

## **Agreement for Stormwater Trees at 13600 Juneau Boulevard**

This agreement is between the Milwaukee Metropolitan Sewerage District (the “District”) and the Village of Elm Grove (the “Village”), effective as of the date signed by the District and the Village.

The District is responsible for managing wastewater and stormwater within its service area and employs natural flood infrastructure, including trees, to strengthen the ecological processes that prevent stormwater from overwhelming surface waters and sewerage systems.

Through its Reforestation and Wetland Restoration Program, the District seeks to plant six million trees and restore 4,000 acres of wetlands.

Mature trees and healthy wetlands are naturally effective resources to manage stormwater and bring additional local benefits of water and air quality improvement, reduction in the urban heat island effect, and habitat restoration.

Such natural flood management captures and holds stormwater where it falls, reducing the volume of stormwater in the sewerage system and the amount of pollution discharged to surface waters.

The District provides wastewater service to the Village, and the Underwood Creek carries surface water from the Village to the Menomonee River in the District’s service area.

The Village has an ad hoc Beautification Committee whose goals align with District objectives for stormwater management and owns property at 13600 Juneau Boulevard (“Village Park”).

Pursuant to Wis. Stat. § 66.0301, the District and the Village therefore agree as follows.

### **1. District Responsibilities**

- A. The District shall develop a tree planting plan acceptable to the Village for Village Park to include 400-600 trees within the planting area identified in Exhibit A.
- B. The District shall communicate with the Village regarding this agreement via the contact persons identified below.
- C. The District shall pay for all trees and deer protection materials and pay for and manage delivery of all items according to the tree planting plan.
- D. The District shall manage the vendor contract for tree and deer protection procurement and delivery.
- E. The District shall draft and execute an 11-year maintenance covenant or an 11-year limited term conservation easement substantially in the form of Exhibit B.

### **2. Village Responsibilities**

- A. The Village shall provide feedback to the District and to the Southeastern Wisconsin Regional Planning Commission on the tree planting plan and approve a final design.

- B. The Village shall provide any required permits for planting trees on the property at no cost to the District.
- C. The Village shall prepare the planting areas for tree planting. The Village shall arrange for Diggers Hotline to mark the planting areas in advance of planting.
- D. The Village shall install the trees and deer protection on or before December 31, 2028.
- E. The Village shall execute an 11-year maintenance covenant or an 11-year limited term conservation easement if required by the District.
- F. The Village shall water and maintain the trees in good health for at least 11 years after planting.

**3. Contact Information**

The parties shall contact each other through the following points of contact.

<p>Jamie Ferschinger, Senior Project Planner          Milwaukee Metropolitan Sewerage District          260 West Seeboth Street          Milwaukee, Wisconsin 53204          jferschinger@mmsd.com          (414) 225-2052</p>	<p>Tom Harrigan, Village Manager          Village of Elm Grove          13600 Juneau Boulevard          Elm Grove, Wisconsin 53122</p> <p>Richard Paul, Jr., Director of Public Works          Village of Elm Grove          13600 Juneau Boulevard          Elm Grove, Wisconsin 53122</p>
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**4. Modifying this Agreement**

The parties may modify this agreement only in a writing signed by the District and the Village.

**5. Terminating this Agreement**

Any party to this agreement may terminate it at any time by providing written notice to the other party indicating the effective date of the termination and the reasons for the termination.

**6. Severability**

If a court of competent jurisdiction holds any part of this agreement unenforceable, the remainder of the agreement will continue in effect.

**7. Governing Law**

The laws of Wisconsin govern any dispute arising under or related to this agreement.

**8. Conflicts of Interest**

No officer, employee, or agent of either party to this agreement who has any responsibility for implementing this agreement may have any interest in any consultant, contractor, or vendor providing anything for the project pursuant to this agreement.

**9. Resolving Disputes**

If a dispute arises under this agreement, the parties will first try to resolve the dispute with the help of a mutually acceptable mediator in Milwaukee County. The parties will equally share the costs and fees associated with the mediation, except that each party will be responsible for its own attorney fees. If the dispute is not resolved within 30 days after the mediation session, any party to this agreement may take the matter to court.

**10. Liability**

The parties will be liable for their own negligent acts, errors, and omissions. Nothing in this agreement is a waiver of any otherwise applicable immunity, limited immunity, or limitation on liability under Wisconsin law.

**11. Independence of the Parties**

This agreement does not create a partnership, and neither party may enter into contracts on behalf of another party.

**12. Counterparts**

This agreement may be signed in one or more counterparts, each of which, taken together, constitutes one and the same document.

**13. Signature Authority**

The persons signing this agreement certify that they have the authority from the entity they represent to execute this agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their authorized representatives.

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

**VILLAGE OF ELM GROVE**

By: \_\_\_\_\_  
Kevin Shafer, P.E.  
Executive Director

By: \_\_\_\_\_  
Tom Harrigan  
Village Manager

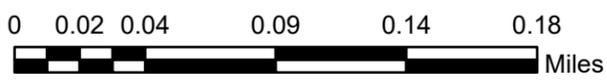
Date: \_\_\_\_\_

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

Approved as to form

\_\_\_\_\_  
Attorney for the District

# Elm Grove - Village Park Tree Planting Areas



- Parcel\_Poly\_11\_21\_2024
- Interceptor Sewer

## Tree Plantings

### Description

- Floodplain Forest - 8.5 acres
- Dimension

DOCUMENT NO.

**LIMITED TERM  
CONSERVATION  
EASEMENT AGREEMENT  
FOR GREEN  
INFRASTRUCTURE**

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (“Easement Agreement”) is granted as of the date of signature by \_\_\_\_\_ (“Landowner”) to the Milwaukee Metropolitan Sewerage District (“Easement Holder”).

**RECITALS**

**A. Property.** The Landowner is the sole owner of certain property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the “Property”) having an address at \_\_\_\_\_.

This Limited Term Conservation Easement Agreement 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 Easement Area has Conservation Value because it has the following features:

(DESCRIBE GREEN INFRASTRUCTURE)

**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” [or “Budget Book”]), which is on file at the office of the Easement Holder and incorporated into this Easement Agreement by reference. This Baseline Report [Budget Book] consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Easement Area at the time of the conveyance of the Easement described herein and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement Agreement.

**Recording Area**

Name and Return Address:

Milwaukee Metropolitan  
Sewerage District  
Attention: Beth Smit  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204

Parcel Identification Number:

**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) of the Wisconsin Statutes 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 XX years. The Landowner intends to place restrictions on the use of the Easement Area 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. Funding Provided by Easement Holder.** The Easement Holder has provided funding to the Landowner for the installation of the Green Infrastructure within the Easement Area. The Landowner acknowledges the receipt and sufficiency of the 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 an Easement over the Easement Area (“Easement”) for a period of (NOT LESS THAN 10) years on the Property. This Easement consists of the following terms, rights, and restrictions:

**1. Purpose.** The purpose of this Limited Term Conservation Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed within the Easement Area, with a total area of \_\_\_\_\_.

**2. Effective Dates.** This Limited Term Conservation Easement is deemed effective as of \_\_\_\_\_ and terminates on \_\_\_\_\_.

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

**4. Operation and Maintenance.** The Landowner will operate and maintain the Green Infrastructure located in the Easement Area so that it remains functional for the entire term of this Easement. The Landowner 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 this Easement

Agreement or inconsistent with the purpose of this Easement Agreement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Easement Area.

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 Agreement.

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

5.3 The Landowner notifies the Easement Holder of any conveyance in writing within 15 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 Agreement or limit its enforceability in any way.

**6. Easement Holders Rights and Remedies.** To accomplish the purpose of this Easement Agreement, the Landowner expressly conveys to the Easement Holder an Easement over the Easement Area consisting of 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 Easement Area.

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

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

**7. Remedies for Violations.** The Easement Holder has the right to enforce the terms of this Easement Agreement 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 with Landowner. The Easement Holder will notify 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 Agreement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation to Landowner and allow the Landowner at least 30 days to correct the violation. If the Landowner fails to respond or fails to properly correct the violation or threatened violation, 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 Easement Area or if good faith efforts to notify the Landowner are unsuccessful.

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

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

7.5 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches or estoppel as related to this Easement Agreement.

7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury or change in the Property resulting from causes beyond Landowner's 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 Agreement.

## **8. General Provisions.**

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

- a. Seeks to diminish the Conservation Values of the Easement Area,
- b. Would be inconsistent with the purpose of the Easement,

c. Would affect the duration of the Easement, or

d. Would affect 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 Agreement to a unit of federal, state, or local government or to an organization that is qualified within the meaning of 26 U.S.C. § 170(h)(3) and in the related regulations or any successor provisions then applicable and is 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 Agreement 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 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 Headings. The headings in this Easement Agreement have been inserted solely for convenience of reference 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 Agreement. Ambiguities in this Easement Agreement 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 Landowner and the Easement Holder may execute this Easement Agreement in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed 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 Landowner and the Easement Holder with respect to this Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, other than Green Infrastructure Partnership Program Funding Agreement G98004P91 and Green Solutions Funding Agreement G98005P132 all of which are merged into this Easement Agreement.

8.7 Extinguishment. This Easement Agreement may be terminated or extinguished before the expiration of its term, whether in whole or in part, by the exercise of the power of eminent domain or purchase in lieu of condemnation that takes all or part of the Property or by agreement between the Landowner and the Easement Holder that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Joint Obligation. The obligations imposed by this Easement Agreement upon the Landowner are joint and several.

8.9 Ownership Responsibilities, Costs, and Liabilities. The Landowner retains 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 is responsible for the operation, upkeep, and maintenance of the Property.

b. *Control.* In the absence of a judicial decree, nothing in this Easement Agreement 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 remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement Agreement 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 releases and will hold harmless and indemnify the Easement Holder 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:

(i) The Landowner’s violation or alleged violation of, or other failure to comply with, any state, federal, or local law or regulation pertaining to management of the Property including, without limitation, CERCLA;

(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 to human health or the environment, unless and to the extent caused solely by the Easement Holder.

e. *Taxes.* 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 Agreement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement Agreement shall remain valid and binding.

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

8.13 Warranties and Representations. The Landowner warrants and represents to the best of its knowledge 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 negatively 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 Easement to the Easement Holder.

**GRANT OF INTEREST TO EASEMENT HOLDER**

As (TITLE/POSITION), I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name  
Title

**STATE OF WISCONSIN, MILWAUKEE COUNTY**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the person known as (NAME), came before me and executed the foregoing instrument and acknowledged the same.

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

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

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

**ACCEPTANCE OF EASEMENT HOLDER’S INTEREST**

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

**STATE OF WISCONSIN, MILWAUKEE COUNTY**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 \_\_\_\_\_.

Approved as to Form: \_\_\_\_\_  
Vincent R. Bauer  
Attorney for the District

ATTACHMENTS

- EXHIBIT A Description of Property
- EXHIBIT B Location of Property
- EXHIBIT C Location of Easement Area

EXHIBIT A  
**DESCRIPTION OF PROPERTY**

**Address:**

**Tax Number:**

**Legal Description:**

Exhibit B

EXHIBIT B  
**LOCATION OF PROPERTY**

Exhibit B

EXHIBIT C  
**LOCATION OF EASEMENT AREA**