



Green Infrastructure Funding Agreement G98005P166

**Green Solutions - Riverwest School**

**2765 North Fratney Street, Milwaukee, WI 53212**

## **1. The Parties**

This Agreement is effective as of the date of last signature below and involves the:

- A. Milwaukee Metropolitan Sewerage District (**MMSD**) located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204; and
- B. Milwaukee Board of School Directors on behalf of the Milwaukee Public Schools (**MPS**) located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208; and
- C. City of Milwaukee (**Milwaukee**), Department of Public Works located at 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, stormwater enters local sewerage systems increasing the volume of wastewater that MMSD must convey and treat and directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding.
- C. Green Infrastructure (GI) includes bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.
- D. GI reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface waters.
- E. MMSD wants to promote the installation of GI and does so through its Green Solutions Program providing funding to various entities to install critical GI.
- F. Milwaukee owns land at 2765 North Fratney Street, Milwaukee, WI 53212 (**Land**). MPS maintains and operates the Land and desires to install GI on the Land for a Green Schoolyard Redevelopment Project at Riverwest Elementary School.

G. The Wisconsin Department of Natural Resources has made Clean Water Fund loans available to MMSD for the construction of various GI installations and such funds may be used herein.

### **3. Term**

This Agreement becomes effective as of the date of last signature below and ends **December 31, 2026**, except that the following survive the termination of this Agreement: (1) Access to maintenance records required by Section 4(F.), (2) Annual maintenance reports required by Section 5(C.), (3) The operation and maintenance requirements of Section 10, and (4) The transfer of maintenance responsibilities notification requirement of Section 11.

### **4. The Project**

MPS will:

- A. Remove from the Land 27,200 square feet of impervious surface with a stormwater capture capacity of 5,440 gallons and install on the Land the following: 7,800 square feet of porous pavement with a stormwater capture capacity of 23,400 gallons, cisterns with a stormwater capture capacity of 43,200 gallons, 5,300 square feet of bioswales with a stormwater capture capacity of 64,700 gallons, and 35 trees with a stormwater capture capacity of 875 gallons, providing a total stormwater capture capacity of 137,615 gallons (**Project**);
- B. Complete construction on the Project before **December 31, 2026**;
- 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 MPS's 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 GI;
- 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, both during and after construction, 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 of the Project. These reports are due before the 10<sup>th</sup> day of each month starting with the month after submission of the Project schedule;
- (3) Detailed plans and specifications before construction, if MMSD determines that reviewing these plans and specifications is necessary to ensure the intended retention capacity; and
- (4) A Baseline Report using forms provided or approved by MMSD. This report is due after the conclusion of construction of the Project. This report will include, but may not be limited to:
  - (a) A site drawing showing the completed GI;
  - (b) A map showing all parcels where the GI is located and the surrounding streets;
  - (c) A legal description of all parcels where the GI is located and the parcel identification number(s);
  - (d) Design specifications for all GI, 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, for the construction work for the Project;
  - (f) A copy of any signed construction contracts for the Project;
  - (g) A list of the permits obtained for the Project;
  - (h) Photographs of the completed Project;
  - (i) A maintenance plan for the GI installed;
  - (j) An itemization of all design, construction, and education and outreach costs, with supporting documentation;
  - (k) A W-9 Tax Identification Number form if not previously provided to MMSD;
  - (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 and any contractors, consultants, and volunteers utilized by MPS for the Project.

B. To provide the reports required by paragraph (A) directly above, MPS may use the U.S. mail, another delivery service, or electronic mail. MPS will send such reports to:

Lisa Sasso, Senior Project Planner  
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 installed GI performance and maintenance activities during the preceding 12 months. This report is due December 31 of each year. MMSD must receive these annual maintenance reports for 10 consecutive calendar years following completion of the Project. MPS will use the reporting form available from MMSD and submit the form as directed by MMSD.
- D. MPS will provide the required reports. Such reports submitted by a consultant or contractor of MPS will not be accepted by MMSD.
- E. Reports that are late, incomplete, or missing may be a basis for rescinding this Agreement or making MPS ineligible for future funding from MMSD.

## **6. Conservation Easement**

After the completion of the Project, Milwaukee and MPS will execute a conservation easement in favor of MMSD. The extent of the conservation easement will be limited to the GI installed under the Project. The duration of the conservation easement will be **11 years**. MMSD will draft the conservation easement. Milwaukee will record the easement at MMSD's expense.

## **7. MMSD Funding**

- A. The District will reimburse MPS for the cost of the GI Project described herein up to \$140,000.
- B. Beyond financial support for the Project, MMSD will not be involved in design, construction, maintenance, or operation of the Project either during or after the Project is completed beyond the terms and conditions of this Agreement.

## **8. Procedure for Payment**

- A. Along with or after the Baseline Report required by Section 5(A.)(4) is submitted to MMSD, 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 Section 5(A.);

- (2) MPS completes the Project before **December 31, 2026**;
- (3) MMSD receives the invoice before **December 31, 2026**; and
- (4) Milwaukee and MPS execute the conservation easement after the completion of the Project.

C. MPS will use MMSD's web-based project management information system (e-Builder) to submit the invoice. The invoice shall include the name of MMSD's Project Manager as listed in Section 5(B.) and the funding agreement number for this Agreement (G98005P166).

## **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 GI installed through the Project for at least 11 years. If the installed GI fails to perform as anticipated or if maintaining the installed GI is not feasible, then MPS will provide a report to MMSD explaining the failure of the GI or why maintenance is not feasible. Failure to maintain the GI may 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, and/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 any consultants, contractors, and suppliers;

- B. Compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Project; and
- C. Any and all insurance coverages concerning the planning, design, construction, and maintenance of the Project and the GI installed.

#### **14. Indemnification**

MPS will indemnify and hold harmless MMSD and MMSD's commissioners, employees, and agents against any and all claims, damages, costs, liabilities, and expenses whatsoever, including attorneys' fees and related disbursements, arising from or connected with the planning, design, construction, operation, and/or maintenance of the Project or the GI installed. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities as set forth in Wis. Stats. § 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 of the Project. After construction has commenced, MMSD may terminate this 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 GI to be installed is not fully completed.

#### **17. Exclusive Agreement**

This Agreement is the entire agreement between MMSD, MPS, and Milwaukee regarding reimbursement for the GI installation as contemplated herein.

#### **18. Severability**

If a court of competent jurisdiction holds any part of this Agreement unenforceable, then the remainder of the Agreement will continue in full force and effect.

#### **19. Applicable Law**

The laws of the State of Wisconsin shall 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. The parties will equally share the costs and fees associated with the mediation, other than attorneys' 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 shall be in writing and shall be considered received as follows:

- A. When delivered personally to the address as stated in 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:

Jerrel Kruschke  
Department of Public Works  
841 North Broadway, Room 820  
Milwaukee, Wisconsin 53202  
414-286-2400  
jkrusc@milwaukee.gov

With a copy to:

Jordan M. Schettle  
City Attorney's Office  
841 North Broadway, 10<sup>th</sup> Floor  
Milwaukee, Wisconsin 53202  
414-286-2615  
jschet@milwaukee.gov

- B. Notices to MMSD will be sent to:

Lisa Sasso, Senior Project Planner  
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:

Heather Dietzel, P.E., Sustainability Project Specialist  
Milwaukee Public Schools  
1124 North 11th Street  
Milwaukee, Wisconsin 53233  
(414) 283-4713  
dietzehm@milwaukee.k12.wi.us

With a copy to:

Jordan M. Schettle  
City Attorney's Office  
841 North Broadway, 10<sup>th</sup> Floor  
Milwaukee, Wisconsin 53202  
414-286-2615  
jschet@milwaukee.gov

D. The parties may change contact information after providing notice according to Section 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 parties 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 related to this Agreement that are subject to disclosure pursuant to the State of Wisconsin's Open Records Laws, Wis. Stats. §§ 19.31 to 19.39. The parties will indemnify each other against any claims, demands, and causes of action resulting from any party or parties failure to comply with this requirement.

### **26. Conflicts**

If MPS identifies a relationship with MMSD or MMSD's commissioners or staff that could provide it an advantage, monetarily or otherwise, or cause a conflict of interest, then MPS shall notify MMSD within five days of identifying the conflict if such a conflict was not previously disclosed to MMSD in MPS's application for funding.



## 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 GI installation during Project construction.

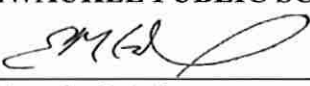
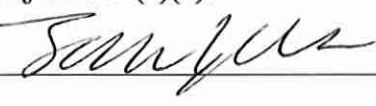
**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

Approved as to Form

By: \_\_\_\_\_  
Kevin L. Shafer, P.E.  
Executive Director

\_\_\_\_\_  
Vincent R. Bauer  
Attorney for MMSD

Date: \_\_\_\_\_

<p><b>CITY OF MILWAUKEE</b></p> <p>By: _____ Mayor Cavalier Johnson</p> <p>CITY CLERK</p> <p>By: _____ James R. Owczarski, City Clerk</p> <p><b>Countersigned:</b></p> <p>By: _____ Bill Christianson, Comptroller</p> <p>City Common Council Resolution File No. _____</p>	<p><b>CITY ATTORNEY AUTHENTICATION</b></p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the City signatures per Wis. Stats. § 706.06 so this document may be recorded per Wis. Stats. § 706.05 (2)(b).</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>State Bar No.: _____</p> <p>Date: _____</p>
<p><b>MILWAUKEE PUBLIC SCHOOLS</b></p> <p>By:  _____ Eduardo Galván Interim Superintendent of Schools</p>	<p><b>MPS AUTHENTICATION</b></p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the MPS signatories per Wis. Stats. § 706.06 so this document may be recorded per Wis. Stats. § 706.05 (2)(b).</p> <p>By:  _____</p> <p>Printed Name: <u>Theodore Wegner</u></p> <p>Title: <u>Contract Law Specialist</u></p> <p>State Bar No.: <u>111 5517</u></p> <p>Date: <u>02/04/2025</u></p>