

Green Infrastructure Maintenance Covenant for the City of Milwaukee, Department of Public Works

This Maintenance Covenant (Covenant) is granted by the City of Milwaukee, Department of Public Works (Milwaukee), 841 North Broadway, Milwaukee, Wisconsin 53202, to the Milwaukee Metropolitan Sewerage District (District), 260 West Seeboth Street, Milwaukee, Wisconsin 53204.

INTRODUCTION

1. The Green Infrastructure. Milwaukee will plant up to 250 trees within the project area defined as N. 76th Street to N.35th Street and W. Villard Avenue to W. Mill Road, as shown in Exhibit A (the green infrastructure). These trees will capture and hold stormwater in place to reduce the quantity and improve the quality of runoff. The trees provide a retention capacity of 14,750 gallons. This Covenant applies only to this Green Infrastructure.

2. Conservation Intent. The Conservation Intent is up to 250 trees with the capacity to capture and infiltrate 14,750 gallons of stormwater per storm event at the location stated above.

3. Funding Provided by the District. The District will provide funding to City for the installation of the Green Infrastructure, in an amount not to exceed One Hundred Fifty Five Thousand Dollars (\$155,000), inclusive of all costs and materials.

MAINTENANCE COVENANT

In consideration of the facts recited above, Milwaukee grants and the District accepts a Maintenance Covenant for the Term set forth below for the Green Infrastructure. This Covenant consists of the following terms, rights, and restrictions.

1. Purpose. The purpose of this Covenant is to require Milwaukee to keep, preserve and maintain the Green Infrastructure, as described above.

2. Term and Effective Dates. This Covenant became effective on July 1, 2019. This Covenant terminates on December 31, 2029.

3. Operation and Maintenance. Upon completion of the project and receipt of funds from the District, City will operate and maintain the Green Infrastructure so that it remains functional for its Conservation Intent the entire term of this Covenant. City will take all actions necessary to preserve the Conservation Intent, and will prohibit all actions that would impede or restrict the Green Infrastructure from functioning as set forth in the Conservation Intent. City is solely responsible for operation, maintenance and evaluating performance.

4. Additional Reserved Rights of Milwaukee. Milwaukee 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 the Covenant. Milwaukee expressly reserves the right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the

Green Infrastructure, if:

4.1 The encumbrance or conveyance is subject to the terms of this Covenant.

4.2 Milwaukee incorporates the terms of this Covenant by reference in any subsequent deed or other legal instrument by which Milwaukee transfers any interest in all or part of the Green Infrastructure.

4.3 Milwaukee notifies the District of any conveyance in writing within fifteen (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 Milwaukee 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, Milwaukee expressly conveys to the District the following rights and remedies:

5.1 Prevent Inconsistent Uses. The District has the right to require the restoration of areas or features of the Green Infrastructure that are damaged by any activity or use reasonably determined to be inconsistent with the purpose of this covenant pursuant to the remedies set forth below.

5.2 Inspection. The District has the right to: inspect and monitor compliance with the terms of this Covenant; and otherwise exercise its rights under the Covenant. To the extent the Green Infrastructure is located somewhere not open to the general public, the District will provide prior notice to Milwaukee of at least five (5) days before inspecting the Green Infrastructure. In all case, the District will comply with the safety rules of Milwaukee, and avoid unreasonable disruption of the activities of Milwaukee.

6. Remedies for Violations. Both parties have 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 functioning to achieve the Conservation Intent, then the District will initially attempt to resolve the problems collaboratively. The District will notify Milwaukee of the problems and request remedial action within a reasonable time.

6.2 Notice of Violation and Corrective Action. If either party determines

that a violation of the terms of this Covenant has occurred or is threatened, then the non-violating party will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the violating party fails to respond, then the non-violating party may initiate judicial action.

6.3 Remedies. When enforcing this Covenant, the remedies available to either party 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 a condition reasonably similar to the condition at the time of the conveyance of this Covenant, specific performance, and declaratory relief resulting from a violation of the Covenant or injury to the Green Infrastructure.

6.4 Non-Waiver. A delay or prior failure of either party 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 Acts Beyond the Control of Milwaukee. The District may not bring any action against Milwaukee for any injury or change in the Green Infrastructure resulting from causes beyond the control of Milwaukee, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or actions taken by Milwaukee under emergency conditions to prevent or mitigate damage from such causes, provided that Milwaukee notifies the District of any occurrence that has adversely affected or interfered with the purpose of this Covenant prior to or within a reasonable time after the occurrence of such a cause.

7. **Amendment.** At any time, Milwaukee and the District may jointly amend this Covenant in a written instrument executed by both parties.

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 Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable with the prior written consent of Milwaukee. 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 Milwaukee of any assignment at least thirty (30) days before the date of such assignment.

9. **Captions.** The captions in this Covenant have been inserted solely for convenience of reference and are not part of the Covenant and have no effect on construction or interpretation.

10. **Controlling Law and Venue.** The laws of the State of Wisconsin govern the interpretation and performance of this Covenant. Venue for any action arising out of or in any way related to this Contract shall be exclusively in the Milwaukee of Milwaukee for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising

under federal jurisdiction.

11. Counterparts. Milwaukee 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 Milwaukee and the District with respect to this Covenant and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Covenant.

13. Extinguishment. This Covenant may be terminated or extinguished before the expiration of its term, in whole or in part, through judicial proceedings in a court of competent jurisdiction. The Covenant may also be extinguished if Milwaukee and the District agree that a subsequent unexpected change in the condition of or surrounding the Green Infrastructure makes accomplishing the purpose of the Covenant impossible.

14. Ownership Responsibilities, Costs, and Liabilities. Milwaukee 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. Milwaukee 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 Milwaukee 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. Milwaukee 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, Milwaukee will comply with all applicable federal, state and local laws, regulations, and requirements.

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. Public Records. Both Parties understand that Milwaukee is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Covenant are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 et. sec. The District acknowledges that it is obligated to assist Milwaukee in retaining and producing records that are subject to the Wisconsin Public Records Law, including but not limited to those records produced or collected by the District under this Covenant pursuant to Wis. Stat. sec. 19.36(3) and that the failure to do so shall constitute a material breach of this Covenant, and that the District must defend and hold Milwaukee harmless from liability due to its fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of the expiration of this Covenant.

17. Conflict of Interest. No officer, employee, or agent of Milwaukee who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Covenant pertains, shall have any personal interest, direct or indirect, in this Covenant. No member of the governing body of Milwaukee and no other public official Milwaukee who exercises any functions or responsibilities in the review or approval of the carrying out of this Covenant shall have any personal interest, direct or indirect, in this Covenant. The District covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its duties hereunder. The District further covenants that in the performance of this Covenant no person having any conflicting interest shall be employed. An interest on the part of the District or its employee must be disclosed to Milwaukee.

18. Non-Discrimination. The District agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse of sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories. Milwaukee and the District will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964. The District agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* The District will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Covenant so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

19. Audit. At any time during normal business hours and as often as Milwaukee, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to Milwaukee or such agency for examination all of its

records with respect to all matters covered by this Covenant and the District shall permit Milwaukee or such agency to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Covenant.

20. Successors. This Covenant is binding upon and inures to the benefit of Milwaukee 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 the Covenant.

21. Terms. Wherever used in this Covenant, the terms "Milwaukee" and "District" include the respective personal representatives, heirs, successors, and assigns of Milwaukee and the District.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

**CITY OF MILWAUKEE
DEPARTMENT OF PUBLIC WORKS**

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

By: _____

Date: _____

Date: _____

COUNTERSIGNED:

City of Milwaukee Comptroller
Martin Matson

Approved as to Form

Approved as to Form

Attorney for the District Date

Milwaukee Assistant Attorney Date

Cluster Identification Map

- Project Boundary
- 20 mi ±: Westlawn Gardens
- 20 mi ±: MKE Playlot
- Lincoln Creek
- Villard Ave. Bt
- Tree Planting C

Cluster	Ext
1	15
2	10
3	15
4	6
5	19
6	20
7	25
8	15
9	9
10	3
11	9
12	3
13	10
14	11
15	15
16	48
17	19
18	11
19	29

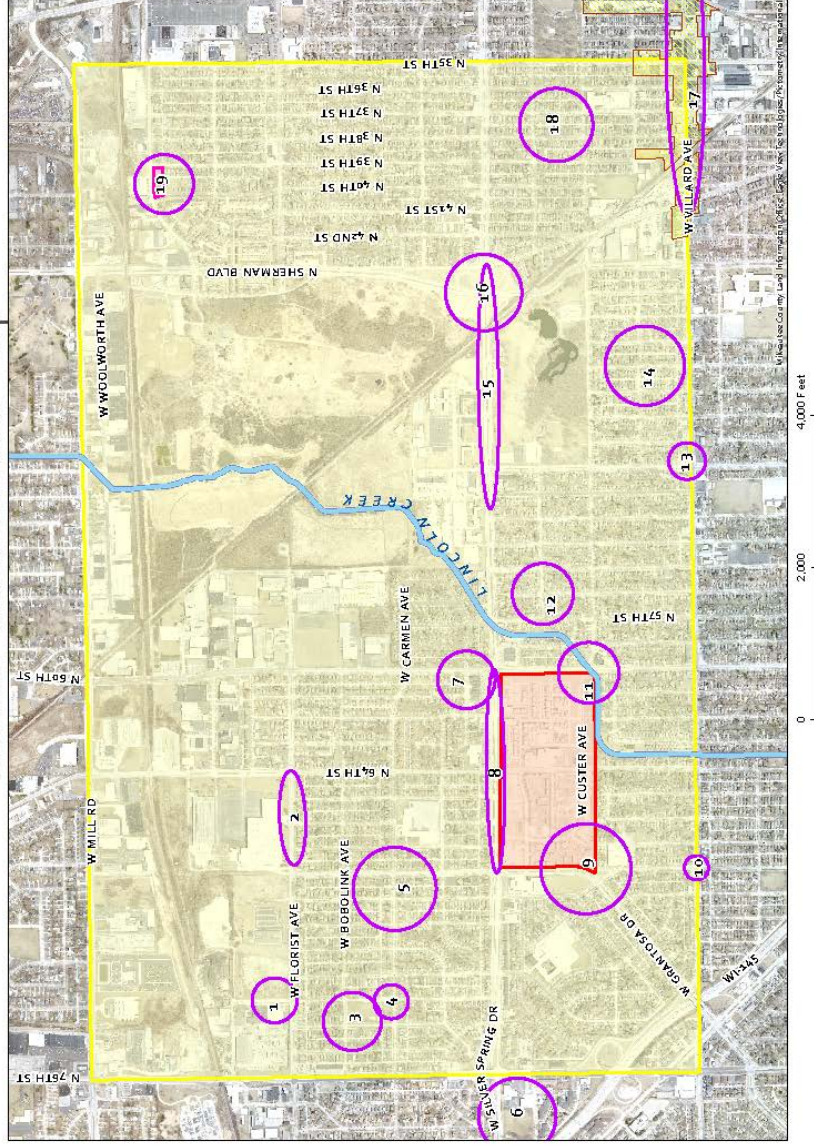


EXHIBIT A

