



Green Infrastructure Funding Agreement G98004P67

West Morgan Avenue and South Honey Creek Drive Bioswales

1. The Parties

This Agreement is between the:

- A. Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204; and
- B. City of Milwaukee, Department of Public Works (Milwaukee), 841 North Broadway, Milwaukee, Wisconsin 53202.

2. Basis for this Agreement

- A. The District is responsible for collecting and treating wastewater from local sewerage systems.
- B. During wet weather events, stormwater enters local sewerage systems, increasing the volume of wastewater that the District must convey and treat and directly enters surface waters, increasing pollution levels in those waterways and increasing the risk of flooding.
- C. Green infrastructure includes, but is not limited to, bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.
- D. Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface water.
- E. The District's wastewater discharge permit includes a goal of 50 million gallons of green infrastructure detention capacity by March 31, 2024.
- F. In the District's 2035 Vision, a strategic objective is capturing the first half inch of rainfall in green infrastructure.

G. Milwaukee owns West Morgan Avenue from South Honey Creek Drive to South 75th Street and South Honey Creek Drive from West Morgan Avenue to West River Bend Drive (Land) and wants to install green infrastructure on the Land.

H. The Wisconsin Department of Natural Resources has made Clean Water Fund loans available to the District for the construction of green infrastructure.

3. Date of Agreement

This Agreement becomes effective when signed by both parties and ends December 31, 2023, except for the access to maintenance records required by sec. 4.F, the annual maintenance reports required by sec. 5.C, the operation and maintenance requirements of sec. 10, and the transfer of ownership notification requirement of sec. 11.

4. The Green Infrastructure

Milwaukee will:

A. install on the Land 6,010 square feet of bioswale, providing a detention capacity of 86,039 gallons (Green Infrastructure);

B. complete construction before December 31, 2023;

C. install educational signage that:

(1) is either designed and provided by the District or provided by Milwaukee and approved by the District,

(2) is in a location approved by the District, and

(3) identifies the District as funding the Green Infrastructure, by name, logo, or both;

D. identify the District as funding the Green Infrastructure in any printed matter, web sites, social media posts, and any other informational materials regarding the Green Infrastructure;

E. install all Green Infrastructure components described in the application for funding;

F. allow the District to inspect the Green Infrastructure and review maintenance records;

G. allow the District to identify Milwaukee and describe the Green Infrastructure in publicity regarding green infrastructure;

H. inform the District of any promotional events for the Green Infrastructure arranged by Milwaukee and allow the District to participate; and

- I. allow the District to access the Green Infrastructure at reasonable times for promotional events arranged by the District, after notice from the District.

5. Reports

A. Milwaukee will provide to the District:

- (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, until the completion of construction. These reports are due before the 10th day of each month, starting with the month after submission of the Green Infrastructure schedule;
- (3) plans, including planting plans, and specifications for the Green Infrastructure before construction;
- (4) a Baseline Report, using forms provided or approved by the District. This report is due after the conclusion of construction. This report will include:
 - (a) a site drawing, showing the completed green infrastructure;
 - (b) a topographic map of the project site;
 - (c) a legal description of the property where the Project is located and the parcel identification number;
 - (d) design specifications for all green infrastructure, including rainwater capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
 - (e) a tabulation of the bids received, including bidder name and price;
 - (f) a list of the permits obtained for the Project;
 - (g) a copy of the signed construction contract;
 - (h) photographs of the completed Project;
 - (i) a maintenance plan;
 - (j) an itemization of all design, construction, and education and outreach costs, with supporting documentation;
 - (k) a W-9 Tax Identification Number form;
 - (l) a Small, Women's, and Minority Business Enterprise Report; and
 - (m) 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 Forestry Exploration Center, contractors, consultants, and volunteers;
 - (n) a Clean Water Fund Loan Program Disadvantaged Business Enterprise Good Faith Certification Form (EIF Form 8700-294); and
 - (o) a Clean Water Loan Program Disadvantaged Business Enterprise Subcontractor Utilization Form (EPA Form 6100-4).

B. To provide the reports required by par. (A), Milwaukee may use the U.S. mail, another delivery service, or electronic mail. Milwaukee will send reports to:

Andrew Kaminski, Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1467
akaminski@mmsd.com

- C. Milwaukee will provide annual maintenance reports. These reports will summarize Green Infrastructure performance and maintenance activities during the preceding twelve months. This report is due December 31 of each year. The District must receive these reports for the ten calendar years following the completion of construction. Milwaukee will use the reporting form available from the District and submit the form as directed by the District.
- D. Milwaukee will provide the required reports, not a consultant or contractor.
- E. Reports that are late, incomplete, or missing may be a basis for rescinding this Agreement or making Milwaukee ineligible for future funding.

6. Conservation Easement

After the completion of construction, Milwaukee will execute a conservation easement in favor of the District. The extent of the conservation easement will be limited to the Green Infrastructure. The duration of the conservation easement will be twenty years. The District will draft and record the conservation easement.

7. District Funding

- A. The District will reimburse Green Infrastructure installation costs up to \$120,200 or 50% of Green Infrastructure installation costs, whichever is less, except schools, churches, and registered 501(c)(3) nonprofit organizations are subject to a maximum reimbursement rate of 75%.
- B. The District will reimburse costs at the rate of \$1.95 per gallon of as-built detention capacity, except the District will reimburse the cost of rain barrels at a rate of \$0.90 per gallon and reimburse the cost of soil amendments and pavement removal at a rate of \$0.50 per gallon.
- C. The basis for reimbursement will be the detention capacity identified in the Baseline Report, as approved by the District.
- D. Beyond financial support for the Green Infrastructure, the District will not be involved in design, construction, maintenance, or operation.

8. Procedure for Payment

- A. Along with or after the Baseline Report required by sec. 5.A(4), Milwaukee will submit an invoice to the District for the amount to be reimbursed.

B. The District will provide reimbursement only if:

- (1) Milwaukee provides the schedule, monthly reports, and Baseline Report required by sec. 5(A);
- (2) Milwaukee completes construction before December 31, 2023;
- (3) the District receives the invoice before December 31, 2023; and
- (4) Milwaukee executes the Conservation Easement after the completion of construction.

C. Milwaukee will electronically submit the invoice as directed by the District.

9. Green Infrastructure Changes

- A. The District will not pay for green infrastructure not described in the application for funding without prior written approval from the District.
- B. Milwaukee must notify the District before decreasing Green Infrastructure detention capacity. The District may reduce the reimbursement amount or terminate this Agreement in response to a reduction of detention capacity.
- C. The District will not provide additional funding for additional detention capacity not requested in the original proposal.

10. Operation and Maintenance

Milwaukee will operate and maintain the Green Infrastructure for at least twenty years. If the Green Infrastructure fails to perform as anticipated or if maintaining the Green Infrastructure is not feasible, then Milwaukee will provide a report to the District explaining the failure of the Green Infrastructure or why maintenance is not feasible. Failure to maintain the Green Infrastructure will make Milwaukee ineligible for future District funding until Milwaukee corrects the maintenance problems.

11. Transfer of Ownership or Maintenance Responsibilities

Milwaukee will notify the District before transferring ownership of the Land or maintenance responsibilities for the Green Infrastructure. The District must receive this notice at least 30 days in advance.

12. Utilization of Disadvantaged Businesses

Milwaukee will give disadvantaged business enterprises an opportunity to compete for work on this Green Infrastructure by soliciting quotes or bids from those businesses to the maximum extent possible. Disadvantaged businesses include small businesses and businesses owned by

women, minorities, or veterans. The District's procurement office will provide a list of these businesses, upon request.

13. Responsibilities of Milwaukee

Milwaukee is solely responsible for:

- A. planning, designing, constructing, and maintaining the Green Infrastructure, including selecting and paying consultants, contractors, and suppliers;
- B. the safety of employees, contractors, and guests;
- C. compliance with all federal, state, and local laws and any permits, certificates, or licenses required to complete the Green Infrastructure; and
- D. insurance. The District will not provide any insurance coverage of any kind for the Green Infrastructure or Milwaukee.

14. Indemnification

Milwaukee will defend, indemnify, and hold harmless the District and the District's Commissioners, employees, and agents against any 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 Green Infrastructure. Nothing in this Agreement is a waiver of the opportunity and right to rely upon the process, limitations, and immunities set forth in Wis. Stats., sec. 893.80.

15. Modifying this Agreement

Any modification to this Agreement will be in writing and signed by the District and Milwaukee.

16. 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, including, but not limited to, breach of this Agreement by Milwaukee.
- B. Milwaukee may terminate this Agreement at any time but will not receive any payment from the District if the Green Infrastructure is incomplete.

17. Exclusive Agreement

This Agreement is the entire agreement between Milwaukee and the District regarding reimbursement for the Green Infrastructure.

18. Severability

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

19. Applicable Law

The laws of the State of Wisconsin govern this Agreement.

20. Resolving Disputes

If a dispute arises under this Agreement, then the parties will try to resolve the dispute with the help of a mutually acceptable mediator in Milwaukee County. The parties will equally share the costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after a mediation session, then either party may take the matter to court.

21. Notices

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

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

22. Independence of the Parties

This Agreement does not authorize any party to make promises binding upon the other party or to contract on the other party's behalf.

23. Assignment

Milwaukee may not assign any rights or obligations under this Agreement without notice to the District.

24. Public Records

Milwaukee will produce any records in the possession of Milwaukee that relate to this Agreement and are requested from the District pursuant to the State of Wisconsin's Open Records Law, Wis. Stats. secs. 19.31 to 19.39. Milwaukee will indemnify the District against any claims, demands, and causes of action resulting from a failure to comply with this requirement.

25. Conflicts

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

26. Signature Authority

The persons signing this Agreement certify they have authority from the entity they represent to execute this Agreement.

27. Inspection by the Department of Natural Resources

Milwaukee will allow the Department of Natural Resources to inspect the Green Infrastructure during construction.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

**CITY OF MILWAUKEE
DEPARTMENT OF PUBLIC WORKS**

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

By: _____
Jeffrey S. Polenske, P.E.
Commissioner

Date _____

Date _____

Approved as to Form

Attorney for the District