

Amendment to the Agreement for the Design and Construction Phases of the North 30th Street Corridor Phase 2 Stormwater West Basin

This amendment is made to the intergovernmental cooperation agreement between the City of Milwaukee (the “City”) and the Milwaukee Metropolitan Sewerage District (the “District”) for the design and construction phases of the North 30th Street Corridor Phase 2 Stormwater West Basin (the “West Basin”) effective as of March 28, 2022 (the “Agreement”). This amendment is effective upon execution by the City and the District.

RECITALS

During the final design for construction of the West Basin, the parties identified constructability constraints related to the new City stormwater conveyance due to existing utilities and changes in project construction phasing due to project construction schedules.

The City and the District determined that the most economically feasible and constructable alignment of the new City stormwater conveyance would encroach on private property owned by Integrated Mail Industries (“IM”) at 4350 West Hopkins Street in Milwaukee.

To avoid rework, additional construction costs, regulatory risk, delay, and public safety hazards, the City and the District propose that the District acquire a subdivided parcel from IM through which to construct a segment of the new City stormwater conveyance.

The District and the City previously agreed to increases in the cost of engineering and design services for City Components in an amount of \$123,708

In consideration of the above recitals, the Agreement, and other good and valuable consideration, the District and the City therefore amend the agreement as follows.

AMENDMENT

The Agreement is hereby amended by replacing section I.B.2. “City Components” with:

2. “City Components” consists of the stormwater conveyance systems primarily within the City right of way but also including stormwater conveyance systems that will be located on District property. These components will be designed by the City, constructed by the City unless otherwise noted, and owned by the City at all times. The City Components (as shown in Attachment A) include:

- a. New stormwater diversion structure tentatively planned to be constructed at or near the intersection of W. Capitol Drive and N. 35th Street.
- b. New stormwater conveyance from the diversion structure to the inlet structure of the west basin.
 - i. The District shall construct a portion of this conveyance, a double box culvert from the West Basin inlet headwall to approximately the intersection of N. 35th St. and W. Hopkins St. (hereinafter the “City Culvert”).

- ii. The City shall otherwise design, own, and maintain the City Culvert.
- c. New stormwater “Basin #4” at 3100 W. Capitol Drive that will manage stormwater that collects at the W. Capitol Drive RR underpass.
- d. All stormwater conveyance infrastructure that connects Basin #4 to existing or newly constructed structures or infrastructure.
- e. All City public utilities, existing and newly constructed, that reside in the right of way or easements that currently exist or are created as part of this project.
- f. All surface features, existing or newly constructed, that would normally be owned by the City and within the right of way or on City property including pavement, signs, streetlights, traffic lights, and City utility valves, hydrants, and manhole structures. This includes landscaping or green infrastructure installed on City right of way.

“Project” consists of the District Components and the City Components.

The Agreement is hereby amended by replacing section II.A.2 with:

2. Construction: The District will use a sealed bid process to contract with a construction contractor for the District Components and the City Culvert.

The Agreement is hereby amended by replacing section II.B with:

B. Cost Estimates. At the completion of the preliminary engineering phase, the Consultant will provide a cost estimate that includes both the District Components and the City Components and the costs for each. For final design and at bidding, the Consultant will provide a construction cost estimate for the District Components and the City Culvert only.

The Agreement is hereby amended by adding a new section II.C.4:

- 4. For the City Culvert, the District shall require its Consultant incorporate plans and specifications provided by the City and stamped by a professional engineer into the District’s 50%, 90% (“essentially complete”), and 100% (“camera ready”) construction plans and specifications. The City shall have the opportunity to provide comment on all versions of the combined plans and specifications. The City shall complete such review and provide any written comments within 20 business days of receipt of the plans and specifications from the Consultant.

The Agreement is hereby amended by replacing section II.D with:

D. Permits. District shall prepare all documents and applications needed to obtain necessary permits and regulatory reviews and approvals to construct District components and the City Culvert. The City shall assist the District with these submittals and participate in discussions with regulatory agencies.

The Agreement is hereby amended by replacing section II.E with:

E. Real Estate. District shall acquire all real estate interests necessary to construct District components and the City Culvert. The District shall prepare and record any temporary or permanent easements needed for the project including any easements containing City owned infrastructure on District property or District owned infrastructure on City owned property. The City shall have the right to review, comment on, and approve real estate interests that impact City owned property or City owned infrastructure. The District shall grant the City an easement for access to operate and maintain the City Culvert.

The Agreement is hereby amended by replacing section II.F with:

F. Demolition. The District shall deconstruct or demolish structures, as necessary to construct District Components and the City Culvert.

The Agreement is hereby amended by replacing section II.H with:

H. Construction Oversight. The District shall perform all construction inspection and construction management for District components and the City Culvert. The District will not provide construction inspection or construction management for any City Components except the City Culvert. At all times, the District will coordinate construction oversight with City staff.

The Agreement is hereby amended by replacing section II.I with:

I. Remediation. The District shall undertake any environmental remediation activities necessary to construct the District Components and the City Culvert, as required by the Wisconsin Department of Natural Resources or the United States Environmental Protection Agency.

The Agreement is hereby amended by replacing section II.L with:

L. Change Orders. The District shall solicit City review and approval of any proposed District contract change orders related to City Components that have potential City cost implications prior to approving. The City shall review as quickly as possible but shall have up to (but no more than) 10 business days to review and approve any such change order. If the City provides notice of disapproval or otherwise conditions or qualifies its approval, then the City and the District shall meet with the consultant or contractor to resolve the issue.

The Agreement is hereby amended by replacing section III.A.3 with:

3. For the City Components and the City Culvert, the City shall provide the District with 50%, 90%, and 100% complete plans and specifications and give the District the opportunity to provide comments on the designs. The District shall complete such review and provide any written comments within 20 business days of receipt of the plans and specifications from the City.

The Agreement is hereby amended by replacing section III.B with:

B. Reimbursement.

1. The City shall reimburse the District for the cost of engineering services related to City Components and the City Culvert in an amount not to exceed \$685,708.00, subject to increase only upon consultant engineering change orders mutually agreed upon by the District and the City in writing.

2. The City shall reimburse the District for the costs of construction of the City Culvert in an amount not to exceed \$1,750,000.00. The City shall reimburse the District for the costs of construction of the City Culvert in a higher amount only with District and City concurrence. The City shall reimburse the District for construction costs including but not limited to:

- a. actual costs of all construction contract items related to the City Culvert,
- b. remediation,
- c. permits,
- d. fees,
- e. demolition, and
- f. relocation of existing City infrastructure and utilities.

3. The City may withhold payment for services not reasonably associated with the City components or the City Culvert.

4. The District may request reimbursement for eligible expenses on an ongoing basis, but no more frequently than every 30 days. With reimbursement requests, the District shall provide proof of payment, which may consist of cancelled checks or receipts or other proof, and:

- a. an invoice from the District clearly stating the requested reimbursement amount and,
- b. contractor pay application with units and cost for scope of work for each, District Components and City Culvert, as defined by this Agreement clearly segregated and itemized. All contractor pay applications must include supporting documentation confirming that the District has inspected the work and paid the contractor.

The Agreement is hereby amended by replacing section III.C with:

C. Procurement

1. Upon completion of preliminary engineering, the City shall self-perform final design for City Components including the City Culvert.

2. Upon completion of final design, the City shall self-perform bidding, construction, ESDC, and Department of Public Works inspection for all City Components except the City Culvert.

3. The City shall coordinate plans, specifications, and schedules with the District and the consultant.

The Agreement is hereby amended by replacing section III.D with:

D. Waiver of Fees. City shall waive all fees and assessments against the District for the District's work on the District Components and the City Culvert, including but not limited to:

1. any fees for permits issued to the District for work on District Components and the City Culvert and

2. any cost assessments to the District for the unrealized useful life of relocated City utilities, sewer infrastructure, streets, and other assets.

The Agreement is hereby amended by replacing section III.F with:

F. Remediation. The City is responsible for all costs related to investigation and remediation of environmental contamination required by the Wisconsin Department of Natural Resources or the United States Environmental Protection Agency on the City Components on City-owned real property. The City is also responsible for all costs related to remediation of environmental contamination required by the Wisconsin Department of Natural Resources or the United States Environmental Protection Agency for construction of the City Culvert.

The Agreement is hereby amended by replacing section III.G with:

G. Relocation. The City shall relocate utilities, sewer infrastructure, and streets as necessary for the City Components and the City Culvert at no cost to the District.

The Agreement is hereby amended by replacing section III.I with:

I. Ownership. The City shall own City Components including the City Culvert to the point of connection with District Components (for the City Culvert, to the West Basin inlet headwall). Following substantial completion of construction, all maintenance responsibilities for the City Components and the City Culvert belong to the City.

The Agreement is hereby amended by replacing the City notification contact in section VII with:

Robert Seleen, Flood Hazard Mitigation Manager
City of Milwaukee, Department of Public Works
841 North Broadway, Room 701
Milwaukee, Wisconsin 53202
(414) 286-2465
rselee@milwaukee.gov

The Agreement is hereby amended by adding section XIV, providing:

XIV. Public Records. This Amendment, the Agreement, and certain documents relating hereto are or may be subject to Wisconsin's Public Records Law, Wis. Stat. Chapter 19, Subchapter II and Wis. Stat. § 19.36(3) that includes records produced or collected hereunder. The parties acknowledge that each is obligated to assist the other in retaining and producing records subject to the Wisconsin Public Records Law, including but not limited to those records produced or collected by the City or the District under this Amendment or the Agreement pursuant to Wis. Stat. § 19.36(3) and that the failure to do so constitutes a material breach of this Agreement and that the breaching party shall

defend and hold harmless the non-breaching party from liability due to its fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of the final payment under the Agreement, as amended.

Except as amended by the terms herein, the original Agreement remains in full force and effect.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

CITY OF MILWAUKEE

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

By: _____
Jerrel Kruschke, P.E.
Commissioner of Public Works

Date: _____

Date: _____

Approved as to form

Countersigned

Attorney for the District

Bill Christianson
Comptroller
City Attorney Approval (MCO § 304-21)

Attorney for the City

Date: _____

City Common Council Resolution File No.

