

**Intergovernmental Cooperation Agreement  
between the  
Milwaukee Metropolitan Sewerage District  
and the  
City of Milwaukee  
For Overpass Green Infrastructure/Stormwater Project**

**1. Parties**

This Intergovernmental Cooperation Agreement (Agreement) is between the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, WI 53204, acting through its Executive Director, and the City of Milwaukee (City), located at 841 N Broadway, Milwaukee, WI 53202, acting through its Commissioner of Public Works.

**2. Purpose**

The purpose of this Agreement is to establish responsibilities for design, construction, and cost sharing for Green Infrastructure located in an area bounded to the south by West St. Paul Avenue, bounded to the north by West Clybourn Avenue, bounded to the east by North 6<sup>th</sup> Street, and bounded to the west by a point beginning approximately 300 feet to the east of North 12<sup>th</sup> Street (hereinafter “Project,” as depicted in Figure 1 attached hereto).

**3. Basis for this Agreement**

- A. WHEREAS the District is obligated, pursuant to its Wisconsin Pollutant Discharge Elimination System (WPDES) permit, to facilitate the installation of Green Infrastructure (GI) in order to increase stormwater retention capacity in watersheds within or tributary to its service area; and
- B. WHEREAS the total GI retention capacity goal to be achieved during the term of the WPDES permit is fifty (50) million gallons with twenty (20) million gallons of that being collected within the separate sewer area; and
- C. WHEREAS the City is obligated, pursuant to its WPDES permit, to manage discharges from its municipal separate storm sewer system (MS4), and the installation of GI within the separate sewer area will help satisfy this obligation; and
- D. WHEREAS the project as envisioned will allow the City and the District to capture and store 293 thousand gallons of stormwater within the separate sewer area through the installation of GI and stormwater management practices.

#### **4. Effective Dates**

This Agreement becomes effective on the date of execution and terminates on December 31, 2021.

#### **5. District Responsibilities**

The District will:

- A. obtain and initially pay for the planning and a design for the installation of GI as described herein in an amount not to exceed \$309,840. If actual design costs for the Project will exceed this amount and the District has notified the City, then the District and the City may increase this amount by amending this Agreement, according to sec. 8. Any increase in this amount is contingent upon approval by the District; and
- B. provide a draft design of the Project to the City for review, no later than the 50% complete design stage; and
- C. provide the final design to the City; and
- D. obtain and initially pay for all construction costs of the GI as described herein, in an amount not to exceed \$2,261,508. If actual construction costs for the Project will exceed this amount and the District has notified the City, then the District and the City may increase this amount by amending this Agreement, according to sec. 8. Any increase in this amount is contingent upon approval by the District; and
- E. notify the City of the commencement of construction of the Project, regularly update the City as to the progress of the Project, allow the City to review all plans and specifications, and conduct, with reasonable notice, Project site inspections; and
- F. invoice the City at construction completion for reimbursement of all Project costs, including but not limited to all design costs, construction costs, District staff time expended on the Project, and any and all usual and customary out-of-pocket costs associated with the Project and the invoice amount will be considered paid by the equal reduction in the District's Green Solutions remaining allocation for the City; and
- G. record, at its sole discretion, any and all deeds, easements, and covenants executed in favor of District and held by the District in escrow for the Project.

#### **6. City Responsibilities**

The City will:

- A. prior to the start of construction, acquire all necessary ownership rights or Right of Way Use agreements to the real estate depicted in the Project area, including but not limited to

rights currently held by the State of Wisconsin and any of its related entities, Milwaukee County, and any other entities known or unknown; and

B. prior to the start of construction, execute a 10-year maintenance covenant in favor of the District, substantially similar to the form depicted in Figure 2 attached hereto, to be held by the District in escrow pursuant to Sec. 5(G) herein; and

C. review all plans and specifications for the Project, and not unreasonably withhold the approval of all such plans and specifications; and

D. issue all necessary permits to complete the Project; and

E. provide reasonable notice prior to any site inspections; and

F. notify the District immediately if there is insufficient funding to finance the obligations described herein; and

G. provide the District a maintenance covenant as described herein and the City, or its designee, shall operate the Project site upon the issuance of a certificate of substantial completion, including any vegetation establishment period; and

H. pay any invoices submitted by the District within thirty (30) days of receipt.

## 7. Notices

A. The District will provide notices to:

Jeffrey S. Polenske, Commissioner of Public Works  
City Department of Public Works  
Frank P. Zeidler Municipal Building  
841 North Broadway, Room 501  
Milwaukee, WI 53202  
[jpolen@milwaukee.gov](mailto:jpolen@milwaukee.gov)  
414-286-2489

B. The City will provide notices to:

Tom Chapman, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1446  
[tchapman@mmsd.com](mailto:tchapman@mmsd.com)  
414-225-2154

## **8. Modifying this Agreement**

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

## **9. Severability**

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

## **10. Applicable Law**

The laws of the State of Wisconsin apply to this Agreement.

## **11. Resolving Disputes**

If a dispute arises under this Agreement, then the Parties will try to resolve it with the help of a mutually acceptable 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 a mediator, then either Party may take the matter to court. Venue in any action brought under this Contract is proper only in the Circuit Court for Milwaukee County.

## **12. Termination**

Either Party may terminate this Agreement at any time. To terminate this Agreement, a Party will provide written notice to the other Party. This notice will indicate the effective date of termination and the reasons for termination.

## **13. Independence of the Parties**

This Agreement does not create a partnership. Neither Party may enter into contracts on behalf of the other Party.

## **14. Authority of Signatories**

Each person signing this agreement certifies that the person is properly authorized by the Party's governing body to execute this Agreement.

## **15. Indemnification**

The District and the City will be liable for their own negligent acts, errors, and omissions.

## **16. Funding**

Each Party is responsible for initially funding respective Components that it designs, constructs, operates, and maintains under this Agreement, except as indicated in any future modifications to this Agreement. If the City or the District is unable to fund its obligations under this Agreement, then the City and the District will collaborate to determine whether to suspend, modify, or terminate this Agreement. In consideration for the services to be performed and cost associated with the tasks described herein, the work described herein will be in an amount not to exceed \$2,800,000, according to the terms set out in paragraphs 5 and 6 herein.

SIGNATURES ON NEXT PAGE

DRAFT

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

**CITY OF MILWAUKEE**

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

By: \_\_\_\_\_  
Jeffrey Polenske, PE  
Commissioner of Public Works

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

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

Approved as to form

Countersigned

By: \_\_\_\_\_  
Aycha Sawa, Comptroller

Approved as to form

\_\_\_\_\_  
Attorney for the District

\_\_\_\_\_  
Attorney for the City

Figure 1

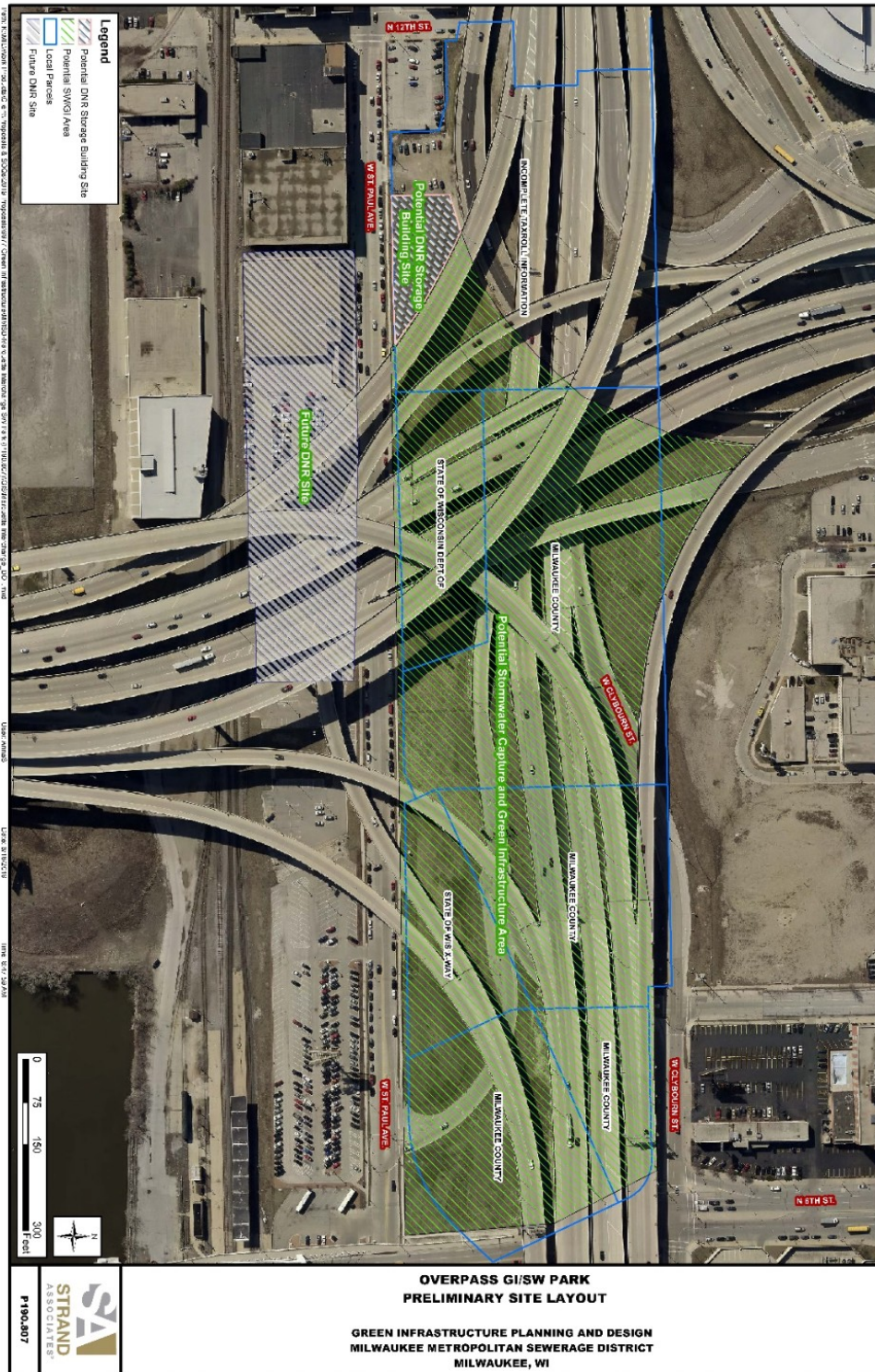


Figure 2  
 Intergovernmental Cooperation Agreement  
 Overpass Green Infrastructure/Stormwater Project  
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**Green Infrastructure Ten-Year Maintenance Covenant**  
for  
**(Project Description)**  
**Contract \_\_\_\_\_**  
**Project Name \_\_\_\_\_**

This Ten-Year Maintenance Covenant (Covenant) is granted by the **City/Village, located at \_\_\_\_\_**, to the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204.

INTRODUCTION

- 1. The Green Infrastructure.** **\_\_\_\_\_ (Describe project with gallons captured)**
- 2. Baseline Documentation.** The condition of the green infrastructure is documented in a **Baseline Report** at the office of the District and incorporated into this Covenant by reference. The Baseline Report consists of reports, maps, photographs, and other documentation and provides an inventory of relevant features, characteristics, and conservation values. The Baseline Report provides an accurate representation of the condition of the green infrastructure at the time of the conveyance of this Covenant. The Baseline Report is an objective, but not exclusive, reference for monitoring compliance with the terms of this Covenant.
- 3. Conservation Intent.** **City** and the District share the common purpose of preserving the green infrastructure for a period of at least ten years. **City** intends to protect the green infrastructure. In addition, **City** intends to convey to the District and the District agrees to accept a right to monitor and enforce these restrictions.
- 4. Funding Provided by the District.** The District will provide funding to **City** for the installation of the green infrastructure, in an amount not to exceed \$ **\_\_\_\_\_** through the **Green Infrastructure Partnership Program (GIPP)**, inclusive of all costs and materials. **City** acknowledges the sufficiency of this funding. The **City** will provide notices to:

\_\_\_\_\_, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1446  
[\(email\)](#)  
414-225-xxxx



## MAINTENANCE COVENANT

In consideration of the facts recited above, City grants, and the District accepts a Maintenance Covenant for a period of ten years for the green infrastructure. This Covenant consists of the following terms, rights, and restrictions.

1. **Purpose.** The purpose of this Covenant is to require City to keep, preserve and maintain the green infrastructure, as described above.
2. **Effective Dates.** This Covenant became effective on \_\_\_\_\_. This Covenant terminates on \_\_\_\_\_.
3. **Operation and Maintenance.** City will maintain the green infrastructure so that it remains functional for the entire term of this Covenant. City is solely responsible for operation, maintenance and evaluating performance.
4. **Additional Reserved Rights of City.** City retains all rights associated with the green infrastructure, including the right to use it and invite others to use it in any manner that is not expressly restricted or prohibited by the Covenant or inconsistent with the purpose of the Covenant. However, City may not exercise these rights in a manner that would adversely affect the green infrastructure.

City expressly reserves the right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the green infrastructure, if:

- 4.1 The encumbrance or conveyance is subject to the terms of this Covenant.
  - 4.2 City incorporates the terms of this Covenant by reference in any subsequent deed or other legal instrument by which City transfers any interest in all or part of the green infrastructure.
  - 4.3 City notifies the District of any conveyance in writing within fifteen days after the conveyance and provides the District with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
  - 4.4 Failure of City to perform any act required in Subparagraphs 4.2 or 4.3 does not impair the validity of this Covenant or limit its enforceability in any way.
5. **District Rights and Remedies.** To accomplish the purpose of this Covenant, City expressly conveys to the District the following rights and remedies:
- 5.1 Preserve Conservation Values. The District has the right to preserve and protect the green infrastructure.
  - 5.2 Prevent Inconsistent Uses. The District has the right to prevent any activity or use of the green infrastructure that is inconsistent with the purpose of this Covenant and to

require the restoration of areas or features of the green infrastructure that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.

5.3 Inspection. The District has the right to: inspect and monitor compliance with the terms of this Covenant; obtain evidence for use in seeking judicial or other enforcement of the Covenant; and otherwise exercise its rights under the Covenant. The District will: provide prior notice to City before inspecting the green infrastructure, comply with safety rules of City and avoid unreasonable disruption of the activities City.

**6. Remedies for Violations.** The District has the right to enforce the terms of this Covenant and prevent or remedy violations through appropriate legal proceedings.

6.1 Notice of Problems. If the District identifies problems with the green infrastructure, then the District will initially attempt to resolve the problems collaboratively. The District will notify City of the problems and request remedial action within a reasonable time.

6.2 Notice of Violation and Corrective Action. If the District determines that a violation of the terms of this Covenant has occurred or is threatened, then the District will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If City fails to respond, then the District may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the green infrastructure or if good faith efforts to notify City are unsuccessful.

6.3 Remedies. When enforcing this Covenant, the remedies available to the District include: temporary or permanent injunctive relief for any violation or threatened violation of the Covenant, the right to require restoration of the green infrastructure to its condition at the time of the conveyance of this Covenant, specific performance, declaratory relief and recovery of damages resulting from a violation of the Covenant or injury to the green infrastructure.

6.4 Non-Waiver. A delay or prior failure of the District to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Covenant.

6.5 Waiver of Certain Defenses. City waives any defense of laches, such as failure by the District to enforce any term of the Covenant, and estoppel, such as a contradictory statement or action by the District.

6.6 Acts Beyond the Control of City. The District may not bring any action against City for any injury or change in the green infrastructure resulting from causes beyond the control of City, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by

City under emergency conditions to prevent or mitigate damage from such causes, provided that City notifies the District of any occurrence that has adversely affected or interfered with the purpose of this Covenant.

**7. Amendment.** At any time, City and the District may jointly amend this Covenant in a written instrument executed by both parties. However, no amendment will be allowed if, in the judgment of the District, it:

7.1 diminishes the green infrastructure,

7.2 is inconsistent with the purpose of the Covenant,

7.3 affects the duration of the Covenant, or

7.4 affects the validity of the Covenant.

**8. Assignment.** The District may convey, assign or transfer its interests in this Covenant to a unit of federal, state or local government or to an organization that is qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable. As a condition of any assignment or transfer, any future holder of this Covenant is required to carry out its purpose for the remainder of its term. The District will notify City of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

**9. Captions.** The captions in this Covenant have been inserted solely for convenience of reference and are not part of the Covenant and have no effect on construction or interpretation.

**10. Controlling Law and Liberal Construction.** The laws of the State of Wisconsin govern the interpretation and performance of this Covenant. Ambiguities in this Covenant will be construed in a manner that best effectuates the purpose of the Covenant and protection of the green infrastructure.

**11. Counterparts.** City and the District may execute this Covenant in two or more counterparts, which will, in the aggregate, be signed by both parties. Each counterpart is an original document.

**12. Entire Agreement.** This Covenant sets forth the entire agreement between City and the District with respect to this Covenant and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Covenant.

**13. Extinguishment.** This Covenant may be terminated or extinguished before the expiration of its term, in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Covenant may be extinguished only if City and the District agree that a subsequent unexpected change in the condition of or surrounding the green infrastructure makes accomplishing the purpose of the Covenant impossible.

**14. Ownership Responsibilities, Costs, and Liabilities.** City retains all responsibilities and will bear all costs and liabilities related to the ownership of the green infrastructure, including, but not limited to, the following:

14.1 Operation, upkeep, and maintenance. City is responsible for the operation, upkeep and maintenance of the green infrastructure.

14.2 Control. In the absence of a judicial decree, nothing in this Covenant establishes any right or ability in the District to:

- a. exercise physical or managerial control over the day-to-day operations of the green infrastructure;
- b. become involved in the management decisions of City regarding the generation, handling or disposal of hazardous substances; or
- c. otherwise become an operator of the green infrastructure within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of the green infrastructure.

14.3 Permits. City is solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Covenant. During construction or any other activity, City will comply with all applicable federal, state and local laws, regulations, and requirements.

14.4 Indemnification. The District and the City will be liable for their own negligent acts, errors, and omissions.

**15. Severability.** If any provision or specific application of this Covenant is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Covenant will remain valid and binding.

**16. Successors.** This Covenant is binding upon and inures to the benefit of City and the District and their respective personal representatives, heirs, successors and assigns and will continue as a servitude running with the green infrastructure for the term of the Covenant.

**17. Terms.** Wherever used in this Covenant, the terms "City" and "District" include the respective personal representatives, heirs, successors, and assigns of City and the District.

MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT

CITY OF \_\_\_\_\_

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

By: \_\_\_\_\_  
Name  
Title

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

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

Approved as to Form

Approved as to Form

By: \_\_\_\_\_  
Attorney for the District

By: \_\_\_\_\_  
Attorney for \_\_\_\_\_

Exhibit A