

**Intergovernmental Cooperation Agreement
between the
Milwaukee Metropolitan Sewerage District
and the
City of Milwaukee
for WaterMarks WaterMarkers Maintenance**

1. Parties

This Intergovernmental Cooperation Agreement (Agreement) is between the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204, acting through its Executive Director, and the City of Milwaukee (City), located at 200 East Wells Street, Milwaukee, Wisconsin 53202, acting through its Commissioner of Public Works (each a Party and together the Parties).

2. Purpose

The purpose of this Agreement is to establish responsibilities for ownership and maintenance of the artistic installation of illuminated blue letters known as WaterMarkers planned for locations on property owned by the City of Milwaukee.

3. Basis for this Agreement

- A. City as Living Laboratory (CALL) is a nonprofit organization working with artists, scientists, and residents of urban communities to create sustainable solutions for environmental issues. CALL's mission is to promote artistry in urban living and sustainability and to connect people to their surrounding ecosystem and infrastructure.
- B. CALL developed the *WaterMarks: An Atlas of Water for the City of Milwaukee* initiative in 2017 to engage residents via artistic installations throughout Milwaukee's communities in conceptualizing their role in water systems and infrastructure.
- C. By design, the WaterMarks initiative continues to grow, fostering interconnection and promoting the significance of individual action to help reduce flooding and sewer overflows.
- D. CALL's project promotes the District's work providing water reclamation and flood management services and enhances the City's aesthetic landscape, connecting communities and increasing water use awareness.
- E. The City's Department of City Development has separately agreed to fund the design and installation costs for three WaterMarkers along East Greenfield

Avenue through a grant from Tax Incremental Financing District No. 96, passed by City's Common Council Resolution No. 181254 in 2018.

- F. The District and the City desire to participate collaboratively in the WaterMarks initiative.

4. Effective Dates

This Agreement becomes effective on the date it is executed by both Parties and terminates on December 31, 2035, unless otherwise extended by the Parties.

5. District Responsibilities

The District will:

- A. ensure the ordinary operation of each WaterMarker interfaced with Water Drop Alerts according to the WaterMarks Operations & Maintenance (O&M) Manual;
- B. monitor and maintain WaterMarkers placed on District property at the District's sole cost according to the WaterMarks O&M Manual, including but not limited to:
 - 1. annually inspect each WaterMarker's illuminated letter, pole, components, foundation, and connections,
 - 2. replace components as needed,
 - 3. remove graffiti,
 - 4. complete minor repairs (less than \$5,000 per incident), and
 - 5. submit any warranty claims to the manufacturer/installer as applicable;
- C. in the event of major damage (\$5,000 or more) to a WaterMarker, meet with City within 10 days to decide course of action.

6. City Responsibilities

The City will:

- A. retain ownership of WaterMarkers on City property;
- B. monitor and maintain each WaterMarker installed on City property at the City's sole cost according to the WaterMarks O&M Manual, including but not limited to:

1. annually inspect each WaterMarker's illuminated letter, pole, components, foundation, and connections,
 2. replace components as needed,
 3. remove graffiti,
 4. complete minor repairs (less than \$5,000 per incident), and
 5. submit any warranty claims to the manufacturer/installer as applicable;
- C. in the event of major damage to a WaterMarker, meet with District within 10 days to decide a course of action;
- D. at the end of the WaterMarkers' useful life, as determined by the City in its sole discretion, the City shall be solely responsible for removal of its WaterMarkers and associated site restoration.

7. Notices

- A. The District will provide notices to:

Milwaukee Department of Public Works
Attn: Jerrel Kruschke, Commissioner
841 North Broadway, Room 501
Milwaukee, WI 53202
jkrusc@milwaukee.gov
(414) 286-3301

- B. The City will provide notices to:

Milwaukee Metropolitan Sewerage District
Attn: Kate Morgan, Senior Public Engagement Specialist
260 West Seeboth Street
Milwaukee, WI 53204-1446
kmorgan@mmsd.com
(414) 225-2155

8. Intellectual Property

The Parties acknowledge that CALL retains ownership of the copyright for the WaterMarker work at all times. The CALL Mark is a registered U.S. trademark of Mary Miss/City as Living

Laboratory (U.S. Registration No. 4405853). CALL has granted the District a limited non-exclusive license to use the CALL Mark only in connection with the Park Project.

The Parties' use of the CALL Mark will at all times be consistent with the quality associated with the CALL Mark in order to maintain the integrity of the CALL Mark and the reputation and goodwill symbolized by the CALL Mark and associated with CALL. CALL will have the right to review and approve all the Parties' uses of the CALL Mark to ensure the quality of the CALL Mark be maintained. This includes uses of the CALL Mark in the Parties' press releases and didactic and other promotional materials. The Parties will either (1) use the ® symbol in conjunction with the CALL Mark or (2) display on materials using the CALL Mark the following legend:

“CITY AS LIVING LABORATORY (CALL) is a trademark of Mary Miss/City as Living Laboratory (CALL), Inc. All rights reserved, used with permission.”

All the Parties' use of the CALL Mark and associated goodwill inure to the benefit of CALL.

9. Records

The Parties agree to cooperate with one another concerning public records requests related to this Agreement and the WaterMarks project. Each Party authorizes the other to audit records related to this Agreement.

10. Modifying this Agreement

The Parties may modify this Agreement only by a written amendment signed by both Parties.

11. Severability

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

12. Applicable Law

The laws of the State of Wisconsin govern this Agreement.

13. 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 30 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 the Circuit Court for Milwaukee County.

14. Independence of the Parties

This Agreement does not create a partnership. Neither Party may enter into contracts on behalf of the other Party.

15. Authority of Signatories; Signatures; Counterparts

Each person signing this agreement certifies that that person is properly authorized by that Party's governing body to execute this Agreement. Facsimile and digital signatures are acceptable as original for purposes of this Agreement. This Agreement may be executed in one or more counterparts, each of which, when taken together, constitutes one and the same document.

16. Liability

The District and the City will each be liable for their own negligent acts, errors, and omissions. If litigation requires one Party to respond for the acts, errors, or omissions of the other Party, then the City and the District will hold each other harmless for any losses, damages, costs, or expenses including but not limited to reasonable attorney's fees and litigation expenses.

17. Nondiscrimination

The Parties agree to act in accordance with applicable federal, state, and local law related to nondiscrimination, including but not limited to Milwaukee Code of Ordinances Section 109-9 and District Administrative Policy 2-77.54.

SIGNATURES ON NEXT PAGE

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

CITY OF MILWAUKEE

By: _____
Kevin L. Shafer, P.E.
Executive Director

By: _____
Jerrel Kruschke, P.E.
Commissioner of Public Works

Date: _____

Date: _____

Approved as to form:

Attorney for the District

By: _____
Jim Owczarski
City Clerk

Countersigned

By: _____
Aycha Sawa
Comptroller

City Attorney Approval (MCO § 304-21):

By: _____
Assistant City Attorney

Date: _____

City Common Council Resolution File No.
