



## Green Infrastructure Funding Agreement

### **Scaling-Up Water Resource Investments in the Pulaski Park Neighborhood**

M03064P385

This Agreement is between the Milwaukee Metropolitan Sewerage District (District), with its principal place of business at 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446, and the City of Milwaukee Department of Public Works (Owner), 841 North Broadway, Milwaukee, Wisconsin 53202.

WHEREAS, the District is responsible for collecting and treating wastewater from local sewerage systems; and

WHEREAS, during wet weather events, stormwater enters local sewerage systems, increasing the volume of wastewater that the District must convey and treat; and

WHEREAS, during wet weather events, stormwater directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding; and

WHEREAS, green infrastructure, such as constructed wetlands, rain gardens, green and blue roofs, bioswales, and porous pavement, reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface waters; and

WHEREAS, the District's wastewater discharge permit requires one million gallons per year of new green infrastructure retention capacity; and

WHEREAS, the District wants to promote the installation of green infrastructure; and

WHEREAS, the Owner plans to install green infrastructure;

Now, therefore, for the consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows.

## 1. Date of Agreement

This Agreement becomes effective immediately upon signature by both parties and ends August 1, 2016, except for secs. 3(A)(5) and (8).

## 2. The Project

The Owner will:

- (A) install 24,140 square feet of porous pavement, providing a total retention capacity of 149,668 gallons, as described in the Owner's application (Project). This porous pavement will be in:
  - (1) the alley in the area bounded by South 20<sup>th</sup> Street on the west, West Harrison Avenue on the south, South 19<sup>th</sup> Street on the east, and Arthur Avenue on the north; and
  - (2) the alleys in the area bounded by South 19<sup>th</sup> Street on the west, West Harrison Avenue on the south, West Windlake Avenue on the southeast, South 18<sup>th</sup> Street on the east, and West Arthur Avenue on the north;
- (B) complete construction before July 1, 2016;
- (C) install educational signage that:
  - (1) is either designed and provided by the District or provided by the Owner and approved by the District,
  - (2) is in a location approved by the District, and
  - (3) identifies the District as funding the Project;
- (D) identify the District as funding the Project in any informational literature;
- (E) include all Project components described in the Owner's application;
- (F) allow the District to inspect the Project and review maintenance records;
- (G) allow the District to identify the owner, identify the location of the Project, and describe the Project in publicity regarding green infrastructure;
- (H) inform the District of any promotional events for the Project arranged by the Owner and allow the District to participate; and
- (I) allow the District to access the Project at reasonable times for promotional events arranged by the District, after notice from the District.

### 3. Reports

(A) The Owner will provide:

- (1) a Project schedule within 30 days after this Agreement becomes effective;
- (2) monthly progress reports, describing the actions initiated and completed since the preceding report. These reports are due before the 10<sup>th</sup> day of each month, starting with the month after submission of the Project schedule;
- (3) detailed plans and specifications before construction, if the District determines that reviewing these plans and specifications is necessary to ensure the intended retention capacity.
- (4) a Baseline Report, using forms provided or approved by the District. This report will include:
  - (a) a site drawing, showing the completed green infrastructure;
  - (b) design specifications for all green infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
  - (c) a legal description of the property where the Project is located;
  - (d) photographs of the completed Project;
  - (e) a maintenance plan;
  - (f) an outreach and education strategy, including a description of events or activities completed or planned;
  - (g) an itemization of all construction costs, with supporting documentation;
  - (h) a W-9 Tax Identification Number form;
  - (i) a Small, Women, 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 the Owner, contractors, consultants, and volunteers.
- (5) an annual maintenance report. This report will summarize Project performance and the Owner's maintenance activities during the preceding twelve months. This report is due December 31 of each year. The Owner will provide these reports for the ten calendar years following the year in which the Owner completes construction.

(B) To provide these reports, the Owner may use the U.S. mail, another delivery service, or electronic mail.

(C) The Owner must provide the required reports, not a consultant or contractor. Reports that are late or incomplete may be a basis for rescission of this Agreement, make the Owner ineligible for future funding, or both.

(D) The Owner will send reports to:

Bre McDonald, Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, WI 53204-1446  
bmcdonald@mmsd.com

#### **4. Conservation Easement**

The Owner will execute a Conservation Easement in favor of the District, after the completion of construction. The extent of the Conservation Easement will be limited to the Project. The duration of the Conservation Easement will be ten years. The District will draft and record the Conservation Easement.

#### **5. District Funding**

- (A) The District will reimburse construction costs at the rate of \$7 per square foot of porous pavement, up to a maximum reimbursement of \$118,286, except as provided in par. (B). The District will provide this funding after the Owner completes construction and provides the Baseline Report and the signed Conservation Easement.
- (B) Reimbursement may not exceed 50% of total project cost.
- (C) Beyond financial support for the Project, the District will have no involvement in design, construction, maintenance, or operation.

#### **6. Procedure for Payment**

- (A) Along with or after the Baseline Report required by Article 3(A)(4), the Owner will submit an invoice to the District for the amount to be reimbursed.
- (B) The District will reimburse costs only if:
  - (1) the Owner has provided the schedule, monthly reports, and Baseline Report required by Article 3(A);
  - (2) the Owner completes the Project before July 1, 2016;
  - (3) the District receives the invoice before August 1, 2016; and
  - (4) the Owner signs the Conservation Easement.
- (C) The Owner will submit the invoice to:

Milwaukee Metropolitan Sewerage District  
Accounts Payable Department  
260 West Seeboth Street  
Milwaukee, WI 53204-1446  
Project Manager: Bre McDonald

## **7. Project Changes**

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

## **8. Operation and Maintenance**

The Owner will maintain the Project for at least ten years. If the Project fails to perform as anticipated or if maintaining the Project is not feasible, then the Owner will provide a report to the District explaining the failure of the Project or why maintenance is not feasible. Failure to maintain the Project will make the Owner ineligible for future District funding until the Owner corrects the maintenance problems.

## **9. Transfer of Ownership**

The Owner will notify the District before transferring ownership or maintenance responsibilities. The Owner will provide this notice at least 30 days in advance.

## **10. Procurement**

The Owner will select professional service providers according to the Owner's ordinances and policies. The Owner will procure all non-professional service work according to State of Wisconsin statutes and regulations and the Owner's ordinances and policies. Whenever work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request and the Owner must provide an opinion from a licensed attorney representing the Owner explaining why the procurement complies with State of Wisconsin law and the Owner's ordinances and policies.

## **11. The Owner's Responsibilities**

The Owner is solely responsible for:

- (A) planning, design, construction and maintenance of the Project, including the selection and payment of consultants, contractors, and materials;
- (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;

(D) compliance with Wisconsin prevailing wage law; and

(E) insurance. The District will not provide any insurance coverage of any kind for the Project or the Owner.

## **12. Indemnification**

The Owner will defend, indemnify, and hold harmless the District and its Commissioners, employees, and agents against any and all damages, costs, liability and expense whatsoever, including attorney's fees and related disbursements, arising from or connected with the planning, design, construction, operation, or maintenance of the Project. Nothing in this Agreement is a waiver by either party of the opportunity and right to rely upon the process, limitations and immunities set forth in Wis. Stats., sec. 893.80.

## **13. Modifying this Agreement**

Any modification to this Agreement must be in writing and signed by both parties.

## **14. Terminating this Agreement**

(A) The District may terminate this Agreement at any time before the commencement of construction. After construction has commenced, the District may terminate the Agreement only for good cause, such as, but not limited to, breach of this Agreement by the Owner.

(B) The Owner may terminate this Agreement at any time, but will not receive any payment from the District if the Owner does not complete the Project.

## **15. Exclusive Agreement**

This Agreement is the entire agreement between the Owner and the District regarding reimbursement for the Project.

## **16. Severability**

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

## **17. Applicable Law**

The laws of the State of Wisconsin govern this Agreement.

## **18. Resolving Disputes**

If a dispute arises under this Agreement, then the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Milwaukee County. The parties will

equally share any costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after the parties refer it to the mediator, then either party may take the matter to court.

### **19. Notices**

All notices and other communications in connection with this Agreement will be in writing and will be considered given as follows:

- (A) when delivered personally to the recipient's address as stated on this Agreement; or
- (B) three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

### **20. Independence of the Parties**

This Agreement does not authorize the Owner to make promises binding upon the District or to enter into contracts on the District's behalf.

### **21. Assignment**

The Owner may not assign any rights or obligations under this Agreement without the District's prior written approval.

### **22. Public Records**

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

### **23. Conflicts**

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

**Signatures on Next Page**

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

**CITY OF MILWAUKEE  
DEPARTMENT OF PUBLIC WORKS**

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

By: \_\_\_\_\_  
Ghassan Korban, P.E.  
Commissioner

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

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

Approved as to form:

\_\_\_\_\_  
Attorney for the District