



## Strategic Green Infrastructure Program Funding Agreement G98015P03

### West Allis

#### 1. The Parties

This Agreement is between the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446, and the City of West Allis (West Allis), 4800 West Green Brook Drive, West Allis, Wisconsin 53223.

#### 2. Basis for this Agreement

- A. Wisconsin law authorizes any municipality to establish an intergovernmental cooperation agreement with another municipality for the furnishing of services (Wis. Stat. sec. 66.0301).
- B. The District is responsible for collecting and treating wastewater from locally owned sewerage systems in the District's service area.
- C. During wet weather, stormwater enters the sewerage system, increasing the volume of wastewater the District must collect and treat.
- D. During wet weather, stormwater directly enters surface water, increasing pollution levels in those waterways and increasing the risk of flooding.
- E. Constructed wetlands, rain gardens, green roofs, bioswales, porous pavement, cisterns, and native landscaping are examples of green infrastructure.
- F. Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface water.
- G. The District's wastewater discharge permit includes a goal of 50 million gallons of green infrastructure detention capacity by March 31, 2024, with 20 million gallons within the combined sewer service area.
- H. In the District's *2035 Vision*, a strategic objective is capturing the first half inch of rainfall in green infrastructure.
- I. The District's *Resilience Plan* (2019) directed the District to support green infrastructure investments in projects that will promote environmental education, behavioral change, empowerment, and economic growth in socially vulnerable communities.
- J. The U.S. Environmental Protection Agency, under its Building Blocks for Sustainable Communities Program and Greening America's Communities Program, identified conceptual opportunities for green infrastructure in West Allis, in the area shown in Figure 1 (the Project Area).

K. To provide more detail regarding opportunities in the Project Area, the District has funded a consultant to provide a green infrastructure recommendation memo, which is expected in December 2021 (Recommendation Memo).

L. West Allis is interested in installing green infrastructure in the Project Area.

### **3. Date of Agreement**

This Agreement becomes effective immediately upon signature by both parties and ends either December 31, 2024, when West Allis receives final payment from the District, or the parties terminate this Agreement according to sec. 15 of this Agreement.

### **4. District Funding**

A. The District will reimburse West Allis for eligible costs, up to \$400,000.

B. Costs are eligible if they are for green infrastructure proposed for implementation by the Recommendation Memo, except as provided in par. H. This green infrastructure is likely to include:

- (1) biowales,
- (2) bioretention,
- (3) infiltration basins,
- (4) permeable pavement,
- (5) trees, or
- (6) pavement removal.

C. Costs for the following activities are eligible for reimbursement:

- (1) planning, engineering, design, and construction of eligible green infrastructure; and
- (2) staff and consultant time for project management and preparing reports and applications.

D. Costs for the following facilities and activities are not eligible for reimbursement.

- (1) community park amenities other than eligible green infrastructure;
- (2) construction site erosion control and sediment control efforts, unless it relates to construction or post-construction management of eligible green infrastructure;
- (3) investigation or inspection work not related to eligible green infrastructure;
- (4) maintenance.
- (5) Green infrastructure outside of the Project Area.

E. The District will reimburse costs only if the District approved construction plans and specifications before construction.

F. The District will provide funding after the District receives a baseline report and either a conservation easement or maintenance covenant for each green infrastructure location.

G. West Allis may combine funding under this agreement with funding from other District sources, such as the District's Green Solutions program.

- H. The District may approve projects not included in the Recommendation Memo, after a written request from West Allis.
- I. West Allis is not required to implement all projects suggested for implementation by the Recommendation Memo.

## **5. District Participation in Planning and Design**

West Allis will

- A. give the District an opportunity to participate in meetings, workshops, or other discussions regarding planning, design, and construction of green infrastructure in the Project Area.
- B. provide to the District construction plans and specifications for proposed green infrastructure in the Project Area before the commencement of procurement by West Allis.

## **6. District Responsibilities**

The District will:

- A. designate a Senior Project Manager to support the Project and facilitate communication among West Allis, the District, consultants, contractors, and community stakeholders;
- B. coordinate periodic Project meetings;
- C. will promptly review plans and not unreasonably withhold approval;
- D. will draft easements or covenants and record easements at the District's cost.

## **7. Baseline Reports**

After completion of the green infrastructure, West Allis will provide a Baseline Report using forms provided or approved by the District. The Baseline Report will include:

- A. a site drawing, showing the green infrastructure as completed;
- B. a topographic map of the site;
- C. design specifications for the green infrastructure, including detention capture capacity (maximum per storm) and other information regarding runoff rate reduction or pollutant capture;
- D. a tabulation of the bids received, including bidder name and price;
- E. a copy of the executed construction contract;
- F. a legal description of the property where the project is located, including parcel identification numbers;
- G. photographs of the completed project;
- H. a maintenance plan;
- I. an outreach and education strategy, including a description of events or activities completed or planned;
- J. an itemization of all construction costs, with supporting documentation;
- K. a W-9 Tax Identification Number form;
- L. a Small, Veterans, Women, 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 West Allis's employees, contractors, consultants, and volunteers.

## **8. Procedure for Payment**

West Allis will submit an invoice to the District for the amount to be reimbursed. The invoice will document all costs to be reimbursed. Invoices from consultants will provide: their hourly billing rates, if applicable; the hours worked, by individual; and a summary of the tasks accomplished. To submit invoices, West Allis will use the District's web-based project management system, e-Builder.

The District will reimburse West Allis until the green infrastructure is complete and the District has received all required deliverables.

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

Any changes to the project must be approved by the District in writing in advance. The District will not reimburse for work that is not described in the original project description unless West Allis obtains prior written approval from the District.

## **10. Modifications to this Agreement**

Any modifications to this Agreement will be in writing and signed by both parties.

## **11. Project Maintenance**

West Allis will maintain the project for at least eleven 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 maintenance problems.

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

West Allis is solely responsible for compliance with all federal, state, and local laws and any required permits, certificates, or licenses.

## **13. Procurement**

West Allis must select professional service providers according to the ordinances and policies of West Allis. West Allis must procure all non-professional services, such as construction, sewer inspection, and post-construction restoration, according to State of Wisconsin statutes and regulations and the ordinances and policies of West Allis. Whenever work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request and West Allis must provide an opinion from a licensed attorney representing West Allis explaining why the procurement complies with State of Wisconsin law and the ordinances of West Allis.

## **14. Responsibility for Work, Insurance, and Indemnification**

West Allis is solely responsible for planning, design, construction, and maintenance of the project, including the selection of and payment for consultants, contractors, and materials.

West Allis is solely responsible for ensuring compliance with Wisconsin prevailing wage law.

The District will not provide any insurance coverage of any kind for the project or the West Allis.

West Allis will defend, indemnify, and hold harmless the District and its Commissioners, employees, and agents against all damages, costs, liability, and expenses, including attorney's fees and related disbursements, arising from or connected with the planning, design, construction, operation, or maintenance of the project.

### **15. Terminating this Agreement**

The District may terminate this Agreement at any time before the commencement of construction. After the commencement of construction, the District may terminate this Agreement only for good cause, including, but not limited to, breach of this Agreement by West Allis. West Allis may terminate this Agreement at any time, but West Allis will not receive any payment from the District if West Allis does not complete the project.

### **16. Conservation Easement and Maintenance Covenants**

- A. For projects not in a public right of way, the District must receive a conservation easement from West Allis. For projects in a public right of way, the District must receive a maintenance covenant.
- B. The easement or covenant will be limited to the green infrastructure.
- C. The term of the easement or covenant will be eleven years.
- D. West Allis will cooperate with the District to prepare the easement or covenant.
- E. The District will prepare the easements or covenants after the completion of construction.

### **17. Exclusive Agreement**

This Agreement is the entire agreement between West Allis and the District for the green infrastructure described in the attached project description.

### **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 apply to 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 agreed-upon mediator in Milwaukee County. The parties will equally share the costs and fees associated with the mediation, other than attorney's fees. If the dispute is not resolved within 30 days after mediation, 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 recipient's address as stated in this Agreement; or
- B. three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

## **22. Independence of the Parties**

This Agreement does not create a partnership. West Allis does not have authority to make promises binding upon the District or otherwise have authority to contract on the District'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 all claims, demands, or causes of action resulting from the failure to comply with this requirement.

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

**CITY OF WEST ALLIS**

By: \_\_\_\_\_

Kevin L. Shafer, P.E.  
Executive Director

By: \_\_\_\_\_

Peter C. Daniels, P.E.  
City Engineer

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

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

Approved as to Form

By: \_\_\_\_\_

Attorney for the District

Figure 1  
Potential Green Infrastructure Locations

