

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE AND THE
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT CONCERNING
REMEDICATION OF POLYCHLORINATED BIPHENYLS CONTAMINATED SEWER**

CAO 279386, GH 3-11-2022

The City of Milwaukee, a Wisconsin municipal corporation, organized and operating pursuant to special charter, hereafter “**City**,” and the Milwaukee Metropolitan Sewerage District, a municipal body corporate, organized and operating pursuant to Wis. Stat. Ch. 200, hereafter “**District**,” enter into this Agreement, pursuant to Wis. Stat. § 66.0301 (intergovernmental cooperation), effective as of _____, 2022, for the purpose of establishing their respective duties and responsibilities with respect to remediation of polychlorinated biphenyls (“**PCBs**”).

WHEREAS, buildings in the City are connected to local sewers owned by the City;

WHEREAS, the City-owned sewers are connected into the Metropolitan Interceptor Sewers (**MIS**) owned by the District;

WHEREAS, a property located at **4132 North Holton Street** in the City of Milwaukee was formerly the site of the Milwaukee Die Casting Company which utilized PCBs in its processes;

WHEREAS, PCBs from Milwaukee Die Casting Company entered a 12” City-owned sewer comprising approximately 6% of the impacted portion of the sewer system (“**City Segment**”), which connected into the District’s Basin H MIS at District manhole 01802;

WHEREAS, PCBs remain in the City Segment and in the District’s Basin H sewer at levels above 50 parts per million triggering the jurisdiction of the United States Environmental Protection Agency (“**U.S. EPA**”) (see Detail A of the **Attached Figure 1**);

WHEREAS, the District hired environmental professionals to develop a plan (**Risk Based Work Plan**) pursuant to 40 CFR § 761.61(c), and the U.S. EPA approved this Risk Based Work Plan on December 7, 2015;

WHEREAS, the District hired design engineering firm CDM Smith to provide biddable plans and specifications for the remediation of the District’s Basin H MIS and the contaminated City-owned sewer;

WHEREAS, the District plans to award a contract to the lowest responsive, responsible bidder for the remediation of the Basin H sewer and the City-owned sewer (“**Project**”) to abide by state and federal law (and applicable local law) and to prevent PCB contamination from spreading to the Jones Island Water Reclamation Facility, Lake Michigan, or the Milwaukee River; and

NOW, THEREFORE, in light of the above and foregoing declarations, the City and the District enter into this Agreement setting forth their respective roles in tasks necessary to implement this reach of the Project, and to agree upon the terms and conditions contained herein.

I. Responsibilities of the District

- A. Remediation Work. The District shall contract for the work as stated in the Basin H Central MIS PCB Remediation Contract Documents (District Contract C05041C03) to remove PCB contamination from its Basin H sewer and from the City Segment in accordance with the Risk Based Work Plan for Removal of PCB Impacted Sediments Basin H-Central Metropolitan Interceptor Sewer System Revision 2 as approved by the U.S. EPA.
- B. District Contracting and Paying for Remediation Work. The District will contract and pay for the design and construction of this remediation (the “**Work**”). The District has used a qualifications-based selection process for the design. The District will use a sealed bid process to select a construction contractor. The City has no duty to sign or let contracts for the Work or the Project. District shall ensure that District’s contractors carry insurance in amounts reasonably acceptable to District. District shall require its contractors to comply with applicable federal, state, and local law.
- C. Collaboration. District has collaborated with the City throughout the development of the sewer design and has included the City in meetings with the design team at key milestones throughout the project. District will continue to keep City informed regarding the Project and the Work.
- D. Permits. District will obtain any necessary permits from the City for this Work.
- E. Oversight; Records; Inspection. District shall provide construction oversight for the Work at its sole cost and shall provide any and all records to the City upon request. The City shall have the opportunity to inspect the Work at any time. Each party agrees to cooperate with the other regarding public records requests that may be received regarding this Agreement or work or activities relating hereto, and to allow the other party hereunder to audit records concerning this Agreement and activities and undertakings hereunder.
- F. Confirmation Sampling. District shall provide the City with a copy of all confirmation sampling and inspections regarding the City Segment.
- G. City Ownership. No ownership of any sewer segments is changing as a result of this Agreement.
- H. Contracts, and Change Orders. District shall solicit City review and approval of any proposed contract and of any proposed contract change orders pertaining to the City Segment prior to approval. The City shall review as quickly as possible but shall have up to (but no more than) 10 working days to review and approve any such contract or change order. The City’s failure to respond by the 10-working day deadline shall be deemed approved by the City. If the City provides notice of disapproval or otherwise conditions or qualifies its approval, then the City, District and the contractor shall meet to resolve the issue.

II. Responsibilities of the City

A. Payment.

1. The City agrees to reimburse the District for the costs to design and implement remediation of the City Segment. For costs of design and preparation of the Risk Based Work Plan, the City agrees to reimburse the District at the rate of 6% of total costs, commensurate with the proportion in linear feet of the City Segment to the total impacted sewer to be remediated. Construction costs will be reimbursed at the rate of 6% for overhead items, dewatering and liquid treatment facility and sediment disposal plus actual costs for remediation of the City Segment as estimated below:

	Total Costs	City Share
Risk Based Work Plan	\$190,229.51	\$11,413.77
Design Costs through 8/2019	\$333,627.24	\$20,017.63
Bid Item 6 – Access to City Segment (this manhole will be used for access to both the District and City Segment, charging 1/3 of total to City).	\$69,190.40	\$23,063.47
Bid Item 21 – Cleaning City Segment	\$40,998.00	\$40,998.00
Bid Item 34 – Post Inspection of City Segment	\$2,688.00	\$2,688.00
Bid Items – 2, 3, 4, 14, 15, 16, 17, 18, 36 - Overhead, Liquid Treatment and Sediment Disposal	\$4,491,198.07	\$269,471.88
Additional Engineering Services (estimated)	\$200,000.00	\$12,000.00
Total Estimated Reimbursement:		\$379,652.75

2. In consideration for the services to be performed, the City agrees to reimburse the District an amount **not to exceed \$400,000**, unless this Agreement is amended.

3. Costs for the Risk Based Work Plan and Design Costs through 8/2019 shall be reimbursed to the District by **June 1, 2023**. All other costs shall be reimbursed within 90 days of substantial completion of remediation of the City Segment.

III. Notices

The District will provide notices to:

Karen Dettmer, Interim Commissioner
Department of Public Works
841 N. Broadway, Room 501
Milwaukee, WI 53202
(414) 286-2400

The City will provide notices to:

Kevin L. Shafer, Executive Director
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1446
kshafer@mmsd.com
(414) 225-2181

IV. Modifying this Agreement

Any modification to this Agreement will be in writing and signed by both Parties.

V. Severability; Wisconsin Law; Remedies

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

This Agreement shall be construed in accordance with Wisconsin Law.

In the event of breach of this Agreement, the nonbreaching party shall have all rights and remedies at law and in equity against the breaching party. Nothing in this Agreement shall be construed as waiving any privilege, right of recovery, cause of action, defense, remedy, category of damages, or immunity to which either party is entitled under applicable law; and, waiver of any of the foregoing may only be accomplished in writing by an individual with the authority to bind the respective party so waiving.

Each party agrees to not discriminate against any protected class with respect to its respective activities and undertakings hereunder and to act in accordance with applicable federal, state, and local law (including Milwaukee Code of Ordinances (“MCO”) Section 109-9, Discrimination Prohibited). Any contract in which a member of the City of Milwaukee Common Council is an interested party is voidable at City’s sole discretion, and City may sue to recover any amounts paid under such contract.

VI. Authority of Signatories; Counterparts

Each person signing this Agreement certifies that the person is properly authorized by the Party’s governing body to execute this Agreement. Facsimile and/or PDF email signatures shall be acceptable as originals. This Agreement may be executed in one or more counterparts each of which, when taken together, shall constitute one and the same document.

VII. Commencement, Completion, Termination.

As stated above, District is responsible for awarding the contract for the Project and the Work, and for providing construction oversight. District informs City that District contemplates that the Project and Work will be completed by December 18, 2023. As stated above, City’s reimbursement duty hereunder to District is capped at **\$400,000**. Notwithstanding anything to the contrary contained herein, if District does not act with reasonable diligence in awarding contracts, or if completion of the Project and Work become, in City’s determination, unreasonably delayed, or if District or its contractors are in breach hereof, then City has the right to provide 30 day’s notice of District terminating this Agreement in which case, City shall only be responsible for reimbursing District (up to and not exceeding the capped amount) for reimburseable costs up to the time of termination.

IN WITNESS WHEREOF, District and City have caused this Agreement to be executed by their duly authorized signatories as of the date first written above.

CITY OF MILWAUKEE

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

By: _____
Karen Dettmer, P.E., Interim Commissioner
Department of Public Works

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

By: _____
Jim Owczarski, City Clerk

Approved by MMSD Division of Legal Services

COUNTERSIGNED

By: _____
Aycha Sawa, Comptroller

By: _____
Katherine Lazarski, Director of Legal Services

Approved as to form, content, and execution:

By: _____
Assistant City Attorney

City Common Council Resolution File No. _____.