

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT AND THE CITY OF
MILWAUKEE CONCERNING RECONSTRUCTION OF A WATER MAIN
WITHIN A DISTRICT TUNNEL UNDER THE MENOMONEE RIVER AT
EMMBER LANE**

This Agreement entered into as of the last date written below, by and between the City of Milwaukee, a municipal corporation, hereafter "City," and the Milwaukee Metropolitan Sewerage District, a municipal body corporate, authorized and existing under Wis. Stat. §§ 200.15 to 200.65, hereafter "District," concerning reconstruction of a water main within a District tunnel under the Menomonee River at Emmer Lane:

WHEREAS, the District constructed a monolithic concrete tunnel under the Menomonee River at Emmer Lane to serve as a conduit through which the District constructed a siphon for an 18-inch Metropolitan Interceptor Sewer, hereafter "MIS"; and

WHEREAS, the City of Milwaukee Water Works, hereafter "Water Works," uses said tunnel to serve as a conduit through which the Water Works operates a 24-inch water main; and

WHEREAS, the District intends to construct an additional 18-inch MIS in the same conduit; and

WHEREAS, the Water Works' 24-inch water main is approximately 80 years old and made of cast iron; and

WHEREAS, the Water Works is willing to allow the District to remove the 24-inch water main and design and re-construct a new 24-inch ductile iron water main to Water Works standards as part of the work to construct the new 18-inch MIS; and

WHEREAS, the replacement of the 24-inch cast iron water main with a new 24-inch ductile iron water main provides the Water Works with a significant betterment of its facilities in this location, all to the advantage of the customers of the Water Works; and

WHEREAS, the City of Milwaukee has authorized the proper City officials to enter into this Agreement pursuant to Common Council Resolution No.

_____ dated _____, 2008;

NOW, THEREFORE, in consideration of the mutual promises made, it is agreed that the rights, responsibilities, and procedures relating to removal, design and

reconstruction of a water main within a District tunnel under the Menomonee River are as outlined in this Agreement.

1. **District Design And Related Services.** In exchange for the City's payment to the District for design, construction, and construction contract management, described below, the District agrees to design and construct a replacement 24-inch ductile iron water main to Water Works' standards within the District's monolithic concrete tunnel under the Menomonee River at Emmer Lane. In addition, the District will provide resident engineer and resident inspection services for removal of the existing water main and construction of the ductile iron replacement water main designed as referenced above. The City of Milwaukee will assign, at its sole cost, additional engineering and inspection staff it deems necessary to further represent its interests.

2. **City of Milwaukee Payment to the District.** (A) Payment for All Work Related to Demolition and Replacement of 24-inch Cast Iron Water Main. Except as provided in sec. 2(B), the City agrees that it will reimburse the District for all of the District's costs associated with removal of the 24-inch cast iron water main and replacement with a 24-inch ductile iron water main; the design costs related thereto; and a portion of the construction contract management costs for providing a resident engineer and resident inspector for this work. Before work begins, it is estimated, based on bid amounts for the construction work, that removal of the 24-inch cast iron water main and replacement with a 24-inch ductile iron water main will cost One Hundred Ninety Thousand, Seven Hundred Sixty and No/100 (\$190,760) Dollars. The design fee attributable to the water main work is Twenty Thousand Nine Hundred Fifty-six and No/100 (\$20,956.00) Dollars and the construction contract management fee should be around Ten Thousand and No/100 (\$10,000) Dollars. These costs total Two Hundred Twenty-one Thousand, Seven Hundred Sixteen and No/ 100 (\$221,716.00) Dollars, which is the present estimate of the City's financial obligation. Except as provided in sec. 2(B), below, this payment is full compensation for the District's work in the removal of the 24-inch cast iron water main and the design and construction of a 24-inch ductile iron water main within the District's monolithic concrete tunnel under the Menomonee River at Emmer Lane.

(B) Payment for Contract Modifications. Notwithstanding the provisions of sec. 2(A), above, in the event the construction contract is modified or amended with regard to work, in whole or in part, on the 24-inch cast iron water main, the City agrees to pay the District for such portion of the contract modification as relates to the work on the water main. The City of

Milwaukee must provide written approval of any change orders involving removal of the 24-inch cast iron water main and replacement by the 24-inch ductile iron water main. The District or its representative(s) shall not approve any change orders involving the water main without the approval of the City of Milwaukee. The District will provide the City of Milwaukee's Construction Supervisor with notice of requests for any contract modification or amendment that might result in additional costs under this section within ten (10) days of receipt of the contract modification initiation request by the District's resident engineer. Notice will be deemed complete upon delivery to the City of Milwaukee's Construction Supervisor.

3. **Payment Schedule.** The parties agree that the City will pay to the District one-half of the costs set forth in section 2, above, or One Hundred Ten Thousand, Eight Hundred Fifty-eight and No/100 (\$110,858.00) Dollars, within thirty (30) days of District receipt of a payment application by the construction contractor that shows greater than 50% project completion. The District will give the City prompt notification of such payment application. An additional payment of One Hundred Ten Thousand, Eight Hundred Fifty-eight and No/100 (\$110,858.00) Dollars, adjusted for the actual cost(s) for construction contract management and contract modifications as described in sec. 2(B), shall be made when the water main goes into service.
4. **Integration of Agreement.** This writing is the entire Agreement between the City of Milwaukee and the District. There are no unwritten or oral agreements that can be used to change the terms of this Agreement.
5. **Termination Date.** This Agreement will terminate no later than 31 December 2009, or when construction is completed, whichever is later.
6. **City Not Required to Provide Insurance Coverage.** The City of Milwaukee is not explicitly or implicitly required by this Agreement to provide insurance coverage of any kind for the District or for District employees, consultants, or contractors' personnel. The District shall provide such insurance coverage.
7. **Standard of Care for Work to be Done.** The District represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the construction professional community practicing under similar conditions at the same time and in the same or similar locality.

8. **Hold Harmless Clause.** The District will hold the City of Milwaukee harmless and defend the City against any claims arising from the design by District-retained consultants or removal and construction by District-retained contractors of the existing and replacement 24-inch water mains.
9. **Audits and Inspections.** The City of Milwaukee Comptroller shall have the right, upon reasonable notice, to audit, examine, and copy all District records relating to work performed for the City pursuant to this Agreement.
10. **Public Records.** The Parties acknowledge that both the City and the District are bound by the Wisconsin Public Records Law and all of the terms of this Agreement are subject to and conditioned upon compliance with the provisions of Wis. Stat. § 19.21, *et seq.* The Parties acknowledge that they have reciprocal obligations to each other to assist in retention and production of records that are subject to the Wisconsin Public Records Law; that the failure to do so shall constitute a material breach of this Agreement; and that the Party which possesses the original of any public record generated pursuant to or on account of this Agreement or the design and construction documents generated in the prosecution of the work to remove and replace the 24-inch ductile iron water main shall defend and hold the other harmless from liability under that law, provided that notice of the public records request is given to the Party holding the original record. Such records shall be maintained for the period of time required by the Wisconsin Public Records Law; provided, however, in the event one of the Parties is required by state law to retain a public record for a longer period than the other Party, records shall be maintained for the longest period applicable to such records.
11. **Parties Shall Not Discriminate.** The Parties shall not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with or perceived affiliation with any of these protected categories.

This Agreement is signed on behalf of the parties by:

CITY OF MILWAUKEE

Commissioner of Public Works for Date
the City of Milwaukee

Water Works Superintendent Date

City of Milwaukee Comptroller Date

Approved as to form:

Assistant City Attorney

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

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

Approved as to form:

Senior Staff Attorney

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