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

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

RECITALS:

WHEREAS, the City and the County share a common natural resource of the Menomonee River and have interests to protect this valuable resource; and

WHEREAS, the City and the County are co-permittees in a watershed-based storm water permit issued to both parties by the Wisconsin Department of Natural Resources (“WDNR”); and

WHEREAS, the municipalities of Greenfield, Wauwatosa, and West Allis are also co-permittees; and

WHEREAS, the permit requires that the permittees shall jointly pursue and implement a project of unspecified scope or magnitude (hereafter referred to as the “Joint Project”) prior to the end of the term of the current permit or December 31, 2017; and

WHEREAS, the scope of the Joint Project can be developed by co-permittees and must be approved by the WDNR to satisfy the permit conditions; and

WHEREAS, Milwaukee County is currently in the process of reconstructing the Menomonee River Parkway (“MRP”), which is located on the east side of the Menomonee River and borders the City of Milwaukee and the City of Wauwatosa; and

WHEREAS, the roadway reconstruction will include certain storm water best management practices (“BMPs”) as part of the base design in order to satisfy project-specific permit needs, however, additional BMPs could be added to serve as the Joint Project; and

WHEREAS, the City and the County believe that inclusion of additional BMPs in MRP could satisfy the Joint Project requirement, pending WDNR approval; and

WHEREAS, the City and the County agree to share in the cost of the Joint Project elements; and

WHEREAS, the other co-permittees may participate in the Joint Project if they agree to share in the cost of the project, as established under separate Memoranda of Understanding; and

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WHEREAS, the municipalities of Greenfield, Wauwatosa, and West Allis have expressed interest in participating in the Joint Project under separate Memoranda of Understanding; and

WHEREAS, any storm water pollution discharge credits that are generated as a result of the Joint Project shall be shared by the City and County, as well as other participating co-permittees, in direct proportion to their relative cost share.

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

AGREEMENT:

1. Design and Construction of the Joint Project.

- a. The County shall design and construct the Joint Project. The Joint Project shall consist of one or more BMPs for managing storm water runoff from the MRP.
- b. The City agrees to fund a portion of the Joint Project in an amount divided between participants in the project. The amount of funding provided by the City shall not exceed \$30,000.00.
- c. Plan Review, Engineering Services and other Engineering Considerations.
 - i. Prior to the start of construction, the County shall provide the City with plans and specifications for the Joint Project for review and approval, which approval shall not be unreasonably delayed or withheld. The City's failure to respond within 10 days to a written or electronic request by County for approval, or within 5 days regarding revisions, shall constitute approval.
 - ii. The County shall provide as-built drawings, acceptable to the City, within 60 days after the County determines the project is substantially complete.
 - iii. The County shall permit designated City staff to enter the County-owned parkway for purposes of inspection of the Joint Project.
- d. The County shall submit the Joint Project plan, on behalf of the project participants, to the WNDR for their approval.
- e. The construction costs shall be shared jointly by participants in the Joint Project. The construction costs include a 2-year maintenance period starting from the completion date of the project. Once the 2-year maintenance period concludes, the County shall be responsible for the maintenance of the BMPs.

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- 2. Payment.** The County shall submit an invoice to the City for the City's share of the project cost. The first invoice will be sent following execution of the construction contract and this agreement, and shall provide a breakdown accounting of the costs of the Joint Project elements. To expedite the payment of invoices under this Agreement, all invoices shall be sent directly to the following address:

**Mr. Tim Thur
Room 820
841 North Broadway
Milwaukee, WI 53202**

- 3. Reports.** At the end of every three (3) month period during the Joint 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.
- 4. Materials.** The County shall furnish all materials, equipment, and supplies needed for the Joint Project.
- 5. Independent Contractor.** Nothing contained in this MOU shall constitute or be construed to create a partnership or joint venture between the City or its successors or assigns and the County or its successors or assigns. In entering into this MOU, and in acting in compliance herewith, the City and the County are at all times acting and performing as independent contractors, duly authorized to perform the acts required of them hereunder.
- 6. Mutual Indemnification.** The parties to this MOU agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses (including reasonable attorney's fees) to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representative of the indemnifying party which may arise out of or are connected with the activities covered by this MOU. Each party's liability shall be limited by Wis. Stat. sec. 345.05(3) for automobile liability and sec. 893.80(3) for general liability. Nothing in this MOU shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.
- 7. Exclusive Agreement.** This MOU contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties hereto, or to vary any of the terms contained herein. Any Amendments or revisions of this MOU shall be made in writing and executed by the Parties.
- 8. Contract Completion.** The parties agree that the Joint Project shall be completed no later than December 31, 2017.

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SIGATURE PAGE FOLLOWS:

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

CITY OF MILWAUKEE

By: _____ Date: _____
Name: _____
Title: _____

Countersigned

By: _____ Date: _____
Name: _____
Title: _____

Common Council File No _____, approved on _____, 2015.

City Attorney Approval/Authentication

MILWAUKEE COUNTY

By: _____
Name: _____
Title: _____

Reviewed by:

By: _____ Date: _____
Risk Management

Approved for execution:

By: _____ Date: _____
Corporation Counsel

Approved:

By: _____ Date: _____
Comptroller

Approved:

By: _____ Date: _____
County Executive

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

By: _____ Date: _____
Corporation Counsel

[Signature Page to Watershed-Based Storm Water Permit MOU]