

## **Funding Agreement M10005MI08**

### **Private Property Infiltration and Inflow Reduction Agreement**

This Agreement is made between the Milwaukee Metropolitan Sewerage District (“District”) with its principal place of business at 260 West Seeboth St., Milwaukee, Wisconsin 53204-1446 and the City of Milwaukee Department of City Development (“Municipality”) with its municipal offices at 809 North Broadway, Milwaukee, Wisconsin 53202.

WHEREAS, Wisconsin law, through Section 66.0301 Stats., authorizes any municipality to enter into an intergovernmental cooperation agreement with another municipality for the furnishing of services, and

WHEREAS, the District is responsible for collecting and treating wastewater from the Municipality’s locally owned collection system, and

WHEREAS, the Municipality’s sewers collect wastewater from lateral sewers located on private property and owned by private property owners; and

WHEREAS, during wet weather events stormwater enters lateral sewers through defective pipes and leaky joints and connections (“infiltration”) and stormwater also enters lateral sewers from foundation drains, improper connections, and other sources (“inflow”); and

WHEREAS, infiltration and inflow increase the amount of wastewater that the District must collect and treat; and

WHEREAS, during wet weather events infiltration and inflow (“I/I”) into privately owned sewers contributes to the risk of sewer overflows; and

WHEREAS, the District has established the Private Property Infiltration and Inflow Reduction Program (Program) to provide guidelines, requirements, and a funding structure for municipalities to complete I/I reduction work on private property through the District Private Property Infiltration and Inflow Policy (Policy); and

WHEREAS, the District has developed an Approved Contractors List, organized by work type, and an Approved Products List for the Program; and

WHEREAS, the Municipality wishes to participate in the Program; and

WHEREAS, the Municipality has established a Homes MKE initiative, in which the Municipality will sell tax-foreclosed vacant residential properties to developers (each a “Selected Developer”), who will renovate them and return them to productive use; and

WHEREAS, renovation of these properties will include I/I reduction work on private property consistent with the Program (“the Work”); and

WHEREAS, the City of Milwaukee Department of Public Works (DPW) has the capacity to determine the Work needed at each property.

NOW, THEREFORE, in consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows:

## **1. Term of Agreement**

This Agreement becomes effective immediately upon signature by both parties and shall remain in effect until the earliest of (1) the Municipality receiving final payment from the District; (2) March 17, 2025; or (3) termination of this Agreement as otherwise set forth herein.

## **2. District Funding**

The District shall reimburse the Municipality in an amount not to exceed \$1,222,500 for the Work. Provided the Municipality is in compliance with the terms of this Agreement, the District shall reimburse the Municipality in accordance with Section 8 below. The District will not reimburse costs incurred before the effective date of this Agreement or for costs not supported by documentation as required by this Agreement.

## **3. Program Publicity and Outreach Requirements**

The Municipality shall identify the District as a funder in informational literature and signage relating to the Work. The Municipality shall provide samples of all public involvement and public education documents to the District for review before being distributed to the public.

## **4. Selection of Professional Service Providers by Municipality**

Reserved

## **5. Selection of Non-Professional Service Providers by Selected Developers**

The DPW will notify the District of the Work needed at each property. After the approval of the Work by the District, the Municipality shall provide the appropriate subset of the Approved Contractor List and the Approved Products List to the Municipality.

The Municipality shall require the Selected Developer to:

- A. use an Approved Contractor and Approved Products (as applicable) for the Work;
- B. request at least three price quotes when the Work will cost less than \$25,000; and
- C. use a sealed bidding process or other appropriate procurement process consistent with Municipality's procurement rules, when the Work will cost \$25,000 or more.

Whenever Work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request, and the Municipality must provide an opinion from a licensed attorney representing the Municipality stating that the procurement is in compliance with State of Wisconsin law and Municipal ordinances.

## **6. Non-professional Service Contract Terms and Conditions**

The Municipality shall require Selected Developers to include, in substantial form, the provisions of Attachment B regarding the paragraphs (1) Warranty and (2) Assignment in their contracts with providers of non-professional services. Failure to include these provisions in substantial form is a material breach of this Agreement.

## **7. Selected Developer Pay Applications**

Before the Municipality pays a Selected Developer for the Work, the Municipality shall provide applications for payment to the District for review. The Municipality shall submit

Developer pay applications for review via email to the contact person identified in Section 8 below. All pay applications shall include supporting documentation certifying that the Municipality has received and reviewed a proportionate amount of contract deliverables.

The District shall review pay applications within seven (7) calendar days of submission. If the Municipality does not receive a response from the District within seven (7) calendar days, the application is approved

## **8. Procedure for Reimbursement**

The Municipality shall submit reimbursement requests to the District in a timely matter. Each reimbursement request shall include:

- a. An invoice from the Municipality clearly stating the requested reimbursement amount;
- b. All approved Selected Developer pay applications and the evidence of payment to the Approved Contractor for the Work and other expense invoices;
- c. A copy of the scope for work for each house as approved by Department of Public Works and the closed permit evidencing completion of said work from the Department of Neighborhood Services (“DNS”).

The Municipality will not request reimbursement for consultant or Municipality staff time.

The Municipality shall promptly submit reimbursement requests after the costs are incurred. The Municipality shall submit the final reimbursement request before to the expiration of this Agreement.

The Municipality shall submit all reimbursement requests and supporting documentation to:

Jerome Fogel, P.E.  
Senior Project Manager II  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street.  
Milwaukee, WI 53204-1446

## **9. Changes in Work and Modifications to the Agreement**

Any material proposed changes to the Work must be submitted to the District, in writing, in advance of the Work being completed. The District will not reimburse for Work not previously approved by the District.

This Agreement may be modified only in writing signed by both parties or through the eBuilder change process.

## **10. Responsibility for Work**

The Municipality is responsible for overseeing construction and shall provide customary construction inspection for the Work. Each inspector shall be experienced, qualified, and certified for the scope of the Work.

## **11. Post-Construction Verification**

The Municipality and the Selected Developers shall report to the District any actually known problems that arise with or related the Work after its completion, whether discovered through inspection or through complaints from homeowners for a period of one (1) year following substantial completion. The Municipality shall also report any actions taken to investigate the complaint and, if within the warranty period, work in good faith to resolve the issue.

## **12. Permits, Certificates, and Licenses**

The Municipality shall require Selected Developers and their respective Approved Contractors to comply with all federal, state, and local laws and any permits, certifications, and licenses applicable to the Work.

## **13. Insurance**

The District shall not provide any insurance coverage of any kind for the Work or for the Municipality. Municipality shall require Selected Developers and their respective Approved Contractors to have adequate insurance to perform the Work and to name the Municipality as an additional insured on Commercial General Liability Insurance policies.

## **14. Terminating the Agreement**

The District may terminate this Agreement at any time before the commencement of the Work. After the Work has commenced, the District may terminate the Agreement only for good cause, such as, but not limited to, material breach of agreement by the Municipality. In the event that the District determines that a material breach has occurred, and if District determines in good faith that the breach is curable, the District shall first provide Municipality with notice of the breach and 20 business days in which to either cure the breach or reach a mutually agreeable resolution to the breach; however, in the event that the District determines, in good faith, that the breach cannot be cured or no resolution is reached within the 20 business day timeframe, the District may terminate the Agreement. The Municipality may terminate the Agreement at any time but will not receive any payment from the District if the Work is not completed.

## **15. Exclusive Agreement**

This is the entire Agreement between the Municipality and the District regarding reimbursement for the Work.

## **16. Severability**

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect.

## **17. Applicable Law**

This Agreement is governed by the laws of the State of Wisconsin.

## **18. Resolving Disputes**

If a dispute arises under this Agreement, then the parties shall try to resolve the dispute with the help of a mutually acceptable mediator in Milwaukee County. The parties will equally share costs associated with the mediation, except for their own attorney's fees. If the dispute is not resolved with 30 days after mediation, then either party may take the matter to court.

## 19. 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:

- when delivered personally to the recipient's address as stated on this Agreement; or
- three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

## 20. No Partnership

This Agreement does not create a partnership relationship nor give the Municipality the authority to make promises binding upon the District. The Municipality does not have the authority to enter into contracts on the District's behalf.

## 21. Assignment

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

The District acknowledges the Municipality's contracts with Selected Developers are not an assignment of the Municipality's rights or obligations under this Agreement.

## 22. Public Records

The Municipality and the District shall cooperate to produce any records subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law, §§19.31-19.39, Wis. Stats.

Milwaukee Metropolitan Sewerage  
District

City of Milwaukee

By:

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

By:

\_\_\_\_\_  
Lafayette L. Crump, JD, Commissioner of City  
Development

Date:

\_\_\_\_\_  
Approved as to form:

Date:

\_\_\_\_\_  
Approved as to form:

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

\_\_\_\_\_  
Attorney for the Municipality

## **ATTACHMENT A**

### **Deliverables**

Pre-Construction Deliverables (To be submitted as indicated prior to beginning of construction):

1. A minimum of a one (1) week notice of any project meetings shall be provided to the District SPM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.
2. A copy of the Scope of work for each house as verified in writing by the Department of Public Works.
3. Documentation of the property inspection, DPW review, and DPW recommendations for Work on each property shall be submitted to the District SPM via the District Municipal Portal in PDF or Word format a minimum of one (1) week prior to authorization of the Work being issued to the Selected Developer. .
4. Bid results from all procurement processes associated with the project shall be provided to the District SPM via the District Municipal Portal in PDF format upon close of the bid process prior to award of contract.
5. Submittal of a monthly project status report that includes progress on contracting, construction, and invoicing.

Construction Deliverables (To be submitted as indicated and will be reviewed with any reimbursement request):

6. A minimum of a one (1) week notice of any project meetings shall be provided to the District SPM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.
7. Quality control and quality assurance (QA/QC) reports and testing results that are documented by the Selected Developer (and/or Approved Contractor) field engineer/inspector shall be submitted to the District SPM via the District Municipal Portal in PDF format on a monthly basis or with reimbursement request, whichever occurs more frequently. All QA/QC submittals shall include a summary tabulation by property indexed by tax ID number with review confirmation as completed by the Selected Developer and/or Approved Contractor, to extent required to close out the respective permits (as issued by DNS) covering such work.

Post-Construction Deliverables (To be submitted prior to final reimbursement being processed):

8. Documentation of the procurement of construction contract by the Selected Developer, detailed Approved Contractor invoice with materials, units, and unit costs for the Work, Municipality construction inspection, and the Municipality closed permits shall be provided to the District through eBuilder with the Municipality invoice to the District for Work completed.
9. The Final Project Summary Report shall be submitted to the District SPM via the District Municipal Portal in PDF format. prior to the final reimbursement request. The template that must be used can be found on the District's website: [Project Summary Report Template \(https://www.mmsd.com/government-business/rules-regulations/private-property-i-i\)](https://www.mmsd.com/government-business/rules-regulations/private-property-i-i).

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10. Documentation of the limits of the lateral replacement expressed in text and graphics (map overlay) shall be provided to each participating property owner and copied to the District. The document shall include disclosure of all known deficiencies in the lateral that were not remedied and, if applicable, the responsibilities of the property owner (i.e. disclosure of which lateral improvements were replaced and their respective location on the property). Documents shall be provided to the District as one document via the District Municipal Portal in PDF format.
11. Through a spreadsheet using the District template (provided by the District), submission of participating parcels information including without limitation: property tax id., address, and column categories of work performed by property following the District template form data fields and format. The document shall be provided to the District via the District Municipal Portal in an Excel format.
12. Provide all post-construction CCTV inspection videos to the District via t4 Vault with associated metadata; said inspections video to be provided by the Selected Developer's Approved Contractor.

**ATTACHMENT B**  
**Required Terms and Conditions for the Contract for the Work**

1. **Warranty:** The scope of Work performed under this Contract shall be warranted by the Approved Contractor for a period of no less than three (3) years from substantial completion. The warranty shall be enforceable by each of the Municipality, the District as funder, and the property owner as it relates to a particular property. The Selected Developer shall provide a copy of the warranty to the Municipality before commencement of the Work.
2. **Reporting:** For a period of ten (10) years after substantial completion, if the Municipality becomes aware of any problems arising from the Work, the Municipality shall notify the City and the District.
3. **Assignment:** For the avoidance of doubt, the Municipality's obligations under this Funding Agreement are fully assignable to the District. The Selected Developer's consent (and/or the Approved Contractor's consent) is not required prior to the Municipality's assignment and the District's assumptions of Municipality's rights hereunder.