

## Funding Agreement M10005WE02

### 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 Street, Milwaukee, Wisconsin 53204-1446 and the City of West Allis (Municipality) with its municipal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214.

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 Municipality wishes to participate in the Program;

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) June 1, 2023, 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 \$710,000 for approved private property I/I costs incurred through the work described in Attachment A ("the Work"). The estimated total project cost of \$1,130,000 is offset by property owner cost share and Wisconsin Department of Natural Resources funds. Provided the Municipality is in compliance with the terms of this Agreement, the District funding shall be provided on a reimbursement basis in accordance with Section 8 below. No reimbursement will be made for costs incurred

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prior to the effective date of this Agreement or for costs that are not supported by documentation as outlined by this Agreement.

**3. Program Publicity and Outreach Requirements**

- a. The Municipality shall identify the District as a funder in informational literature and signage relating to the Work. Samples of all public involvement/public education documents shall be provided to the District for review prior to being distributed to the public.
- b. A minimum of a one (1) week notice of any public meetings shall be provided to the District. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.

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

The selection of professional service providers to perform Work funded by this Agreement shall be in accordance with the Municipality’s ordinances and policies.

**5. Selection of Non-Professional Service Providers by Municipality**

Pursuant to a public Request for Qualifications process, the District has developed an Approved Contractors List, organized by work type to ensure all Work funded by the District maintains specific quality standards. Those Approved Contractors and their suppliers can submit products they intend to utilize for inclusion in the District’s Approved Products List. The appropriate subset of the Approved Contractor List and the Approved Products List shall be utilized as part of Municipality’s bidding process for contracts to perform Work funded by this Agreement.

In addition to the above, all non-professional service providers to perform Work funded by this Agreement shall be procured in accordance with both State of Wisconsin statutes and regulations and the Municipality’s ordinances and policies. 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.

In addition:

- a. The Municipality shall provide the District with the opportunity to review and comment on the complete set of bidding documents prior to solicitation of bids, quotes or proposals as set forth in Attachment B;
- b. Municipality shall provide the District with all bids and proposals for review prior to the award of the contract, as set forth in Attachment B. The District reserves the right to revoke funding based on project award to contractors who are not on the District’s list of Authorized Contractors.

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

The Municipality agrees to include Attachment C in all non-professional service contracts relating the Work. Failure to include Attachment C in the non-professional service contracts will constitute a material breach of this Agreement.

## **7. Contractor Pay Applications**

Prior to the Municipality paying contractors for Work funded by this Agreement, the District shall be provided an opportunity to review and endorse the contractor pay applications. The Municipality shall submit contractor pay applications for review through a Comment Form in the District's online application, eBuilder. Contractor pay applications that include a scope of work not funded by this Agreement shall have District reimbursable expenses clearly segregated and itemized. All contractor pay applications shall include supporting documentation certifying that the Municipality has received and reviewed a proportionate amount of contract deliverables for which the Contractor is responsible.

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 shall be considered approved.

## **8. Procedure for Reimbursement**

The Municipality shall submit reimbursement requests to the District a minimum of two (2) times throughout this Agreement.

Each reimbursement request shall include:

An invoice from the Municipality clearly stating the requested reimbursement amount;

All consultant invoices, approved contractor pay applications, and other expense invoices;

All time and pay documentation for Municipality's internal staff time that is being requested for reimbursement;

All deliverables listed in Attachment B, proportionate and applicable to the Work completed as related to the request.

Invoices from consultants shall provide the hourly billing rates, the hours worked by individuals, and a summary of the tasks completed.

Reimbursement requests should be submitted within a reasonable period of time of the costs being incurred. The initial reimbursement request shall be submitted prior to fifty percent - 50% of Work being completed. The final reimbursement request shall be submitted upon completion of all Work. All reimbursement requests must be received prior to expiration of this Agreement.

Reimbursement requests, the supporting documentation of costs shall be submitted through eBuilder. The corresponding deliverables shall be submitted as set forth in Attachment B. Questions should be directed to the District Senior Project Manager (SPM):

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

Final payment will not be provided until the Work is complete and all deliverables set forth in Attachment B have been received.

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

Any 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 that is not included in Attachment A (including all professional services and non-professional services contracts procured through the Work outlined in Attachment A) unless prior written approval has been requested from the District and approval has been obtained through the eBuilder change process.

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 full time construction inspection for all Work. Each inspector shall be experienced, qualified, and certified for the scope of the Work.

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

The Municipality and its contractor(s), if applicable, shall report to the District any problems that arise with or related to the completed Work, whether discovered through inspection or through complaints from homeowners, for a period of ten (10) years following substantial completion. The Municipality shall also report any actions taken to investigate the complaint, and if within the warranty period, to resolve the issue.

The Municipality shall be responsible for reporting post-workflow monitoring data and or other data related to identified measures of success for at least five (5) years post-work completion or as long as data is available, whichever period is longer.

All warranty inspection costs incurred by the District due to Municipality's failure to enforce the warranty inspection requirement in its construction contract(s) shall either be: (1) deducted from Municipality's Program account; or (2) invoiced to Municipality.

The terms of this Section 11 shall survive termination of this Agreement.

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

The Municipality is solely responsible for ensuring compliance with all federal, state and local laws requiring permits, certificates and licenses required to implement the Work.

## **13. Insurance**

The District shall not provide any insurance coverage of any kind for the Work or for the Municipality. Municipality shall ensure that each contractor and subcontractor have adequate

insurance to perform the Work and names the Municipality as an additional insured on its Commercial General Liability Insurance policies.

**14. Terminating the Agreement**

The District may terminate this Agreement at any time prior to 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, breach of agreement by the Municipality. 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 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, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Milwaukee County. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the dispute is not resolved within thirty (30) days after it is referred to the mediator, 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 apparent authority to make promises binding upon the District. The Municipality does not have 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.

## **22. Public Records**

The Municipality agrees to cooperate and assist the District in the production of any records in the possession of the Municipality that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law, §§19.31-19.39, Wis. Stats. The Municipality agrees to indemnify the District against any and all claims, demands, and causes of action resulting from the Municipality's failure to comply with this requirement.

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

**CITY OF WEST ALLIS**

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

By: \_\_\_\_\_  
Peter Daniels, City Engineer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

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

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

**ATTACHMENT A**  
**Municipality Work Plan**

DRAFT



**ATTACHMENT B**  
**Agreement 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. Draft specifications, plans, and bidding documents shall be submitted to the District SPM via email or other approved digital transfer method a minimum of one (1) week prior to bidding. Specifications and plans shall include scope to facilitate District monitoring of the sump pump run times.
3. Final bid documents shall be provided to the District SPM via email or other approved digital transfer method for review and approval prior to advertisement of the contract for bid.
4. Bid results from all procurement processes associated with the project shall be provided to the District SPM via email or other approved digital transfer method upon close of the bid process prior to award of contract.
5. Electronic copies of the executed contract documents shall be provided to the District SPM prior to the Municipality's issuance of the Notice to Proceed.
6. Draft homeowner Right of Entry or Access Agreements shall be presented to the District for review prior to distribution by the Municipality and signature by the homeowners. The Right of Entry or Access Agreement shall include a provision allowing the District and Municipality to enter the property for a period of three (3) years following construction to collect the sump pump data collectors and/or inspect the work to determine the success of repairs.

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

7. All Contractor/consultant submittals to the Municipality shall be reviewed and approved by the municipal engineer or designee and supplied to the District prior to the commencement of the work contained in the submittal.
8. 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.
9. An accurate schedule of field activities shall be provided to the District SPM via email or telephone call at least one week in advance of activity commencement.
10. Progress reports on project activities and public involvement activities shall be provided to the District SPM via email on a monthly basis.

11. Quality control and quality assurance (QA/QC) reports and testing results that are documented by the Contractors and Municipality's field engineer/inspector shall be submitted to the District SPM via email or other approved digital transfer method 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 by the Municipality's engineer.
12. Inspection reports from the field engineer for work completed shall be submitted to the District SPM via email or other approved digital transfer method on a monthly basis or with reimbursement request, whichever occurs more frequently.
13. All construction contract deliverables organized, formatted, and delivered as specified by the contract and approved by the District. Samples of deliverable formats are recommended to be provided to the District prior to construction.

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

14. The Final Project Summary Report shall be submitted to the District SPM via email with, or prior to, the final reimbursement request. The template that must be used can be found on the District's website: <https://www.mmsd.com/government-business/rules-regulations/private-property-i-i>
15. Fully executed copies of the Right of Entry or Access Agreements for each homeowner.
16. The Municipality shall provide documentation of the resolution of all punch list items of the Municipality and the District.
17. 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.
18. Following completion of the Work, the Municipality shall complete a survey of all property owner participants, compile the results, and submit the survey forms and results to the District through an approved digital transfer method, format, and file type. The survey deliverable shall include a summary of results in spreadsheet format.

## ATTACHMENT C

### **Requirements of Contractor**

Contractor's Work under this Contract is funded in whole or in part by the Milwaukee Metropolitan Sewerage District's Private Property Infiltration and Inflow Program ("Program"). Pursuant to the terms of that Program, the following terms and conditions must be included in all construction contracts. Defined terms shall have the meaning assigned to them in the Funding Agreement between the District and the Municipality, which shall be provided to Contractor upon request. If a term or condition set forth herein conflicts with the terms and conditions set forth in the bid documents, the terms and conditions below take precedence.

- 1. Contractor Emergency Response Plan.** Within 14 days of the Notice to Proceed from Municipality, the Contractor shall submit to the Municipality and the District an Emergency Response Plan (ERP). This plan shall include at a minimum the following information: (1) the Contractor's site representative that will be responsible for all emergency calls, 24 hours per day/7 days per week for the duration of the project with all of their contact information; (2) the contact information for the Contractor's foreman; (3) the contact information for each municipal representative that the Contractor will contact, in the event of an emergency; (4) the contact information for the District's Senior Project Manager (5) the contact information for the Clean Up/Dig Up contractor that will be on-call for emergencies throughout the duration of this project; (6) and a detailed narration of the step-by-step sequence of events and communications that the Contractor will take in the event of an emergency throughout the duration of this project.
- 2. Warranty:** All Work performed under this Contract shall be warranted by 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 homeowner as it relates to a particular property. At least three (3) months prior to the end of the warranty period, Contractor shall perform a warranty inspection.
- 3. Retainage:** Retainage shall be held by Municipality in compliance with Wis. Stat. § 66.0901 (9) (b), and shall not be released until the Work is complete, inclusive of the warranty inspection.
- 4. Warranty Inspection:** Contractor shall complete a warranty inspection via third party of the Work, via CCTV or other method approved in advance by the Municipality and the District, at least 90 days prior to the warranty expiration. All inspection results, including video and associated files with Pipeline Assessment Certification Program (PACP) coding shall be provided to the Municipality and the District with in fifteen (15) days of inspection. The retainage portion of this Contract shall not be paid until the warranty inspection is complete. Contractor's obligations to perform a warranty inspection shall survive termination of this Contract.
- 5. Reporting:** For a period of ten (10) years post substantial completion, if the Contractor becomes aware of any problems arising with the Work, Contractor shall notify the Municipality and the District.
- 6. Assignment:** The Municipality's obligations under this Contract are fully assignable to the District. The Contractor's consent is not required prior to the Municipality's assignment and the District's assumptions of Municipality's rights hereunder.