

D-R-A-F-T
INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN THE CITY OF MILWAUKEE AND THE
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
CONCERNING ESTABLISHMENT OF A SYSTEM OF
ANTENNA FACILITIES ON DISTRICT EASEMENTS
ON CITY PROPERTY

The City of Milwaukee is a general purpose municipal corporation, existing pursuant to special charter from the state legislature, and operating pursuant to the provisions of such special charter, the ordinances adopted by the City's Common Council, and those statutes of the state of general applicability to the entire state, hereafter "City," and the Milwaukee Metropolitan Sewerage District, a municipal body corporate, organized and operating pursuant to secs. 200.21 through 200.65 Stats., hereafter District, enter into this Intergovernmental Cooperation Agreement, pursuant to sec. 66.0301, Stats., effective the latest date appearing below, to permit the District to establish a system of antenna facilities on District easements on City property:

WHEREAS, the District has projected, planned, designed, constructed, established, maintained, and operated a sewerage system for the collection, transmission and disposal of all sewage and drainage of the sewerage service area, including the collection, transmission, and disposal of storm water and groundwater; and

WHEREAS, the District has constructed and established its sewerage system, in part, on, under, and through various real estate owned by the City, in each instance, pursuant to easements granted by the City of Milwaukee Common Council or by state law; and

WHEREAS, the District has ascertained that establishment of a system of directional radio antenna facilities will allow the District to improve its ability to effectively and efficiently control its system and monitor flows within that system; and

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WHEREAS, the District proposes to use two different types of antenna: a dome antenna, approximately 3-1/2 inches tall, and a yagi antenna, of lengths of 22-inch and 32-inch and

WHEREAS, the decision on where to place an antenna, what shape should be used, and configuration of the antenna is dependent upon the ability of the antenna to direct radio waves to a repeater antennae established on the Ameritech Tower at the City of Greenfield's Municipal Building, Sandburg Hall Dormitory at the University of Wisconsin-Milwaukee, the Milwaukee Hilton (in downtown Milwaukee), and the American Tower Corporation tower on North Humboldt, north of West Capitol Drive; and

WHEREAS, the District has located the sites for each antenna in proximity to the telemetry boxes to be controlled thereby, consistent with avoidance of loss of signal, for the maximum benefit to the public; and

WHEREAS, the District does not request any new easements in this agreement, but rather seeks only to increase its use of already existent easements;

NOW, THEREFORE, in light of the above and foregoing declarations, the City and the District enter into this Intergovernmental Cooperation Agreement, concerning the establishment of a system of antenna facilities on District easements on City property:

ARTICLE I

PROPERTY AND EASEMENT USE PERMITS

City Use Permits Granted To The District. The City agrees that the existent burden on City lands reflected in easements heretofore granted to the District may be increased to include the attachment of appropriate antenna facilities to fixtures on the easements. The City will provide

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permits to the District for the easements described in Attachment A, which attachment identifies the sites at which dome and yagi antenna facilities will be installed by the District, subject to this Agreement. The permits granted herein shall be issued by the City without fee or application charge to the District and shall constitute an adequate right-of-entry to make the full installation of the antenna facility designated for each site.

ARTICLE II

CONSTRUCTION

Section 2. 01. Right-Of-Entry Granted To District. The City through this Agreement grants the District the right of entry upon the property of the City at sites identified on Attachment A, described above. The City, in granting this right to the District, reserves the right of review and approval of any material deviation from the plan and any significant substitution of materials (construction, vegetative, or otherwise).

Section 2.02. District To Determine Suitability of Site For The Uses Intended. Notwithstanding anything to the contrary contained herein, if the District determines that any easement already in existence, is unsuitable for the construction of the needed antenna or if the District is unable to obtain any other easement, permit, license and approval required for the construction or use of the facilities, then the District shall have the right to terminate this agreement by written notice to the City. The parties acknowledge that the District may cause inspections, studies, tests and evaluations of any easement to be made as the District may consider appropriate or desirable to determine the suitability of the site for the construction and use of the designated antenna. This work shall be accomplished at the District's sole expense. The District shall provide the City with copies of all test results and site reports, if the City so requests. The Parties agree that the City will not be required to do any construction, remediate any environmental conditions, or in any way expend any money or incur any liability by way of granting the use

permits herein described.

Section 2.03. Safety and Security. The District assumes full responsibility for security and safety, without limitation, at the site during construction and during maintenance activities. The City, however, is responsible for actions of its authorized agents and employees.

Section 2.04. As-built Drawings. The District shall provide a complete set of detailed as-built plans to the City for all work upon completion of the project, if the City requests.

ARTICLE III

PROJECT MANAGEMENT

Section 3.01 District To Provide Project Management. The District will provide project management for the installation of the antenna facilities, hereafter the Work. The Work will entail installation of the above-described domes, attachment of the proposed yagi, or construction of an appropriate pole.

Section 3.02 Bid Activities. The District will conduct all necessary activities to solicit bids to perform the Work. The District reserves the right to let the Work in one or more contracts. Bid advertisement, supervision, receipt, and award shall be performed pursuant to the policies for the award of contracts of the District.

Section 3.03 Design Activities. The District will provide designs, plans and specifications for the Work involved to the City for review. All plans and specifications must be consistent with the plans and specifications provided the City by the District during development of this Agreement and the City must concur with any deviation.

Section 3.04 Construction Services. The District will provide a

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resident engineer for the Work and will provide for on-site inspection services at its sole cost and expense. The City at its sole cost may have an inspector at the job site to ensure that City interests are protected during construction activities.

Section 3.05. Acceptance Of Construction. The District will be the sole authority to issue acceptances for the Work.

ARTICLE IV

MAINTENANCE

Section 4.01 District Obligations During Maintenance. District personnel must display proper identification when working upon easements on City land. If bicycle, pedestrian, or vehicle traffic is impeded by repair or maintenance work, the District is to provide traffic control to ensure public safety. All efforts must be made by the District to keep roads open during any repairs (emergency or otherwise). Except during an emergency repair, the District must obtain City approval to close roads. The District must provide personnel and appropriate equipment to ensure public safety during any work where normal public access is impeded by such work.

Section 4.02 Repair Of City Property Damaged During District Repairs Or Maintenance Work. The District is responsible for any damage caused to City property during District work to repair or maintain the antenna facilities that are the subject of this Agreement. Such repair will be to return the damaged property to its status before being damaged.

Section 4.03 City's Right To Enter. The City shall have the right at any time to enter upon any of the lands subject to the easements described, above, for any purpose that the City may deem necessary or desirable, including, without limitation by this enumeration, inspection, testing, remediation, or such maintenance or repair that the City may

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determine is in the public interest, **provided, however**, such entry upon the easement area does not interfere with or disrupt the operation and maintenance of the antennae. In addition, the City may engage in any activities in, on, or around the easement area so long as such activities do not interfere with or disrupt the operation and maintenance of the facilities.

Section 4.04 Additional Rights Of the City. The parties agree that the City shall not be liable for any interruption, inconvenience or acts that City must take as a result of lawful orders or compliance with federal, state, or local laws.

Section 4.05 District To Maintain Its Antennae. The District is responsible for all maintenance and upkeep of its land and facilities without enumeration.

ARTICLE V

INSURANCE AND INDEMNIFICATION

Section 5.01 Insurance. The District shall include the work for the installation of the antenna facilities as work covered by the District's Owner Controlled Insurance Program (OCIP) and Pollution Liability Coverage Policy. The District shall include the City as an additional insured under the OCIP and the Pollution Liability Coverage Policy.

Section 5.02 Indemnification. To the fullest extent permitted by law, the District and the City shall be liable for their own negligent acts, errors, and omissions. The City and the District agree to hold each other harmless for any losses, damages, costs, or expenses, including, but not limited to, reasonable attorney fees and litigation expenses paid or sustained by reason of one party being called upon to respond in litigation for the negligent acts, errors, or omissions of the other.

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ARTICLE VI

NOTICES

Whenever in this Agreement it shall be required or permitted that notice be given by any party hereto to the other, such notice shall be given by certified or registered mail, and any notice so sent shall be deemed to have been given on the date that the same is deposited in the United States mail, postage prepaid. Notices shall be addressed to the City at Milwaukee Commissioner of Public Works, 841 North Broadway, Suite 516, Milwaukee, Wisconsin 53202, and to the District at 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446, Attn: Executive Director, or at such other address as either party may from time to time specify in writing in lieu thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto a copy of any notice it may receive from any third person that may affect the rights of any party hereunder.

The City and the District mutually agree that the execution of this a document by the officials who sign this document constitutes a certification that the signatory has been appropriately authorized by the respective governing board to execute this document.

WHEREFORE, authorized representatives of the parties to this Intergovernmental Cooperation Agreement affix their signatures, being duly authorized to do so.

City of Milwaukee

Milwaukee Metropolitan Sewerage
District

By: _____
Position: _____
Date: _____

By: _____
Position: _____
Date: _____

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Approved as to form:

Approved as to form;

By: _____
Office of the City Attorney

By: _____
District Division of Legal Services