

**Intergovernmental Cooperation Agreement
between the
Milwaukee Metropolitan Sewerage District
and the
City of Milwaukee**

Port of Milwaukee Overpass Green Infrastructure Project

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 841 N Broadway, Milwaukee, Wisconsin 53202, acting through its Commissioner of Public Works.

2. Purpose

The purpose of this Agreement is to establish responsibilities for design, construction, post construction vegetation establishment, and maintenance of the Green Infrastructure (GI) to be installed under the Port of Milwaukee Overpass as depicted in Attachment 1 (Project), attached hereto and incorporated herein.

3. Basis for this Agreement

- A. Pursuant to its Wisconsin Pollutant Discharge Elimination System (WPDES) permit, the District must facilitate the installation of GI to reduce the frequency, magnitude, and duration of sewer overflows.
- B. The City supports reducing the risk of combined sewer overflows by reducing the quantity of stormwater runoff entering the combined sewer system from the areas under and surrounding the Port of Milwaukee Overpass on Interstate 794.
- C. Space is available for GI to be installed in the areas under and surrounding the Port of Milwaukee Overpass on Interstate 794.
- D. The contract that the District will secure for construction of the Project will include a vegetation establishment phase that will last approximately five years after the completion of construction and installation of the GI on the Project.

4. Effective Dates

This Agreement becomes effective as of the date of last signature below and terminates upon execution of the maintenance covenant as provided for in Section 6(E) below.

5. District Responsibilities

The District will:

- A. Obtain and pay for a design for the Project;
- B. Provide draft and final plans and specifications for the Project to the City for review pursuant to any federal, state, or local law, regulation, or requirement including those related to hazardous waste and substances that have the potential to contaminate or in any way harm or threaten human health or the environment;
- C. Secure and pay a contractor to construct the Project and establish GI vegetation for an initial five year period;
- D. Notify the City of the commencement of construction of the Project, regularly update the City as to the progress of the Project, allow the City to review all plans and specifications concerning the Project, and conduct, with reasonable notice, Project site inspections; and
- E. Record, at its sole discretion, any and all deeds, easements, and covenants executed in favor of District and held by the District for the Project.

6. City Responsibilities

The City will:

- A. Prior to the start of Project construction, acquire all necessary ownership rights or Right of Way Use agreements to the real estate depicted in the Project area in Attachment 1 including, but not limited to, rights currently held by the State of Wisconsin and any of its related entities, Milwaukee County, and any other entities known or unknown;
- B. Review all plans and specifications for the Project and not unreasonably withhold the approval of all such plans and specifications;
- C. Issue all necessary permits under the City's control in order to complete the Project;
- D. Provide reasonable notice prior to any site inspections;

- E. Upon completion of Project construction, execute a 10-year maintenance covenant in favor of the District. The maintenance covenant shall be in the form substantially similar to that in Attachment 2; and
- F. Subject to any vegetation maintenance contracts concerning the Project GI, Operate and maintain the GI after completion of construction of the Project.

7. Notices

- A. The District will provide notices to:

Tony Jazdyk, Manager
City Department of Public Works
841 North Broadway, Room 820
Milwaukee, WI 53202
antjaz@milwaukee.gov
414-286-2355

- B. The City will provide notices to:

Andy Kaminski, Senior Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, WI 53204
akaminski@mmsd.com
414-225-2245

All notices and other communications related to this Agreement shall be in writing and shall be considered received as follows:

- i. When delivered personally to the address as stated directly above;
- ii. Three days after being deposited in the United States mail, with postage prepaid to the address as stated directly above; or
- iii. By email when a record shows successful transmission.

8. Modifying this Agreement

Any modification to this Agreement will be in writing and signed by both parties.

9. Severability

If a court finds any part of this Agreement unenforceable, then the remainder of this Agreement shall continue in full force and effect.

10. Applicable Law

The laws of the State of Wisconsin apply to this Agreement.

11. 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 attorneys' fees. If the dispute is not resolved within 30 days after the dispute is heard by a mediator, then either party may take the matter to court. Venue in any action brought under this Agreement is proper only in the Circuit Court for Milwaukee County.

12. Termination

Either Party may terminate this Agreement at any time. To terminate this Agreement, a party will provide written notice to the other party per Section 7 of this Agreement. This notice will indicate the effective date of termination and the reasons for termination.

13. Independence of the Parties

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

14. Authority of Signatories

Each person signing this Agreement certifies that the person is properly authorized by the party's governing body to execute this Agreement.

15. Indemnification

The District and the City will be liable for their own negligent acts, errors, and omissions as to this Agreement.

16. Funding

If the City or the District is unable to fund its obligations under this Agreement, then the City and the District will collaborate to determine whether to suspend, modify, or terminate this Agreement.

**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: _____

Countersigned

By: _____
Bill Christianson, Comptroller

Approved as to form

Approved as to form

Attorney for the District











Attorney for the City

ATTACHMENT 1

FINAL GREEN INFRASTRUCTURE DESIGN



LEGEND

 Existing trees	 Stone swale
 Proposed trees	 Drainage flow
 Mowed lawn	 Project limits
 Upland prairie plantings	 Rain garden
 Bioretention basin plantings	
 Shrub massings	

SUMMARY

- Utilizes 5 bioretention basins to manage nearly 300,000 gallons during a major rain event
- Mowed lawn areas are placed adjacent to roadways to maintain clear sight lines
- Native vegetation improves water quality, increases biodiversity, and provides resources for wildlife
- Additional rain garden and native vegetation added north of E. Lincoln Ave. for improved sight lines and aesthetics

ATTACHMENT 2

Green Infrastructure Maintenance Covenant for Port of Milwaukee Overpass Green Infrastructure

This Maintenance Covenant (Covenant) is granted by the City of Milwaukee (City), located at 841 North Broadway, Milwaukee, Wisconsin 53202, to the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204.

INTRODUCTION

- 1. The Green Infrastructure.** The Port of Milwaukee Overpass Green Infrastructure installation project as provided for by an Intergovernmental Cooperation Agreement fully executed between the parties on (Insert Date) resulted in the installation of the following Green Infrastructure at the location depicted in Exhibit A:

(Insert Green Infrastructure details)

The above represent a total stormwater capture capacity of (Insert Amount) gallons of stormwater runoff and are hereinafter referred to in the collective as “Green Infrastructure” for the remainder of this Covenant.

- 2. Baseline Documentation.** The condition of the Green Infrastructure is documented in a Baseline Report provided by the City to the District and incorporated into this Covenant by reference. The Baseline Report consists of reports, maps, photographs, and other documentation and provides an inventory of relevant features, characteristics, and conservation values. The Baseline Report provides an accurate representation of the condition of the Green Infrastructure at the time of the conveyance of this Covenant. The Baseline Report is an objective, but not exclusive, reference for monitoring compliance with the terms of this Covenant.
- 3. Conservation Intent.** City and the District share the common purpose of preserving the Green Infrastructure for a period of at least 10 years. City intends to protect the Green Infrastructure. In addition, City intends to convey to the District and the District agrees to accept a right to monitor and enforce these restrictions.

MAINTENANCE COVENANT

In consideration of the facts recited above, City grants and the District accepts a Maintenance Covenant for a period of 10 years for the Green Infrastructure. This Covenant consists of the following terms, rights, and restrictions.

1. Purpose. The purpose of this Covenant is to require City to keep, preserve, and maintain the Green Infrastructure as described above and as further delineated in the exhibits attached hereto and incorporated herein.

2. Effective Dates. This Covenant is effective upon the date of last signature below. This Covenant terminates exactly 10 years from the date of last signature below.

3. Operation and Maintenance. City will maintain the Green Infrastructure so that it remains functional for the entire term of this Covenant. City is solely responsible for the operation, maintenance, and performance of the Green Infrastructure, subject to the Vegetation Maintenance Agreement, Contract No. (Insert Number), between the District and (Insert Contractor Name), a copy of which has been furnished to City.

4. Additional Reserved Rights of City. City retains all rights associated with the Green Infrastructure including the right to use it and invite others to use it in any manner that is not expressly restricted or prohibited by this Covenant or inconsistent with the purpose of this Covenant. However, City may not exercise these rights in a manner that would adversely affect the Green Infrastructure.

City expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Green Infrastructure only if:

4.1 The encumbrance or conveyance is subject to the terms of this Covenant.

4.2 City incorporates the terms of this Covenant by reference in any subsequent deed or other legal instrument by which City transfers any interest in all or part of the Green Infrastructure.

4.3 City notifies the District of any conveyance in writing within 15 days after the conveyance and provides the District with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

4.4 Failure of City to perform any act required in Subparagraphs 4.2 or 4.3 does not impair the validity of this Covenant or limit its enforceability in any way.

5. District Rights and Remedies. To accomplish the purpose of this Covenant, City expressly conveys to the District the following rights and remedies:

5.1 Preserve Conservation Values. The District has the right to preserve and protect the Green Infrastructure.

5.2 Prevent Inconsistent Uses. The District has the right to prevent any activity or use of the Green Infrastructure that is inconsistent with the purpose of this Covenant and to require the restoration of areas or features of the Green Infrastructure that are damaged by any inconsistent activity or use pursuant to the remedies set forth herein.

5.3 Inspection. The District has the right to inspect and monitor compliance with the terms of this Covenant, obtain evidence for use in seeking judicial or other enforcement of the Covenant, and otherwise exercise its rights under this Covenant. The District will provide prior notice to City before inspecting the Green Infrastructure, shall comply with any safety rules of City when undertaking such inspections, and shall avoid unreasonable disruption of the activities of City when undertaking such inspections.

6. Remedies for Violations. The District has the right to enforce the terms of this Covenant and prevent or remedy violations through appropriate legal proceedings.

6.1 Notice of Problems. If the District identifies problems with the Green Infrastructure, the District will initially attempt to resolve the problems collaboratively with City. The District will notify City of the problems and request City take remedial action within a reasonable amount of time.

6.2 Notice of Violation and Corrective Action. If the District determines that a violation of the terms of this Covenant has occurred or is threatened, then the District will give written notice of the violation or threatened violation and allow at least 30 days for City to correct the violation. If City fails to respond, then the District may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Green Infrastructure or if good faith efforts to notify City are unsuccessful.

6.3 Remedies. When enforcing this Covenant, the remedies available to the District include temporary or permanent injunctive relief for any violation or threatened violation of the Covenant, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Covenant, specific performance, declaratory relief, and recovery of damages resulting from a violation of this Covenant or injury to the Green Infrastructure.

6.4 Non-Waiver. A delay or prior inability of the District to discover a violation or initiate enforcement proceedings does not waive or forfeit the District's right to take any action necessary to assure compliance with the terms of this Covenant.

6.5 Waiver of Certain Defenses. City waives any defense of laches or estoppel as related to this Covenant.

6.6 Acts Beyond the Control of City. The District may not bring any action against City for any injury or change in the Green Infrastructure resulting from causes beyond the control of City including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by City under emergency conditions to prevent or mitigate damage from such causes, provided that City notifies the District of any occurrence that has adversely affected or interfered with the purpose of this Covenant.

7. Amendment. City and the District may jointly amend this Covenant in a written instrument executed by both parties. However, no amendment will be allowed if, in the judgment of the District, the proposed amendment:

7.1 Seeks to diminish the Green Infrastructure,

7.2 Would be inconsistent with the purpose of this Covenant,

7.3 Seeks to shorten the duration of this Covenant, or

7.4 Would affect the validity of this Covenant.

8. Assignment. The District may convey, assign, or transfer its interests in this Covenant 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. As a condition of any assignment or transfer, any future holder of this Covenant is required to carry out its purpose for the remainder of its term. The District will notify City 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.

9. Headings. The headings in this Covenant have been inserted solely for convenience of reference and have no effect on construction or interpretation.

10. Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Covenant. Ambiguities in this Covenant will be construed in a manner that best effectuates the purpose of this Covenant and protection of the Green Infrastructure.

11. Counterparts. City and the District may execute this Covenant in two or more counterparts which will, in the aggregate, be signed by both parties. Each counterpart is an original document.

12. Entire Agreement. This Covenant sets forth the entire agreement between City and the District with respect to this Covenant and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Covenant.

13. Extinguishment. This Covenant may be terminated or extinguished before the expiration of its term, in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, this Covenant may be extinguished only if City and the District agree that a subsequent unexpected change in the condition of or surrounding the Green Infrastructure makes accomplishing the purpose of this Covenant impossible.

14. Ownership Responsibilities, Costs, and Liabilities. City retains all responsibilities and will bear all costs and liabilities related to the ownership of the Green Infrastructure including, but not limited to, the following:

14.1 Operation, upkeep, and maintenance. City is responsible for the operation, upkeep, and maintenance of the Green Infrastructure, subject to the Vegetation Maintenance Agreement, Contract No. (Insert Contract Number), between the District and (Insert Contractor Name).

14.2 Control. In the absence of a judicial decree, nothing in this Covenant establishes any right or ability in the District to:

- a. Exercise physical or managerial control over the day-to-day operations of the Green Infrastructure;
- b. Become involved in the management decisions of City regarding the generation, handling, or disposal of hazardous substances; or
- c. Otherwise become an operator of the Green Infrastructure 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 the Green Infrastructure.

14.3 Permits. City is solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Covenant. During construction or any other activity, City will comply with all applicable federal, state, and local laws, regulations, and requirements.

14.4 Indemnification. City releases and will hold harmless, indemnify, and defend the District and its Commissioners, members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each (collectively “Indemnified Parties”) from and against any and 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 or in any way connected with:

- a. Injury to or the death of any person or physical damage to the Green Infrastructure resulting from any act, omission, condition, or other matter related to or occurring on or about the Green Infrastructure, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- b. The violation or alleged violation of, or other failure to comply with, any state, federal, or local law or regulation including, without limitation, CERCLA, by any person other than the Indemnified Parties in any way affecting, involving, or related to the Green Infrastructure; or
- c. The presence or release in, on, from, or about the Green Infrastructure, 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 or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

Nothing in this Covenant is intended to be a waiver or estoppel of City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, City or its insurer will not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

15. Severability. If any provision or specific application of this Covenant is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Covenant will remain valid and binding.

16. Successors. This Covenant is binding upon and inures to the benefit of City and the District and their respective personal representatives, heirs, successors, and assigns and will continue as a servitude running with the Green Infrastructure for the term of this Covenant.

**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

By: _____
Attorney for the District

Exhibit A