

**Intergovernmental Cooperation Agreement
between the
Milwaukee Metropolitan Sewerage District
and the
City of Milwaukee
For Western Milwaukee Phase 2B**

1. Parties

This Intergovernmental Cooperation Agreement (Agreement) is between the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204, acting through its Executive Director, and the City of Milwaukee (City), located at 841 North Broadway Street, Room 501, Milwaukee, Wisconsin 53202, acting through its Commissioner of Public Works. The Parties make this Agreement according to Wis. Stat. sec. 66.0301.

2. Purpose

The purpose of this Agreement is to establish responsibilities for design, construction, ownership, long-term maintenance, and cost sharing for various elements associated with the District's Western Milwaukee Phase 2B project (Project) located in the City of Milwaukee.

3. Basis for this Agreement

A. WHEREAS, the purpose of the Western Milwaukee corridor projects (WMCP), outlined in Figure 1, including the Project described in this Agreement, is to protect an estimated 62 structures from the one percent annual probability floodplain along the Menomonee River;

B. WHEREAS, the WMCP comprise part of the Menomonee River Watercourse Management Plan adopted by the District Commission, which identified overbank flooding near West State Street on the west side of Milwaukee;

C. WHEREAS, the WMCP will complete the levee system in the corridor that starts in the City of Wauwatosa just west of Hart Park at West State Street at the upstream end and extends into the City of Milwaukee eastward to U.S. Highway 175;

D. WHEREAS, the purpose of this Project is to design and construct a continuation of the floodplain levee and floodwall system started in Hart Park in Wauwatosa to just west of the U.S. Highway 175 overpass, including completion of the remaining gap in the levee and floodwall system from east of the North 59th and State Street Pump Station to approximately 50th Place;

E. WHEREAS, as part of this Project, approximately 1,700 feet of earthen levee, 1,200 feet of floodwall, and 200 feet of combined floodwall and earthen levee will be designed

and constructed as part of the WMCP, as well as four storm sewer lines, 15” to 72” in diameter totaling 5,100 feet;

- F. WHEREAS, this Agreement describes the individual responsibilities of the District and the City with respect to the Project.

4. Effective Date

This Agreement becomes effective on its execution by both parties.

5. Levee and Floodwall. The District is constructing the levee and floodwall as part of this Project to lower the flood risk for properties along the Menomonee River.

- A. The District will obtain all required permitting and permissions required for the levee and floodwall construction and pay any permit fees.
- B. The District has designed maintenance drive access to both the landside and riverside of the levee to allow the District, City, and other utility owners to access the area under Hawley Road Bridge. The District shall provide the City access to use the maintenance drive for the purpose of infrastructure inspection and regular maintenance that does not disturb the ground surface. Should the City require access such as to accommodate utility reconstruction or ground disturbing activities, the City shall request from the District a permit or temporary construction easement, as appropriate, which the District will provide at no cost.
- C. The District will design, contract for, construct and manage construction of the levee and floodwall at its sole cost.
- D. The District will maintain the levee and floodwall at its sole cost.
- E. The District acknowledges the rights of City utilities to be located in right-of-way within the Project area in the vicinity of and underneath Hawley Road Bridge.
- F. The District will provide the City with utility easements, if needed, for existing City-owned facilities that cross District property where the levee will be constructed.
- G. Following construction of the levee and floodwall, those areas and the area expanding approximately 20 feet from the toe on either side of the levee and floodwall, as shown on Attachment A, shall be designated the Levee Management Area and subject to additional inspection, repair and construction coordination requirements denoted below. The Levee Management Area includes both the City right-of-way and District property.
 - a. The City shall work collaboratively with the District for design-stage work and emergency repair coordination for any City facility in need of repair or replacement, which may require a District buildover letter, to ensure such work

does not impact the integrity of the levee or the levee's Federal Emergency Management Agency (FEMA) accreditation status.

- b. Precise GIS datapoints delineating the Levee Management Area can be provided to the City upon request after completion of the Project.

- H. Subject to the buildover letter set forth below, the City will provide the District, for one dollar and other valuable consideration, necessary easements for those portions of the Project located in the City right-of-way under Hawley Road Bridge. The easement areas are conceptually included in Attachment B.

6. Storm Sewers. New and replacement storm sewers are planned as part of the Project to improve conveyance of local storm water through the levee and floodwall system to the Menomonee River, as set forth in Attachment C. Storm sewers include all infrastructure components to collect and convey storm water runoff, including but not limited to inlets, manholes, pipes, and closure devices. These storm sewers must meet the standards set forth in 44 C.F.R. § 65.10 for FEMA approval of the project, FEMA levee accreditation, and FEMA approval of a floodplain map change recognizing the levee flood risk reduction benefits.

- A. The District will provide Project design documents to the City for review and comment prior to the District's solicitation of bids, and as-built plans upon completion of construction.

- B. The District will obtain all required permitting for the storm sewer construction and pay any permit fees.

- C. The District will design, contract for, construct, and manage construction of the new and replacement storm sewers at its sole cost.

- D. The City shall own, operate and maintain the R-line, P-line, and portions of the Q-line storm sewers after completion of construction. The portions of the Q-line storm sewer to be owned by the City shall include structures Q-1, Q-2, Q-3, and the pipes between these structures. The District shall prepare all property transfer documents for City signature prior to beginning construction of the Project, which documents will be held in escrow by the District for recording upon approval and acceptance by the City of construction substantial completion. Punch list items may remain after construction substantial completion.

- E. The District will retain ownership of portions of the Q-line storm sewer starting from the pipe between structures Q-3 and Q-4 and including all pipes and structures westward of this pipe for the remainder of the Q-line.

- F. The District will transfer ownership of the S-line storm sewer to the City of Wauwatosa following completion of construction. For that portion of the S-line storm sewer crossing City right-of-way beneath Hawley Road Bridge, the City shall ensure the

(license/easement) provided to the District for permanent placement of the S-line storm sewer is transferrable.

- G. During Project construction, the District will provide Resident Inspector and construction management services for all storm sewer construction.
- H. For those portions of the storm sewers within the Levee Management Area as shown in Attachment C, the District will do the following:
 - i. Conduct a visual inspection of the storm sewers as part of the United States Army Corps. of Engineers (USACE) and Wisconsin Department of Natural Resources annual levee and floodwall inspection pursuant to Wis. Admin. Code NR 116.17.
 - ii. Conduct, at its sole cost, a CCTV inspection and PACP pipe condition assessment of the storm sewers as required by the USACE guidance every five years.
 - iii. Lead design and construction for any structural repairs required to maintain levee accreditation uncovered through the CCTV inspection and PACP pipe condition assessment. The District will be responsible for 50% of these structural repair costs.
 - iv. The District shall invoice the City for its portion of the structural repair costs upon completion of the work.
- I. For those portions of the storm sewers within the Levee Management Area as shown in Attachment C, the City will:
 - i. Provide day to day maintenance of the storm sewers, such as repairing inlets, cleaning inlets, cleaning sewers and maintaining closure devices. The District's maintenance is limited to structural repairs as described in subsection H above.
 - ii. Provide maintenance records to the District to support annual and five year USACE and WDNR-required levee system inspections to maintain FEMA accreditation.
 - iii. Be responsible for 50% of structural repair costs required to maintain levee accreditation uncovered through the CCTV inspection and PACP pipe condition assessment. The District will lead design and construction of structural repairs, in coordination with the City, and be responsible for the other 50% of structural repair costs as noted above.
- J. For those portions of the storm sewers owned by the City and not within the Levee Management Area as shown in Attachment C, the City shall ensure the storm sewers continue to meet 44 C.F.R. § 65.10 interior drainage standards.

7. Sanitary Sewers. Replacement sanitary sewers are planned as part of the Project in those areas where the Project impacts existing structures. Sanitary sewers include all infrastructure components to collect and convey sanitary sewage including but not limited to manholes and pipes. The District will also rehabilitate or replace, as specified, additional City-owned sanitary sewers at the City's sole expense.

- A. The City will design all sanitary sewer replacements and rehabilitations to be included in the District's construction contract.
 - a. The City will complete design to meet the District's contract bidding schedule and provide the District the opportunity to review and comment. The sanitary sewer preliminary engineering is included in Attachment D.
 - b. The District will be responsible for the cost of the sanitary sewer replacements impacted by the Project.
 - c. Upon the City reviewing the condition of the sanitary sewer within the Project corridor but not directly impacted by the Project, the City has chosen to replace additional sanitary sewer which is nearing the end of its useful life. The City will be solely responsible for the costs of the additional sanitary sewer replacements and rehabilitations requested by the City but not required by the Project. These costs include design and construction and any inspection the City chooses to conduct. The District will invoice the City on a quarterly basis during construction for construction costs incurred. The sanitary sewer estimated to be paid for solely by the City extends from and includes manhole 386B017 to manhole 386B020 for approximately a length of 267 feet as shown in Attachment D. The extent of the City's sanitary sewer replacement cost responsibility could increase depending upon the final P-Line storm sewer alignment impacts to the existing sanitary sewer.
 - d. The District's sanitary sewer replacement responsibility is estimated to include the remaining sanitary sewer and manholes in Attachment D for approximately a length of 1,001 feet. The extent of the District's sanitary sewer replacement responsibility could decrease depending upon the final P-Line storm sewer alignment impacts to the existing sanitary sewer.
- B. The District will keep the City informed about the project bidding schedule and obtain all required permitting for the sanitary sewer construction and pay any permit fees.
- C. The District will contract for and manage the construction of the sanitary sewer replacements and rehabilitations, including providing Resident Inspector services. Construction management and Resident Inspector services shall be provided at the District's sole cost.

- D. The District will provide the City sanitary sewer as-built plans upon completion of construction.
- E. The City shall own, operate and maintain all sanitary sewers replaced and rehabilitated under this Section 7. The District shall prepare all property transfer documents necessary for City signature prior to beginning construction of the Project, which documents will be held in escrow by the District for recording upon construction substantial completion. Punch list items may remain after construction substantial completion.

8. Milwaukee Water Works Facilities. Several City water mains cross the Levee Management Area. The City and District must ensure continued operation and maintenance of the water mains can occur without compromise to the structural integrity of the levee structure. Several City-owned water mains and water service lines are also impacted by the Project within the State Street right-of-way and will need to be relocated.

- A. Levee Management Area
 - a. By June 1, 2021, the City will provide to the District those water main leak testing results completed since 2019 of the 48”/42” feeder main, and the 16” water main under Hawley Road Bridge for review. The City shall cover costs for water main leak testing.
 - b. The City will provide water main leak testing results to the District for review as part of the every five-year USACE condition assessment for pipes in the Levee Management Area. The City shall cover costs for water main leak testing.
 - c. Should leak detection testing results lead to a need to do more extensive pipe condition testing within the Levee Management Area to comply with the every five-year USACE pipe condition assessment, the City, if it has expertise in this technology, will lead the more extensive pipe condition assessment and the District shall reimburse the City for these additional testing costs. If the City does not have such expertise, the District will lead the investigation and cover all costs thereof.
 - d. The District will inspect the 12” blow off pipe under Hawley Road Bridge as part of the every five year USACE condition assessment for pipes in the Levee Management Area. For inspections, the City shall open valves on the blow off pipe so that as much of the line can be inspected using CCTV as possible. The District shall pay for the CCTV inspection.
 - e. The City will cooperate with the District for any water main repair and replacement projects within the Levee Management Area to ensure such work does not impact levee accreditation. The City shall pay for water main repair and replacement project costs within the Levee Management Area.

B. State Street Relocations

- a. The District will contract and pay for the design and construction of water main required for relocation with the project including the 16-inch diameter City-owned water main and water service line relocations within the State Street right-of-way starting at approximately 46th Street and extending westward to approximately 400 feet west of 50th Place. The District shall comply with all required measures to mitigate against lead exposure to the public per applicable City of Milwaukee ordinances.
- b. The District shall collaborate with the City throughout the development of the water main and water service line design and include the City in meetings with the design team at key milestones throughout the project. District shall provide the City with 50%, 90% and 100% complete Plans and Specifications for water main and water service line relocations, and the City shall have the opportunity to provide comment on the designs. The City shall complete such review and provide any comments within 30 days of receipt of the plans and specifications. The District shall provide the City a deposit of \$55,000 for the cost of such plan review and City water inspections.
- c. The District will obtain any necessary permits from the City for this work and pay the City any permit fees.
- d. The City will contract for and replace the private property portions of lead water service lines requiring replacement at the City's sole cost.
- e. The District shall provide construction oversight for the relocations and shall provide any and all records to the City upon request. The City shall also provide inspection of the water main and water service line construction.
- f. The District shall solicit City input on substantive changes to the design that may occur during construction. The City shall review as quickly as possible but shall have up to (but no more than) 10 working days to review and provide input to design changes. The City's failure to respond by the 10 working day deadline shall be deemed approval by the City.
- g. The District shall conduct a substantial completion inspection of each water main and water service line relocation with the contractor and the City. The District shall provide the City with acceptance test results for each water main and water service line at the substantial completion inspection. The City shall accept ownership of the water mains and acceptance bills of sale from the District for the water mains following the City's substantial completion approval of each structure. City shall be responsible for water main maintenance. The District shall oversee the completion of any remaining punch list items within a reasonable time period following substantial completion.

- h. The District will provide the City as-built plans for the City-owned water mains and the right-of-way portions of water service lines within 30 days of the substantial completion of each water main and service line relocation.
- C. The City will invoice the District for actual costs incurred following completion of the relocations and the District will pay the balance of the relocation costs over and above the deposit amount directly to the City within thirty days of receipt of an invoice documenting fair and reasonable actual costs. If City costs are less than the deposit amount, the City will refund the remaining balance to the District within thirty days of final invoice. City's final invoice shall be provided to the District within thirty days of project substantial completion.

9. Street Lighting, City Communications, and City-owned Underground Conduit (CUC) Relocations. Cabling for street lighting and City Communications beneath the Hawley Road Bridge and within the State Street right-of-way will need to be relocated to accommodate the Project.

- A. The City will design the relocation and provide the District a cost estimate for the relocation of cabling for street lighting beneath the Hawley Road Bridge.
- B. The District will design the City-owned underground conduit (CUC) relocation beneath the Hawley Road Bridge and in the State Street right-of-way. The District will contract to relocate the conduits at its sole cost.
- C. The District will provide CUC relocation design documents to the City for review and comment and approval prior to the District's solicitation of bids for the work.
- D. The City will obtain a quote from We Energies for a new electrical service feed and a quote for a new electrical box required for the Hawley Road Bridge and State Street relocations and provide to the District. The City quote amount is \$70,000 to be used as a deposit for electrical street lighting work. District will pay this quote amount to the City for these services.
- E. For conduit under Hawley Road Bridge, the City will undertake the disconnection and reconnection of street lighting and City Communications cabling and will coordinate with the District's contractor with respect to that work prior to the District beginning work under Hawley Road Bridge. The City will require six to eight weeks to complete the street lighting and City Communications disconnection and reconnection work. The CUC will require a \$10,000 deposit to cover CUC design review and inspection costs for CUC relocation under Hawley Road Bridge. City Communications will require a \$20,000 deposit to cover disconnection and reconnection work under the Hawley Road Bridge.
- F. For City Communications and Street Lighting cabling in State Street impacted by the Project, the City will undertake the disconnection and reconnection of street lighting and

communications cabling and will coordinate with the District's contractor with respect to that work. The District shall require the District's contractor to complete the underground conduit replacement work in State Street from approximately N. 46th Street to N. Alois Street and allow the City time to disconnect and reconnect the City Communications cabling prior to any conduit being disturbed in State Street. The CUC will require a \$10,000 deposit to cover the CUC design review and inspection costs for work within State Street. City Communications will require a \$50,000 deposit to cover disconnection and reconnection work within State Street.

- G. The District will provide the City as-built plans for the City-owned conduit upon completion of construction.
- H. The City will invoice the District for actual costs incurred following completion of the relocations and the District will pay the balance of the relocation costs over and above the deposit amount directly to the City within thirty days of receipt of an invoice documenting fair and reasonable actual costs. If City costs are less than the deposit amount, the City will refund the remaining balance to the District within thirty days of final invoice. City's final invoice shall be provided to the District within Ninety (90) days of project substantial completion.

10. Street Reconstruction. To facilitate construction of the "P-Line" storm sewer, impacts to the roadway pavement and sidewalks in and along the State Street right-of-way will occur.

- A. The District will contract to repair and reconstruct roadway pavement and sidewalks that are impacted by the Project in its construction contract.
- B. The District shall provide the City with the design specifications for review and comment to ensure the final construction design of the sidewalks aligns with ADA standards.
- C. The District will pay for required roadway pavement and sidewalk reconstruction.
- D. The District will provide as-built plans to the City upon completion of construction.
- E. The District will provide construction management services for roadway pavement and sidewalk reconstruction but provide the opportunity for the City Inspectors to inspect for consistency with City and ADA standards the road pavement and sidewalk construction elements.

11. FEMA CLOMR/LOMR. The District is constructing the Project and seeking levee accreditation so floodplain maps can be revised, resulting in lower flood risk to many buildings currently in the floodplain.

- A. The City will collaborate with the District on as-builts for work on facilities within the Levee Management Area, development of operations and maintenance plans, and emergency preparedness plans consistent with 44 C.F.R. § 65.10 requirements, as

required for the Letter of Map Revision (LOMR) submittal and levee system accreditation.

- B. The District will prepare the LOMR submittal and levee system accreditation documentation that must be submitted to FEMA. The District and the City acknowledge that documentation on levee system accreditation must also be included as part of the LOMR submittal, such that cooperation will be necessary to submit timely applications.
- C. The District will submit the levee system accreditation application and LOMR to FEMA on behalf of the City of Milwaukee.
- D. The District will pay all FEMA application fees.

12. Miscellaneous Items

- A. For one dollar and other valuable consideration, the City will provide the District a Wisconsin Department of Natural Resources (WDNR) flood easement on Wisconsin Avenue related to the USACE led Menomonee River Fish Passage Project Phase 2. The WDNR flood easement template is included as Attachment E.
- B. Ownership of the “P-Line, portions of the Q-Line, and R-Line” storm sewers will be transferred to the City of Milwaukee as documented in this Agreement.
- C. For one dollar and other valuable consideration, the City will provide the District , a temporary construction easement at the storm sewer P-Line outfall where it crosses City property, as included as Attachment F. The City shall not transfer the property to another entity prior to construction completion of the Project.

13. Notice and Review Periods

- A. The District will provide notices to:

Jerrel Kruschke, City Engineer
City - DPW – Infrastructure Services Division
841 N. Broadway, Room 701
Milwaukee, WI 53202
(414) 286-2400

B. The City will provide notices to:

Mark Mittag, Senior Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1446
414-225-2147
mmittag@mmsd.com

Where the City's review and approval of plans and specifications is required, the City shall complete such review and provide any comments within 30 days of receipt of the plans and specifications from the District.

14. Modifying this Agreement

The Parties may modify this Agreement only by a written amendment signed by both Parties.

15. Severability

If a court finds any part of this Agreement unenforceable, then the remainder of this Agreement continues in effect.

16. Applicable Law

The laws of the State of Wisconsin apply to this Agreement.

17. Resolving Disputes

If a dispute arises under this Agreement, then the Parties will try to resolve it with the help of a mutually acceptable 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 a mediator, then either Party may take the matter to court. Venue in any action brought under this Contract is proper only in either the Circuit Court for Milwaukee County or the United States District Court for the Eastern District of Wisconsin.

18. Conflict of Interest

No officer, employee, or agent of the District or the City/Village/Town/County who has any responsibility for implementing this Agreement may have any interest in any consultant, contractor, or vendor providing services to the District or the City/Village/Town/County under this Agreement.

19. Independence of the Parties

This Agreement does not create a partnership. Neither Party may enter into contracts on behalf of the other Party.

20. Authority of Signatories

Each person signing this agreement certifies that the person is properly authorized by the Party's governing body to execute this Agreement.

21. Indemnification

The City and the District will be liable for their own negligent acts, errors, and omissions. If litigation requires one Party to respond for the acts, errors, or omissions of the other Party, then the City and the District will hold each other harmless for any losses, damages, costs, or expenses, including, but not limited to, reasonable attorney's fees and litigation expenses.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

CITY OF MILWAUKEE

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

By: _____
Jeffrey Polenske
Commissioner of Public Works

Date: _____

Date: _____

Approved as to form

Countersigned

Attorney for the District

Comptroller

Approved as to form

Attorney for the City

Figure 1: Western Milwaukee Corridor Projects (WMCP)

Attachment A: Levee Management Area

Attachment B: Easements Near Hawley Road

Attachment C: Storm Sewers

Attachment D: Sanitary Sewers

Attachment E: WDNR Flood Easement Template

Attachment F: P-Line Storm Sewer Outfall Construction Easement Area