# Agreement for North 35th Street and West Roosevelt Drive Improvements

This intergovernmental cooperation agreement is made between the Milwaukee Metropolitan Sewerage District (the "District"), acting through its executive director, and the City of Milwaukee (the "City"), acting through its commissioner of public works, to establish the parties' responsibilities for the construction and maintenance of sewer improvements in the City of Milwaukee. This agreement is effective as of the date all parties have signed below.

The District is authorized under Wis. Stat. § 200.31 to collect, transmit, and dispose of all sewage and drainage of the sewerage service area.

In 2020, the District evaluated bypass pumping station BS0503, which pumps excess sanitary sewer flow in times of tremendous exertion on the conveyance system into a City stormwater box culvert that in turn discharges into the Lincoln Creek at West Congress Street.

Bypass pumping station BS0503 has overflowed 10 times in the past 20 years, contributing to flooding and causing sanitary sewer overflows, which are not authorized under the District's Wisconsin Pollutant Discharge Elimination System permit.

Sewer improvements can alleviate such flooding and overflows by relieving bypass pumping station BS0503 but will impact both District and City facilities, including connected infrastructure, instrumentation, controls, traffic signals, and street lighting.

The District's North 35<sup>th</sup> Street and West Roosevelt Drive Improvements project (the "Project") is intended to alleviate the flooding and overflow issues by upsizing sewers and replacing associated manholes and structures.

The District executed contract C05055D01 for the design of the Project on April 7, 2021, as authorized by Milwaukee Metropolitan Sewerage Commission resolution 21-030-3. The District paid for the Project design and gave the City the opportunity to review the Project plans and specifications before construction.

The District executed contract C05055C01 for the construction of the Project on September 25, 2023, as authorized by Milwaukee Metropolitan Sewerage Commission resolution 23-110-9 and is overseeing construction. The Project includes constructing and installing 17 City precast concrete manholes and segments of local small-diameter sanitary sewer. The District is paying all construction costs.

Municipalities, not the District, must operate, maintain, and repair local sewers and appurtenant local facilities under Wis. Stat. § 200.33.

The parties are collaborating to reduce flooding and overflows in the Project area. In accordance with Wis. Stat. § 66.0301, the District and the City therefore agree as follows.

# 1. District Responsibilities

The District will design and construct the Project's local sewers and manholes (the "Local Infrastructure") substantially as shown in drawings 401-PP-7 through 401-PP-11 in the conformed plan set, subject to any change orders, attached and made part of this agreement.

The District will invite the City to participate in the substantial completion walkthrough and require its contractor address any issues the City raises.

After construction, the District will inspect the new sewer using closed-caption televising (CCTV) and provide the video and any accompanying reports to the City.

Within one year of substantial completion, as defined in District contract C05055C01, the District will provide record drawings of the Local Infrastructure to the City.

# 2. City Responsibilities

The City will attend the District's substantial completion walkthrough and may request any punch-list tasks.

Upon substantial completion of contract C05055C01, the City will own and thereafter operate and maintain the Local Infrastructure.

#### 3. Contacts

For the District, the contact person is:

Ryan Holzem, Senior Project Manager Milwaukee Metropolitan Sewerage District 260 West Seeboth Street Milwaukee, Wisconsin 53204 rholzem@mmsd.com

For the City, the contact person is:

Rob Seleen, Flood Hazard Mitigation Manager City of Milwaukee Department of Public Works 841 North Broadway Street Milwaukee, Wisconsin 53202 rselee@milwaukee.gov

# 4. Modifying this Agreement

Any modification to this agreement must be in writing and signed by the City and the District.

# 5. Severability

If a court of competent jurisdiction holds any part of this agreement unenforceable, the remainder will continue in effect.

## 6. Governing Law

The laws of Wisconsin govern any dispute arising under or related to this agreement.

# 7. Resolving Disputes

If a dispute arises under or relates to this agreement, then the City and the District will first try to resolve it with the help of a mutually acceptable mediator in Milwaukee County. The City and the District will equally share any costs and fees associated with the mediation, except that each party will be responsible for its own attorney fees. If the dispute is not resolved within 30 days after the mediation session, then either party may take the matter to court. Venue in any action brought under this agreement is proper only in the Milwaukee County Circuit Court.

### 8. No 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.

# 9. Independence of the Parties

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

# 10. Authority of Signatories; Counterparts

All signatories to this agreement certify that they are properly authorized by their governing body to execute this agreement. The parties may execute this agreement in one or more counterparts, each of which, when taken together, constitutes one and the same document.

## 11. Liability

The City and the District will be liable each 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, and expenses, including but not limited to attorney fees and litigation expenses. Nothing in this agreement is a waiver of any otherwise applicable immunity, limited immunity, or limitation of liability under Wisconsin law.

SIGNATURES ON NEXT PAGE

DISTRICT	
By:	By:
Kevin L. Shafer, P.E.	Jerrel Krushke, P.E.
Executive Director	Commissioner of Public Works
Approved as to form	
	By: James R. Owczarski
D	
By:Attorney for the District	City Clerk
	By: James R. Owczarski
	James R. Owczarski
	COUNTERSIGNED
	Bill Christianson
	Comptroller
	Common Council Resolution
	CITY ATTORNEY APPROVAL
	Alexander Carson
	Assistant City Attorney

CITY OF MILWAUKEE

MILWAUKEE METROPOLITAN SEWERAGE









