

**AGREEMENT BETWEEN THE
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT,
THE CITY OF MILWAUKEE AND REXNORD INDUSTRIES, LLC,
FOR MODIFICATIONS TO THE
FLOODWALL SYSTEM AND INTERNAL DRAINAGE SYSTEM
AT THE FALK COMPLEX, 3001 CANAL STREET, MILWAUKEE, WISCONSIN**

This Agreement entered into as of the last date appearing in the signature block below, by and among the Milwaukee Metropolitan Sewerage District ("District"), a municipal body corporate, created and operating pursuant to Wis. Stat. §§ 200.21 through 200.65; the City of Milwaukee, a general purpose municipal corporation organized and operating pursuant to Special Charter, hereafter "City;" and Rexnord Industries, LLC, hereafter "Rexnord," a Delaware limited liability company authorized to do business in Wisconsin:

- A. WHEREAS, Rexnord owns land and facilities bordering the Menomonee River located at 3001 West Canal Street, hereafter "the Falk Complex"; and
- B. WHEREAS, the Falk Complex has flooded on multiple occasions in the past 50 years and Rexnord is concerned that development in the Menomonee River Valley could increase future risk of flooding at the Falk Complex; and
- C. WHEREAS, the Falk Complex presently has a perimeter floodwall protection system consisting of sheet piling and reinforced concrete floodwalls which may no longer provide adequate reduction of flood risk; and
- D. WHEREAS, the District is authorized by statute to project, plan, design, construct, maintain, and operate a sewerage system for the collection, transmission, and disposal of all drainage of the sewerage service area including, either as an integrated or as a separate feature of the system, the collection, transmission and disposal of storm water and groundwater; and
- E. WHEREAS, the preferred method to reduce flood risk at the Falk Complex is installation of an improved

floodwall protection system, including flood gates, hereinafter referred to as "floodwall system," which would provide adequate free board protection from the risk of the 1% probability flood so as to meet National Flood Insurance Standards, and installation of an internal drainage system at the Falk Complex; and

- F. WHEREAS, Rexnord agrees, subject to certain conditions contained in Paragraph 1.B, below, to plan, design, construct, operate and maintain improvements in the floodwall system and internal drainage system at the Falk Complex; and
- G. WHEREAS, the City supports efforts to retain and possibly expand employment opportunities within the City and in furtherance of such support of local employers, the City proposes to apply to the Wisconsin Department of Commerce for a Community Development Block Grant through the Emergency Assistance Program in the amount of \$2,300,000 to be used toward the floodwall system; and
- H. WHEREAS, Rexnord proposes to convey a drainage/flood easement for the Falk Complex to the District in exchange for reimbursement of project costs as set forth in this Agreement; and

NOW, THEREFORE, IT IS AGREED AMONG THE PARTIES, THAT IN CONSIDERATION TO THE MUTUAL PROMISES MADE BY THE PARTIES TO THIS AGREEMENT:

1. *Design and Construction of Floodwall System and Internal Drainage System at the Falk Complex*

- A. Rexnord to Design and Construct the Floodwall System and the Internal Drainage System.
 - (1) Subject to Subparagraph A.(2) and A.(3), Rexnord shall cause a floodwall system and internal drainage system to be designed and built consistent with the memoranda titled "Falk Complex-Interior Drainage System Improvements," prepared by Tetra Tech, Inc., and dated

September 28, 2009, and "Falk Complex –Floodwall Modifications," prepared by Collins Engineers Inc., and dated July 3, 2008, which are appended hereto as Attachment A and are made a part of this Agreement by reference thereto.

- (2) In the event the City is wholly or partially unable to obtain an Emergency Assistance Program grant, Rexnord agrees, subject to the District providing the funding set forth in Subparagraph B.(3)(i) and in accordance with the terms set forth in this Agreement, to design and construct an internal drainage system consistent with the memorandum on internal drainage system improvements referenced in Attachment A.
- (3) In the event the City is wholly or partially unable to obtain an Emergency Assistance Program grant, Rexnord agrees, subject to the District providing the funding set forth in Subparagraphs B.(3)(iii) and B.(3)(iv) and in accordance with the terms set forth in this Agreement, to design and construct affordable floodwall system improvements consistent with the memorandum on floodwall modifications referenced in Attachment A. The term "affordable" means such design and construction that uses all available Emergency Assistance Program grant funds and, as provided in subsection B.(3)(iii) or (iv), up to \$338,000 in District contribution toward the floodwall system.
- (4) Subject to the District's reimbursement as set forth in Subparagraph B.(3), Rexnord agrees to pay all reasonable and necessary costs to operate and maintain the hydraulics and hydrology of the floodwall system and internal drainage system (or to pass such obligation on to a successor) for however long as such systems are in service.

B. Payment and Reimbursement for Design and Construction Costs.

- (1) Rexnord agrees to seasonably perform all necessary design and construction work on the floodwall and

internal drainage system and to be directly responsible for all costs incurred to design and construct both the floodwall system and the internal drainage system; provided, however, that appropriate designers and contractors enter into definitive contracts to perform all necessary design and construction work on the floodwall and internal drainage system; and provided further, however, that adequate funding of the work is available and that adequate arrangements have been made to recompense Rexnord for funds it expends to design and construct the above referenced work to the extent agreed to herein.

- (2) City Participation in Costs of Design and Construction.
 - (i) Apply to the Wisconsin Department of Commerce for a Community Development Block Grant pursuant to the Emergency Assistance Program to fund the improvement of the perimeter floodwall at Rexnord.
 - (ii) The City agrees to provide Rexnord with that portion of any Emergency Assistance Program grant obtained to fund all or part of the design and construction of the floodwall system and the internal drainage system as permitted by said grant program as soon as such grant funds can be provided to Rexnord under the regulations applicable to the grant program.
- (3) District Participation in Costs of Design and Construction.
 - (i) Regardless of whether the City is able to obtain an Emergency Assistance Program grant to provide assistance for the design and construction of the floodwall system at the Falk Complex, the District will reimburse Rexnord for the actual cost incurred to design and construct the internal drainage system at the Falk Complex in an amount "not-to-exceed" \$823,000.

- (ii) If an Emergency Assistance Program grant in the amount of \$2,300,000 is obtained by the City, the District will not provide financial assistance for design and construction of the floodwall system at the Falk Complex.
 - (iii) If no Emergency Assistance Program grant is obtained, the District will reimburse Rexnord for actual costs incurred, in a "not-to-exceed" amount of \$338,000, to be used either to design and construct the floodwall system up to the 1% probability flood event with one additional foot of freeboard or to provide maintenance for the current floodwall system.
 - (iv) In the event the City receives a partial award of grant funding, e.g., less than \$2,300,000, the District will reimburse Rexnord for actual costs incurred to design and construct the floodwall system up to the 1% probability flood event with one additional foot of freeboard in an amount up to \$338,000, provided that the amount of District financial participation in funding floodwall work, when added to the amount of grant money received, shall not exceed \$2,300,000. For example, if the City receives a grant for \$2 million, the District will contribute \$300,000.
- (4) The City and the District agree that the funding provided to Rexnord for the work at the Falk Complex is not a loan and does not obligate Rexnord to reimburse the City or the District for any of the funding Rexnord receives; provided, however, that nothing in this provision relieves Rexnord of its obligation under **Article 9 Easement** to provide the District with the required easement; and provided further, however, that Rexnord proceeds in a seasonable manner to perform the work funded hereinabove.

C. Plan Review, Engineering Services, and Other Engineering Considerations.

- (1) Rexnord shall provide the City and the District with plans and specifications for the floodwall system and for the internal drainage system for review and approval, which approval shall not be unreasonably withheld, prior to the start of construction, unless the City's review and approval is waived by the City or the District's review and approval is waived by the District.
- (2) Rexnord is responsible for providing engineering services, including resident engineer and inspection activities, during construction at no cost to the District. None of the funds provided by the District may be used to pay administrative and supervisory costs of Rexnord employees.
- (3) Rexnord shall provide as-built drawings acceptable to the District within 60 days after substantial completion.
- (4) Subject to its exercise of reasonable discretion, Rexnord shall permit designated City or District staff to enter the Falk Complex at all reasonable times for the limited purpose of inspection of the floodwall and internal drainage system.
- (5) The District shall provide Rexnord with the hydraulic model for the lower reaches of the Menomonee River and shall, upon request and to the extent such information is available to the District, provide technical information.

2. *Payment*

Rexnord may submit a quarterly invoice to the District for the District's share of the project's cost. The invoice should include: an invoice number, detailed description of the work performed and including costs incurred for which reimbursement is sought by the invoice, the dates covered by the invoice, and backup documentation of actual costs incurred by Rexnord. The District shall pay Rexnord's invoice within Thirty (30) days after receiving the invoice provided a complete invoice is

submitted to the District; provided, however, that the final payment will not be made until and unless Rexnord has furnished the District with a mutually acceptable easement at the Falk Complex as identified in **Article 9 Easement**. To expedite the payment of invoices under this Contract, all invoices shall be sent directly to the following address:

Milwaukee Metropolitan Sewerage District
Attn: David Fowler
260 West Seeboth Street
Milwaukee, WI 53204-1446

3. *Reports*

At the end of every three month period, Rexnord shall provide a written report to the District describing the progress made during that three month period on design or construction of the systems identified in this Agreement.

4. *Materials*

Rexnord shall furnish all materials, equipment, and supplies used to provide the services required by this Agreement.

5. *Insurance*

Neither the City nor the District will provide any insurance coverage of any kind for Rexnord or Rexnord's employees, consultants, agents, or contractors. Rexnord agrees that all legal obligations to provide insurance and all sound risk management considerations that suggest the propriety for insurance shall be purchased or undertaken by Rexnord.

6. *Terminating the Agreement*

For reasonable cause, either District or Rexnord may terminate this Agreement, effective immediately upon giving written notice; provided, however, that in the event the District makes any payment of any costs related to the internal drainage system, including any progress payment toward design or construction costs, Rexnord is required to provide the easement described in **Article 9 Easement**. Reasonable cause requires a material violation of this Agreement that is not remedied by the "at fault" party within forty-five (45) days of the "at fault" party's receipt of written notice of such material violation of this Agreement. The forty-five

(45) day notice of material violation of this Agreement allowed above does not apply in the event Rexnord fails or refuses to execute the **Article 9 Easement**. Rexnord agrees the District may bring a lawsuit for specific performance in the Milwaukee County Circuit Court to compel execution of an appropriate **Article 9 Easement**.

7. Exclusive Agreement

This is the entire Agreement between Rexnord, the City, and District.

8. Modifying the Agreement

This Agreement may be modified only by a writing signed by all parties.

9. Easement

Subject to Rexnord receiving the funding set forth in Subparagraph B.(3), within 30 days of the District's acceptance of the substantial completion of the project, Rexnord agrees to grant a mutually agreed upon permanent drainage/flood easement to the District in which the District is named as grantee for the Falk Complex. The District reserves its right to use the easement at its discretion under the District Watercourse Policy; provided, however, the District may not exercise its discretion in such a manner as to increase the burden of its easement upon Rexnord's Falk Complex.

10. Maintenance of Drainage/Flood Easement

The District and Rexnord agree that maintenance of the easement area granted to the District by Rexnord will be necessary to preserve the integrity of the floodwall system and to prevent flooding of structures by flood events up to the 1% probability flood. Rexnord will be responsible for all reasonable and necessary operation and maintenance costs of the flood easement area and all operation, maintenance, and replacement costs of the flood management improvements that are part of this agreement; provided that the District agrees that such obligation may be assigned to a successor in interest to Rexnord.

11. Contract Completion

The parties agree that the work contemplated in this Agreement will

be completed no later than 31 December 2012.

[SIGNATURE PAGE TO FOLLOW]

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

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

Dated: _____

Approved as to form:

Attorney for the District

REXNORD INDUSTRIES, LLC

By: _____

Tim Carpenter
Vice President & General
Manager - Gear Division

Dated: 9/29/10

CITY OF MILWAUKEE

By: _____

Thomas Barrett, Mayor

Dated: _____

By: _____

W. Martin Morics,

Comptroller

Dated: _____

By: _____

Ronald D. Leonhardt

City Clerk

Dated: _____

Approved as to form and
execution

By: _____

Assistant City Attorney

Dated: _____