

Green Infrastructure Funding Agreement G98004P02

West Allis Downtown Business Parking Lot

1. The Parties

This Agreement is between the:

- A. Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446; and
- B. City of West Allis (West Allis), 7525 West Greenfield Avenue, West Allis, Wisconsin 53214.

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 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 requires the construction of new green infrastructure retention capacity.
- F. The District wants to promote the installation of green infrastructure.
- G. West Allis owns land north of West Greenfield Avenue, between South 72nd Street and South 73rd Street, as shown in the attachment, (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, 2020, except for 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 Project

West Allis will:

- A. install on the Land 7,000 square feet of porous pavement, providing a retention capacity of 21,000 gallons (Project);
- B. complete construction before December 31, 2020;
- C. install educational signage that:
 - (1) is either designed and provided by the District or provided by West Allis and approved by the District,
 - (2) is in a location approved by the District, and
 - (3) identifies the District as funding the Project, by name, logo, or both;
- D. identify the District as funding the Project in any printed matter, web sites, and any other informational materials regarding the Project;
- E. install all Project components described in the application for funding;
- F. allow the District to inspect the Project and review maintenance records;
- G. allow the District to identify West Allis and describe the Project in publicity regarding green infrastructure;
- H. inform the District of any promotional events for the Project arranged by West Allis 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.

5. Reports

A. West Allis 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 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 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)(1) to (4), West Allis may use the U.S. mail, another delivery service, or electronic mail. West Allis will send reports to:

Green Infrastructure Funding Agreement
West Allis Downtown Business Parking Lot

Andrew Kaminski, Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204-1446
akaminski@mmsd.com

- C. West Allis will provide annual maintenance reports. These reports will summarize project 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. West Allis will use the form available from <http://www.freshcoast740.com> and submit the form to greeninfrastructure@mmsd.com.
- D. West Allis will provide the required reports, not a consultant or contractor.
- E. Reports that are late or incomplete may be a basis for rescinding this Agreement or making West Allis ineligible for future funding.

6. Conservation Easement

After the completion of construction, West Allis will execute a conservation easement in favor of the District. The extent of the conservation easement will be limited to the Project. 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 \$40,000.
- B. The District will reimburse costs at the rates shown in the following table.

Type	Reimbursement Rate
Bioswale	\$9/square foot
Cistern	\$2/gallon
Constructed wetlands	\$9/square foot
Green roof	\$5/square foot
Native landscaping	\$1.80/square foot
Porous Pavement	\$7/square foot
Rain barrel	\$0.90/gallon
Rain garden	\$4/square foot
Soil amendment	\$0.11/square foot
Tree	\$75/tree

- C. Beyond financial support for the Project, 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), West Allis will submit an invoice to the District for the amount to be reimbursed.
- B. The District will provide reimbursement only if:
- (1) West Allis provides the schedule, monthly reports, and Baseline Report required by sec. 5(A);
 - (2) West Allis completes construction before December 31, 2020;
 - (3) the District receives the invoice before December 31, 2020; and
 - (4) West Allis executes the Conservation Easement after the completion of construction.
- C. West Allis will submit the invoice to apinvoice@mmsd.com. West Allis will include the name of the District's project manager and the funding agreement number (G98004P02).

9. 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.

10. Operation and Maintenance

West Allis will operate and maintain the Project for at least twenty years. If the Project fails to perform as anticipated or if maintaining the Project is not feasible, then West Allis 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 West Allis ineligible for future District funding until West Allis corrects the maintenance problems.

11. Transfer of Ownership or Maintenance Responsibilities

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

12. Utilization of Disadvantaged Businesses

West Allis will give disadvantaged business enterprises an opportunity to compete for work on this Project 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 West Allis

West Allis is solely responsible for:

- A. planning, designing, constructing, and maintaining the Project, including selecting and paying consultants, contractors, and suppliers;
- 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; and
- D. insurance. The District will not provide any insurance coverage of any kind for the Project or West Allis.

14. Indemnification

West Allis 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 Project. 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 must be in writing and signed by the District and the West Allis.

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 West Allis.
- B. West Allis may terminate this Agreement at any time, but will not receive any payment from the District if the Project is incomplete.

17. Exclusive Agreement

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

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 agree to first 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 involving the parties and the mediator, 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 West Allis's address as stated on this Agreement; or
- B. three days after being deposited in the United States mail, with postage prepaid to the West Allis's address as stated on this Agreement.

22. Independence of the Parties

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

23. Assignment

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

24. Public Records

West Allis will produce any records in the possession of West Allis 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. West Allis will indemnify the District against any claims, demands, and causes of action resulting from the failure to comply with this requirement.

25. Conflicts

If West Allis 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 West Allis did not disclose this relationship in the application for funding, then West Allis will notify the District within five (5) days of identifying it.

26. Signature Authority

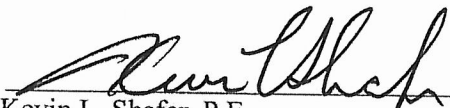
The persons signing this Agreement certify that they are authorized by their organization to execute this Agreement.


27. Inspection by the Department of Natural Resources

West Allis will allow the Department of Natural Resources to inspect the project during construction.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

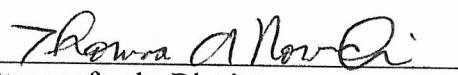
CITY OF WEST ALLIS

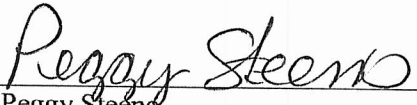
By: 
Kevin L. Shafer, P.E.
Executive Director

By: 
Peter Daniels
City Engineer

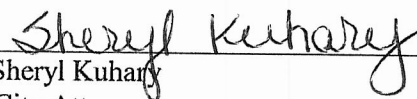
Date: 7/28/18

Date: 8/8/18

Approved as to Form

Attorney for the District

By: 
Peggy Steeno
Director of Finance/Comptroller

Date: 8/14/18

By: 
Sheryl Kuhary
Interim City Attorney

Date: 8/8/18

