



March 10, 2025

Robert Hutter
City of West Allis
7525 W. Greenfield Ave., Rm 212
West Allis, WI 53214

Subject: Green Infrastructure Maintenance Covenant
for
West Allis Bioswales – Agreement G98005P159 and Agreement
G98015P08

Dear Mr. Hutter:

Enclosed is one copy of a fully executed Green Infrastructure Maintenance Covenant for West Allis Bioswales – Agreement G98005P159 and Agreement G98015P08, for your records.

Should you have any questions, please contact me at (414) 225-2245.

Sincerely,


Andy Kaminski
Senior Project Manager

Enclosure

Green Infrastructure Maintenance Covenant
for
West Allis Bioswales - Agreement G98005P159 and Agreement G98015P08

This Maintenance Covenant (Covenant) is granted by the City of West Allis (Funding Recipient), located at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214, to the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204.

INTRODUCTION

- 1. The Green Infrastructure.** The Green Infrastructure includes eight bioswales totaling 3,500 square feet with a capture capacity of 10,500 gallons of stormwater as described in attached Exhibit A (Green Infrastructure).
- 2. Baseline Documentation.** The condition of the Green Infrastructure is documented in a Baseline Report provided by the Funding Recipient to the District and incorporated into this Covenant by reference. The Baseline Report consists of reports, maps, photographs, and other documentation and provides an inventory of relevant features, characteristics, and conservation values. The Baseline Report provides an accurate representation of the condition of the Green Infrastructure at the time of the conveyance of this Covenant. The Baseline Report is an objective, but not exclusive, reference for monitoring compliance with the terms of this Covenant.
- 3. Conservation Intent.** Funding Recipient and the District share the common purpose of preserving the Green Infrastructure for a period of at least 10 years. Funding Recipient intends to protect the Green Infrastructure. In addition, Funding Recipient intends to convey to the District and the District agrees to accept a right to monitor and enforce these restrictions.

MAINTENANCE COVENANT

In consideration of the facts recited above, Funding Recipient grants and the District accepts a Maintenance Covenant for a period of 10 years for the Green Infrastructure. This Covenant consists of the following terms, rights, and restrictions.

- 1. Purpose.** The purpose of this Covenant is to require Funding Recipient to keep, preserve, and maintain the Green Infrastructure as described above and as further delineated in Exhibit A attached hereto and incorporated herein.
- 2. Effective Dates.** This Covenant is effective upon the date of last signature below. This Covenant terminates exactly 10 years from the date of last signature below.
- 3. Operation and Maintenance.** Funding Recipient will maintain the Green Infrastructure so that it remains functional for the entire term of this Covenant. Funding Recipient is solely responsible for the operation, maintenance, and performance of the Green Infrastructure.

4. Additional Reserved Rights of Funding Recipient. Funding Recipient retains all rights associated with the Green Infrastructure including the right to use it and invite others to use it in any manner that is not expressly restricted or prohibited by this Covenant or inconsistent with the purpose of this Covenant. However, Funding Recipient may not exercise these rights in a manner that would adversely affect the Green Infrastructure.

Funding Recipient expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Green Infrastructure only if:

- 4.1 The encumbrance or conveyance is subject to the terms of this Covenant.
- 4.2 Funding Recipient incorporates the terms of this Covenant by reference in any subsequent deed or other legal instrument by which Funding Recipient transfers any interest in all or part of the Green Infrastructure.
- 4.3 Funding Recipient notifies the District of any conveyance in writing within 15 days after the conveyance and provides the District with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 4.4 Failure of Funding Recipient to perform any act required in Subparagraphs 4.2 or 4.3 does not impair the validity of this Covenant or limit its enforceability in any way.

5. District Rights and Remedies. To accomplish the purpose of this Covenant, Funding Recipient expressly conveys to the District the following rights and remedies:

- 5.1 Preserve Conservation Values. The District has the right to preserve and protect the Green Infrastructure.
- 5.2 Prevent Inconsistent Uses. The District has the right to prevent any activity or use of the Green Infrastructure that is inconsistent with the purpose of this Covenant and to require the restoration of areas or features of the Green Infrastructure that are damaged by any inconsistent activity or use pursuant to the remedies set forth herein.
- 5.3 Inspection. The District has the right to inspect and monitor compliance with the terms of this Covenant, obtain evidence for use in seeking judicial or other enforcement of the Covenant, and otherwise exercise its rights under this Covenant. The District will provide prior notice to Funding Recipient before inspecting the Green Infrastructure, shall comply with any safety rules of Funding Recipient when undertaking such inspections, and shall avoid unreasonable disruption of the activities of the Funding Recipient when undertaking such inspections.

6. Remedies for Violations. The District has the right to enforce the terms of this Covenant and prevent or remedy violations through appropriate legal proceedings.

- 6.1 Notice of Problems. If the District identifies problems with the Green Infrastructure, the District will initially attempt to resolve the problems collaboratively with the

Funding Recipient. The District will notify Funding Recipient of the problems and request the Funding Recipient take remedial action within a reasonable amount of time.

6.2 Notice of Violation and Corrective Action. If the District determines that a violation of the terms of this Covenant has occurred or is threatened, then the District will give written notice of the violation or threatened violation and allow at least 30 days for the Funding Recipient to correct the violation. If Funding Recipient fails to respond, then the District may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Green Infrastructure or if good faith efforts to notify Funding Recipient are unsuccessful.

6.3 Remedies. When enforcing this Covenant, the remedies available to the District include temporary or permanent injunctive relief for any violation or threatened violation of the Covenant, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Covenant, specific performance, declaratory relief, and recovery of damages resulting from a violation of this Covenant or injury to the Green Infrastructure.

6.4 Non-Waiver. A delay or prior inability of the District to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Covenant.

6.5 Waiver of Certain Defenses. Funding Recipient waives any defense of laches or estoppel as related to this Covenant.

6.6 Acts Beyond the Control of Funding Recipient. The District may not bring any action against Funding Recipient for any injury or change in the Green Infrastructure resulting from causes beyond the control of Funding Recipient including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by Funding Recipient under emergency conditions to prevent or mitigate damage from such causes, provided that Funding Recipient notifies the District of any occurrence that has adversely affected or interfered with the purpose of this Covenant.

7. Amendment. Funding Recipient and the District may jointly amend this Covenant in a written instrument executed by both parties. However, no amendment will be allowed if, in the judgment of the District, the proposed amendment:

7.1 Seeks to diminish the Green Infrastructure,

7.2 Would be inconsistent with the purpose of this Covenant,

7.3 Seeks to shorten the duration of this Covenant, or

7.4 Would affect the validity of this Covenant.

- 8. Assignment.** The District may convey, assign, or transfer its interests in this Covenant to a unit of federal, state, or local government or to an organization that is qualified within the meaning of 26 U.S.C. § 170(h)(3) and in the related regulations or any successor provisions then applicable. As a condition of any assignment or transfer, any future holder of this Covenant is required to carry out its purpose for the remainder of its term. The District will notify Funding Recipient of any assignment at least 30 days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.
- 9. Headings.** The headings in this Covenant have been inserted solely for convenience of reference and have no effect on construction or interpretation.
- 10. Controlling Law and Liberal Construction.** The laws of the State of Wisconsin govern the interpretation and performance of this Covenant. Ambiguities in this Covenant will be construed in a manner that best effectuates the purpose of this Covenant and protection of the Green Infrastructure.
- 11. Counterparts.** Funding Recipient and the District may execute this Covenant in two or more counterparts which will, in the aggregate, be signed by both parties. Each counterpart is an original document.
- 12. Entire Agreement.** This Covenant sets forth the entire agreement between Funding Recipient and the District with respect to this Covenant and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Covenant other than Green Solutions-West Allis-Bioswale Bump Outs Funding Agreement G98005P159 executed on January 23, 2025 and Green Infrastructure Funding Agreement G98015P08-Lapham Curb Bump Outs executed on December 16, 2024.
- 13. Extinguishment.** This Covenant may be terminated or extinguished before the expiration of its term, in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, this Covenant may be extinguished only if Funding Recipient and the District agree that a subsequent unexpected change in the condition of or surrounding the Green Infrastructure makes accomplishing the purpose of this Covenant impossible.
- 14. Ownership Responsibilities, Costs, and Liabilities.** Funding Recipient retains all responsibilities and will bear all costs and liabilities related to the ownership of the Green Infrastructure including, but not limited to, the following:
- 14.1 Operation, upkeep, and maintenance. Funding Recipient is responsible for the operation, upkeep, and maintenance of the Green Infrastructure.
- 14.2 Control. In the absence of a judicial decree, nothing in this Covenant establishes any right or ability in the District to:

- a. Exercise physical or managerial control over the day-to-day operations of the Green Infrastructure;
- b. Become involved in the management decisions of Funding Recipient regarding the generation, handling, or disposal of hazardous substances; or
- c. Otherwise become an operator of the Green Infrastructure within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of the Green Infrastructure.

14.3 Permits. Funding Recipient is solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Covenant. During construction or any other activity, Funding Recipient will comply with all applicable federal, state, and local laws, regulations, and requirements.

14.4 Indemnification. Funding Recipient releases and will hold harmless, indemnify, and defend the District and its commissioners, members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each (collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments, or administrative actions including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with:

- a. Injury to or the death of any person or physical damage to the Green Infrastructure resulting from any act, omission, condition, or other matter related to or occurring on or about the Green Infrastructure, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- b. The violation or alleged violation of, or other failure to comply with, any state, federal, or local law or regulation including, without limitation, CERCLA, by any person other than the Indemnified Parties in any way affecting, involving, or related to the Green Infrastructure; or
- c. The presence or release in, on, from, or about the Green Infrastructure, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

Nothing in this Covenant is intended to be a waiver or estoppel of Funding Recipient or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, Funding Recipient or its insurer will not

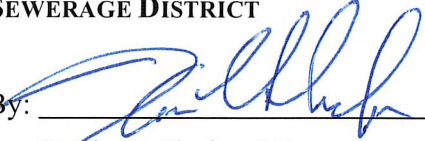
be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.


15. Severability. If any provision or specific application of this Covenant is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Covenant will remain valid and binding.

16. Successors. This Covenant is binding upon and inures to the benefit of Funding Recipient and the District and their respective personal representatives, heirs, successors, and assigns and will continue as a servitude running with the Green Infrastructure for the term of this Covenant.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

CITY OF WEST ALLIS


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

By: 
Melinda K. Dejewski, P.E.
City Engineer

Date: 3/5/25

Date: March 5, 2025

Approved as to Form

By: 
Vincent R. Bauer
Attorney for the District

