



Green Infrastructure Funding Agreement W96001P10

Fondy Stormwater Park

This Agreement is between the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446, and the City of Milwaukee, Environmental Collaboration Office (Milwaukee), 200 East Wells Street, Milwaukee, Wisconsin 53202.

WHEREAS, the District is responsible for collecting and treating wastewater from local sewerage systems; and

WHEREAS, during wet weather events, stormwater enters local sewerage systems, increasing the volume of wastewater that the District must convey and treat; and

WHEREAS, during wet weather events, stormwater directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding; and

WHEREAS, green infrastructure, such as constructed wetlands, rain gardens, green and blue roofs, bioswales, and porous pavement, reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface waters; and

WHEREAS, the District's wastewater discharge permit requires the construction of new green infrastructure retention capacity; and

WHEREAS, the District wants to promote the installation of green infrastructure; and

WHEREAS, the Fund for Lake Michigan (Fund) wants to promote the installation of green infrastructure in parks, playgrounds, schools, and open spaces; and

WHEREAS, Milwaukee plans to install green infrastructure; and

WHEREAS, both the District and the Fund intend to support the green infrastructure installed by Milwaukee.

Now, therefore, for the consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows.

1. Date of Agreement

This Agreement becomes effective immediately upon signature by both parties and ends December 31, 2018, except for the annual maintenance reports required by sec. 3(A)(5), the operation and maintenance requirements of sec. 8, and the transfer of ownership notification requirement of sec. 9.

2. The Project

Milwaukee will:

- (A) install a 1,500 gallon above ground cistern, 2,700 square feet of bioswale, and five trees, providing a retention capacity of 21,875 gallons (Project). The Project is located at 2210 West Fond du Lac Avenue, Milwaukee;
- (B) complete construction before November 1, 2018;
- (C) install educational signage that:
 - (1) is either designed and provided by the District or provided by Milwaukee and approved by the District,
 - (2) is in a location approved by the District, and
 - (3) identifies the District and the Fund as funding the Project, by name, logo, or both;
- (D) identify the District and the Fund 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 the District to inspect the Project and review maintenance records;
- (G) allow the District to identify Milwaukee and describe the Project in publicity regarding green infrastructure;
- (H) inform the District of any promotional events for the Project arranged by Milwaukee and allow the District to participate; and
- (I) allow the District to access the Project at reasonable times for promotional events arranged by the District, after notice from the District.

3. Reports

(A) Milwaukee will provide to the District:

- (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) detailed plans and specifications before construction, if the District determines that reviewing these plans and specifications is necessary to ensure the intended retention capacity;
- (4) a Baseline Report, using forms provided or approved by the District. This report is due after the conclusion of construction. This report will include:
 - (a) a site drawing, showing the completed green infrastructure;
 - (b) design specifications for all green infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
 - (c) a legal description of the property where the Project is located;
 - (d) photographs of the completed Project;
 - (e) a maintenance plan;
 - (f) an itemization of all design, construction, and education and outreach costs, with supporting documentation;
 - (g) a W-9 Tax Identification Number form;
 - (h) a Small, Women's, and Minority Business Enterprise Report; and
 - (i) 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 Milwaukee, contractors, consultants, and volunteers; and
- (5) annual maintenance reports. This report will summarize Project performance and maintenance activities during the preceding twelve months. This report is due December 31 of each year. The District must receive these reports for the **ten calendar years** following the completion of construction.

(B) To provide these reports, Milwaukee may use the U.S. mail, another delivery service, or electronic mail. Milwaukee will send reports to:

Karen Nenahlo, Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1446
knenahlo@mmsd.com

(C) Milwaukee must provide the required reports, not a consultant or contractor.

(D) Reports that are late or incomplete may be a basis for terminating this Agreement or making Milwaukee ineligible for future funding.

4. Conservation Easement

After the completion of construction, Milwaukee will execute a conservation easement in favor of the District. The extent of the conservation easement will be limited to the Project. The duration of the conservation easement will be ten years. The District will draft and record the conservation easement.

5. District Funding

(A) The District will reimburse Project costs up to \$64,375.

(B) Beyond financial support for the Project, the District will have no involvement in design, construction, maintenance, or operation.

6. Procedure for Payment

(A) Along with or after the Baseline Report required by sec. 3(A)(4), Milwaukee will submit an invoice to the District for the amount to be reimbursed.

(B) The District will provide reimbursement only if:

- (1) Milwaukee provides the schedule, monthly reports, and Baseline Report required by sec. 3(A);
- (2) Milwaukee completes construction before November 1, 2018;
- (3) the District receives the invoice before December 1, 2018; and
- (4) Milwaukee executes the Conservation Easement after the completion of construction.

(C) Milwaukee will submit invoices to:

Milwaukee Metropolitan Sewerage District
Accounts Payable Department
260 West Seeboth Street
Milwaukee, WI 53204-1446
Project Manager: Karen Nenahlo

7. Project Changes

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

8. Operation and Maintenance

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

9. Transfer of Ownership

Milwaukee will notify the District before transferring ownership or maintenance responsibilities. Milwaukee will provide this notice at least 30 days in advance.

10. Procurement

Milwaukee must select professional service providers according to Milwaukee's ordinances and policies. Milwaukee must procure all non-professional services, such as construction, sewer inspection, and post-construction restoration, according to State of Wisconsin statutes and regulations and Milwaukee's ordinances and policies. Whenever work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request and Milwaukee must provide an opinion from a licensed attorney representing Milwaukee explaining why the procurement complies with State of Wisconsin law and Milwaukee's ordinances.

11. Responsibilities of Milwaukee

Milwaukee 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;
- (D) compliance with Wisconsin prevailing wage law; and
- (E) insurance. The District will not provide any insurance coverage of any kind for the Project or Milwaukee.

12. Indemnification

Milwaukee will defend, indemnify, and hold harmless the District and the District's Commissioners, employees, and agents against any and all 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 by either party of the opportunity and right to rely upon the process, limitations, and immunities set forth in Wis. Stats., sec. 893.80.

13. Modifying this Agreement

Any modification to this Agreement must be in writing and signed by all parties.

14. Terminating this Agreement

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

15. Exclusive Agreement

This Agreement is the entire agreement between Milwaukee and the District regarding reimbursement for the Project.

16. Severability

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

17. Applicable Law

The laws of the State of Wisconsin govern this Agreement.

18. 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 agreed-upon 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 the mediator, then either party may take the matter to court.

19. Notices

All notices and other communications in connection with this Agreement will be in writing and will be considered given as follows:

- (A) when delivered personally to the recipient's address as stated on this Agreement; or
- (B) three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

20. Independence of the Parties

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

21. Assignment

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

22. Public Records

Milwaukee will produce any records in the possession of Milwaukee that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law, Wis. Stats. secs. 19.31 to 19.39. Milwaukee will indemnify the District against any and all claims, demands, and causes of action resulting from the failure to comply with this requirement.

23. Conflicts

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

Signatures on Next Page

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

**CITY OF MILWAUKEE
ENVIRONMENTAL COLLABORATION OFFICE**

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

By: _____
Erick Shambarger
Environmental Sustainability Director

Date: _____

Date: _____

Approved as to Form

Attorney for the District