

MEMORANDUM OF UNDERSTANDING
BETWEEN
MILWAUKEE COUNTY PARKS
AND
LAKE PARK FRIENDS
RE: RAVINE ROAD BRIDGE MAINTENANCE FUND

Lake Park is on the National Register of Historic Places ("National Register") and is located within the City of Milwaukee Northpoint North Historic District. Lake Park's Ravine Road Footbridge ("Bridge") is a recognized contributing structure on the National Register and is a designated City of Milwaukee Landmark within the Northpoint North Historic District.

This Memorandum of Understanding ("Agreement") is made and entered into effective _____, by and between the Milwaukee County Parks, ("Milwaukee County") and the Lake Park Friends, a 501 (C)(3) not-for-profit organization ("LPF"). Referenced together, the County and LPF are the "Parties" to this Agreement.

Milwaukee County will rehabilitate the Bridge. This Agreement establishes Lake Park Friends' commitment to provide Milwaukee County with financial support to complete routine maintenance of the rehabilitated Bridge. LPF is providing this financial support because LPF wants to help ensure there is sufficient funding for Milwaukee County to complete the routine bridge maintenance activities, which are necessary to help ensure the Bridge's service life will be extended for at least another 50 years following rehabilitation.

This Agreement is one in which LPF agrees to contribute funding for specified periodic maintenance items the County would agree to undertake and complete for the Bridge after it has been successfully rehabilitated by Milwaukee County.

PROVISIONS

1. MAINTENANCE & RESTORATION FUNDS:

LPF, agrees to establish a restricted fund (hereinafter said funds shall be referred to as the "Maintenance Fund") with an initial balance and anticipated rate of return intended to be sufficient to allow LPF to contribute the amounts set forth on Exhibit A (the "LPF Contributions") for up to fifty (50) years. LPF shall deposit in an interest-bearing account in a federally insured institution the sum of \$300,000 ("Capital Contribution") which, together with interest thereon, shall be the entire Maintenance Fund subject to this Agreement. The account shall be established in the name of LPF pursuant to this Agreement between the Parties. LPF shall provide documentary evidence of the establishment of this Maintenance Fund.

Any interest earned on the account shall accrue to the Maintenance Fund, up to a maximum, that when combined with the Capital Contribution shall not exceed the total of Exhibit A ("Maximum"). Any additional interest earned beyond the Maximum shall be retained by LPF for the benefit of Lake Park, unless otherwise agreed to by LPF.

2. ADDITIONS TO THE MAINTENANCE FUND:

LPF reserves the right to add to the Maintenance Fund by themselves or through any designated agent.

3. TERM: This Agreement shall be for an initial term of ten (10) years commencing on the Effective Date and expiring ten (10) years thereafter (the "Initial Term"), unless sooner terminated as provided herein. This Agreement will renew automatically under the same terms and conditions for an additional ten (10) year period, for a maximum of four (4) terms beyond the Initial Term, by agreement of the Parties, which agreement shall not be unreasonably withheld if the Bridge has ongoing maintenance needs.

4. DISPOSITIVE PROVISIONS:

The Maintenance Fund subject to this Agreement shall be held, managed, invested and re-invested by LPF in a federally insured financial institution or custodied in a brokerage account. The Maintenance Fund shall be distributed to the County subject to the provisions of this Agreement, and net interest and Capital Contribution shall be disposed of as follows:

4.1 LPF will distribute funds from the Maintenance Fund for the annually agreed upon maintenance or required repairs or restoration to the Bridge that are mutually agreeable to both Parties as established in Schedule A.

4.2 Upon written agreement of the Parties, any other maintenance, repair, improvement, or ancillary cost associated with maintaining the Bridge (beyond those established in Schedule A) over its extended lifecycle may be paid for from the Maintenance Fund.

5. PURPOSE OF MAINTENANCE FUNDS:

As referenced herein, the Parties shall be authorized to the extent necessary to utilize the Maintenance Fund to repair, maintain, preserve, inspect, survey, or improve the Bridge. Such funds for future repairs, maintenance, preservation, inspections, surveys, and/or improvements to the Bridge shall be held and distributed in accordance with the terms and conditions set forth in this Agreement.

Exhibit A is an estimate and schedule of the maintenance needs of the Bridge over the anticipated fifty (50) years of its extended life. Actual maintenance costs may differ from these estimates. It is the intention of the Parties that the Maintenance Fund should be used for the types of maintenance needs listed in Exhibit A, which will be carried out by contractor(s) with experience in maintaining historic structures in accordance with the Secretary of the U.S. Department of the Interior's Standards for Rehabilitation, as appropriate for the type of maintenance being performed. For example, bridge washing, cleaning and reapplication of bridge sealants is not expected to require such experience, however, bridge inspections and concrete surface repairs of repaired bridge elements would require such contractor experience. The Maintenance Fund shall not be used for maintenance and/or repair elements that are covered under warranty. The

Maintenance Fund is also not intended to be used for extensive bridge repairs and/or rehabilitation; however, due to the length of this agreement and unknown future needs of the Bridge, by agreement of the Parties, the Maintenance Fund may be used for items that are not listed on Exhibit A such as drainage system replacement, deck joint replacement, deck overlay mill and replacement, or other items necessary to keep the Bridge in good repair. The Parties do not intend for the Maintenance Fund to be used to pay for Milwaukee County staff time or materials used to carry out routine maintenance needs.

It is the intention of the Parties that once a maintenance need is identified and the Parties agree it is to be funded from the Maintenance Fund, Milwaukee County shall carry out all work related to the maintenance need, including securing the contractor, obtaining required approvals, permits, or other required authorizations from regulatory or governmental agencies, entering into agreements, processing Right of Entry requests, and all other steps necessary to carry out the approved maintenance. Furthermore, Milwaukee County shall be responsible for all needed bridge repair, maintenance, inspections, surveys, improvements, and/or rehabilitation, whether or not such needed maintenance is funded by the Maintenance Fund.

6. **ANNUAL MEETING:** The Parties shall meet annually by February 1 each year to discuss and agree to upcoming maintenance needs for the Bridge and use of the Maintenance Fund to pay for such maintenance activities.
7. **DISTRIBUTIONS:** Within 3 months of completion of the agreed upon maintenance activity(ies), the County will provide LPF with a report and invoice documenting the agreed upon maintenance activities completed. Distributions shall be made by LPF to the County after receipt of an invoice for agreed upon maintenance activities within 3 months or as otherwise agreed to by the Parties.
8. **ACCOUNTING BY LPF:**
LPF shall not less than annually provide an accounting of the administration of the Maintenance Fund to the Parties, which accounting may be made by submission of a copy of the federal income tax return, if applicable, filed for LPF, and bank statements reflecting activity over the year. If no objection in relation to the accounting has been made in writing by the Parties within sixty (60) days after the date of mailing of such account, it shall be deemed approved and shall be conclusive upon all persons interested.
9. **TERMINATION:**
This Agreement shall terminate on the date of the first to occur of the following events:
 - 9.1 This Agreement may terminate upon the mutual consent of the Parties.
 - 9.2 This Agreement may terminate at the discretion of LPF if Milwaukee County Parks receives a designated funding source that is reasonably certain to provide for all of Milwaukee County Parks' deferred and ongoing maintenance needs of the Bridge.
 - 9.2 This Agreement will terminate if Milwaukee County demolishes the Bridge.

Upon termination of the Agreement for any reason, all funds in the account, including all accumulated interest, shall remain the sole property of LPF for the benefit of Lake Park in accordance with donors' intent.

10. **AUDIT:**

LPF shall allow the County, its Department of Audit, or any other certified public accountant that the County may name, to audit, examine, and make copies of, excerpts or transcripts from any records or other information directly relating to matters under this Agreement. The County shall give reasonable written notice to LPF of any demand for audit pursuant to this paragraph, and shall not do so more than once per year. Any such audit will be at the County's expense.

11. **INDEMNIFICATION:**

Milwaukee County agrees to indemnify, defend and hold harmless LPF and its officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney's fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional, or negligent acts or omissions of Milwaukee County or any of its officers, employees, agents, contractors or representatives which may result in any person, persons, or organization suffering bodily injury, personal injury, death or property loss or damage, employment practices, civil rights or environmental liability and impairments arising out of or related to this Agreement. Milwaukee County's liability shall be limited by Wisconsin State statute sections 345.03(3) for automobile and 893.80(3) for general liability.

12. **MISCELLANEOUS:**

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

12.2 Milwaukee County and LPF agree that, as independent and separate entities, each shall maintain a staff, management, and fiscal structure independent of the other. This Agreement does not make or appoint, and nothing contained in this Agreement shall be construed to appoint, either Party as an agent of the other, or to create a partnership or joint venture between the Parties. Neither Party shall act or represent itself as an agent of the other and shall not bind or obligate the other in any manner.

12.3 All the provisions of this Agreement and any amendment thereto shall extend to and be binding upon and inure to the benefit of the Parties and the successors of the respective Parties. This Agreement, or any provision hereof or any right or obligation arising hereunder, is not assignable by either party in whole or in part, without the express written consent of the other party.

12.4 This Agreement shall be governed by and construed under the laws of the State of Wisconsin. The exclusive venue for any cause of action brought in relation to this Agreement shall be Milwaukee County Circuit Court, Milwaukee, Wisconsin.

12.5 Should any portion of this Agreement be deemed invalid or unenforceable by a duly sitting court of law, all other terms and conditions of this Agreement shall remain in full force and effect.

12.6 The failure of a Party to enforce a provision of this Agreement shall not constitute a waiver of any other right or obligation set forth in this Agreement by either Party.

13. OWNERSHIP OF IMPROVEMENTS: Upon termination of this Agreement for any reason, including but not limited to, for cause, by mutual written agreement, or by reason of the expiration of any of the terms of the Agreement, all structural renovations, improvements, or alterations to the Bridge shall become the property of the County, at no cost to the County.

14. NOTICE: 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 LPF:
Lake Park Friends
President
P.O. Box 71197
Milwaukee, WI 53211

To Milwaukee County:
Milwaukee County Parks
Parks Executive Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

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

Signature Page Follows