

**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, Copernicus Park is a Milwaukee County Park located in the City of Milwaukee at 2150 W. Klein Avenue in the City of Milwaukee, as shown on the attached map; and

WHEREAS, City properties in the vicinity of the intersection of South 20th Street and West Klein Avenue have experienced repeated surface flooding and basement back-ups during heavy storm events; and

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

WHEREAS, Heavy rain events overwhelm the City of Milwaukee storm sewer system which causes surface flooding on City streets; and

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

WHEREAS, Said water in basements empties via basement floor drains, contributing excessive amounts of rain water in local City sanitary sewers, causing additional basement back-ups in surrounding properties; and

WHEREAS, City and County are desirous of reducing the flooding and basement back-ups; and

WHEREAS, City prepared a Storm Water Management Plan, and said plan recommended the construction of a storm water detention facility in Copernicus Park to mitigate the aforementioned flooding; and

WHEREAS, City selected and funded a consultant to prepare the “Copernicus Park Master Plan,” hereinafter referred to as “Master Plan,” that incorporated the recommendations of the Storm Water Management Study; and

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

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

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

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

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

AGREEMENT:

1. Design and Construction of the Project.

- a. City shall address the guidelines and conditions of the County Board adopted General Policy on Use of Parkland in Cooperation with other Governmental Units.
- b. City shall design the Storm Water Project and park improvements at City’s cost, however County shall not invoice City for time and materials expended by County providing to City the necessary documents and reviews as discussed below. Said project shall incorporate the amenities described in the Master Plan. The Parties agree that should the need arise to amend or modify the scope of work of the Storm Water Project and park improvements, amendment shall be made in writing and executed by the Parties.
 - i. Said detention facility shall be designed to accommodate flood waters from a 1% probability storm (100-year recurrence interval), as defined by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) as of the date of this agreement and constructed in accordance with green infrastructure best management practices to mitigate flooding and provide additional stormwater storage capacity.
 - ii. Said park amenity features to be designed and constructed within the project include a sports field, playground, Copernicus Plaza, council ring, picnic shelter, educational signage, a park entry gateway, solar system interpretive features, park lighting, an amphitheater, labyrinth garden, sewer infrastructure improvements, reconstruction of South 20th Street, the creation of sidewalks and multi-use paths within the park, the creation of a

sled hill, lawn restoration, trees and landscape plantings to be approved by Milwaukee County Parks in accordance with Park Master Plan and Milwaukee County Architecture and Engineering standards.

- c. City agrees to perform the Storm Water Project and all park improvements listed in the Master Plan.
- d. A contract shall be awarded to the lowest responsible bidder whose bid complies with the bid specifications. However, City reserves the right to reject all bids if the lowest bid for the work exceeds City's available funding. If the contract is to be rejected, City shall notify County within thirty days after the day of bid opening. Alternatively, within forty-five days of the bid opening, City and County retain the option to revise the scope of the bid, obtain additional funding, or both, in order to allow the lowest bid to be awarded.
- e. County agrees to grant City a permanent easement in Copernicus Park for the public purpose of flood detention improvements, and inspection, operation, repair and maintenance of storm water facilities. Terms of the easement will restrict modifications to the footprint of the detention facility to that of the original design, except where modifications to said design are agreed to by all parties in writing. Said easement shall be drafted by City and reviewed and approved by County. Said easement may be terminated by mutual agreement between the parties if it is determined the easement no longer serves the parties interests.
- f. Plan Review, Engineering Services and other Engineering Considerations.
 - i. County shall provide City with access to maps, plans, and record drawings to assist the design effort.
 - ii. The City shall obtain a Right of Entry Permit from County prior to commencing any construction or maintenance activities on parkland. Prior to the start of any bidding, installation, construction or renovation of the Premises, including any subsequent alterations or renovations to the Project, the City shall submit detailed construction plans and specifications to the Milwaukee County Parks Department and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of the City's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, design drawings which must adhere to Parks Planning and Maintenance standards and which shall be approved by County Parks Planning, County Parks Maintenance and the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, shop drawings containing product information and materials, a description of the scope of work to be performed, and the means by which such work will be performed. Conditions for approval shall include, but not be limited to, provision that the City shall obtain and

comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

- iii. County shall not unreasonably delay or withhold approval.
- iv. Upon substantial completion the City shall provide record drawings.
- v. County shall provide City, at no cost to City, all necessary permits, rights of entry, and temporary easements required for the initial construction of Storm Water Project, and shall jointly apply for any required State of Wisconsin and Federal permits.
- vi. County shall furnish to the City a list of approved plant species, tree concentrations and plants per acre per plant community as referenced in 1(a)(ii).
- g. City shall submit Storm Water Project plans, on behalf of the Parties, to the Wisconsin Department of Natural Resources (WDNR) for their approval.
- h. The County does not represent the suitability of the park land for a particular use and will not be responsible for any costs to make the park land suitable for the use. The County will not be responsible for achieving compliance with any Federal, State, or Local law or zoning, or obtaining any required permit. The City will be responsible for ensuring that the design of the storm water facility will be compliant with all applicable laws and regulations.

2. Maintenance Obligations.

- a. The Storm Water Project shall include a Storm Water Post Construction Warranty and Project Maintenance Plan.
- b. The City shall maintain all infrastructure associated with the Storm Water Project in perpetuity and shall provide a Long Term Maintenance Plan to the County with the final design documents. The City assumes responsibility for the operation and maintenance of the detention facility, including, but not limited to:
 - i. The removal of trash, waste, and litter from the detention facility and outlet structure after rain events of 2-inches or more.
 - ii. The repair, maintenance and upkeep of the detention facility including the repair of erosion to the detention facility and open channel caused by storm events.
 - iii. The maintenance, inspection, repair and upkeep of the outlet structure.

- iv. The City shall perform environmental remediation as necessary. However, the City may pursue any third Party responsible, excluding Milwaukee County, to recover such costs.
 - c. County shall assume ownership of and be responsible for regular maintenance of the park and recreation amenity features outside of the storm water mitigation facilities and features i.e. those features not built for flood control and mitigation to include routine and regular lawn mowing, tree and shrub tending, trash, waste, and litter removal, maintenance of walkways, and maintenance of site furnishings.
 - d. The parties agree that maintenance will be required on the detention facility, for the purposes of maintaining flood storage capacity. City assumes responsibility for the operation and maintenance of all infrastructure associated with the Storm Water Project.
3. **Payment.** No payments between City and County are anticipated in this MOU.
4. **Reports.** At the end of every six (6) month period during the Storm Water Project and park improvements, City shall provide a written report to County describing the progress made on the design or construction of the project during the preceding six (6) month period.
5. **Materials.** City shall furnish all materials, equipment, and supplies needed for the Storm Water Project and park improvements.
6. **Independent Contractor.** Nothing contained in this MOU shall constitute or be construed to create a partnership or joint venture between City or its successors or assigns and County or its successors or assigns. In entering into this MOU, and in acting in compliance herewith, City and County are at all times acting and performing as independent contractors, duly authorized to perform the acts required of them hereunder.
7. **Small Business Enterprise and Resident Preference Program.** The Small Business Enterprise (SBE) requirement for this project is xx% of the contract base bid. For a complete listing of City of Milwaukee certified SBE firms, see the Office of Small Business Development (OSBD) website at milwaukee.gov/osbd. The Resident Preference Program (RPP) requirement for this project is 40% of all hours worked on the project.
8. **Mutual Indemnification.** The Parties to this MOU agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses (including reasonable attorney's fees) to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representative of the indemnifying party which may arise out of or are connected with the activities covered by this MOU. Each party's liability shall be limited by Wis. Stat. sec. 345.05(3) for automobile liability and sec. 893.80(3) for general liability. Nothing in this MOU

shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.

9. **Insurance.** During the term of this Agreement, the City will keep in full force and effect a policy of general liability insurance or its equivalent and automobile insurance in an amount not less than \$1,000,000 combined single limit. Also, the City will maintain insurance coverage for worker's compensation (waiver of subrogation endorsement in favor of Milwaukee County) as required by the State of Wisconsin, including employer's liability. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. As its interests may appear, Milwaukee County will be named as an additional insured for general liability. The City will submit a certificate indicating the above.
10. **Exclusive Agreement.** This MOU contains all the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties hereto, or to vary any of the terms contained herein. Any Amendments or revisions of this MOU shall be made in writing and executed by the Parties.
11. **Contract Completion.** The Parties agree that the Storm Water Project shall be substantially completed no later than December 31, 2018, excluding the Maintenance Plan requirements.

SIGATURE PAGE FOLLOWS:

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

CITY OF MILWAUKEE

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

Countersigned

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

Common Council File No. _____, adopted on _____.

City Attorney Approval/Authentication

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

MILWAUKEE COUNTY

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

Reviewed by:

Approved for execution:

By: _____ Date: _____
Risk Management

By: _____ Date: _____
Corporation Counsel

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

Approved:

By: _____ Date: _____
Comptroller

By: _____ Date: _____
County Executive

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

By: _____ Date: _____
Corporation Counsel