

## **OUT OF PROGRAM AGREEMENT (MPS - Rogers St Academy)**

THIS OUT OF PROGRAM AGREEMENT (“Agreement”) is made as of July 5, 2023 and is by and between the Milwaukee Board of School Directors, a public school district organized and existing under Wis. Stat. Chapter 119 and the Constitution of the State of Wisconsin (“MPS”) and the City of Milwaukee, a Wisconsin municipal corporation (“City”), each of the foregoing being a “Party”, and collectively the “Parties”.

### **RECITALS**

- A. City is the owner of real property located at 2430 W. Rogers Street, Milwaukee, Wisconsin, as depicted on the City approved site plan attached as **Exhibit A** (the “Overall Project”) and legally described on **Exhibit B** (the “Property”).
- B. MPS operates and manages the Property and wishes to install a pedestrian area within its Overall Project, as depicted and described in **Exhibit A**.
- C. In conjunction with the Overall Project, MPS requested this Agreement to allow MPS, at its expense, to allow the City to design, construct and install necessary public water main improvements that are in conflict with the Overall Project, approximately 100 linear foot new public water main line, hydrants, and lead service lines abutting the Property (“Public Water Main Line”) within current public street and public right-of-way.

If not defined herein, any capitalized terms herein have the meaning ascribed to them in the Development Agreement.

### **AGREEMENT**

- 1. **Recitals.** The recitals above are acknowledged and accepted.
- 2. **City to Design Public Water Main.** City shall undertake the design of the public water main improvements using funds provided by MPS.
- 3. **Funding Obligation.** MPS will provide all funds necessary for the Public Water Main Line Project. Notwithstanding the foregoing, MPS will advance and City will reimburse MPS for actual costs up to, but not to exceed, \$115,000 for the Public Water Main Line Project including the design and construction, materials inspections, construction inspections and any related City work necessitated by the Public Water Main Line Project. MPS will be responsible for actual costs that may exceed original estimate of \$115,000.
- 4. **City to Contract.** The City shall obtain a contractor to construct the public water main improvements.

5. **Public Water Main Line.** Water main will be installed in the street rights-of-way, as may be necessary. Per paragraph 2, plans for water main improvements shall be prepared by the City. The estimated costs to design, construct and inspect the water main improvements are as follows:

Construction	\$75,000.00
Design, Inspection	\$13,000.00
Water Materials	\$27,000.00

The City shall provide all water fittings. As the designer of the water main project, the City is responsible for requesting the required State of Wisconsin Department of Natural Resources ("DNR") Water Main Installation Permit.

6. **Lateral Replacement (Lead Service Lines).** Any existing water service within limits of the public water main line shall be replaced in accordance with City ordinance as a planned lead service line replacement.
7. **Deposits, Estimated Costs and Reconciliation; Actual Costs** MPS shall pay to City, the quarterly bills that City will bill to MPS to cover City's actual costs associated with City's work and time referred to in paragraphs 5 and 6 and MPS shall pay or cause to be paid those invoices within 90 days of receipt.

Quarterly billing shall commence after execution of this document.

City shall respect MCO 200-32-4 where applicable.

8. **Funding Guarantee for Construction.** A letter of commitment dated even herewith (the "LOC"), submitted by MPS shall be submitted and approved by the Department of Public Works Commissioner for the Public Water Main Line prior to the construction of any public improvements. At MPS's request, the actual contract amount for the Public Water Main Line may be substituted for the estimated costs. In addition, the amount of the LOC may be reduced periodically to reflect payments made to contractors. Any such reductions shall be approved by the Department of Public Works Commissioner.
9. **Other Improvements.** Any utility and access improvements necessary to the Property, in addition to those listed above, shall be MPS's responsibility and be undertaken by MPS at MPS's sole expense. City has the right to review and approve plans for any work to occur in right-of-way. Permits necessary for any such work shall be obtained by MPS.
10. **Private Utilities.** MPS shall coordinate installation of all private utility lines and facilities necessary to provide telephone, communications, electrical, and gas services to the Property.
11. **Inspections.** All materials furnished and work performed hereunder must conform to City regulations and specifications and are subject to City inspection. All engineering and inspection costs incidental to the installation of the Public Water Main Line are subject to this Agreement and the cost of such service, when furnished by City, shall be established as the wages of the person or persons engaged in such work plus all costs of overhead.

12. **Ownership of Public Water Main Line; As-Builts.** Upon completion of the Public Water Main Line, title to Public Water Main Line installed hereunder shall vest in City and City will accept the obligation of operation and maintenance of Public Water Main Line in accordance with City's standard practice.
13. **City Ordinances and Regulations.** This Agreement is subject to City ordinances and regulations. Nothing herein is deemed to waive or supersede such requirements.
14. **Binding Effect.** This Agreement is binding upon MPS and City. Neither MPS nor City may assign its rights or duties hereunder without each other's prior written approval.
15. **Enforcement.** This Agreement may be enforced at law and in equity, with the non-breaching party entitled to injunctive relief and/or monetary damages. The parties retain any respective rights they have under Wis. Stat. § 893.80 and under MCO Ch. 120.
16. **Governing Law; Amendment.** This Agreement is governed by Wisconsin law, and may only be amended by written instrument signed by the parties hereto.
17. **Drafter-Doctrine Not Applicable; Headings.** The contract-interpretation doctrine of "construing against the drafter" shall not apply to interpretation of this Agreement. Headings are for convenience only.
18. **Open Records.** This Agreement is, and records kept or maintained hereunder or as a result hereof may be, subject to Wisconsin Open Records Law, Wis. Stat. Chapter 19, and the parties hereto agree to cooperate regarding duties under such law, including providing copies of records required to comply with such law.
19. **Notice.** Notices required or desired to be given with respect to this Agreement shall be in writing, addressed to the respective party as per the contact information below, and shall be (i) delivered personally, (ii) sent by United States mail, postage prepaid, or (iii) sent by email provided no error or inability to send message is generated in response. Contact information may be changed by providing notice to all parties per this "notice" section.

<p><b>If to CITY:</b>  Jerral Kruschke  Commissioner, Dept. of Public Works  City of Milwaukee  841 N. Broadway, Room 501  Milwaukee, WI 53202  Phone: 414-286-3301  Email: jkrusc@milwaukee.gov</p> <p><b>With copy to:</b>   City Attorney's Office  200 E. Wells, Room 800</p>	<p><b>If to MPS:</b>  Michelle J. Lenski  Manager, Design and Construction  Department of Facilities and Maintenance  Services  1124 North 11<sup>th</sup> Street  Milwaukee, WI 53233  Phone: (414) 283-4702  Email: lenskimj@milwaukee.k12.wi.us</p>
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Milwaukee, WI 53202 Phone: Email:	
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20. **Counterparts.** This Agreement may be signed in counterparts. Facsimile or email signatures shall be accepted as originals.

**IN WITNESS WHEREOF**, the parties sign and enter this document as of the date first written above.

<b>CITY: CITY OF MILWAUKEE</b>  By: _____ Jerrel Kruschke, Commissioner Dept. of Public Works  <b>Countersigned:</b>  By: _____ Aycha Sawa, Comptroller  <b>City Common Council Resolution File</b> <b>No.</b> , adopted on. See, also, File No.. <b>CITY ATTORNEY APPROVAL</b> MCO 304-21. By: _____ Joseph M. Dobbs, Asst. City Attorney	<b>MPS: MILWAUKEE PUBLIC SCHOOLS</b>  By: _____ Michelle J. Lenski, Manger, Design and Construction Facilities & Maintenance Services

Exhibit A

Site Plan

Exhibit B

Legal Description