

Funding Agreement M10005MI13

Private Property Infiltration and Inflow Reduction Program Agreement

This Agreement is made between the Milwaukee Metropolitan Sewerage District (“District”) with its principal place of business at 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446 and the City of Milwaukee (“Municipality”) with its municipal offices at 841 North Broadway, Room 821, Milwaukee Wisconsin 53202.

WHEREAS, Wisconsin law, through Wis. Stats. § 66.0301 Stats., authorizes any municipality to enter into an intergovernmental cooperation agreement with another municipality for the furnishing of services; and

WHEREAS, the District is responsible for collecting and treating wastewater from the Municipality’s locally owned wastewater collection system; and

WHEREAS, the Municipality’s sewers collect wastewater from lateral sewers located on private property and owned by private property owners; and

WHEREAS, during wet weather events stormwater enters lateral sewers through defective pipes and leaky joints and connections (“infiltration) and stormwater also enters lateral sewers from foundation drains, improper connections, and other sources (“inflow”); and

WHEREAS, infiltration and inflow increase the amount of wastewater that the District must collect and treat; and

WHEREAS, during wet weather events infiltration and inflow (“I/I”) into privately owned sewers contributes to the risk of sewer overflows; and

WHEREAS, the District has established the Private Property Infiltration and Inflow Reduction Program (“Program”) to provide guidelines, requirements, and a funding structure for municipalities to complete I/I reduction work on private property as more fully set forth in the Statement of Policy, Milwaukee Metropolitan Sewerage District Private Property Infiltration and Inflow Reduction Program (“Policy”); and

WHEREAS, the Municipality wishes to participate in the Program ; and

NOW, THEREFORE, in consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows:

1. Term of Agreement

This Agreement becomes effective immediately upon the date of last signature below and shall remain in effect until the earliest of (1) the Municipality receiving final payment from the District, (2) April 1st, 2028, or (3) termination of this Agreement as otherwise set forth herein.

2. District Funding

The District shall reimburse the Municipality in an amount not to exceed \$1,640,000 for approved private property I/I costs incurred through the work described in Attachment A (“Work” or “Work Plan”). The total project cost of 1,743,800 is offset by cost shared

Municipality funds. Provided the Municipality is in compliance with the terms of this Agreement, the District funding shall be provided on a reimbursement basis in accordance with Section 8 below. No additional reimbursement will be made for costs incurred prior to the effective date of this Agreement or for costs that are not supported by documentation as outlined by this Agreement.

3. Program Publicity and Outreach Requirements

The Municipality shall identify the District as a funder in informational literature and signage relating to the Work. Samples of all public involvement/public education documents shall be provided to the District for review prior to being distributed to the public.

A minimum of a one week notice of any public meetings shall be provided to the District. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five days of the meeting.

4. Selection of Professional Service Providers by Municipality - Reserved

5. Selection of Non-Professional Service Providers by Municipality

Pursuant to a public Request for Qualifications process, the District has developed an Approved Contractors List organized by work type to ensure all Work funded by the District maintains specific quality standards. Those Approved Contractors and their suppliers can submit products they intend to utilize for inclusion in the District's Approved Products List. The appropriate subset of the Approved Contractor List and the Approved Products List shall be utilized as part of Municipality's bidding process for contracts to perform Work funded by this Agreement.

In addition to the above, all non-professional service providers to perform Work funded by this Agreement (for example: construction, sewer inspection, post-construction restoration) shall be procured in accordance with both State of Wisconsin statutes and regulations and the Municipality's ordinances and policies. Whenever Work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request, and the Municipality must provide, an opinion from a licensed attorney representing the Municipality stating that the procurement is in compliance with State of Wisconsin law and Municipal ordinances.

In addition:

- a. The Municipality shall provide the District with the opportunity to review and comment on the complete set of bidding documents prior to solicitation of bids, quotes, or proposals as set forth in Attachment B; and
- b. Municipality shall provide the District with all bids and proposals for review prior to the award of the contract, as set forth in Attachment B. The District reserves the right to revoke funding based on project award to contractors who are not on the District's list of Authorized Contractors.

6. Non-professional Service Contract Terms and Conditions

The Municipality agrees to include Attachment C in all non-professional service contracts relating to the Work. Failure to include Attachment C in the non-professional service contracts will constitute a material breach of this Agreement.

7. Contractor Pay Applications

The District recommends referring to Attachment D, Contractor Pay Application Example, as a format for processing Municipality/Contractor pay applications. The District recommends submitting all pay applications and supporting documentation received from the Contractor, reviewed by Municipality, to the District through the District Municipal Portal prior to paying the Contractor request for payment.

8. Procedure for Reimbursement

The Municipality shall submit reimbursement requests to the District a no later than 90 days after each construction phase is complete .

Each reimbursement request shall include:

- a. An invoice from the Municipality clearly stating the requested reimbursement amount;
- b. Contractor pay applications with units and cost for scope of work not funded by this Agreement clearly segregated and itemized. All contractor pay applications shall include supporting documentation confirming that the Municipality has received and reviewed a proportionate amount of construction contract deliverables as applicable to Attachment B Agreement Deliverables for which the Contractor is responsible; and
- c. All time and pay documentation for Municipality’s internal staff time that is being requested for reimbursement.

Reimbursement requests should be submitted within a reasonable period of time of the costs being incurred. The initial reimbursement request shall be submitted prior to 25% of Work being completed. Subsequent reimbursement requests will be completed no later than 90 days after each construction phase is complete. The final reimbursement request shall be submitted upon completion of all Work. All reimbursement requests must be received prior to the expiration of this Agreement.

Reimbursement requests and the supporting documentation of costs shall be submitted through Trimble Unity Construct (“TUC”) (formerly eBuilder). The corresponding deliverables shall be submitted as set forth in Attachment B. Questions concerning the Procedure for Reimbursement as provided for in this Section should be directed to the District’s Project Manager (PM):

Timothy O’Brien
Project Manager, PPII
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street.
Milwaukee, WI 53204-1446

Final payment will not be provided until the Work is complete and all deliverables set forth in Attachment B have been received. The District shall attempt to reimburse requested amounts within 30 days of such request provided the applicable supporting documentation is included. The District will reject any reimbursement requests that do not strictly adhere to the requirements of this Section and will require the Municipality to resubmit any such requests. The District is not responsible for any interest or fees associated with any reimbursement requests submitted by the Municipality which do not strictly adhere to the requirements of this Section.

9. Changes in Work and Modifications to the Agreement

Any proposed changes to the Work must be submitted to the District, in writing, in advance of the Work being completed. The District will not reimburse for Work that is not included in Attachment A (including all professional services and non-professional services contracts procured through the Work outlined in Attachment A) unless prior written approval has been requested from the District and approval has been obtained through the TUC change order process.

This Agreement may be modified only in writing signed by both parties or through the TUC change order process.

10. Responsibility for Work

The Municipality is responsible for overseeing construction and shall provide full time construction inspection for all Work. Each inspector shall be experienced, qualified, and certified for the scope of the Work.

11. Post-Construction Verification

The Municipality and its contractor(s), if applicable, shall report to the District any problems that arise with or related to the completed Work, whether discovered through inspection or through complaints from homeowners, for a period of 10 years following substantial completion of the Work. The Municipality shall also report any actions taken to investigate the complaint, and if within the warranty period, steps taken to resolve the issue.

The Municipality shall be responsible for reporting post-Work flow monitoring data and or other data related to identified measures of success for at least five years post-Work completion or as long as data is available, whichever period is longer.

The Municipality shall require that the contractor it secures to complete the Work under this Agreement obtain a warranty bond in the amount of the 20% of the value of the contract the Municipality executes with said contractor and for the bond to run for three years after completion of the Work to protect against any problems or issues that may arise as to the completed Work. Such warranty bonds shall be in substantially similar form to the example form attached hereto as Attachment E and shall provide for the ability of the District, in addition to the Municipality, to request from the warranty bond surety fulfillment of the warranty obligation in the event the Contractor fails to do so. The Municipality shall ensure to include in the bid documents for the Work the aforementioned example form or a form in substantially similar format.

All warranty repair costs incurred by the District due to Municipality's failure to enforce the warranty bond requirements in its construction contract(s) shall either be: (1) invoiced to

Municipality; or (2) covered by the warranty bond the Municipality shall secure from its contractor. The terms of this Section 11 shall survive the termination of this Agreement.

12. Permits, Certificates, and Licenses

The Municipality is solely responsible for ensuring compliance with all federal, state, and local laws requiring permits, certificates, and licenses required to implement the Work.

13. Insurance

The District shall not provide any insurance coverage of any kind for the Work or for the Municipality. Municipality shall ensure that each contractor and subcontractor have adequate insurance to perform the Work and names the Municipality as an additional insured on its applicable insurance policies.

14. Terminating the Agreement

The District may terminate this Agreement at any time prior to commencement of the Work. After the Work has commenced, the District may terminate this Agreement only for good cause such as, but not limited to material breach of this Agreement by the Municipality. In the event that the District determines that a material breach has occurred, and if District determines in good faith that the breach is curable, the District shall first provide Municipality with notice of the breach and 15 business days in which to either cure the breach or reach a mutually agreeable resolution to the breach. In the event that the District determines, in good faith, that the breach cannot be cured or no resolution is reached within the 15 day timeframe, the District may terminate this Agreement. The Municipality may terminate this Agreement at any time but will not receive any payment from the District if the Work is not completed.

15. Exclusive Agreement

This is the entire Agreement between the Municipality and the District regarding reimbursement for Work.

16. Severability

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in full force and effect.

17. Applicable Law

This Agreement shall be governed by the laws of the State of Wisconsin.

18. Resolving Disputes

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Milwaukee County. Any costs and fees, other than attorneys' fees, associated with the mediation shall be shared equally by the parties. If the dispute is not resolved within 30 days after it is referred to and heard by the mediator, either party may take the matter to court. Venue in any action brought under this Agreement shall be proper only in either Circuit Court for Milwaukee County or the United States District Court for the Eastern District of Wisconsin.

19. Notices

Unless otherwise set forth herein, all notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- When delivered personally to the recipient's address as stated on this Agreement; or
- Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

20. No Partnership

This Agreement does not create a partnership relationship nor give the Municipality the authority to make promises binding upon the District. The Municipality does not have the authority to enter into contracts on the District's behalf.

21. Assignment

The Municipality may not assign any rights or obligations under this Agreement without the District's prior written approval.

22. Public Records

The Municipality agrees to cooperate and assist the District in the production of any records as related to this Agreement in the possession of the Municipality that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Laws, Wis. Stats. §§ 19.31 to 19.39. The Municipality agrees to indemnify the District against any and all claims, demands, and causes of action resulting from any failure of the Municipality to comply with this requirement.

23. Indemnification

The Municipality will indemnify the District and its commissioners, employees, and agents against any and all claims, damages, costs, liabilities, and expenses whatsoever, including attorneys' fees and related disbursements, connected with the Municipality's planning, design, construction, operation, and/or maintenance of the Work (collectively "Claims") to the extent caused by the negligent acts or omissions of Municipality, including its officers, directors, and employees acting within the scope of their employment within the meaning of Wis. Stat. § 895.46.

Nothing contained within this section is intended to be a waiver or estoppel of the Municipality to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wis. Stat. §§ 893.80, 895.46, and 345.05. For purposes of clarity, in no event shall Municipality be liable in indemnity or contribution for any Claims in an amount greater than the limits of liability for municipal claims established by Wisconsin law or for the negligence or intentional acts of the District, its commissioners, employees, and/or agents.

Milwaukee Metropolitan Sewerage
District

City of Milwaukee

By:

Kevin L. Shafer, P.E., Executive
Director

By:

Jerrel Kruschke, PE

Date:

Date:

Approved as to form:

Approved as to form:

Attorney for the District

Attorney for the Municipality

ATTACHMENT A
Municipality Work Plan

ATTACHMENT B
Agreement Deliverables

Pre-Construction Deliverables (To be submitted as indicated prior to beginning of construction):

1. A minimum of a one week notice of any project meetings shall be provided to the District PM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five days of the meeting.
2. Draft specifications, plans, and bidding documents shall be submitted to the District PM via the District Municipal Portal in PDF or Word format a minimum of one week prior to bidding.
3. Final bid documents shall be provided to the District PM via the District Municipal Portal in PDF format for review and approval prior to advertisement of the contract for bid.
4. Bid results from all procurement processes associated with the project shall be provided to the District PM via the District Municipal Portal in PDF format upon close of the bid process prior to award of contract.
5. Submit a template Right of Entry (ROE) Agreement for District review prior to distribution to property owners for signatures via the District Municipal Portal in PDF or Word format. Each ROE Agreement secured by the Municipality shall include a provision allowing the District and Municipality to enter the property for a period of three years following construction for warranty inspections or project performance evaluations contingent on notification of the property owner.
6. Electronic copies of the executed contract documents and warranty bond shall be provided to the District PM prior to the Municipality's issuance of the Notice to Proceed via the District Municipal Portal in PDF format.

Construction Deliverables (To be submitted as indicated and will be reviewed with any reimbursement request):

7. All Contractor/consultant submittals to the Municipality shall be reviewed and approved by the municipal engineer or designee and supplied to the District prior to the commencement of the Work contained in the submittal via the District Municipal Portal in PDF format.
8. A minimum of a one week notice of any project meetings shall be provided to the District PM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five days of the meeting.
9. An accurate master schedule of anticipated construction phases to be provided with contractor input once contract is awarded. Progress will be reported monthly.
10. Field activities shall be provided to the District PM via email or telephone call at least one week in advance of activity commencement.
11. Progress reports on project activities and public involvement activities shall be provided to the District PM via email on a monthly basis.
12. Quality control and quality assurance (QA/QC) reports and testing results that are documented by the Contractors and Municipality's field engineer/inspector shall be submitted to the District PM via the District Municipal Portal in PDF with each phase reimbursement request. If multiple phases are completed within 45 days then a single reimbursement request for these phases is acceptable. All QA/QC submittals shall include

ATTACHMENT B
Agreement Deliverables

a summary tabulation by property indexed by tax ID number with review confirmation by the Municipality's engineer.

13. Inspection reports from the field engineer for work completed shall be submitted to the District PM via the District Municipal Portal in PDF or spreadsheet format with each phase reimbursement request. If multiple phases are completed within 45 days then a single reimbursement request for these phases is acceptable.
14. All construction contract deliverables organized, formatted, and delivered as specified by the contract as approved by the District. Samples of deliverable formats are recommended to be provided to the District prior to construction.

Post-Construction Deliverables (To be submitted prior to final reimbursement being processed):

15. The Final Project Summary Report shall be submitted to the District PM via the District Municipal Portal in PDF format. prior to the final reimbursement request. The template that must be used can be found on the District's website: [Project Summary Report Template \(https://www.mmsd.com/government-business/rules-regulations/private-property-i-i\)](https://www.mmsd.com/government-business/rules-regulations/private-property-i-i).
16. Copies of the Right of Entry or access agreements for each homeowner shall be submitted to the District PM as one document via the District Municipal Portal in PDF format.
17. Documentation of the limits of the lateral replacement(s) expressed in text and graphics (map overlay) shall be provided to each participating property owner and copied to the District. The document shall include disclosure of all known deficiencies in the lateral(s) that were not remedied and the responsibilities of the property owner. Documents shall be provided to the District as one document via the District Municipal Portal in PDF format.
18. Municipality will be responsible for providing pre-Work flow monitoring data.
19. The Municipality shall provide documentation of the resolution of all punch list items of the Municipality and the District.
20. Through a spreadsheet using the District template (provided by the District), submission of participating parcels information including without limitation: property tax id., address, and column categories of Work performed by property following the District template form data fields and format. The document shall be provided to the District via the District Municipal Portal in an Excel format.
21. Photo documentation of project work in jpeg format provided to the District via the District Municipal Portal in a zipped file.
22. Following completion of the Work, the Municipality shall complete a survey of all property owner participants, compile the results, and submit the survey forms and results to the District via the District Municipal Portal. The survey form shall be submitted in PDF format and the survey results should be summarized in a spreadsheet format.
23. Provide all post-construction CCTV inspection videos to the District via t4 Vault with associated metadata.

ATTACHMENT C Requirements of Contractor

Contractor's Work under this Contract is funded in whole or in part by the Milwaukee Metropolitan Sewerage District's Private Property Infiltration and Inflow Program ("Program"). Pursuant to the terms of the Program, the following terms and conditions must be included in all construction contracts. Defined terms shall have the meaning assigned to them in the Funding Agreement between the District and the Municipality, which shall be provided to Contractor upon request. If a term or condition set forth herein conflicts with the terms and conditions set forth in the bid documents, the terms and conditions below take precedence.

1. **Contractor Emergency/Communication Response Plan.** Within 14 days of the Notice to Proceed from Municipality, the Contractor shall submit to the Municipality and the District an Emergency Response Plan (ERP). This plan shall include at a minimum the following information: (1) the Contractor's site representative that will be responsible for all emergency calls, 24 hours per day/7 days per week for the duration of the project with all of their contact information; (2) the contact information for the Contractor's foreman; (3) the contact information for each municipal representative that the Contractor will contact in the event of an emergency; (4) the contact information for the District's Senior Project Manager; (5) the contact information for the Clean Up/Dig Up contractor that will be on-call for emergencies throughout the duration of this project; and (6) a detailed narration of the step-by-step sequence of events and communications that the Contractor will take in the event of an emergency throughout the duration of this project.
2. **Warranty:** All Work performed under this Contract shall be warranted by Contractor for a period of no less than three years from substantial completion of the Work. Contractor shall provide a warranty bond in the amount 25% of this Contract. The warranty and the warranty bond shall be enforceable by the Municipality and the District as the funder. Individual homeowners may request from the Municipality or the District that the warranties provided for in this Contract be enforced as it relates to a particular property.
3. **Retainage:** Retainage shall be held by Municipality in compliance with Wis. Stats. § 66.0901(9)(b).
4. **Warranty Inspection:** District shall complete a warranty inspection via an appropriate approved for the work type at least 90 days prior to the warranty expiration. All inspection results, including video and associated documents, shall be provided to the Municipality within 30 days of inspection. The Municipality shall coordinate all required warranty repairs by the contractor.
5. **Reporting:** For a period of 10 years post substantial completion of the Work, if the Contractor becomes aware of any problems arising with the Work, Contractor shall notify the Municipality and the District.
6. **Assignment:** The Municipality's obligations under this Contract are fully assignable to the District. The Contractor's consent is not required prior to the Municipality's assignment and the District's assumptions of Municipality's rights hereunder.

ATTACHMENT D
Template: Contractor Application for Payment

DRAFT

ATTACHMENT E

Template: Warranty Bond

Warranty Bond

Contract No. (Insert Contract #)

KNOW ALL PERSONS BY THESE PRESENTS, that (Insert company name)

of (Insert company address), the “CONTRACTOR”, and (Insert surety company name and address) a corporation duly organized and existing under and by virtue of the laws of the State of (Insert state), the “SURETY”, and authorized to transact business within the State of Wisconsin, as SURETY, are held and firmly bound unto the (Insert Municipality name) as Municipality (Obligee), in the penal sum of: (insert amount), lawful money of the United States of America, for the payment of which, well and truly be made to the Municipality. The CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into (Insert contract number) with the Municipality, dated (insert contract date) for (insert project title) (Contract).

NOW, THEREFORE:

The Term of this Warranty Bond (Bond) shall be three (3) years from the date of Substantial Completion. During the Term, the Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Municipality for the Contractor's warranty obligations set forth in the Contract, which is incorporated herein by reference.

If the Contractor satisfies its warranty obligation under the Contract, the Surety and the Contractor shall have no obligation under this Bond.

If Municipality gives written notice to Contractor and Surety during the Term of Contractor's obligations under warranty and Contractor does not fulfill such obligation, the Surety shall be responsible for fulfillment of such warranty obligations. Surety shall either fulfill the warranty period obligations itself, through its agents or contractors, or, in the alternative, Surety may waive the right to fulfill the warranty obligations itself and reimburse the Municipality for all resulting costs incurred by Municipality in performing Contractor's warranty obligations including, but not limited to, correction, removal, replacement, and repair costs, along with Engineering services. The Milwaukee Metropolitan Sewerage District (District) shall also

have the same rights as the Municipality under this paragraph to enforce the warranty obligations of this Bond by virtue of the District's financial assistance to the Municipality in financing all or part of the Contract by way of Funding Agreement (Insert funding agreement number) executed between the Municipality and the District on (insert funding agreement execution date).

Signed and sealed this (insert date) day of (insert month and year).

CONTRACTOR

By:

SURETY

By:

The SURETY named on this bond shall be one who is licensed to conduct business in the State of Wisconsin and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 by the U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond. The Bond must be approved and the approval dated in every case. Refer to Wis. Stats. § 779.14. The title of the person signing must be indicated. The date of this Bond must not be prior to the date of the Contract.