

**AGREEMENT and EASEMENT AMENDMENT
BETWEEN
CITY OF MILWAUKEE and
MILWAUKEE COUNTY**

This Agreement entered into as of the last date appearing in the signature block below, by and between the City of Milwaukee ("City"), a municipal body corporate, and the County of Milwaukee ("County"), a municipal body corporate.

RECITALS:

WHEREAS, the County owns the Menomonee River Parkway Lagoon, hereafter "MRPL," located within the Menomonee River Parkway just west and south of the location where North Menomonee River Parkway intersects with West Concordia Avenue and West Auer Avenue on the east side of the Menomonee River within the City of Milwaukee; and

WHEREAS, the City owns and maintains a storm sewer discharging into MRPL as agreed upon in an easement dated November 5, 1947, hereafter "Easement" (see attached easement document); and

WHEREAS, the City is required by the Easement to "bear the cost of removing any silt deposits from the lagoon caused by the discharge of the storm sewer"; and

WHEREAS, MRPL has become partially filled with silt deposits and requires dredging to maintain the aesthetics and functionality of storm water treatment of MRPL; and

WHEREAS, the City recently diverted $\frac{3}{4}$ of the drainage area watershed away from MRPL; and

WHEREAS, due to the changed watershed of MRPL, the County intends to modify MRPL to create a stormwater wetland in the MRPL area, hereafter referred to as the "Project."

NOW, THEREFORE, it is agreed between the parties, that in consideration of the mutual promises made hereto:

AGREEMENT:

1. Design and Construction of the Modifications of the MRPL.

- a. The County to Design and Construct the Modifications. The County shall design and build the Project at its sole cost, except as provided herein.
- b. City Participation in Costs of Design and Construction of the Project. Instead of bearing the costs to remove the silt deposits from MRPL as required by the Easement, the City agrees to fund a portion of the Project in an amount not to

exceed \$150,000.00.

- c. Plan Review, Engineering Services, and Other Engineering Considerations.
 - i. The County shall provide the City with plans and specifications for the Project to review and approve prior to the start of construction.
 - ii. The County shall provide as-built drawings, acceptable to the City, within 60 days after the County determines the Project is substantial complete.
 - iii. The County shall permit designated City staff to enter the County-owned parkway for purposes of inspection of the Project.
2. **Modifications to Easement.** The City and County hereby agree to amend the Easement to delete the 5th paragraph of the Easement in its entirety and replace it with the following: “The party of the second part hereby agrees to bear the costs of removing any silt deposits from the lagoon within the forebay noted in plans approved by both the City and County. Such dredging shall take place no more than once every ten (10) years beginning ten (10) years after the date of substantial completion of the Project, unless and upon mutual agreement between the parties, it becomes necessary to dredge sooner because of an extreme sedimentation event or an environmental contamination release.”
3. **Payment.** The County shall submit an invoice to the City for the City’s share of the Project cost. To expedite the payment of invoices under this Agreement, all invoices shall be sent directly to the following address:

City of Milwaukee - DPW
Attn: Nader Jaber, PE
841 N. Broadway, Room 820
Milwaukee, WI 53202
4. **Reports.** At the end of every three (3) month period during the Project, the County shall provide a written report to the City describing the progress made on the design or construction of the Project during the preceding three (3) month period.
5. **Materials.** The County shall furnish all materials, equipment, and supplies needed for the Project.
6. **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 the City or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, the City is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.
7. **Indemnification.** To the fullest extent permitted by law, the County and the City agree to

indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney's fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party 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 this Agreement. County's and City's liability shall be limited by Wis. Stat. § 345.05(3) for automobile and § 893.80(3) for general liability.

8. **Exclusive Agreement.** This Agreement and the Easement, as amended, are the entire agreement between the County and City.
9. **Modifying the Agreement.** This Agreement may be modified only by a writing signed by all parties.
10. **Contract Completion.** The parties agree that the Project will be completed no later than August 5, 2016.

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

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

Dated: _____

By: _____
James R. Owczarski, City Clerk

Dated: _____

By: _____
Martin Matson, Comptroller

Dated: _____

Approved as to form and execution:

Mary L. Schanning, Asst. City Attorney

Common Council File No. _____, approved on _____, 2013.

MILWAUKEE COUNTY

By: _____
John Dargle, Parks Director

Dated: _____

Approved as to form and independent status: Reviewed by:

By: _____ Dated: _____
Corporation Counsel

By: _____ Dated: _____
Risk Management

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