



Green Infrastructure Funding Agreement G98004P33
GH 12-20-2018, CAO 255671

Clement Avenue Schoolyard Redevelopment
3666 South Clement Avenue

1. The Parties

This Agreement is dated _____ (Effective Date)
and involves the:

- A. Milwaukee Metropolitan Sewerage District (**MMSD**), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446;
- B. Milwaukee Board of School Directors on behalf of the Milwaukee Public Schools (**MPS**), 5225 West Vliet Street, Milwaukee, Wisconsin 53208; and
- C. City of Milwaukee (**Milwaukee**), Department of Public Works, 841 North Broadway, Milwaukee, Wisconsin 53202.

2. Basis for this Agreement

- A. MMSD is responsible for collecting and treating wastewater from local sewerage systems.
- B. During wet weather events, (1) stormwater enters local sewerage systems, increasing the volume of wastewater that MMSD must convey and treat, and (2) directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding.
- C. Green infrastructure includes bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.
- D. Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface water.
- E. MMSD's wastewater discharge permit requires the construction of new green infrastructure retention capacity.

F. MMSD wants to promote the installation of green infrastructure.

G. Milwaukee owns land at 3666 South Clement Avenue (**Land**). MPS maintains and operates the Land and wants to install green infrastructure on the Land.

H. The Wisconsin Department of Natural Resources has made Clean Water Fund loans available to MMSD for the construction of green infrastructure.

3. Term

This Agreement becomes effective when signed by the parties and ends **December 31, 2021**, except for the annual maintenance reports required by sec. 5.C, the operation and maintenance requirements of sec. 10, and the transfer of maintenance responsibilities notification requirement of sec. 11.

4. The Project

MPS will:

A. remove from the land 22,000 square feet of pavement and install on the Land: 13,300 square feet of native landscaping; cisterns with a capacity of 20,550 gallons; 18 trees; and 5,835 square feet of bioswale, providing a detention capacity of 75,787 gallons (**Project**);

B. complete construction before **December 31, 2021**;

C. install educational signage that:

(1) is either designed and provided by MMSD or provided by MPS and approved by MMSD,

(2) is in a location approved by MMSD, and

(3) identifies MMSD as funding the Project, by name, logo, or both;

D. identify MMSD as funding the Project in any printed matter, web sites, and any other informational materials regarding the Project;

E. install all Project components described in the application for funding;

F. allow MMSD to inspect the Project and review maintenance records;

G. allow MMSD to identify MPS and describe the Project in publicity regarding green infrastructure;

H. inform MMSD of any promotional events for the Project arranged by MPS and allow MMSD to participate; and

I. allow MMSD to access the Project at reasonable times for promotional events arranged by MMSD, after notice from MMSD.

5. Reports

A. MPS will provide to MMSD:

- (1) a Project schedule within 30 days after this Agreement becomes effective;
- (2) monthly progress reports, describing the actions initiated and completed since the preceding report, until the completion of construction. These reports are due before the 10th day of each month, starting with the month after submission of the Project schedule;
- (3) plans, including planting plans, and specifications for the Green Infrastructure at least three weeks before the commencement of construction. If requested by the District, MPS will meet with the District to discuss potential improvements;
- (4) a Baseline Report, using forms provided or approved by MMSD. This report is due after the conclusion of construction. This report will include:
 - (a) a site drawing, showing the completed green infrastructure;
 - (b) a topographic map of the project site;
 - (c) a legal description of the property where the Project is located and the parcel identification number;
 - (d) design specifications for all green infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
 - (e) a tabulation of the bids received, including bidder name and price;
 - (f) a copy of the signed construction contract;
 - (g) a list of the permits obtained for the Project;
 - (h) photographs of the completed Project;
 - (i) a maintenance plan;
 - (j) an itemization of all design, construction, and education and outreach costs, with supporting documentation;
 - (k) a W-9 Tax Identification Number form;
 - (l) a Small, Women's, and Minority Business Enterprise Report; and
 - (m) an Economic Impact Report, showing the total number of people and the estimated number of hours worked on design and construction of the Project by MPS, contractors, consultants, and volunteers;
 - (n) a Clean Water Fund Loan Program Disadvantaged Business Enterprise Good Faith Certification Form (EIF Form 8700-294); and

(o) a Clean Water Loan Program Disadvantaged Business Enterprise
Subcontractor Utilization Form (EPA Form 6100-4).

B. To provide the reports required by par. (A)(1) to (4), MPS may use the U.S. mail, another delivery service, or electronic mail. MPS will send reports to:

Lisa Sasso, Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1446
lsasso@mmsd.com

C. MPS will provide annual maintenance reports. These reports will summarize project performance and maintenance activities during the preceding twelve months. This report is due **December 31** of each year. MMSD must receive these reports for the **ten calendar years** following the completion of construction. MPS will use the form available from <http://www.freshcoastguardians.com> and submit the form to greeninfrastructure@mmsd.com.

D. MPS will provide the required reports, not a consultant or contractor.

E. Reports that are late or incomplete may be a basis for rescinding this Agreement or making MPS ineligible for future funding.

6. Conservation Easement

After the completion of construction, Milwaukee and MPS will execute a conservation easement in favor of MMSD. The extent of the conservation easement will be limited to the Project. The duration of the conservation easement will be **eleven years**. MMSD will draft the conservation easement. Milwaukee will record the easement at MMSD's expense.

7. MMSD Funding

A. MMSD will reimburse green infrastructure installation costs up to \$127,841 or 50% of Green Infrastructure installation costs, whichever is less.

B. The District will reimburse costs at the rate of \$1.76 per gallon of as-built detention capacity, except for soil amendments, which the District will reimburse at a rate of \$0.50 per gallon of detention capacity; rain barrels, which the District will reimburse at a rate of \$0.90 per gallon of detention capacity; and pavement removal, which the District will reimburse at a rate of \$0.50 per gallon of detention capacity. Pavement removal is eligible for reimbursement only if green infrastructure with an equivalent area replaces the pavement.

C. Beyond financial support for the Project, MMSD will not be involved in design, construction, maintenance, or operation.

8. Procedure for Payment

- A. Along with or after the Baseline Report required by sec. 5.A(4), MPS will submit an invoice to MMSD for the amount to be reimbursed.
- B. MMSD will provide reimbursement only if:
 - (1) MPS provides the schedule, monthly reports, and Baseline Report required by sec. 5(A);
 - (2) MPS completes construction before **December 31, 2021**;
 - (3) MMSD receives the invoice before **December 31, 2021**; and
 - (4) Milwaukee and MPS execute the Conservation Easement after the completion of construction.
- C. To invoice MMSD, MPS will use MMSD's web-based project management information system (e-Builder). On the invoice, MPS will include the name of MMSD's project manager and the funding agreement number (G98004P33).

9. Project Changes

MMSD will not pay for work not described in the application for funding, unless MMSD provides prior written approval. Any changes to the Project that decrease the capacity to retain stormwater must be approved by MMSD, in writing, before implementing the change.

10. Operation and Maintenance

MPS will operate and maintain the Project for at least eleven years. If the Project fails to perform as anticipated or if maintaining the Project is not feasible, then MPS will provide a report to MMSD explaining the failure of the Project or why maintenance is not feasible. Failure to maintain the Project will make MPS ineligible for future MMSD funding until MPS corrects the maintenance problems.

11. Transfer of Maintenance Responsibilities

MPS may not transfer maintenance responsibilities for the Project without the consent of Milwaukee and MMSD. MPS will notify Milwaukee and MMSD before a proposed transfer of maintenance responsibilities at least 30 days in advance.

12. Utilization of Disadvantaged Businesses

MPS will give disadvantaged business enterprises an opportunity to compete for work on this Project by soliciting quotes or bids from those businesses to the maximum extent possible. Disadvantaged businesses include small businesses and businesses owned by women, minorities, or veterans. MMSD's procurement office will provide a list of these businesses, upon request.

13. Responsibilities of MPS

MPS is solely responsible for:

- A. planning, designing, constructing, and maintaining the Project, including selecting and paying consultants, contractors, and suppliers;
- B. the safety of employees, contractors, and guests to the Project;
- C. compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Project; and
- D. insurance. MMSD will not provide any insurance coverage of any kind for the Project or MPS.

14. Indemnification

MPS will indemnify and hold harmless MMSD and MMSD's Commissioners, employees, and agents against any damages, costs, liability, and expense whatsoever, including attorney's fees and related disbursements, arising from or connected with the planning, design, construction, operation, or maintenance of the Project. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities set forth in Wis. Stats., sec. 893.80.

15. Modifying this Agreement

Any modification to this Agreement must be in writing and signed by MMSD, MPS, and Milwaukee.

16. Terminating this Agreement

- A. MMSD may terminate this Agreement at any time before the commencement of construction. After construction has commenced, MMSD may terminate the Agreement only for good cause, including, but not limited to, breach of this Agreement by MPS.
- B. MPS may terminate this Agreement at any time but will not receive any payment from MMSD if the Project is incomplete.

17. Exclusive Agreement

This Agreement is the entire agreement among MMSD, MPS, and Milwaukee regarding the Project.

18. Severability

If a court holds any part of this Agreement unenforceable, then the remainder of the Agreement will continue in effect.

19. Applicable Law

The laws of the State of Wisconsin govern this Agreement.

20. Resolving Disputes

If a dispute arises under this Agreement, then the parties agree to first try to resolve the dispute with the help of a mutually acceptable mediator in Milwaukee County. MPS and MMSD will equally share the costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after a mediation session involving the parties and the mediator, then any party may take the matter to court.

21. Notices

All notices and other communications related to this Agreement will be in writing and will be considered given:

- A. when delivered personally to the address as stated on this Agreement; or
- B. three days after being deposited in the United States mail, with postage prepaid to the address as stated on this Agreement.
- C. by email, when a record shows successful transmission.

22. Contact Persons

- A. Notices to Milwaukee will be sent to:

Nader Jaber
Department of Public Works
841 North Broadway, Room 820
Milwaukee, Wisconsin 53202
414-286-0514
njaber@milwaukee.gov

With a copy to:

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Gregg Hagopian
City Attorney's Office
841 North Broadway, 7th Floor
Milwaukee, Wisconsin 53202
414-286-2620
ghagop@milwaukee.gov

B. Notices to MMSD will be sent to:

Lisa Sasso, Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
414-225-2048
lsasso@mmsd.com

C. Notices to MPS will be sent to:

Angeline M. Koch, J.D., M.S.
Sustainability Project Specialist
Division of Facilities and Maintenance Services
1124 N. 11th Street
Milwaukee, WI 53233
(414) 283-4783 office
KochAM@milwaukee.k12.wi.us

With a copy to:

Calvin Fermin
City Attorney's Office
841 North Broadway, 7th Floor
Milwaukee, Wisconsin 53202
414-286-2655
cfermi@milwaukee.gov

D. The parties may change contact information after providing notice according to sec. 21.

23. Independence of the Parties

This Agreement does not authorize any party to make promises binding upon any other party or to contract on the other party's behalf.

24. Assignment

MPS or Milwaukee may not assign any rights or obligations under this Agreement without MMSD's prior written approval.

25. Public Records

Each party will produce any records in their possession that are subject to disclosure pursuant to the State of Wisconsin's Open Records Law, Wis. Stats. secs. 19.31 to 19.39. The parties will indemnify each other against any claims, demands, and causes of action resulting from the failure to comply with this requirement.

26. Conflicts

If MPS identifies a relationship with MMSD or MMSD's Commissioners or staff that could provide an advantage or cause a conflict of interest and if MPS did not disclose this relationship in the application for funding, then MPS will notify MMSD within five (5) days of identifying it.

27. Signature Authority

The persons who sign this Agreement certify that they have sufficient authority from their governing bodies to bind their organizations to this Agreement.

28. Inspection by the Department of Natural Resources

MPS will allow the Department of Natural Resources to inspect the Project during construction.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

Approved as to Form

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

Attorney for the MMSD

Date: _____

<p>CITY OF MILWAUKEE</p> <p>By: _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____ James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No. _____</p>	<p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City signatories per M.C.O. 304-21, and also authenticates those signatures per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Assistant City Attorney State Bar No. 1007373</p> <p>Date: _____</p>
<p>MILWAUKEE PUBLIC SCHOOLS</p> <p>By: <u>Keith P. Posley</u></p> <p>Name Printed: <u>Keith P. Posley, Ed.D.</u></p> <p>Title: <u>Superintendent of Schools</u></p> <p>MPS Board Resolution Dated: _____</p>	<p>MPS AUTHENTICATION</p> <p>The undersigned, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the MPS signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: <u>[Signature]</u></p> <p>Name Printed: <u>Calvin Fermin</u></p> <p>Title: Assistant City Attorney</p> <p>State Bar No.: <u>1101524</u></p> <p>Date: <u>10/10/2019</u></p>