carrying out the project as of the date of termination.

**ARTICLE 12. TERMINATION FOR NONAPPROPRIATION**

The State reserves the right to terminate this Agreement in whole or in part without penalty due to nonappropriation of necessary funds by the Legislature or the Federal Government.

**ARTICLE 13. FAILURE TO PERFORM**

The State reserves the right to suspend payment of funds if required reports are not provided to the State on a timely basis or if performance of grant activities is not evidenced. The State further reserves the right to suspend payment of funds under this Agreement if there are deficiencies related to the required reports or if performance of contracted activities is not evidenced on other contracts between the State and the Grantee in whole or in part.

The Grantee's management and financial capability including, but not limited to, audit results and performance may be taken into consideration in any or all future determinations by the State and may be a factor in a decision to withhold payment and may be cause for termination of this Agreement.

**ARTICLE 14. PUBLICATIONS**

The Grantee may publish materials produced under this Agreement subject to the following conditions:

- a) All materials produced under this Agreement shall become the property of the Department of Administration and may be copyrighted in its name. The Grantee reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use such materials for government purposes.

**Grant No. AD169127-017.01**

- b) All reports, studies, videos, websites or other documents resulting from this contract shall acknowledge the financial assistance provided by the Department. The following notation shall be carried on all articles, reports, publications or other documents resulting from this Agreement.

*"This (article, report, publication or document) is funded (in whole or in part) by the Wisconsin Department of Administration, Wisconsin Coastal Management Program and the National Oceanic and Atmospheric Administration under the terms and conditions of this Agreement." (see Attachment B for further guidance).*

#### **ARTICLE 15. AMENDMENT**

This Agreement may be amended at any time by mutual consent of the parties hereto. Amendments shall be documented by written, signed and data addenda.

#### **ARTICLE 16. SEVERABILITY**

If any provision of this Agreement shall be adjudged to be unlawful or contrary to public policy, then that provision shall be deemed null and void and severable from the remaining provisions, and shall in no way affect the validity of this Agreement.

#### **ARTICLE 17. WAIVER**

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

#### **ARTICLE 18. FORCE MAJEURE**

Either party's performance of any part of this Agreement shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of that party. If any such event occurs, the nonperforming party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

#### **ARTICLE 19. EXTRA WORK**

If the State desires to have the Grantee perform work or render services other than provided for by the expressed intent of this Agreement such work shall be considered as Extra Work, subject to written amendment to this Agreement setting forth the nature and scope thereof and the compensation therefor as determined by mutual agreement between the State and the Grantee. Work under such amendment shall not proceed unless and until so authorized by the State. Any such continuance of service which would cause compensation to exceed the total amount of this Agreement shall be contingent upon the above provision and the appropriation of necessary funds by the Legislature.

#### **ARTICLE 20. LABOR STANDARDS**

The Grantee shall comply with and assure compliance of all Project contractors and subcontractors with the Davis-Bacon Act, as amended 40 U.S.C. 3141-3148, the Contract Work Hours and Safety Standards Act 40 U.S.C. 3701-3708, other applicable Federal laws and regulations pertaining to labor standards, and the Labor Standards section of the Implementation Handbook.

Grant No. AD169127-017.01

**ARTICLE 21. CHOICE OF LAW AND VENUE**

In the event of a dispute this Agreement shall be interpreted in accordance with the laws of the State of Wisconsin, to the extent that there is no conflict with Federal law or applicable program requirements. The venue for any dispute shall be Dane County, Wisconsin.

**FISCAL TERMS AND CONDITIONS**

**ARTICLE 22. AVAILABILITY OF FUNDS**

Funds have been appropriated by the Wisconsin Legislature or received from the Federal Government for the services covered under this Agreement.

**ARTICLE 23. SOURCE OF FUNDS**

Federal funds for this grant by the Wisconsin Coastal Management Program are authorized by the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*; 31 U.S.C. 6506; 42 U.S.C. 3334; and 15 CFR Part 923). The U.S. Department of Commerce, National Oceanic and Atmospheric Administration awards funding to the state through "Coastal Zone Management Administration Awards", listed in the Catalog of Federal Domestic Assistance (CFDA) under number 11.419.

The funds awarded under this contract have been encumbered and are subject to the continued availability of funding from the National Oceanic and Atmospheric Administration, through Award Number **NA16NOS4190108**. The pass-through entity is the Wisconsin Department of Administration, and the awarding official is Director, Grants Management Division, NOAA.

**ARTICLE 24. VARIANCES**

Variances to the budget outlined in Attachment A may be permissible as long as the transfer of funds among cost categories does not exceed 10 percent of the current total award. If the transfer of funds is above 10 percent of the total award, the changes shall be approved by the Division in writing. A variance shall not be used to authorize a revision of the amount awarded or a change in the performance period. Such changes shall be made by amendment to the Agreement.

**ARTICLE 25. LIMITATION ON COSTS**

Reimbursement by the Department shall be **40%** of the total cost or not to exceed **Seventy-Five Thousand Eight Hundred Forty Dollars (\$75,840.00)**. The Grantee shall provide **60%** of the total cost, or **One Hundred Thirteen Thousand Seven Hundred Sixty Dollars (\$113,760.00)**. See itemized budget in Attachment A.

**ARTICLE 26. ELIGIBLE COSTS**

Eligible Costs are those costs which can be audited and which are directly attributable to grant activities and identified and approved in Attachment A.

1. No Eligible Costs subject to reimbursement by this Grant may be incurred prior to the execution of this Agreement.
2. Costs only as identified in the Budget and described in the Scope of Work are allowed.
3. All methods of charging expenses against this Agreement shall be submitted for review and approval by the State.

**ARTICLE 27. ALLOWABLE COSTS**

**Grant No. AD169127-017.01**

Office of Management and Budget (OMB) Uniform Guidance, Subpart E (codified at 2 CFR Part 200), shall be complied with by the grantee with respect to specific items and their cost allowability.

**ARTICLE 28. REIMBURSEMENT OF FUNDS**

The Grantee shall return to the State or other appropriate governmental agency or entity any funds paid to the Grantee in excess of the allowable eligible costs under this Agreement. If the Grantee fails to return excess funds, the State may deduct the appropriate amount from subsequent payments due to the Grantee from the State. The State also reserves the right to recover such funds by any other legal means including litigation if necessary.

The Grantee shall be responsible for reimbursement to the State for any disbursed funds, which are determined by the State to have been misused or misappropriated. The State may also require reimbursement of funds if the State determines that any provision of this Agreement has been violated. Any reimbursement of funds which is required by the State, with or without termination, shall be due within forty-five (45) days after giving written notice to the Grantee.

**ARTICLE 29. LIMITED USE OF PROGRAM FUNDS**

This Agreement is a mutually exclusive Agreement. The Grantee shall not apply funds authorized pursuant to other Program Agreements toward the activities for which funding is authorized by this Agreement nor shall funding authorized by this Agreement be used toward the activities authorized pursuant to other Program Agreements. The word "funds" as used in this Article does not include Program income.

**ARTICLE 30. FINANCIAL MANAGEMENT**

The Grantee agrees to maintain a financial management system that complies with the rules and regulations required by the Program funding source described in ARTICLE 23 and with standards established by the State to assure funds are spent in accordance with law and to assure that accounting records for funds received under this Agreement are sufficiently segregated from other Agreements, programs, and/or projects.

**ARTICLE 31. METHOD OF PAYMENT**

Payment shall be by the Department to the Grantee upon receipt of **quarterly** invoices submitted on the required reimbursement form and sent to the following address:

Coastal Management Grants Specialist  
Department of Administration  
Division of Intergovernmental Relations  
101 East Wilson Street, 9<sup>th</sup> Floor  
PO Box 8944  
Madison, WI 53708-8944

- a) Invoices shall reflect eligible costs incurred by approved Budget line item. Invoices shall be accompanied by written documentation of eligible costs. The Department shall make payment if it determines that the Grantee is making satisfactory progress in completing the project tasks based on the Grantee's progress report submitted at the same time as the invoice.
- b) Final invoice shall be submitted to the Department no later than (60) days following close of the Agreement.

**ADMINISTRATIVE TERMS AND CONDITIONS**

**ARTICLE 32. SINGLE AUDIT REQUIREMENT**

The Grantee shall have a certified annual audit performed utilizing Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.

Grant No. AD169127-017.01

**Federal Funded Awards:**

**Governmental and Non-profit Grantees**, or their assignees, that **expend** federal funds during their fiscal year shall comply with Subpart F of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 C.F.R. Part 200), and the State Single Audit Guidelines issued by the Department. Audit reports are due to the Federal Audit Clearinghouse within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

**State Funded Awards:**

**NOTE:** If an audit is required under the Omni Circular Subpart F as described above, then this section does not apply as State Funded Awards will already be included in that audit.

**Governmental and Non-profit Grantees**, or their assignees, which **received** state funds during their fiscal year, shall comply with the requirements set forth in the State Single Audit Guidelines issued by the Department. Audit reports are due to the State within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

**Submit To:**

Please review the Department of Administration's Single Audit Compliance Supplement for details on submission of the reporting package (<http://www.doa.state.wi.us/divisions/budget-and-finance/financial-reporting/state-controllers-office/state-single-audit-guidelines>).

**ARTICLE 33. EXAMINATION OF RECORDS**

The Division, any of its authorized representatives and the U.S. Government shall have access to and the right at any time to examine, audit, excerpt, transcribe and copy on the Grantee's premises any directly pertinent records and computer files of the Grantee involving transactions relating to this Agreement. Similarly, the State shall have access at any time to examine, audit, test and analyze any and all physical projects subject to this Agreement. If the material is held in an automated format, the Grantee shall provide copies of these materials in the automated format or such computer file as may be requested by the State. Such material shall be retained for three years by the Grantee following final payment on the Agreement.

This provision shall also apply in the event of cancellation or termination of this Agreement. The Grantee shall notify the State in writing of any planned conversion or destruction of these materials at least 90 days prior to such action. Any charges for copies provided by the Grantee of books, documents, papers, records, computer files or computer printouts shall not exceed the actual cost thereof to the Grantee and shall be reimbursed by the State.

The minimum acceptable financial records for the project consist of: 1) Documentation of employee time; 2) Documentation of all equipment, materials, supplies and travel expenses; 3) Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope; 4) Documentation and justification of methodology used in any in-kind contributions; 5) Rationale supporting allocation of space charges; 6) Rationale and documentation of any indirect costs (submitted with initial invoice); 7) Documentation of Agreement Services and Materials; and 8) Any other records which support charges to project funds. The Grantee shall maintain sufficient segregation of project accounting records from other projects or programs.

**ARTICLE 34. PERFORMANCE REPORTS**

The Grantee shall submit Performance Reports to the State on a quarterly basis as long as this Agreement is in effect. Reporting dates are as follows: **September 30, December 31, March 31, June 30**. The Performance Reports shall detail the uses of the funds received under this Agreement, how funds have been expended and the amounts expended during the preceding fiscal period, until all funds have been expended.

**Grant No. AD169127-017.01**

1. Progress Reports - The Grantee shall provide quarterly progress reports which detail project tasks completed and related expenses. Any program and/or fiscal problems encountered must be itemized.
2. Close-out period - The Grantee shall be allowed 60 days after contract completion date to prepare the final report and invoice. Only costs for compiling, editing and printing of final reports, preparation of financial reports and other costs associated solely with contract close-out activities may be incurred during this period.
3. Program Summary and Final Report - A separate summary of the project by the Grantee shall be included with the final report. The summary should include: an identification of the coastal resource management issue addressed; a summary of improvements; where possible, quantitative information on the degree of improvement, i.e., acres of wetlands protected, areas mapped, feet of trail developed, etc.; and where possible, state, federal, and local funds expended for the overall project. This report shall not exceed 1-2 single-spaced pages.
4. Final Work Products - Submit three copies (including one copy in digital/electronic format, if appropriate) of any final work products.

#### **SPECIAL TERMS AND CONDITIONS**

##### **ARTICLE 35. COMPETITIVE PROCUREMENT PRACTICES**

Grantee shall utilize State of Wisconsin competitive procurement practices for products and services purchased as a result of this award. Where state and local procurement practices differ, state rules, standards, policies and practices shall take precedence.

##### **ARTICLE 36. REASONABLE COSTS**

Grantee shall attempt to control unit costs for products and services procured as a result of this Agreement, to the state average experience.

##### **ARTICLE 37. AUDITS**

Grantee shall perform an "Agreed Upon Procedures Audit" on request. This audit shall consist of procedures and questions agreed upon by the State and the Auditor and shall expand beyond the scope of that provided for under the Wisconsin State Single Audit Guideline requirements.

##### **ARTICLE 38. EQUIPMENT ACCOUNTABILITY**

Title to equipment purchased with funds provided under this Agreement shall vest in the Grantee's name, unless otherwise specified by an attachment. Disposition of any equipment shall be in accordance with applicable property disposal procedures.

##### **ARTICLE 39. PATENT INFRINGEMENT**

The Grantee selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further that the sale or use of the articles described herein shall not infringe any United States patent. The Grantee covenants that it shall, at its own expense, defend every suit which shall be brought against the State of Wisconsin (provided that such Grantee is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles and agrees that it shall pay all costs, damages, and profits recoverable in any such suit.

##### **ARTICLE 40. PROGRAM INCOME**

Program income means gross income received by the Grantee that is directly generated from the use of the Agreement award, including but not limited to repayments of funds that had been previously provided to eligible

**Grant No. AD169127-017.01**

beneficiaries; interest earned on any or all Agreement funds obtained from the State; proceeds derived after the Agreement close out from the disposition of real property acquired with any or all funds provided under this Agreement or interest earned on Program income pending its disposition.

All Program income shall be recorded and used in accordance with the rules and regulations of the Program funding source described herein. If at any time changes in the use of Program income are considered, the Grantee shall submit a plan detailing the proposed uses of Program income to the State for approval. Should the Grantee decide following Agreement close out to discontinue using Program income for such purposes, the Grantee shall return the Program income balance and any additional Program income accrued to the State by January 31 of the following year.

**ARTICLE 41. TRAINING – WORKSHOPS – SEMINARS – EXHIBIT SPACE**

If any portion of the funds are used to support training, workshops, seminars, exhibit space, etc., the Wisconsin Department of Administration, Division of Intergovernmental Relations shall receive complimentary registrations and/or exhibit/booth space, if requested.

**ARTICLE 42. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

The Grantee certifies that to the best of its knowledge and belief, that it and its principals:

- (e) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (f) Have not within a three-year period receding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- (g) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b); and
- (h) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this article, such prospective participant shall attach an explanation to this proposal.



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Grant No. AD169127-017.01

ATTACHMENT B

ACKNOWLEDGEMENTS FOR PROJECTS FUNDED BY THE WISCONSIN COASTAL  
MANAGEMENT PROGRAM

**4. For audio productions:**

Funding provided by the Wisconsin Coastal Management Program and the National Oceanic and Atmospheric Administration.

**5. For video productions:**

On the screen, in color, all of the following:

Wisconsin Coastal Management Program wave logo with the words "Wisconsin Coastal Management Program"

National Oceanic and Atmospheric Administration gull logo with the words "National Oceanic and Atmospheric Administration"

**6. For printed documents and work products, including web-based publications:**

Wisconsin Coastal Management Program Logo:



National Oceanic and Atmospheric Administration Logo:



Required text acknowledgement:

Funded by the Wisconsin Coastal Management Program and the National Oceanic and Atmospheric Administration, Office for Coastal Management under the Coastal Zone Management Act, Grant # NA16NOS4190108.

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

**State of Wisconsin Department of Administration  
Division of Intergovernmental Relations**

by \_\_\_\_\_ Date \_\_\_\_\_  
Dawn Vick, Administrator

**Milwaukee County Dept. of Parks, Recreation & Culture**

DocuSigned by:  
by  Date 4/19/2017  
John Dagle, Jr., CPRP, Director

*Approved with regards to County Ordinance Chapter 42:*

DocuSigned by:  
by  Date 4/4/2017  
Community Business Development Partners

*Approved as to form and independent status:*

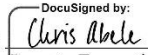
*Reviewed by:*


DocuSigned by:  
by  Date 4/10/2017  
Corporation Counsel

DocuSigned by:  
by  Date 4/5/2017  
Risk Management

*Approved:*

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

DocuSigned by:  
by  Date 4/19/2017  
County Executive Chris Abele

DocuSigned by:  
by  Date 4/11/2017  
Comptroller Scott B. Manske

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

DocuSigned by:  
by  Date 5/26/2017  
Corporation Counsel

**Exhibit C**  
**(MMSD Green Infrastructure Funding Agreement MO3064P18)**



## Green Infrastructure Funding Agreement

### **Milwaukee River Parkway Habitat Improvement and Interpretive Access**

M03064P18

This Agreement is between the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446; the Milwaukee County Department of Parks, Recreation and Culture (County), 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226; and the River Revitalization Foundation (Foundation), 2134 North Riverboat Road, Milwaukee, Wisconsin 53212.

WHEREAS, the District is responsible for collecting and treating wastewater from local sewerage systems; and

WHEREAS, during wet weather events, stormwater enters local sewerage systems, increasing the volume of wastewater that the District must convey and treat; and

WHEREAS, during wet weather events, stormwater directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding; and

WHEREAS, green infrastructure, such as constructed wetlands, rain gardens, green and blue roofs, bioswales, and porous pavement, reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface waters; and

WHEREAS, the District's wastewater discharge permit requires the construction of new green infrastructure retention capacity; and

WHEREAS, the District wants to promote the installation of green infrastructure; and

WHEREAS, the Foundation and the County plan to install green infrastructure;

Now, therefore, for the consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows.

Green Infrastructure Funding Agreement  
Milwaukee River Parkway Habitat Improvement and Interpretive Access  
Page 1

### **1. Date of Agreement**

This Agreement becomes effective immediately upon signature by both parties and ends July 1, 2022, except for secs. 3(A)(5), 8 and 9.

### **2. The Project**

The County and the Foundation will:

- (A) install 5,350 square feet of bioswale, 750 square feet of permeable pavers, and 24,000 square feet of native landscaping, providing a total retention capacity of 51,975 gallons, as described in the application for funding (the Project). The Project will be located in the area between Humboldt Boulevard and the Milwaukee River, south of Capitol Drive, in Milwaukee;
- (B) complete construction before July 1, 2017, and establish vegetation before July 1, 2022;
- (C) install educational signage that:
  - (1) is either designed and provided by the District or provided by the County and approved by the District,
  - (2) is in a location approved by the District, and
  - (3) identifies the District as funding the Project;
- (D) identify the District as funding the Project in any informational literature;
- (E) include all Project components described in the application for funding;
- (F) allow the District to inspect the Project and review maintenance records;
- (G) allow the District to identify the Foundation and the County, identify the location of the Project, and describe the Project in publicity regarding green infrastructure;
- (H) inform the District of any promotional events for the Project arranged by the Foundation or the County and allow the District to participate; and
- (I) allow the District to access the Project at reasonable times for promotional events arranged by the District, after notice from the District.

### **3. Reports**

- (A) The Foundation will provide:

- (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) detailed plans and specifications before construction, if the District determines that reviewing these plans and specifications is necessary to ensure the intended retention capacity;
  - (4) a Baseline Report, using forms provided or approved by the District. This report will include:
    - (a) a site drawing, showing the completed green infrastructure;
    - (b) design specifications for all green infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
    - (c) a legal description of the property where the Project is located;
    - (d) photographs of the completed Project;
    - (e) a maintenance plan;
    - (f) an outreach and education strategy, including a description of events or activities completed or planned;
    - (g) an itemization of all construction costs, with supporting documentation;
    - (h) a W-9 Tax Identification Number form;
    - (i) a Small, Women, and Minority Business Enterprise Report; and
    - (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 County, contractors, consultants, and volunteers; and
  - (5) an annual maintenance report. This report will summarize Project 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. If the Foundation does not provide these reports, then the County will provide these reports.
- (B) To provide these reports, the Foundation and the County may use the U.S. mail, another delivery service, or electronic mail.
- (C) The Foundation or the County must provide the required reports, not a consultant or contractor. Reports that are late or incomplete may be a basis for rescinding this Agreement or making the County ineligible for future funding.
- (D) The Foundation and the County will send reports to:

Bre Plier, Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, WI 53204-1446  
bplier@mmsd.com

#### **4. 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 Project. The duration of the Conservation Easement will be ten years. The District will draft and record the Conservation Easement.

#### **5. District Funding**

(A) The District will reimburse 50% of construction costs, up to \$48,100. The District will provide an amount up to \$45,700 after the Foundation completes construction and provides the Baseline Report and the County provides the signed Conservation Easement. The District will provide up to \$2,400 after the Foundation provides documentation showing that vegetation establishment is complete.

(B) Beyond financial support for the Project, the District will have no involvement in design, construction, maintenance, or operation.

#### **6. Procedure for Payment**

(A) Along with or after the Baseline Report required by sec. 3(A)(4), the Foundation will submit an invoice to the District for the amount to be reimbursed.

(B) The District will reimburse costs only if:

- (1) the Foundation has provided the schedule, monthly reports, and Baseline Report required by sec. 3(A);
- (2) the Foundation completes construction before July 1, 2017;
- (3) the District receives the initial invoice before August 1, 2017;
- (4) the County signs the Conservation Easement; and
- (5) the District receives the invoice and report regarding vegetation establishment before July 1, 2022.

(C) The Foundation will submit invoices to:

Green Infrastructure Funding Agreement  
Milwaukee River Parkway Habitat Improvement and Interpretive Access  
Page 4



Milwaukee Metropolitan Sewerage District  
Accounts Payable Department  
260 West Seeboth Street  
Milwaukee, WI 53204-1446  
Project Manager: Bre Plier

#### **7. Project Changes**

The District will not pay for work not described in the application for funding, unless the District provides prior written approval. Any changes to the Project that decrease the capacity to retain stormwater must be approved by the District, in writing, before implementing the change.

#### **8. Operation and Maintenance**

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

#### **9. Transfer of Countyship**

The Foundation or the County will notify the District before transferring Countyship or maintenance responsibilities. The Foundation or the County will provide this notice at least 30 days in advance.

#### **10. Procurement**

- (A) The Foundation will ensure that disadvantaged business enterprises, including small, women and minority owned business enterprises, have the opportunity to compete for business opportunities on this project. The Foundation will make good faith efforts to solicit these enterprises for design, construction, or maintenance of the Project. The Foundation will keep records documenting these efforts. Additionally, the Baseline Report will indicate all spending with certified Small, Women and Minority Owned Businesses relating to the Project.
- (B) To allow the District to understand the economic impact of its spending, the Foundation will provide an economic impact report showing the total number of people and the estimated number of hours worked on design, construction, or maintenance of the green infrastructure, including the County, contractors, consultants, and volunteers.
- (C) The Foundation will make reasonable efforts to maximize the value of the District's investment in the Project, such as using a competitive procurement process to obtain multiple quotes or bids. Upon request, the Foundation will provide to the District records of the procurement process used for the Project.

Green Infrastructure Funding Agreement  
Milwaukee River Parkway Habitat Improvement and Interpretive Access  
Page 5

#### **11. Responsibilities of the Foundation and the County**

The Foundation and the County are responsible for:

- (A) planning, designing, constructing and maintaining the Project, including selecting and paying consultants, contractors, and suppliers;
- (B) the safety of employees, contractors, and guests to the Project;
- (C) compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Project;
- (D) compliance with Wisconsin prevailing wage law; and
- (E) insurance. The District will not provide any insurance coverage of any kind for the Project or the County.

#### **12. Indemnification**

The Foundation and the County will defend, indemnify, and hold harmless the District and its Commissioners, employees, and agents against any and all 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 Project. Nothing in this Agreement is a waiver by either party of the opportunity and right to rely upon the process, limitations and immunities set forth in Wis. Stats., sec. 893.80.

#### **13. Modifying this Agreement**

Any modification to this Agreement must be in writing and signed by all parties.

#### **14. 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, such as, but not limited to, breach of this Agreement by the Foundation or the County.
- (B) The Foundation or the County may terminate this Agreement at any time, but will not receive any payment from the District if the Project is incomplete.

**15. Exclusive Agreement**

This Agreement is the entire agreement between the Foundation, the County, and the District regarding reimbursement for the Project.

**16. Severability**

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

**17. Applicable Law**

The laws of the State of Wisconsin govern this Agreement.

**18. Resolving Disputes**

If a dispute arises under this Agreement, then the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon 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 the mediator, then either party may take the matter to court.

**19. Notices**

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

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

**20. Independence of the Parties**

This Agreement does not authorize any party to make promises binding upon any other party or to enter into contracts on any other party's behalf.

**21. Assignment**

The Foundation or the County may not assign any rights or obligations under this Agreement without the District's prior written approval.

**22. Public Records**

The Foundation and the County will produce any records in the possession of the County that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law,


Wis. Stats. secs. 19.31 to 19.39. The Foundation and the County will indemnify the District against any and all claims, demands, and causes of action resulting from the failure to comply with this requirement.

### 23. Conflicts

If the Foundation or the County identifies a relationship with the District, its Commissioners, or staff that could provide an advantage or cause a conflict of interest and if the Foundation or the County did not disclose this relationship in the application for funding, then the County will notify the District within five (5) days of identifying it.

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

Approved as to Form

By:   
Kevin L. Shafer, P.E.  
Executive Director

  
Attorney for the District

Date: 10/19/15

**MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE**

By:   
John Dargle, Jr.  
Director of Parks, Recreation and Culture

Date: 15 Sep 2015

**RIVER REVITALIZATION FOUNDATION**

By:   
Kimberly A. Gleffe  
Executive Director

Date: 9-15-15

Green Infrastructure Funding Agreement M03064P18

**Milwaukee River Parkway Habitat Improvement and Interpretive Access**

**Amendment One**

This Amendment One is to Green Infrastructure Funding Agreement M03064P18 between the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446; the Milwaukee County Department of Parks, Recreation and Culture (County), 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226; and the River Revitalization Foundation (Foundation), 2134 North Riverboat Road, Milwaukee, Wisconsin 53212.

The District, County, and Foundation amend **Section 1 Date of Agreement** to shorten the ending date from July 1, 2022, to October 31, 2018.

**1. Date of Agreement**

This Agreement becomes effective immediately upon signature by both parties and ends October 31, 2018, except for secs. 3(A)(5), 8 and 9.

The District, County, and Foundation amend **Section 2 The Project**, paragraph (A), to reduce the bioswale area from 5,350 square feet to 3,536 square feet, eliminate the permeable pavers, reduce the native landscaping area from 24,000 square feet to 8,981 square feet, and reduce the total retention capacity from 51,975 to 30,112 gallons; and paragraph (B), to establish a complete construction date of October 31, 2018.

**2. The Project**

The County and the Foundation will:

(A) install 3,536 square feet of bioswale and 8,981 square feet of native landscaping, providing a total retention capacity of 30,112 gallons (the Project). The Project will be located in the area between Humboldt Boulevard and the Milwaukee River, south of Capitol Drive, in Milwaukee;

(B) complete construction before October 31, 2018;

The District, County, and Foundation amend **Section 3 Reports**, paragraph (D), to identify Chris Schultz as the project manager.

**3. Reports**

(D) The Foundation and the County will send reports to:

Chris Schultz, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1446  
cschultz@mmsd.com

The District, County, and Foundation amend **Section 5 District Funding**, paragraph (A), to reduce the reimbursement amount from \$48,100 to \$42,464, a reduction of \$5,636, and to eliminate a separate payment after vegetation establishment.

**5. District Funding**

- (A) The District will reimburse construction costs up to \$42,464. The District will provide this funding after the Foundation completes construction and provides the Baseline Report and the County provides the signed Conservation Easement.

The District, County, and Foundation amend **Section 6 Procedure for Payment** paragraph (B)(2), to extend the complete construction date from July 1, 2017, to October 31, 2018; paragraph (B)(3) to extend the invoice due date from August 1, 2017, to October 31, 2018 and to eliminate a second invoice after vegetation establishment; and paragraph (C) to change the invoice address.

**6. Procedure for Payment**

- (B) The District will reimburse costs only if:
- (2) the Foundation completes construction before October 31, 2018;
  - (3) the District receives the invoice before October 31, 2018; and
  - (4) the County signs the Conservation Easement.
- (C) The Foundation will send the invoice to [apinvoice@mmsd.com](mailto:apinvoice@mmsd.com). The invoice will identify the District project manager (Chris Schultz) and the funding agreement number (M03064P18).

**Signatures on Next Page**

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

Approved as to Form

By: Karen Sands  
Karen L. Sands, AICP, ENV SP  
Director of Planning, Research and  
Sustainability

Donna Novak  
Attorney for the District

Date: 6/28/18

**MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE**

By: Guy Smith  
Guy Smith  
Interim Director of Parks, Recreation and Culture

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

**RIVER REVITALIZATION FOUNDATION**

By: Kimberly A. Gleffe  
Kimberly A. Gleffe  
Executive Director

Date: 6-18-18