

**MPS GREEN SCHOOLYARDS REDEVELOPMENT PROGRAM FUNDING
AGREEMENT**

**BETWEEN THE
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
AND
THE MILWAUKEE BOARD OF SCHOOL DIRECTORS ON BEHALF OF THE
MILWAUKEE PUBLIC SCHOOLS
AND
THE CITY OF MILWAUKEE
(Funding Agreement No. G98035)**

This Funding Agreement (“Agreement”) is entered into as of the date of last signature below by and between the Milwaukee Metropolitan Sewerage District (the “District”), with its principal place of business at 260 West Seeboth Street, Milwaukee, WI 53204, the Milwaukee Board of School Directors on behalf of the Milwaukee Public Schools (“MPS”), with its principal place of business at 5225 West Vliet Street, Milwaukee, WI 53208, and the City of Milwaukee (“City”), Department of Public Works, with its municipal offices located at 841 North Broadway, Milwaukee, WI 53202.

WHEREAS, the District has established the MPS Green Schools Program (“Program”) to streamline the provision of funding to various MPS schools that have previously completed conceptual planning in concert with the District and Reflo, Inc. under Consultant Agreement No. G98028P01 for proposed Green Infrastructure (“GI”) projects (“Projects” or “Project”) at selected MPS schools (“Cohort” or “Cohorts”); and

WHEREAS, certain Cohorts have completed the conceptual planning stage and are now ready to proceed with the implementation of a Work Plan to develop specific Green Infrastructure Project design and subsequent construction at certain Cohort schools; and

WHEREAS, this Agreement provides specific funding to MPS in order to assist with the establishment and implementation of a Work Plan and subsequent construction for such Projects to install the planned Green Infrastructure at certain Cohort schools with the overall goal of such funding to be 3 million gallons of Green Infrastructure capture capacity across 15 MPS schools that comprise the Cohorts;

NOW THEREFORE, the District, MPS, and the City agree to the following under this Agreement:

1. **TERM.** This Agreement shall be effective upon the date of last signature below and shall terminate on December 31st, 2030.
The table directly below provides an approximate schedule for the work to be completed under this Agreement per cohort:

Cohort	School Selection	Funding Agreement Proposed by MMSD*	Conceptual Planning Year	Funding Agreement Commission Approval	Estimated Workplan Approval	Estimated Construction Year	Estimated Invoice / Final Report Year
9	Fall 2024	Feb 2025	2025	Sept 2025	Feb 2026	2027	2028
10	Fall 2025	Feb 2025	2026	Sept 2025	Feb 2027	2028	2029
11	Fall 2026	Feb 2025	2027	Sept 2025	Feb 2028	2029	2030

*Note that a new Funding Agreement would need to be proposed by MMSD in February 2028 to continue a similar schedule for Cohort 12 and beyond.

2. DISTRICT FUNDING. The District will reimburse MPS in an amount not to exceed \$11,250,000.00 under this Agreement for the cost of completion of Projects at Cohort 9-11 schools. It is anticipated that reimbursements will be made to MPS for up to five schools per cohort within the term of this Agreement with approximately 15 schools ultimately receiving funding under this Agreement during the term of this Agreement. The District will provide funding to MPS only after the District receives a Baseline Report and an executed Conservation Easement from MPS for each Project seeking reimbursement under this Agreement.

Reimbursable expenses for each Project shall be comprised of the following activities:

- a. Project design;
- b. Project construction;
- c. Project management; and
- d. Vegetation establishment.

MPS is free to pursue separate funding for all Projects expenses to supplement District funding under this Agreement from national, state, local, and private sources including potential additional funding from the District through its Green Solutions program but not through the District's Green Infrastructure Partnership Program.

3. WORK PLAN. In order for a given Project to be eligible to obtain funding under this Agreement, MPS shall submit a Work Plan to the District for a given GI Project at a Cohort school. The Project specific Work Plan shall consist of the following:
 - a. The specific school name and address;
 - b. A description of the specific Project which may include the following:
 - i. Preliminary design features indicating the GI to be installed and the estimated gallon capture capacity of the GI to be installed taking into consideration the minimum amount of GI capture capacity for each individual Project as indicated in Section 7 below;

- ii. A preliminary site drawing indicating the specific Project's location and proposed GI installation within the Project.
- c. An anticipated budget for the specific Project;
- d. An anticipated timeline for design, construction, and completion of the specific Project; and
- e. Planned educational signage at the Project location that identifies the District as funding the specific Project by name, logo, or both.

Each Work Plan shall be submitted to the District contact listed in Section 7 of this Agreement. MPS shall not proceed with the construction of a given Project until a Work Plan submitted to the District is approved by the District.

4. PROGRESS REPORTS. MPS and the District shall utilize the existing schedule of monthly meetings occurring under Fresh Coast Green Schoolyards Program: City of Milwaukee Phase Two Consultant Agreement No. G98028P01 in order for MPS to provide to the District for each Project that has been approved to proceed with construction per Section 3 of this Agreement monthly progress details describing the actions initiated and completed on each approved Project since the preceding meeting until completion of construction of the specific Project.
5. PROJECT CHANGES. MPS shall not make substantive changes to an approved Work Plan for a given Project unless agreed upon in writing between MPS and the District.
6. BASELINE REPORT. After the completion of construction of a Project, MPS shall submit to the District a Baseline Report for the given Project using forms provided or approved by the District. The Baseline Report shall include the following:
 - a. A site drawing and topographical map showing the Project as completed with GI assets defined;
 - b. Design specifications for the Project, including rainwater capture capacity and other information regarding runoff rate reduction or pollutant capture. GI capture capacity will be designed for the 100-year design storm. Capture capacity will be quantified by the allowable design parameters specified by the District, typically the total available storage in the system up to the secondary outflow (spillway) elevation.
 - c. A tabulation of the bids received, including bidder name and price, for the construction work for the Project;
 - d. A copy of the executed construction contract(s) and a list of all permits collected during the Project construction process;
 - e. A legal description of the property where the Project is located including parcel identification numbers;
 - f. Photographs of the Project during construction and upon the Project's completion;

- g. An operations and maintenance plan including details on funding for operations, vegetation establishment, and maintenance;
 - h. An outreach and education strategy, including a description of events or activities completed or planned;
 - i. An itemization of all construction costs with supporting documentation;
 - j. A Small, Women's, and Minority Business Enterprise Report; and
 - k. An Economic Impact Report, showing the total number of people and the estimated number of hours worked on design and construction of the Project by MPS and any contractors, consultants, and volunteers utilized by MPS for the Project.
7. **PROCEDURE FOR PAYMENT.** MPS will submit an invoice to the District for the amount to be reimbursed per each approved Project. The invoice will document all costs to be reimbursed. Invoices from consultants will provide their hourly billing rates, if applicable, the hours worked by individual, and a summary of the tasks accomplished.

The District anticipates that it will reimburse MPS at an average rate of \$3.50 per gallon of as-built GI capture capacity per each approved Project. Notwithstanding the above, the District shall reimburse 100% of actual cost of the as-built GI as it may vary across each approved Project up to the not to exceed amount of this Agreement as provided for in Section 2 of this Agreement. There are no matching requirements for GI reimbursement and MPS is not precluded from seeking supplemental funding for the Projects. The minimum gallon capture capacity for each approved Project shall be 100,000 gallons, averaged across each Cohort.

MPS will send the specific Baseline Report and invoice to:

Lisa Sasso, Senior Project Planner
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
lsasso@mmsd.com

The District will not provide reimbursement until the specific Project seeking reimbursement is complete and the District has received all required deliverables for that specific Project including a fully executed Conservation Easement as provided for in Section 9 of this Agreement.

8. **PROJECT MAINTENANCE.** MPS shall ensure that any Project installing bioswales, native plantings, and/or trees seeking reimbursement under this Agreement shall be established within three years of installation. MPS shall maintain the GI installed for each Project for at least 11 years. If the GI installed at a specific Project location fails to perform as anticipated or if maintaining the GI is not feasible, then MPS shall provide a report to the District explaining the failure of the GI or why maintenance is not feasible. Failure to

properly maintain GI at a given Project site where such maintenance is feasible may make MPS ineligible for further reimbursement under this Agreement for other Projects until MPS corrects any maintenance problems associated with a specifically identified Project.

MPS will provide to the District annual maintenance reports for each Project completed under this Agreement. These reports will summarize installed GI performance and maintenance activities during the preceding 12 months for each completed Project. Such reports are due by December 31st of each year. The District must receive these annual maintenance reports for each completed Project for 11 consecutive calendar years following completion of each Project. MPS will use the reporting form available from the District and submit the form as directed by the District.

9. CONSERVATION EASEMENTS. After the completion of construction of a given Project the District shall receive a Conservation Easement from the City for that specific Project. The Conservation Easement will be limited to the GI installed through the specific Project. The term of each Conservation Easement to be provided under this Agreement will be 11 years. MPS and the City will cooperate with the District to prepare the necessary Conservation Easements. A copy of a Conservation Easement template is attached hereto as Attachment A. The parties note that such attachment is merely a template and the Conservation Easement that is ultimately executed for a given Project through this Agreement may differ. The District shall record the Conservation Easement at the District's expense.
10. PERMITS, CERTIFICATES, AND LICENSES. MPS is solely responsible for compliance with all federal, state, and local laws and any required permits, certificates, or licenses for each Project.
11. PROCUREMENT. MPS must select professional service providers according to the rules and regulations governing MPS for such procurement activities. MPS must procure all non-professional services, such as construction, sewer inspection, and post-construction restoration, according to State of Wisconsin statute and applicable rules and regulations governing MPS. Whenever work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request, and MPS must provide, an opinion from a licensed attorney representing MPS explaining why the procurement complies with State of Wisconsin law and applicable rules and regulations.
12. RESPONSIBILITY FOR WORK, INSURANCE, AND INDEMNIFICATION. MPS is solely responsible for the design, construction, and maintenance of each Project, including the selection of and payment for consultants, contractors, and materials.

The District will not provide any insurance coverage of any kind for any Project seeking reimbursement under this Agreement or to MPS as related to this Agreement.

MPS will defend, indemnify, and hold harmless the District and its commissioners, employees, and agents against all damages, costs, liabilities, and expenses, including attorneys' fees and related disbursements, arising from or connected with the design, construction, operation, and/or maintenance of each Project. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities as set forth in Wis. Stats. § 893.80.

13. AMENDMENT. Any modification to this Agreement shall be in writing and signed by the District, MPS, and the City.
14. TERMINATING THIS AGREEMENT. The District may terminate this Agreement for good cause including, but not limited to, breach of this Agreement by MPS. MPS may terminate this Agreement at any time but MPS will not receive any reimbursements from the District for Projects that have not been fully completed before termination of this Agreement is sought by MPS.
15. SEVERABILITY. If a court of competent jurisdiction finds any part of this Agreement unenforceable, then the remainder of this Agreement shall continue in full force and effect.
16. APPLICABLE LAW. The laws of the State of Wisconsin shall apply to this Agreement.
17. 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 a mediator, any party may take the matter to court. Venue in any action brought under this Agreement shall be proper only in either the Circuit Court for Milwaukee County or the United States District Court for the Eastern District of Wisconsin.
18. 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:
 - A. When delivered personally to the recipient's address as stated within this Agreement;
or
 - B. Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated within this Agreement.

19. CONTACT PERSONS

A. Notices to City will be sent to:

Jerrel Kruschke
Department of Public Works
841 North Broadway, Room 820
Milwaukee, Wisconsin 53202
414-286-2400
jkrusc@milwaukee.gov

With a copy to:

Jordan M. Schettle
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202
414-286-2615
jschet@milwaukee.gov

B. Notices to District will be sent to:

Lisa Sasso, Senior Project Planner
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
414-225-2048
lsasso@mmsd.com

C. Notices to MPS will be sent to:

Heather Dietzel, P.E., Sustainability Project Specialist
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, Wisconsin 53233
414-283-4713
dietzehm@milwaukee.k12.wi.us

With a copy to:

Sheila Thobani
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202
414-286-2621
sthoba@milwaukee.gov

20. ASSIGNMENT. MPS may not assign any rights or obligations under this Agreement without the District's or the City's prior written approval.

21. INDEPENDENCE OF THE PARTIES. This Agreement does not create a partnership among any of the parties. None of the parties to this Agreement may contract on behalf of any other party.

22. COUNTERPARTS. The parties may execute this Easement Agreement in two or more counterparts which shall, in the aggregate, be signed by all parties. Each counterpart shall be deemed an original instrument as against any party who has signed it.

[Signature Page Follows]

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

By: _____
Kevin L. Shafer, P.E.
Executive Director

Date: _____

Approved as to Form:

Attorney for the District

<p>CITY OF MILWAUKEE</p> <p>By: _____ Mayor Cavalier Johnson</p> <p>CITY CLERK</p> <p>By: _____ James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Bill Christianson, Comptroller</p> <p>City Common Council Resolution File No. _____, adopted on _____, 20____.</p>	<p>CITY ATTORNEY AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the City of Milwaukee signatures per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>By: _____</p> <p>Printed Name: Jordan M. Schettle</p> <p>Title: Assistant City Attorney</p> <p>State Bar No.: 1104571</p> <p>Date: _____</p>
<p>MILWAUKEE BOARD OF SCHOOL DIRECTORS</p> <p>By: _____ Dr. Brenda Cassellius Superintendent of Schools</p>	<p>MPS AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the MPS signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>State Bar No.: _____</p> <p>Date: _____</p>

ATTACHMENT A

DOCUMENT NO.

**LIMITED TERM
CONSERVATION
EASEMENT AGREEMENT
FOR GREEN
INFRASTRUCTURE**

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (“Easement Agreement”) is granted as of the date of last signature below by the City of Milwaukee, a Wisconsin municipality (“City”); to the Milwaukee Metropolitan Sewerage District (“MMSD”). City and MMSD are each a “Party”; together, they are the “Parties.”

Recording Area

Name and Return Address:
Milwaukee Metropolitan
Sewerage District
Attention: Real Estate
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Parcel Identification Number:

RECITALS

A. Property. City is the sole owner of certain property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the “Property”) having an address at _____. The Parties acknowledge that the Property is operated, managed, and utilized by the Milwaukee Board of School Directors (“MPS”) for the purposes of a school building known as _____ (**name of school**).

This Limited Term Conservation Easement Agreement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (“Green Infrastructure”). Exhibit C shows the area within the Property that is subject to this Limited Term Conservation Easement Agreement (“Easement Area”).

B. Conservation Values. In its present state, the Easement Area has Conservation Value because it has the following features:

(DESCRIBE GREEN INFRASTRUCTURE)

C. Baseline Documentation. The condition of the Easement Area and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation

Values (“Baseline Report”) which is on file at the office of MMSD and incorporated into this Easement Agreement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Easement Area at the time of the conveyance of the Easement described herein and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement Agreement.

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic, and open space values of real property; ensure its availability for agriculture, forestry, recreation, or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

E. Qualified Organization. MMSD is qualified to hold conservation easements under Section 700.40(1)(b) of the Wisconsin Statutes because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

F. Conservation Intent. City and MMSD share the common purpose of preserving the Conservation Values for a period of not less than 11 years. City intends to place restrictions on the use of the Easement Area to protect those Conservation Values. In addition, City intends to convey to MMSD and MMSD agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by MMSD. MMSD has provided funding to MPS for the installation of the Green Infrastructure within the Easement Area as located on the City’s Property. MPS acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

For good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties hereby acknowledge that the above Recitals are part of this Easement Agreement and are incorporated herein.
2. **Grant of Easement.** In accordance with Wis. Stat. § 700.40, City hereby grants to MMSD a non-exclusive Conservation Easement over the Easement Area (“Easement”), for the Conservation Value and subject to the limitations, conditions, and restrictions contained in this Easement Agreement.
3. **Purpose.** The purpose of this Limited Term Conservation Easement is to require City to keep, preserve, and maintain the Green Infrastructure installed within the Easement Area, with a total area of _____.
4. **Effective Dates.** This Limited Term Conservation Easement is deemed effective as of the date of last signature below and terminates 11 years after the date of last signature.

5. Recording of Easement. This Easement Agreement shall be recorded by MMSD at MMSD's expense in the Office of the Register of Deeds of Milwaukee County.

6. Operation, Rules, and Maintenance. City will operate and maintain the Green Infrastructure located in the Easement Area so that it remains functional for the entire term of this Easement. City is solely responsible for operation, maintenance, and evaluating performance.

7. Additional Reserved Rights of City. City retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by this Easement Agreement or inconsistent with the purpose of this Easement Agreement. However, City may not exercise these rights in a manner that would adversely impact the Conservation Values of the Easement Area.

City expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions:

7.1 The encumbrance or conveyance is subject to the terms of this Easement Agreement.

7.2 City incorporates the terms of this Easement Agreement by reference in any subsequent deed or other legal instrument by which City transfers any interest in all or part of the Easement Area.

7.3 City notifies MMSD of any conveyance in writing within 15 days after the conveyance and provides MMSD with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

7.4 Failure of City to perform any act required in Subparagraphs 7.2 and 7.3 does not impair the validity of this Easement Agreement or limit its enforceability in any way.

8. MMSD's Rights and Remedies.

8.1 Preserve Conservation Values. MMSD has the right to preserve and protect the Conservation Values of the Easement Area.

8.2 Prevent Inconsistent Uses. MMSD has the right to prevent any activity or use of the Easement Area that is inconsistent with the purpose of this Easement Agreement and to require the restoration of areas or features of the Easement Area that are damaged by any inconsistent activity or use pursuant to the remedies set forth below in this Section 8.

8.3 Enter the Easement Area. MMSD has the right to enter the Easement Area to inspect it and monitor compliance with the terms of this Easement Agreement, obtain evidence for use in seeking judicial or other enforcement of this Easement Agreement, and otherwise exercise its rights under this Easement Agreement. MMSD will provide prior written notice to City at least 48 hours before entering the Easement Area, comply with all of City's safety rules, and avoid unreasonable disruption of City's activities.

9. Remedies for Violations. Each Party has the right to enforce the terms of this Easement Agreement and prevent or remedy violations through appropriate legal proceedings.

9.1 Notice of Problems. If a Party identifies problems with the Green Infrastructure, then that Party will initially attempt to resolve the problems collaboratively with the other Party. A Party will notify the other Party of the problems and request remedial action within a reasonable time. Notices under this Easement Agreement shall be consistent with Section 10.1 and will also be sent to MPS, as this Easement Agreement relates to a school located on the Property that is operated by MPS.

9.2 Notice of Violation and Corrective Action. If a Party determines that a violation of the terms of this Easement Agreement has occurred or is threatened, the Party will give written notice of the violation or threatened violation to other Party and allow at least 30 days for correction to the violation. If a Party fails to respond or fails to properly correct the violation or threatened violation, then the noticing Party may initiate judicial action. The notice requirements in this section may be reduced to three days if, in the reasonable discretion of a Party, immediate judicial action is necessary to prevent or mitigate significant damage to the Easement Area.

9.3 Enforcement. Enforcement of this Easement Agreement may be at law or equity against any person or persons violating or attempting or threatening to violate any provision hereof, either to restrain or prevent such violation or obtain other relief. Nothing in this Easement Agreement shall be deemed to be a waiver of the City's governmental immunity rights as stated under Wisconsin Statutory Law or under the laws of the City of Milwaukee.

9.4 Waiver. A delay or prior inability of a Party to discover a violation or initiate enforcement proceedings does not waive or forfeit the right of a Party to take any action necessary to ensure compliance with the terms of this Easement Agreement.

9.5 Acts Beyond City's Control. If City is delayed or interrupted in the performance or completion of any of its obligations hereunder by any cause beyond its control including, but not limited to, any act, neglect, or default of MMSD or any agent or employee of MMSD (including any delay requested by MMSD), embargo, war, fire, flood, concealed conditions, cyclone, earthquake, epidemic or other calamity, act of God or of the public enemy, riots, insurrection or any strike, illegal walkout or secondary boycott, pandemic, public health emergency, or prudent actions taken by City under emergency conditions to prevent or mitigate damage from these causes, then the delay shall be excused and the time of performance specified in this Easement Agreement shall be extended for a period equal to the time lost as a consequence of the delay or interruption. MMSD may not bring any action against City for any injury or change in the Property resulting from the causes beyond City's control listed above.

10. General Provisions.

10.1 Notices. Any notice provided for herein or given pursuant to this Easement Agreement,

shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested; electronic mail (“e-mail”); or by receipted personal delivery to the Parties as follows:

A. City of Milwaukee:

Jerrel Kruschke
Department of Public Works
841 North Broadway, Room 820
Milwaukee, Wisconsin 53202
414-286-2400
jkrusc@milwaukee.gov

With a copy to:

Jordan M. Schettle
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202
414-286-2615
jschet@milwaukee.gov

B. Milwaukee Metropolitan Sewerage District:

Lisa Sasso, Senior Project Planner
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
414-225-2048
lsasso@mmsd.com

C. Milwaukee Board of School Directors:

Heather Dietzel, P.E., Sustainability Project Specialist
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, Wisconsin 53233
414-283-4713
dietzehm@milwaukee.k12.wi.us

With a copy to:

Sheila Thobani
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202

414-286-2621
sthoba@milwaukee.gov

10.2 Amendment. The Parties may amend this Easement Agreement in a written instrument executed by all Parties and recorded in the Office of the Register of Deeds for the county in which the Easement Area is located.

10.3 Assignment. No Party shall assign its rights or obligations under this Easement Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

10.4 Headings. The headings in this Easement Agreement have been inserted solely for convenience of reference and have no effect on construction or interpretation.

10.5 Controlling Law and Venue. This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Easement Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in the Eastern District of Wisconsin for matters arising under federal law.

10.6 No Party Deemed Drafter. All provisions of this Easement Agreement have been negotiated by the Parties at arm's length and with the opportunity for full representation by their respective legal counsel and neither party shall be deemed to be the drafter of this Easement Agreement. If this Easement Agreement is ever construed by a court of law, such court shall not construe this Easement Agreement or any provision thereof against either Party as the drafter of this Easement Agreement.

10.7 Counterparts. The Parties may execute this Easement Agreement in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

10.8 Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, other than MPS Green Schoolyard Redevelopment Program Funding Agreement G98035 (Insert number), all of which are merged into this Easement Agreement.

10.9 Extinguishment. This Easement Agreement may be terminated or extinguished before the expiration of its term, whether in whole or in part, by the exercise of the power of eminent domain or purchase in lieu of condemnation that takes all or part of the Property or by agreement between City and MMSD that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

10.10 Ownership Responsibilities, Costs, and Liabilities. City retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property including, but not

limited to, the following:

a. *Operation, upkeep, and maintenance.* City is responsible for the operation, upkeep, and maintenance of the Property.

b. *Control.* In the absence of a judicial decree, nothing in this Easement Agreement establishes any right or ability in MMSD to:

(i) Exercise physical or managerial control over the day-to-day operations of the Property;

(ii) Become involved in the management decisions of City regarding the generation, handling, or disposal of hazardous substances; or

(iii) Otherwise become an operator of the Property 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 real property.

c. *Permits.* City remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement Agreement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state, and local laws, regulations, and requirements.

d. *Indemnification.* City shall save MMSD harmless from any loss, damage, injury, or liability resulting from negligence on the part of City in connection with the exercise of any rights of City hereunder; provided, however, that in no event shall City be responsible or have any duty of indemnification under this Section 10.10(d) for the negligence or willful misconduct of either MMSD, its respective officers, directors, contractors, employees, agents, tenants, or their respective guests, invitees, successors and assigns, or others using and occupying the Easement Area or any part thereof. The foregoing provisions are subject to the legal defenses which, under law, City is entitled to raise.

e. *Taxes.* This Easement Agreement does not obligate MMSD to pay any taxes, assessments, fees, or charges of whatever description levied on or assessed against the Property.

10.11 Severability. If any provision or specific application of this Easement Agreement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement Agreement shall remain valid and binding.

10.12 Successors. This Easement Agreement is binding upon and inures to the benefit of City and MMSD and their respective successors and assigns and shall continue as a servitude running with the Property for the term of this Easement Agreement.

10.13 No Joint Venture. No provision hereof shall be deemed to constitute the Parties hereto

as partners of one another or joint ventures of one another or in any way obligate any Party hereto for the performance of any obligation of the other Party hereto.

10.14 Authority. Each person signing this Easement Agreement on behalf of a Party represents that such persons are duly authorized to sign this Easement Agreement and to bind the Party on behalf of which such person is signing.

****SIGNATURES NEXT PAGE****

IN WITNESS WHEREOF, the Parties hereto have caused this Easement Agreement to be executed by their duly authorized representatives as of the last date written below.

<p>CITY OF MILWAUKEE</p> <p>By: _____ Mayor Cavalier Johnson</p> <p>CITY CLERK _____ James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Bill Christianson, Comptroller</p> <p>City Common Council Resolution File No. _____, adopted on _____, 20____.</p>	<p>CITY ATTORNEY AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the City signatures per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>By: _____ Name Printed: Jordan M. Schettle Title: Assistant City Attorney</p> <p>State Bar No.: 1104571 Date: _____</p>
<p>MILWAUKEE BOARD OF SCHOOL DIRECTORS</p> <p>By: _____ Dr. Brenda Cassellius Superintendent of Schools</p>	<p>MPS AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the MPS signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>By: _____ Name Printed: _____ Title: _____ State Bar No.: _____ Date: _____</p>

ACCEPTANCE BY MMSD

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term Conservation Easement Agreement on this _____ day of _____, 20__.

By: _____
Kevin L. Shafer, P.E.
Executive Director

STATE OF WISCONSIN, MILWAUKEE COUNTY

On this _____ day of _____, 20__, the person known as Kevin L. Shafer came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____.

Approved as to Form: _____
Attorney for the District

ATTACHMENTS

- EXHIBIT A Description of Property
- EXHIBIT B Location of Property
- EXHIBIT C Location of Easement Area

EXHIBIT A

DESCRIPTION OF PROPERTY

Address:

Tax Number:

Legal Description:

EXHIBIT B

LOCATION OF PROPERTY

EXHIBIT C
LOCATION OF EASEMENT AREA