

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE**

**AND THE**

**MILWAUKEE METROPOLITAN SEWERAGE DISTRICT**

**FOR THE DESIGN PHASE OF THE NORTH 30<sup>TH</sup> STREET CORRIDOR PHASE 2  
STORMWATER WEST BASIN**

The City of Milwaukee, a municipal corporation, hereafter “**City**,” and the Milwaukee Metropolitan Sewerage District, a municipal body corporate, organized and operating pursuant to Wis. Stat. 220.21 et. seq., hereafter “**District**,” enter into this Agreement, pursuant to Wis. Stat. 66.0301, effective as of \_\_\_\_\_, 2021, for the purpose of establishing their respective duties and responsibilities with relation to the improvement of the North 30<sup>th</sup> Street Corridor Phase 2 Stormwater West Basin Project so as to manage the risk of flood damage:

**WHEREAS**, flooding has reoccurred in the North 30<sup>th</sup> Street Corridor. Damages from the July 2010 event alone exceed \$32 million. In extreme wet weather events, flood damage is likely to continue to occur without improvements to the District and City infrastructure serving the North 30<sup>th</sup> Street Corridor.

**WHEREAS**, the North 30<sup>th</sup> Street Corridor drains to Lincoln Creek. The District has made substantial investments to reduce the risk of flooding along Lincoln Creek north of the North 30<sup>th</sup> Street Corridor. As a result of the area’s topography, historical development patterns, and the limited capacity of existing infrastructure, flooding continues to occur in areas within the Lincoln Creek watershed, but outside of the Lincoln Creek floodplain. When reducing flooding in the areas outside of the Lincoln Creek floodplain, stormwater needs to be managed to prevent increasing flooding along Lincoln Creek.

**WHEREAS**, in the north portion of the North 30<sup>th</sup> Street Corridor, stormwater from the City’s separate storm sewers flows to Lincoln Creek through a combined sewer overflow and outfall owned and operated by the District. During extreme wet weather events, Lincoln Creek submerges the outfall, reducing drainage capacity of District structure CSO145 restricting regional stormwater flow and any CSO that may be occurring. Providing storage upstream of the combined sewer overflow and diverting stormwater away from the combined sewer overflow has the potential to mitigate this drainage problem, reduce the volume of combined flows to the District’s Inline Storage System, reduce the volume of combined sewer overflows, and reduce the risk of surface flooding.

**WHEREAS**, reducing the amount of stormwater entering commercial and residential basements will reduce peak flows in the sanitary sewerage system, reducing the risk of overflows.

**WHEREAS**, reduced flood risks and additional green infrastructure will reduce barriers to redevelopment within the North 30<sup>th</sup> Street Corridor by increasing the level of service provided by area stormwater infrastructure.

**WHEREAS**, the District completed a planning level report in November 2013 that describes improvements that would reduce flood damage in the area: *30<sup>th</sup> Street Corridor Stormwater*

*Study, North Section* Project M03062P01 (the *Study*). These improvements include detention basins and new or modified City-owned storm sewers.

**WHEREAS**, a railroad (RR) right-of-way transects the North 30<sup>th</sup> Street Corridor from north to south. The entire recommended alternative, as described in the *Study*, includes elements on both the east and west sides of this right-of-way. The elements on the east side include, but are not limited to, two (2) detention basins and associated conveyance structures. The elements on the west side include, but are not limited to, one (1) detention basin and associated conveyance structures. The elements east of the RR right-of-way have been completed.

**WHEREAS**, this Agreement applies to the preliminary engineering, design, and engineering services for the remaining project elements on the west side of the RR right-of-way including the West Capitol Drive RR underpass.

**NOW, THEREFORE**, in light of the above and foregoing declarations, the City and the District enter into this Agreement setting forth their respective duties necessary to implement the Project.

## **I. EFFECTIVE DATES AND DEFINITIONS**

**A. Effective Dates.** This Agreement becomes effective on its execution by both parties and terminates upon completion of construction of the District Components and City Components and payment of all reimbursement due hereunder. The operation and maintenance obligations survive the termination of this Agreement.

### **B. Definitions.**

1. “District Components” consist of the west stormwater basin and all related infrastructure within the District property boundary from the inlet structure to the point of outfall discharge to Lincoln Creek, as illustrated and described in Attachment A. These components will be owned by the District upon project completion

2. “City Components” consists of the stormwater conveyance systems primarily within the City right-of-way but also including stormwater conveyance systems that will be located on District property. These components will be owned by the City at all times. The City Components (as shown in Attachment A) include:

- a. New stormwater diversion structure tentatively planned to be constructed at or near the intersection of W. Capitol Drive and N. 35<sup>th</sup> Street
- b. New stormwater conveyance from the diversion structure to the inlet structure of the west basin
- c. New stormwater “Basin #4” at 3100 W. Capitol Drive that will manage stormwater that collects at the W. Capitol Drive RR underpass.
- d. All stormwater conveyance infrastructure that connects Basin #4 to existing or newly constructed structures or infrastructure.

- e. All City public utilities, existing and newly constructed, that reside in the right-of-way or easements that currently exist or are needed to be created as part of this project.
- f. All surface features, existing or newly constructed, that would normally be owned by the City and within the right of way or on City property including pavement, signs, streetlights, traffic lights, and City utility valves, hydrants, and manhole structures. This includes landscaping or green infrastructure installed on City right of way.

“Project” consists of the District Components and the City Components.

## **II. DISTRICT RESPONSIBILITIES**

### **A. Procurement.**

1. Engineering Services: The District will contract engineering services for the Project as follows:

- a. Preliminary engineering for the District Components and the City Components including Basin #4.
- b. Final design preparation of bid documents, engineering services during construction (ESDC), and post-construction engineering services for the District Components.
- c. Hydrology and Hydraulic analysis for Basin #4 as it relates to the Project.

The District will use a qualifications based selection process for the procurement of the engineering services contract with a City representative on the selection panel.

2. Construction: The District will use a sealed bid process to contract with a construction contractor for the District Components. In the event the District hires a third party construction manager/inspection staff, such manager will not be an employee of the design firm. At that time, the District would use a qualifications based selection process for the construction manager/inspection staff.

**B. Cost Estimates.** At the preliminary engineering phase, the consultant will provide a cost estimate that includes both the District Components and the City Components and the costs for each. For final design and at bidding, the consultant will provide a construction cost estimate for the District Components.

**C. Collaboration.** District shall collaborate with the City throughout the development of the preliminary engineering, design, and construction phases. The District will include the City in meetings with the consultant team at key milestones throughout the project.

1. For the City Components, the consultant shall provide the City with 30% plans and specifications.
2. For the District Components, the consultant shall provide the City with 30%, 50%, and 90% (“essentially complete”) plans and specifications, and the City shall have the opportunity to provide comment on the designs. The City shall complete such review and provide any written comments within 20 business days of receipt of the plans and specifications from the District.

**D. Permits.** District shall prepare all documents and applications needed to obtain necessary permits and regulatory reviews and approvals. The City shall assist the District with these submittals and participate in discussions with regulatory agencies.

**E. Real Estate.** District shall acquire all real estate interests, as necessary to construct District Components. The District shall prepare and record any temporary or permanent easements needed for the project. Including any easements containing City owned infrastructure on District property or District owned infrastructure on City owned property

**F. Demolition.** District shall deconstruct or demolish structures, as necessary to construct District Components.

**G. Relocation.** District shall pay for the relocation of City utilities within the construction footprint of the District Components.

**H. Construction Oversight.** The District shall perform all construction inspection and construction management for District Components. The District will not provide construction inspection for the City Components. At all times, the District will coordinate construction oversight with the City staff.

**I. Remediation.** The District shall undertake any environmental remediation activities necessary to construct the District Components, as required by the Wisconsin Department of Natural Resources or the United States Environmental Protection Agency.

**J. Invoicing.** Prior to invoicing City for any costs, the District shall provide City staff with opportunity to review draft invoices and supporting documentation.

**K. Ownership.** The District shall own, operate and maintain District Components to the point of connection with City Components.

**L. Change Orders.** District shall solicit City review and approval of any proposed contract change orders to the design contracts prior to approving. The City shall review as quickly as possible but shall have up to (but no more than) 10 working days to review and approve any such change order. The City’s failure to respond by the 10 working day deadline shall be deemed approval by the City. If the City provides notice of disapproval or otherwise conditions or qualifies its approval, then the City, District and the contractor shall meet to resolve the issue.

**M. As-Builts; Manuals.** District shall provide the City with as-built plans and operations and maintenance (O&M) manuals within 180 days of the substantial completion date of any City Component constructed under a District contract. Following substantial completion, in the event the City has any warranty claims related to the City Components, the District shall either act as agent for the City, or shall assign its warranty rights to the City, as the parties may agree.

### **III. CITY RESPONSIBILITIES**

#### **A. Participation.**

1. The City will designate two individuals to participate on the District's consultant selection committee for the contract for preliminary engineering, final design and preparation of bid documents, engineering services during construction (ESDC), and post construction engineering services.

2. The City will designate at least one individual to participate in monthly project update meetings, stakeholder meetings, and public outreach meetings throughout the preliminary engineering, design, and construction phases of the project. The City will designate additional departmental representatives to participate in meetings as appropriate and necessary to provide accurate and comprehensive input on various elements of the project.

3. For the City Components, the City shall provide the District with 50%, and 90% ("essentially complete") plans and specifications, and the District shall have the opportunity to provide comment on the designs. The District shall complete such review and provide any written comments within 20 business days of receipt of the plans and specifications from the District.

#### **B. Reimbursement.**

1. The City shall reimburse the District for the cost of engineering services related to City Components in an amount not-to-exceed \$567,000. [Amount will be inserted when known].

2. Upon completion of preliminary engineering, the City will self-perform final design, bidding, construction, and ESDC for all of the City Components. The City intends to utilize the District's design team for hydrology and hydraulic modeling and structural design of City components. The City shall:

a. Reimburse the District for work related to the City Components.

3. The City shall complete the final design, bidding, construction, and ESDC for the City Components, and shall coordinate plans, specifications, and schedules with the District and the District's design team.

4. The City may withhold payment for services not reasonably associated with the City Components.

**C. Waiver of Fees.** City shall waive:

1. any permit fees for permits issued to the District for work on the District Components;
2. any cost assessments to the District for the unrealized useful life of relocated City utilities, sewer infrastructure, streets, or other assets; and
3. fees and assessments related to vacation of streets and utilities.

**D. Real Estate.** City shall provide real estate interests to the District of any property owned by the City, as needed to complete construction of District components. These interests may include permanent easements, temporary easements for construction, rights of entry, or other real estate interests, which will be determined as design is completed. The District will be responsible for preparing all documents related to real estate interests between the City and the District.

**E. Remediation.** The City is responsible for all costs related to investigation and remediation of environmental contamination that may be identified and be necessary as required by the Wisconsin Department of Natural Resources or the United States Environmental Protection Agency on the City Components.

**F. Relocation.** The City shall relocate utilities, sewer infrastructure, and streets as necessary for the City Components at no cost to the District.

**G. Green Infrastructure.** The City shall consider implementing green infrastructure to the maximum extent practical in stormwater conveyance facilities and street construction elements of the City Components, in consultation with the District.

**H. Ownership.** The City shall own City Components to the point of connection with District Components. Following substantial completion of construction, all maintenance responsibilities for the City Components belong to the City.

#### **IV. COORDINATION AND OUTREACH**

**A. Point of Connection.** At the conclusion of preliminary engineering, the District and the City will determine their respective points of responsibility, including where each Party's ownership begins and ends. The District will be responsible for internal conditions within the basins on District owned property and the City will be responsible for internal conditions within the basins on City owned property, such as structural integrity and vegetation maintenance. The City will be responsible for the sewers that convey stormwater to the basins, including the inlet and outlet structures for these sewers at the City owned basins. The District will be responsible for outlet structures and sewers from basins owned by the District which discharge into waters which the District has jurisdiction responsibility for. When plans and specifications are essentially (90%) complete, the District and the City will review the initial points of responsibility and adjust them, if necessary.

**B. Communication.** The Parties will regularly update each other regarding the progress of their respective work. Primary communication shall be between Robert Seleen, Flood Hazard Mitigation Manager, for the City and Jerome Fogel, Senior Project Manager, for the District or their designated representatives. Each Party will update the other and share reports, plans, specifications, schedules, or any other information related to planning, design, and construction of the project in a timely manner as information becomes available and according to milestones and review targets established in the consultant's scope of work.

**C. Documentation.** Upon completion of construction, each Party will provide the other Party with:

1. as-built plans and specifications in an electronic format acceptable to the other Party, and
2. operation and maintenance plans.

**D. Outreach.** The District will lead the development and implementation of local public stakeholder involvement programs. The District will do this work in cooperation with the City. If the City receives comments from local stakeholders, then the City will share these comments with the District. The District will arrange public involvement for stakeholders, with support from the City.

## **V. FUNDING**

**A. Responsibility.** The District is responsible for funding the design, construction, construction management and inspection, operation and maintenance of the District Components and the City is responsible for funding the design, construction, construction management and inspection, operation and maintenance of the City Components except as otherwise set forth in this Agreement.

**B. Funding Unavailable.** If the City or the District does not provide funding through the respective budgets, then the City and the District will collaborate to determine whether to suspend, modify or terminate this Agreement.

**C. Contingency.** Notwithstanding anything to the contrary contained herein, City's duties hereunder requiring City expenditure of City funds and/or requiring City expense hereunder, and City's duties hereunder requiring City entry into contracts for City Components and City entering into any other contracts with third parties for any other City work required under this Agreement are contingent upon approval of a duly passed and adopted City of Milwaukee Common Council resolution authorizing such expenditure and/or expense and/or contracting as the case may be. The City shall provide written notice to the District within 30 days after each such resolution authorizing the expenditures listed above has been adopted by the Milwaukee Common Council.

## **VI. NOTICES; GENERAL REVIEW**

The District will provide notices to City hereunder to:

Nader Jaber, Engineer in Charge  
City of Milwaukee, Department of Public Works  
841 N. Broadway, Room 701  
Milwaukee, WI 53202  
(414) 286-0514  
njaber@milwaukee.gov

The City will provide notices to District hereunder to:

Jerome Flogel, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1446  
jflogel@mmsd.com  
(414) 225-2161

To the extent not otherwise specified or provided for in this Agreement, where a party's review and approval is needed hereunder, that party shall endeavor to act promptly and to provide the review and comments and/or approval within 30 days of receipt of the request and supporting documentation from the other party.

## **VII. MODIFYING THIS AGREEMENT**

Any modification or amendment to this Agreement must be in writing and signed by both Parties.

## **VIII. SEVERABILITY**

If a court finds any part of this Agreement unenforceable, then the remainder of this Agreement continues in effect.



## **IX. AUTHORITY OF SIGNATORIES; COUNTERPARTS; HEADINGS**

Each person signing this Agreement certifies that the person is properly authorized by the Party's governing body to execute this Agreement. This Agreement may be signed in one or more counterparts which, when taken together, shall constitute one and the same document. Facsimile or email-provided signatures shall be accepted as originals. Headings used herein are for convenience only.

## **X. INDEMNIFICATION**

To the fullest extent permitted by law, the District shall indemnify the City for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the work performed by the District hereunder, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the District, its agents, or employees.

To the fullest extent permitted by law, the City shall indemnify the District for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the work performed by the City hereunder, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the City, its agents, or employees.

Nothing herein waives or compromises the parties' respective rights under Wis. Stat. 893.80.

## **XI. INSURANCE**

The District is a special purpose municipal entity with the authority to levy taxes, and as such, is self-insured for general liability and workers' compensation under Wis. Stat. 102, 893.80 and 895.46(1). The District shall ensure that all contractors performing work on its behalf under this Agreement provide proof of insurance for Comprehensive General Liability, Worker's Compensation, Motor Vehicle Liability, Contractor's Pollution Liability, Umbrella/Excess Liability and Builder's Risk; the District shall ensure that the City is added as an additional insured whenever the District is added as an additional insured.

Likewise, the City shall ensure that all contractors performing work on its behalf under this Agreement provide proof of insurance for Comprehensive General Liability, Worker's Compensation, Motor Vehicle Liability, Contractor's Pollution Liability, Umbrella/Excess Liability and Builder's Risk; the City shall ensure that the District is added as an additional insured whenever the City is added as an additional insured.

## **XII. RESOLVING DISPUTES**

If a dispute arises under this Agreement, then the Parties will try to resolve it with the help of a mutually acceptable mediator in Milwaukee County. The Parties will equally share any costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 60 days after the Parties refer it to a mediator, then either Party may take the matter to court. Venue in any action brought under this Contract is proper only in either the Circuit Court for Milwaukee County or the United States District Court for the Eastern District of Wisconsin.

**IN WITNESS WHEREOF**, District and City have caused this Agreement to be executed by their duly authorized signatories as of the date first written above.

**CITY: CITY OF MILWAUKEE**

**DISTRICT: MILWAUKEE METROPOLITAN SEWERAGE DISTRICT**

By: \_\_\_\_\_  
Jeff Polenske, DPW Commissioner

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

\_\_\_\_\_  
James R. Owczarski, City Clerk

**Approved by MMSD Division of Legal Services**

**COUNTERSIGNED:**

By: \_\_\_\_\_  
Katherine Lazarski  
Director of Legal Services  
State Bar No. 1038378

\_\_\_\_\_  
Aycha Sawa, Comptroller

Common Council Res. # \_\_\_\_\_

**CITY ATTORNEY APPROVAL**

The undersigned hereby approves the signatures of the City representatives above per MCO 304-21.

By: \_\_\_\_\_

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

ATTACHMENT A  
PROJECT MAP

