

43rd Street Ditch Project Agreement

This intergovernmental cooperation agreement (the “**Agreement**”) is between the Milwaukee Metropolitan Sewerage District, acting through its executive director, (the “**District**”) and the City of Milwaukee, acting through its commissioner of public works (the “**City**”).

The District is a special-purpose unit of local government authorized under Wis. Stat. ch. 200 subch. II to manage wastewater and floodwater in its service area.

The District is undertaking a comprehensive program to address flood risks and improve the riparian corridor of the Kinnickinnic River pursuant to its authority under Wis. Stat. § 200.35(8).

The KK watershed is the most urbanized watershed in Wisconsin. Increased development and impervious surfaces, especially in watersheds developed before stormwater and surface water rules, increase stream flows and flooding problems. The Southeastern Wisconsin Regional Planning Commission, in its 2024 Milwaukee County Hazard Mitigation Plan Update, determined that 624 structures in the KK watershed are in the 1% annual probability floodplain with potential direct and indirect flood damage costs estimated at over \$66 million.

The 43rd Street ditch is a tributary to the Kinnickinnic River over which the District has flood management jurisdiction. It originates in the Village of West Milwaukee and flows through western Layton Park before joining the Kinnickinnic River mainstem in Jackson Park.

The segment of the ditch within the anticipated project boundaries is lined with concrete and connects on its north and south ends by underground culverts to convey flow. Originally constructed in the 1960s, portions of this aging infrastructure are now in poor condition.

To reduce the risk of downstream flooding for approximately thirteen structures in the vicinity of South 43rd Street and West Lincoln Avenue, the District has determined that improvements to the ditch and additional floodwater storage are required.

The District’s implementation of the improvements in this project will directly impact land, utilities, and structures owned by the City, including the stormwater treatment pond, the Milwaukee Water Works (MWW) building, the waste transfer station, the land atop the culverts just south of West Lincoln Avenue, the ditch, and the tow lot.

The District and the City enter this Agreement pursuant to Wis. Stat. § 66.0301 to cooperate on watercourse restoration and flood management efforts for this area and to restore all impacted City facilities. The District and the City therefore agree as follows.

1. Effective Dates

This Agreement becomes effective upon execution by the District and the City and terminates upon final completion (as defined in the District’s construction contract) of the improvements substantially as outlined in Attachment A of this Agreement. Ownership and maintenance obligations survive the expiration of this Agreement.

2. District Responsibilities

A. Procurement.

- i. **Engineering Services.** The District will contract for the project design with engineering services consultants, including final design, preparation of bid documents, engineering services during construction, and post-construction engineering services for the project.
- ii. **Construction.** The District will use a public sealed-bid process to contract for the construction of all elements of the project including the following major components substantially as shown in Attachment A.
 - a. **Waste Transfer Station.** The District will demolish the existing waste transfer station and construct a replacement waste transfer station north of the existing facility, including a main waste transfer building and a scale house, that will be architecturally and functionally similar to the existing buildings. The District will design the replacement waste transfer station to maximize the size of the building within the space available for it. The District will conduct necessary site preparation and demolition at the relocation site. The District will relocate existing compactor and scale equipment to the new building. The District will provide facilities as necessary for code compliance. The District will not provide or pay for new compaction or scale equipment. The District will not provide improvements exceeding those necessary for code compliance.
 - b. **Flood Storage Basin and Parking.** The District will construct a flood storage basin. The District will use material excavated from the construction of the basin to raise the parking lots before surfacing and striping them.
 - c. **43rd St. Ditch.** The District will improve the 43rd St. ditch by removing the concrete lining and naturalizing the channel.
 - d. **Stormwater Treatment Pond.** The District will dredge the City's stormwater treatment pond and revegetate the banks. The District will provide new storm sewers and drainage structures connected to the pond as needed to accommodate revised parking lot grading.
 - e. **City Maintenance Area.** After the District replaces the failing portion of its corrugated metal pipe feeding the 43rd St. ditch with reinforced concrete box culvert, the District will replace the overlying pavement, plant a row of evergreen trees between the paved area and West Lincoln Avenue, and install a beam guard vehicle barrier around the perimeter of the paved area. The City will decide the configuration of the reinstalled entrance gate. The District will restore unpaved areas with turf grass seeding.

- f. **Demolition of MWW Facility.** The District will demolish the MWW facility located at 3801 West Lincoln Avenue and raise, pave, and stripe the footprint as part of the tow lot expansion.
 - iii. **Collaboration.** The District will manage and fund the design and construction of the project. The District will collaborate with the City throughout the final design and construction phases. The District will solicit and review the City's comments throughout final design development and include the City in meetings with the design team at key milestones, providing the City with 50%, 90%, and 100% complete construction plans and specifications.
- B. **Permits.** The District will prepare all documents and applications to obtain all necessary permits and regulatory approvals to construct the project.
- C. **Easements.** The District will acquire temporary and permanent easements as needed from the City and other property owners to construct and maintain the project.
- D. **Relocation.** The District will relocate City utilities necessary to construct the project within the construction footprint at the District's cost.
- E. **Construction Oversight.** The District will perform all construction inspection and construction management for the project.
- F. **Notice of Substantial Completion of City Project Components.** The District will notify the City in writing upon substantial completion of the City's relocated or restored assets.
- G. **Change Orders.** The District will solicit City review and approval of any proposed contract change orders to the design or construction contracts that affect City-owned property or infrastructure. If the City provides notice of disapproval or otherwise conditions or qualifies its approval, then the City, District, and consultant will meet to resolve the issue.
- H. **Record Drawings and O&M Manuals.** The District will provide the City record drawings and operations and maintenance manuals within 90 days of the substantial completion date of any project components constructed under a District contract. If the City has any warranty claims following substantial completion, the District will either act as agent for the City or assign its warranty rights to the City, as the parties may agree.

3. City Responsibilities

A. Design Contribution, Review, and Comment.

- i. The City will timely provide to the District any information related to its assets that will need reconstruction as a result of the project.
- ii. The City will provide comments, if any, to the District within 30 days of receipt of plans and specifications for the City maintenance area, MWW building

demolition, waste transfer station removal and relocation, tow lot expansion, restoration of tow lot lighting, pavement restoration in W. Lincoln Ave., rehabilitated stormwater treatment pond, storm sewers, oil/water separators, and any other City assets to be relocated or restored.

- iii. The City will participate in project-related discussions with regulatory agencies and assist the District with regulatory submittals as requested.
- iv. The City will review any proposed contract change orders to the design or construction contracts that affect City-owned property or infrastructure and provide comments, if any, to the District within 10 working days.
- v. The City will conduct timely water infrastructure design review and inspections and participate in the substantial completion inspection walkthrough(s).

B. **Access.** The City will provide the District access to the areas of the tow lot needed for construction of the project.

C. **Easements.** The City will provide all temporary and permanent easements to the District as needed to construct the project at no cost to the District.

4. **Regulatory Obligations.** The District and the City will jointly notify the Wisconsin Department of Natural Resources (WDNR) pursuant to Wis. Stat. § 292.11. The District will manage and the City will cooperate as requested by the District on WDNR regulatory requirements. Regardless of responsible party status according to the WDNR, the District and the City will separately be responsible for any continuing obligations imposed on the parcels according to their ultimate ownership under Article 5 below.

5. **Real Estate.** The District is acquiring 3601 W. Hayes St. from the third-party property owner. Upon final completion of construction (as defined in the District's construction contracts), the District will convey its parcels at 3601 W. Hayes St. and 2425 S. 35th St. to the City in fee simple. The City will convey the parcels containing the 43rd Street ditch and the flood storage basin to the District in fee simple. Anticipated property transactions are included in Attachment B.

6. **No Payment.** The District and the City agree that the services provided in kind under this Agreement reflect an equal contribution from each other and that no additional payment will be required nor fees or costs assessed against either the District or the City.

7. Notices

A. The District will provide notices related to this Agreement to:

Milwaukee Department of Public Works
Attn: Kevin Muhs, City Engineer
841 N. Broadway St., Room 701
Milwaukee, WI 53202
kmuhs@milwaukee.gov

(414) 286-2400

B. The City will provide notices related to this Agreement to:

Milwaukee Metropolitan Sewerage District
Attn: Courtney Allen, Senior Project Manager
260 W. Seeboth St.
Milwaukee, WI 53204
callen@mmsd.com
(414) 225-2069

8. Entire Agreement; Modification

This is the entire agreement between the parties, and the parties may modify this Agreement only by a written amendment signed by both parties.

9. Severability

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

10. Governing Law

The laws of Wisconsin govern disputes arising under or related to this Agreement.

11. Resolving Disputes

If a dispute arises under this Agreement that the parties cannot resolve themselves, 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 Agreement is proper only in either the Milwaukee County Circuit Court or the U.S. District Court for the Eastern District of Wisconsin.

12. Conflict of Interest

No officer, employee, or agent of the District or the City who has any responsibility for implementing this Agreement may have any interest in any consultant, contractor, or vendor providing services to the District or the City under this Agreement.

13. Independence of the Parties

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

14. 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, taken together, constitutes one and the same document.

15. Indemnification

The City and the District will 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 fees and litigation expenses.

16. 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.

Each party is signing this Agreement on the date specified for that party’s signature below.

**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: _____
Jim Owczarski
City Clerk

Attorney for the District

Countersigned

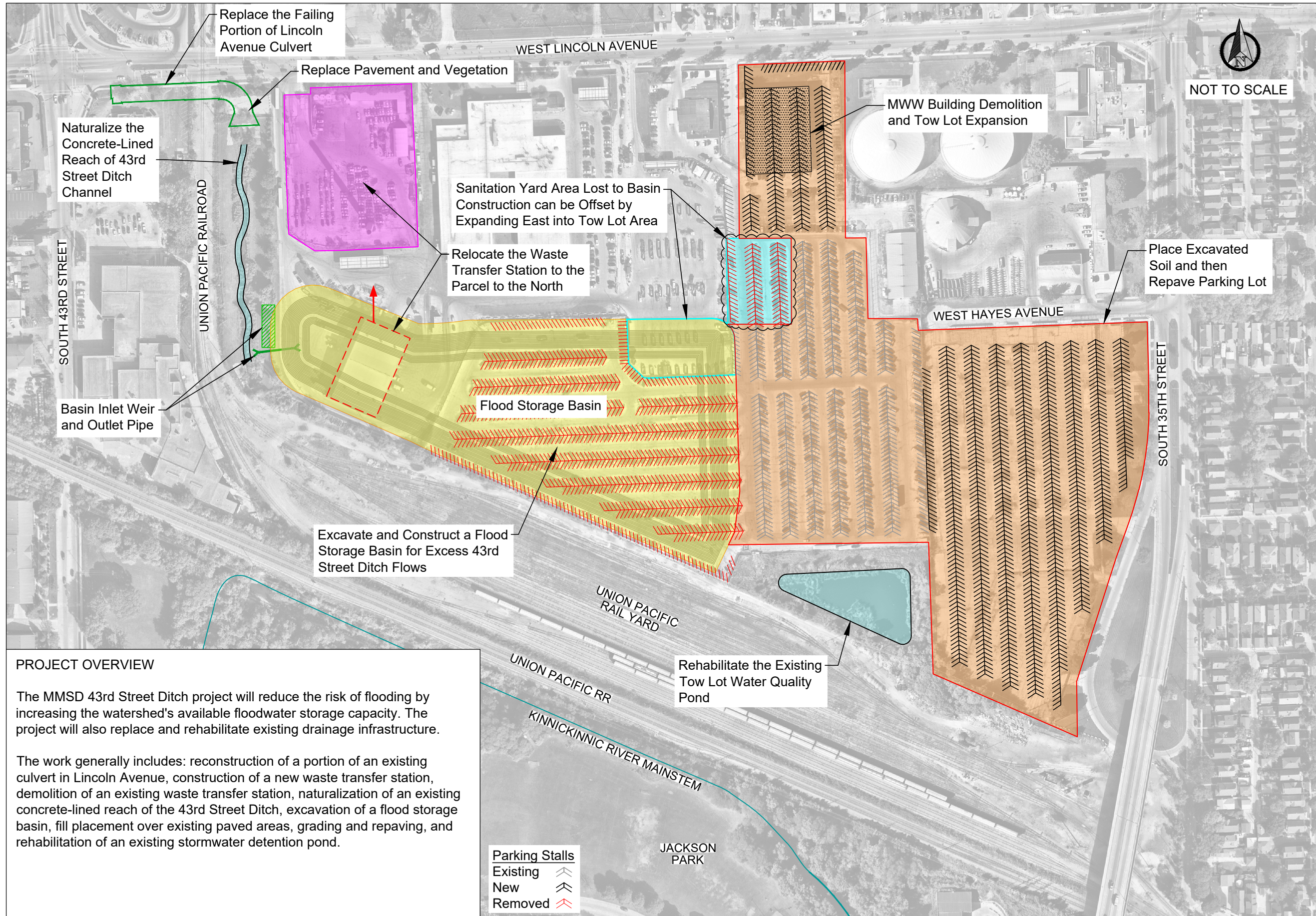
By: _____
Aycha Sawa
Comptroller

City Attorney Approval:

Assistant City Attorney

City Common Council Resolution File No.

ATTACHMENT A - 43RD STREET DITCH PROJECT COMPONENTS



Replace the Failing Portion of Lincoln Avenue Culvert

Replace Pavement and Vegetation

Naturalize the Concrete-Lined Reach of 43rd Street Ditch Channel

Sanitation Yard Area Lost to Basin Construction can be Offset by Expanding East into Tow Lot Area

Relocate the Waste Transfer Station to the Parcel to the North

MWW Building Demolition and Tow Lot Expansion

Place Excavated Soil and then Repave Parking Lot

Basin Inlet Weir and Outlet Pipe

Flood Storage Basin

Excavate and Construct a Flood Storage Basin for Excess 43rd Street Ditch Flows

Rehabilitate the Existing Tow Lot Water Quality Pond

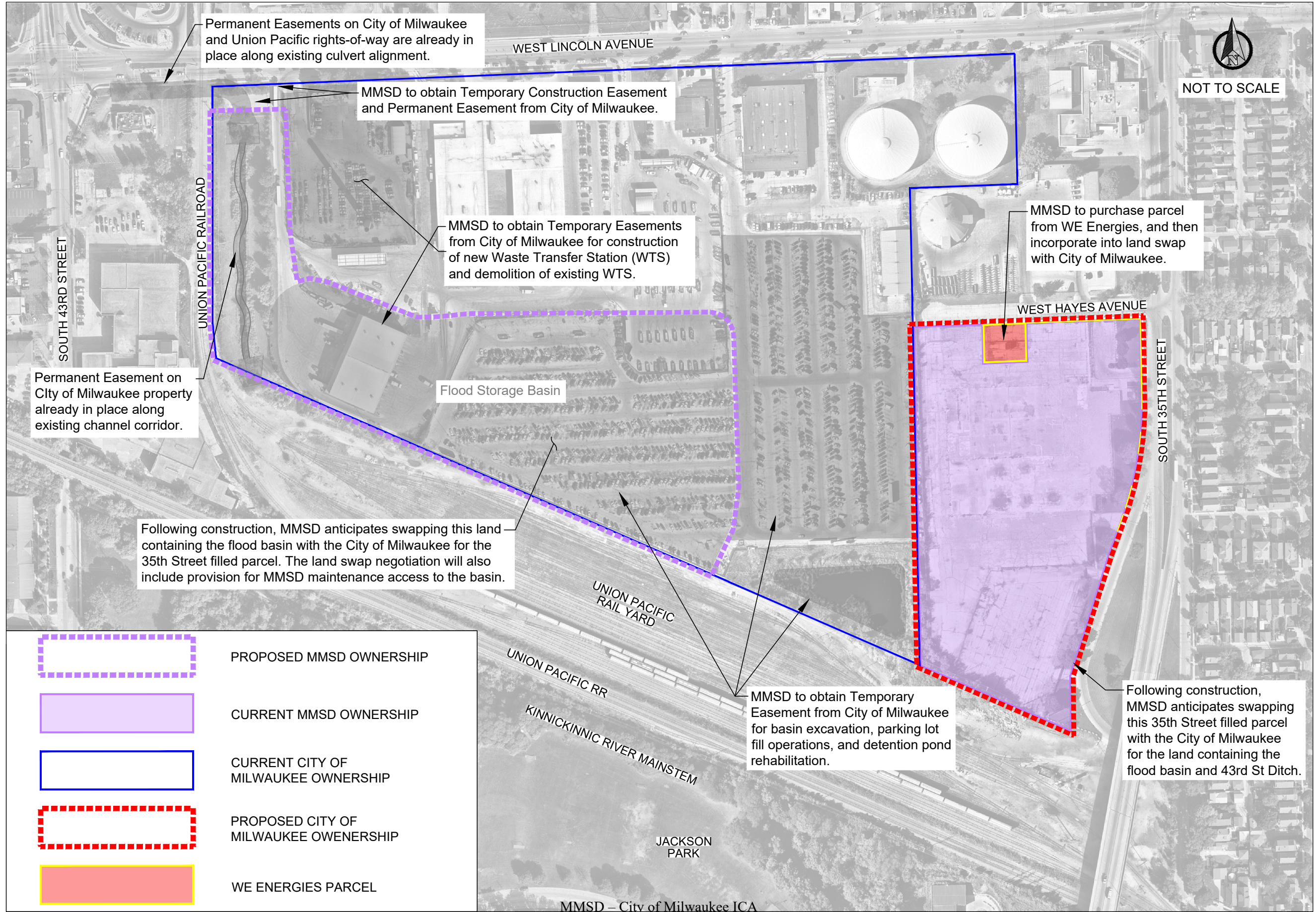
PROJECT OVERVIEW

The MMSD 43rd Street Ditch project will reduce the risk of flooding by increasing the watershed's available floodwater storage capacity. The project will also replace and rehabilitate existing drainage infrastructure.

The work generally includes: reconstruction of a portion of an existing culvert in Lincoln Avenue, construction of a new waste transfer station, demolition of an existing waste transfer station, naturalization of an existing concrete-lined reach of the 43rd Street Ditch, excavation of a flood storage basin, fill placement over existing paved areas, grading and repaving, and rehabilitation of an existing stormwater detention pond.

- Parking Stalls**
 Existing
 New
 Removed

Overview of MMSD 43rd Street Ditch Property Transactions



Permanent Easements on City of Milwaukee and Union Pacific rights-of-way are already in place along existing culvert alignment.

MMSD to obtain Temporary Construction Easement and Permanent Easement from City of Milwaukee.

MMSD to obtain Temporary Easements from City of Milwaukee for construction of new Waste Transfer Station (WTS) and demolition of existing WTS.

MMSD to purchase parcel from WE Energies, and then incorporate into land swap with City of Milwaukee.

Permanent Easement on City of Milwaukee property already in place along existing channel corridor.

Following construction, MMSD anticipates swapping this land containing the flood basin with the City of Milwaukee for the 35th Street filled parcel. The land swap negotiation will also include provision for MMSD maintenance access to the basin.

MMSD to obtain Temporary Easement from City of Milwaukee for basin excavation, parking lot fill operations, and detention pond rehabilitation.

Following construction, MMSD anticipates swapping this 35th Street filled parcel with the City of Milwaukee for the land containing the flood basin and 43rd St Ditch.

	PROPOSED MMSD OWNERSHIP
	CURRENT MMSD OWNERSHIP
	CURRENT CITY OF MILWAUKEE OWNERSHIP
	PROPOSED CITY OF MILWAUKEE OWNERSHIP
	WE ENERGIES PARCEL

MMSD - City of Milwaukee ICA