



Green Infrastructure Funding Agreement G98024P14  
**Emigh Playfield**  
495 East Morgan Avenue

**1. The Parties**

This Agreement involves the:

- A. Milwaukee Metropolitan Sewerage District (“**MMSD**”), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446;
- B. Milwaukee Board of School Directors on behalf of MKE Recreation (“**MKE Rec**”), 5225 West Vliet Street, Room 162, Milwaukee, Wisconsin 53208; and
- C. City of Milwaukee (“**Milwaukee**”), Department of Public Works, 841 North Broadway, Milwaukee, Wisconsin 53202.

**2. Basis for this Agreement**

- A. MMSD is responsible for collecting and treating wastewater from local sewerage systems.
- B. During wet weather events, stormwater (1) enters local sewerage systems, increasing the volume of wastewater that MMSD must convey and treat, and (2) directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding.
- C. Green infrastructure includes, but is not limited to, bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.
- D. Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface water.
- E. MMSD’s wastewater discharge permit includes a goal of 50 million gallons of green infrastructure detention capacity by March 31, 2024.
- F. In MMSD’s 2035 Vision, a strategic objective is capturing the first half inch of rainfall in green infrastructure.

G. Milwaukee owns land at 495 East Morgan Avenue, Milwaukee, Wisconsin 53207 (the “**Land**”). MKE Rec maintains and operates the Land and wants to install green infrastructure on the Land.

### **3. Term**

This Agreement becomes effective when signed by the parties and ends **March 31, 2026**, except for the annual maintenance reports required by sec. 5.C, the operation and maintenance requirements of sec. 10, and the transfer of maintenance responsibilities notification requirement of sec. 11.

### **4. The Project**

MKE Rec will:

A. install two (2) bioswales. These bioswales will have a design detention capacity of 120,156 gallons (the “**Project**”);

B. complete construction by March 31, 2026;

C. install educational signage that:

(1) is either designed and provided by MMSD or provided by MKE Rec and approved by MMSD,

(2) is in a location approved by MMSD, and

(3) identifies MMSD as funding the Project, by name, logo, or both;

D. identify MMSD as funding the Project in any printed matter, websites, and any other informational materials regarding the Project;

E. install all Project components described in the application for funding;

F. allow MMSD to inspect the Project and review maintenance records;

G. allow MMSD to identify MKE Rec and describe the Project in publicity regarding green infrastructure subject to MKE Rec’s approval;

H. inform MMSD of any promotional events for the Project arranged by MKE Rec and allow MMSD to participate; and

I. allow MMSD to access the Project at reasonable times for promotional events arranged by MMSD, after notice from MMSD.

## 5. Reports

A. MKE Rec will provide to MMSD:

- (1) a Project schedule within 30 (thirty) days after this Agreement becomes effective;
- (2) monthly progress reports, describing the actions initiated and completed since the preceding report, until the completion of construction. These reports are due before the 10<sup>th</sup> day of each month, starting with the month after the submission of the Project schedule;
- (3) plans, including planting plans, and specifications for the Green Infrastructure at least three weeks before the commencement of construction. If requested by MMSD, MKE Rec will meet with MMSD to discuss potential improvements;
- (4) a Baseline Report, using forms provided or approved by MMSD. This report is due after the conclusion of construction. This report will include:
  - (a) a site drawing, showing the completed Green Infrastructure;
  - (b) A map showing all parcels with where the Green Infrastructure is located and the surrounding streets;
  - (c) a legal description of all parcels where the Green Infrastructure is located and the parcel identification numbers;
  - (d) design specifications for all Green Infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
  - (e) photographs of the completed Green Infrastructure;
  - (f) a maintenance plan;
  - (g) an itemization of all design, construction, and education and outreach costs, with supporting documentation;
  - (h) a W-9 Tax Identification Number form;
  - (i) a Small, Women's, and Minority Business Enterprise Report; and
  - (j) 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 MKE Rec, contractors, consultants, and volunteers;

B. To provide the reports required by par. (A)(1) to (4), MKE Rec may use the U.S. mail, another delivery service, or electronic mail. MKE Rec will send reports to:

Lisa Sasso, Senior Project Planner  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204-1446  
lsasso@mmsd.com

- C. MKE Rec will provide annual maintenance reports. These reports will summarize project performance and maintenance activities during the preceding twelve months. This report is due **December 31** of each year. MMSD must receive these reports for the **eleven calendar years** following the completion of construction. MKE Rec will use the form available from <http://www.freshcoastguardians.com> and submit the form to [greeninfrastructure@mmsd.com](mailto:greeninfrastructure@mmsd.com).
- D. MKE Rec will provide the required reports, not a consultant or contractor.
- E. Reports that are late or incomplete may be a basis for rescinding this Agreement or making MKE Rec ineligible for future funding.

## 6. Conservation Easement

After the completion of construction, Milwaukee and MKE Rec will execute a conservation easement in favor of MMSD. The extent of the conservation easement will be limited to the Project. The duration of the conservation easement will be **eleven years**. MMSD will draft the conservation easement. Milwaukee will record the easement at MMSD's expense.

## 7. MMSD Funding

- A. MMSD will reimburse actual Green Infrastructure installation costs up to \$264,612.54.
- B. Beyond financial support for the Green Infrastructure, MMSD will not be involved in design, construction, maintenance, or operation.

## 8. Procedure for Payment

- A. Along with or after the Baseline Report required by sec. 5.A(4), MKE Rec will submit an invoice to MMSD for the amount to be reimbursed.
- B. MMSD will provide reimbursement only if:
  - (1) MKE Rec provides the schedule, monthly reports, and Baseline Report required by sec. 5(A);
  - (2) MKE Rec completes construction before **March 31, 2026**;
  - (3) MMSD receives the invoice before **March 31, 2026**; and

(4) Milwaukee and MKE Rec execute the Conservation Easement after the completion of construction.

C. To invoice MMSD, MKE Rec will use MMSD's web-based project management information system (e-Builder). On the invoice, MKE Rec will include the name of MMSD's project manager and the funding agreement number (**G98024P14**).

## **9. Project Changes**

MMSD will not pay for work not described in the application for funding, unless MMSD provides prior written approval. Any changes to the Project that decrease the capacity to retain stormwater must be approved by MMSD, in writing, before implementing the change.

## **10. Operation and Maintenance**

MKE Rec will operate and maintain the Project for at least eleven years. If the Project fails to perform as anticipated or if maintaining the Project is not feasible, then MKE Rec will provide a report to MMSD explaining the failure of the Project or why maintenance is not feasible. Failure to maintain the Project will make MKE Rec ineligible for future MMSD funding until MKE Rec corrects the maintenance problems.

## **11. Transfer of Maintenance Responsibilities**

MKE Rec may not transfer maintenance responsibilities for the Project without the consent of Milwaukee and MMSD. MKE Rec will notify Milwaukee and MMSD before a proposed transfer of maintenance responsibilities at least thirty (30) days in advance.

## **12. Opportunities for Disadvantaged Businesses**

MKE Rec will give disadvantaged business enterprises an opportunity to compete for work on this Project by soliciting quotes or bids from those businesses to the maximum extent possible. Disadvantaged businesses include small businesses and businesses owned by women, minorities, or veterans. MMSD's procurement office will provide a list of these businesses, upon request.

## **13. Responsibilities of MKE Rec**

MKE Rec is solely responsible for:

- A. planning, designing, constructing, and maintaining the Project, including selecting and paying consultants, contractors, and suppliers;
- B. the safety of employees, contractors, and guests to the Project;
- C. compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Project; and

D. insurance. MMSD will not provide any insurance coverage of any kind for the Project or MKE Rec.

#### **14. Indemnification**

To the extent permitted by the law of the State of Wisconsin, including but not limited to Wis. Stat. § 893.80, MKE Rec will indemnify and hold harmless MMSD and MMSD's Commissioners, employees, and agents against any damages, costs, liability, and expense whatsoever, including attorney's fees and related disbursements, to the extent caused directly or proximately by any wrongful, intentional, or negligent act or omission of MPS and its employees so long as such act or omission is within the scope of employment within the meaning of Wis. Stat. § 895.46, arising from or connected with the planning, design, construction, operation, or maintenance of the Project. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities set forth in Wis. Stats., sec. 893.80.

#### **15. Modifying this Agreement**

Any modification to this Agreement must be in writing and signed by MMSD, MKE Rec, and Milwaukee.

#### **16. Terminating this Agreement**

- A. MMSD may terminate this Agreement at any time before the commencement of construction. After construction has commenced, MMSD may terminate the Agreement only for good cause, including, but not limited to, breach of this Agreement by MKE Rec. MMSD shall reimburse MKE Rec for all actual Green Infrastructure installation costs incurred by MKE Rec prior to termination.
- B. MKE Rec may terminate this Agreement at any time but will not receive any payment from MMSD if the Project is incomplete.

#### **17. Exclusive Agreement**

This Agreement is the entire agreement among MMSD, MKE Rec, and Milwaukee regarding the Project.

#### **18. Severability**

If a court holds any part of this Agreement unenforceable, then the remainder of the Agreement will continue in effect.

## **19. Applicable Law**

The laws of the State of Wisconsin govern this Agreement.

## **20. Notices**

All notices and other communications related to this Agreement will be in writing and will be considered given:

- A. when delivered personally to the address as stated on this Agreement; or
- B. three days after being deposited in the United States mail, with postage prepaid to the address as stated on this Agreement.
- C. by email when a record shows successful transmission.

## **21. Contact Persons**

A. Notices to Milwaukee 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:

Todd Farris  
Office of the City Attorney  
841 North Broadway, 10<sup>th</sup> Floor  
Milwaukee, Wisconsin 53202  
414-286-2669  
tfarris@milwaukee.gov

B. Notices to MMSD 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 MKE Rec will be sent to:

Pamela W. Zimmerman, PLA, FASLA  
Recreation Design and Development Specialist  
Milwaukee Recreation  
5225 West Vliet Street, Room 162  
Milwaukee, Wisconsin 53208  
414-283-4777  
pam@mkerec.net

D. The parties may change contact information after providing notice according to sec. 21.

## **22. Independence of the Parties**

This Agreement does not authorize any party to make promises binding upon any other party or to contract on the other party's behalf.

## **23. Assignment**

MKE Rec or Milwaukee may not assign any rights or obligations under this Agreement without MMSD's prior written approval.

## **24. Public Records**

Each party will produce any records in their possession that are subject to disclosure pursuant to the State of Wisconsin's Open Records Law, Wis. Stats. secs. 19.31 to 19.39. The parties will indemnify each other against any claims, demands, and causes of action resulting from the failure to comply with this requirement.

## **25. Conflicts**

If MKE Rec identifies a relationship with MMSD or MMSD's Commissioners or staff that could provide an advantage or cause a conflict of interest and if MKE Rec did not disclose this relationship in the application for funding, then MPS will notify MMSD within five (5) days of identifying it.

## **26. Signature Authority**

The persons who sign this Agreement certify that they have sufficient authority from their governing bodies to bind their organizations to this Agreement.

**\*Signature page follows\***





**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

Approved as to Form

By: \_\_\_\_\_  
Kevin L. Shafer, P.E.  
Executive Director

\_\_\_\_\_  
Attorney for the MMSD

Date: \_\_\_\_\_

<p><b>CITY OF MILWAUKEE</b></p> <p>By: _____ Mayor Cavalier Johnson</p> <p>CITY CLERK</p> <p>_____</p> <p>James R. Owczarski, City Clerk</p> <p><b>Countersigned:</b></p> <p>By: _____ Aycha Sawa, Comptroller</p> <p>City Common Council Resolution File No. _____</p>	<p><b>CITY ATTORNEY AUTHENTICATION</b></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. 716.06 so this document may be recorded per Wis. Stat 716.05 (2)(b).</p> <p>By: _____</p> <p>Name Printed: _____</p> <p>Title: _____</p> <p>State Bar No.: _____</p> <p>Date: _____</p>
<p><b>MILWAUKEE BOARD OF SCHOOL DIRECTORS</b></p> <p>By:  _____ Eduardo Galvan Interim Superintendent of Schools</p>	<p><b>MPS AUTHENTICATION</b></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. 716.06 so this document may be recorded per Wis. Stat. 716.05 (2)(b).</p> <p>By:  _____</p> <p>Name Printed: Theodore Wegner</p> <p>Title: Contract Law Specialist</p> <p>State Bar No.: 1115517</p> <p>Date: 08/01/2024</p>