

State/Municipal Maintenance Agreement
Between
The City of Milwaukee
And
The State of Wisconsin Department of Transportation

IH-794 / STH-794 / Port Milwaukee Overpass

This agreement, made and entered into by and between the State of Wisconsin Department of Transportation, hereinafter called the Department, and the city of Milwaukee, hereinafter called the City, through its undersigned duly authorized officers or officials, identifies and assigns maintenance responsibilities and access rights for ingress, egress for the purpose of said maintenance activities for a green infrastructure project located within the right-of-way of Highways IH-794/STH-794 generally bound by Union Pacific Railroad to the west, S. Lincoln Memorial Dr. to the east, E. Conway St. to the south and E. Lincoln Ave. to the north as shown in Exhibit A attached hereto (Green Infrastructure Project Area). Infrastructure constructed and maintained through this agreement is funded by the Milwaukee Metropolitan Sewerage District (MMSD) under project contract G98026C01. The authority for this agreement is provided by Sections 66.0301 and 86.25 (2), Wisconsin Statutes.

1.0 City Maintenance Responsibilities

- 1.1** The City shall be responsible for maintaining the items identified in the "Port Milwaukee Overpass Green Infrastructure Operations & Maintenance Manual" (O&M Manual), which is made a part of this agreement by reference.
- 1.2** Maintenance shall also include all reasonable upkeep and repairs to keep the identified property and equipment in a state of good repair, operational, and tidy, as well as mowing, litter removal, snow removal, and other seasonal work that may be necessary, desired, or otherwise reasonably directed by the Department.
- 1.3** Infrastructure installed as part of the Project shall be maintained by the City for a minimum of 10-years with eligibility to renew said maintenance responsibility via this agreement for a supplementary 10-year cycle(s).
- 1.4** In order to guarantee the City's obligations under this agreement, the City, through its duly authorized officers or officials, agrees and authorizes the Department to set off and withhold monies otherwise due and payable by the Department to the City for any maintenance or other costs incurred by the Department should the City fail to comply with this agreement.
- 1.5** The City's maintenance duties under this agreement may be assignable by the City to a qualified third party for execution and shall be performed according to the terms of this agreement. The City shall remain responsible for ensuring that its obligations under this agreement are performed.
- 1.6** The City agrees that no advertising of any kind will be allowed on features installed as part of this agreement.
- 1.7** The City is not responsible under this agreement for the maintenance of areas subject to airspace lease agreements between third parties and the Department or between third parties and Milwaukee County as approved by the Department.

2.0 Department Maintenance Responsibilities

- 2.1** After the 10-year cycle(s), if this agreement is not renewed per Section 1.3, the Department shall retake maintenance responsibilities upon written consent of both parties.
- 2.2** For the 10-year duration that the City holds maintenance responsibility, the Department shall reimburse the City variable annual amounts totaling \$150,000 (via Routine Maintenance Agreement dollars) over that period to cover a portion of the costs associated with items listed in Section 1.
- 2.3** This agreement acknowledges the Department is likely to perform a future reconstruction of the Port Milwaukee interchange within the City's 10-year maintenance period. Prior to the start of that reconstruction project, the Department shall document the condition of the green infrastructure project and provide documentation to the City. Any damage to the green infrastructure project caused directly or indirectly by the reconstruction of the interchange by the Department or their contractors shall be repaired at the expense of the Department, said expenses not to be counted against sub 2.2 of this agreement.
- 2.4** The Department must keep, maintain, repair, replace, and preserve its property, outside of those items that are to be maintained by the City as described in Section 1, above, in good, safe, and clean condition and repair, including but not limited to the clearing of debris, snow, and ice and the repair of any potholes, cracks, and broken pavement.

3.0 Maintenance Access

- 3.1** The City and any of its contractors shall have the right to access the Green Infrastructure Project Area for the purposes described in Section 1, above. The Department must not erect or maintain any obstructions or barriers preventing access to the items identified in the O&M Manual that would eliminate vehicular and pedestrian ingress or egress, interfere with the flow of storm water, or interfere with the function of the green infrastructure.
- 3.2** A Department-issued work in highway right-of-way permit may be required prior to the installation of additional items by the City, and prior to some types of maintenance work, including excavation and more extensive repairs. This agreement does not supplant any permit otherwise required under Sections 84.08, 86.07(2), or 86.16, Wisconsin Statutes.

4.0 General Conditions

- 4.1** The Department reserves the right to perform maintenance activities that may disturb or interfere with enhancements under the maintenance responsibility of the City. The Department will restore the area with usual and customary materials. The Department will, within reasonable effort, contact the City prior to disturbing any of the enhancements to allow the City to salvage any materials and to complete restoration prior to the Department. Any restoration/ replacement of the enhancement to the original condition shall be completed by the City at their own cost.
- 4.2** This agreement may be amended in writing signed by both parties to include specific features requested by the City and installed at the City's expense, if acceptable to the Department.

- 4.3 HOLD HARMLESS:** The City will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the City, or of any of its contractors, in prosecuting or failing to prosecute work under this agreement.
- 4.4 NO REPRESENTATIONS BY CITY AND RELEASES OF CLAIMS:** The Department agrees to accept water from City's right of way on an AS-IS, WHERE-IS basis. The City makes no representations regarding the condition of the stormwater entering the project property, including but not limited to the presence of any environmental contaminants. The Department hereby forever releases and waives any claims against the City related to or arising from the presence of any environmental contaminants in any water entering the project property via the public right-of-way of S. Lincoln Memorial Dr., E. Conway St., and E. Lincoln Ave.
- 4.5** Notwithstanding anything in this EASEMENT to the contrary, the CITY hereby forever releases and waives any claims against the Department related to or arising from the presence of any environmental contaminants in any water entering the CITY's sewer system via the PROPERTY that is not a result of negligence of the Department while operating its right-of-way.
- 4.6** Nothing in this agreement shall limit or otherwise affect the sovereign immunity of the State of Wisconsin.
- 4.7** This agreement shall not be construed to create third-party beneficiaries. Nothing herein shall be deemed to create a partnership between Department and the City and neither party shall have the authority to obligate the other.
- 4.8** This agreement contains the entire agreement between the parties; all prior negotiations and discussions have been merged into and are superseded by this agreement.
- 4.9** This agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- 4.10** This agreement does not convey or transfer any ownership, rights of ownership, or interests in Department right-of-way to the City or any other party. The Department retains full and final authority regarding the sale, disposal, or use of the rights-of-way under its jurisdiction, or any portions thereof. This agreement is subject to existing permitted uses of Department rights-of-way and any future uses Department determines are in the public interest or may by law be required to grant.

4.0 Effective Date and Termination

- 4.1** This agreement shall become effective on the date that the Department accepts construction improvements from the contractor. The Department will provide written notice to the City of the effective date.
- 4.2** This agreement may be terminated by written consent of both parties, or at any time by the Department when it determines termination to be in the best interest of the traveling public.

5.0 Approval

This agreement is subject to the terms and conditions above and is made by the undersigned under the proper authority to make such a commitment for the City and upon acceptance by the Department shall constitute the agreement between the City and the Department.

Jerrel Kruschke, P.E.
Commissioner of Public Works
City of Milwaukee

Date

Authorized Signature
Wisconsin Department of Transportation
SE Region Systems Operations Chief

Date

Attachments:

Port Milwaukee Overpass Green Infrastructure Operations & Maintenance Manual, by reference

Exhibit A Port Milwaukee Green Infrastructure Project Area

Exhibit A

