

COMMISSION FILE NO: 21-091-6 **DATE INTRODUCED:** June 14, 2021

INTRODUCED BY: Executive Director (Signature on File in the Office of the Commission)

REFERRED BY COMMISSION CHAIRPERSON TO: Policy, Finance, and Personnel Committee

RELATING TO: Authorizing the Executive Director to Enter into a Memorandum of Understanding with Miller Compressing Company for the Burnham Canal Wetland Project

SUMMARY:

The Commission is requested to authorize the Executive Director to enter into a memorandum of understanding (MOU) with Miller Compressing Company (Miller) to indicate how the District and Miller will collaborate to support the construction of a wetland in the Burnham Canal (Canal).

ATTACHMENTS: BACKGROUND ☒ KEY ISSUES ☐ RESOLUTION ☒
FISCAL NOTE ☐ S/W/MBE ☐ OTHER ☐ _____

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COMMITTEE ACTION: _____ **DATE:** _____

COMMISSION ACTION: _____ **DATE:** _____

BACKGROUND

Authorizing the Executive Director to Enter into a Memorandum of Understanding with Miller Compressing Company for the Burnham Canal Wetland Project

The Canal is in the City of Milwaukee, on the south side of the Menomonee Valley, 0.4 miles south of the Menomonee River. The Canal branches to the southwest from the Menomonee Canal and then goes west. The Canal is north of West Bruce Street on the Canal's west end and is north of West Virginia Street on the Canal's east end. I-94/I-43 and a railroad bridge cross the Canal at its northeastern end. South 11th Street crosses the Canal near its midpoint. The Canal was constructed in the 1870's and was maintained for commercial use until the 1980's.

The Canal is approximately 3,000 feet long, from 95 to 125 feet wide, and up to 17 feet deep. Navigation is limited by the low clearance under the railroad bridge and the South 11th Street Bridge. Five combined sewer overflow outfalls discharge to the Canal.

Currently, the Canal is contaminated and stagnant. The Canal provides limited fish and wildlife habitat and minimal recreational value. The Canal is part of the Milwaukee Estuary. Degraded fish and wildlife habitat and contaminated sediment have caused the United States Environmental Protection Agency (USEPA) to designate the entire Milwaukee Estuary as an Area of Concern (AOC).

Between South 11th Street and the western terminus of the Canal, Miller is the predominant landowner, with land on the north, west, and south banks. Along the remainder of the Canal, several other landowners are present. Miller intends to continue its current metals recycling operations.

The District and Miller have been discussing a wetland project for the Canal since 2010. The District and Miller executed an MOU in 2015. Funding, regulatory, and technical complexities prevented progress. The 2015 MOU has expired; however, both the District and Miller have continued to work to resolve the many challenges of this project.

Currently, a negotiated agreement with the Wisconsin Department of Natural Resources (WDNR) obligates Miller to place an aggregate cap over contaminated sediment in the Canal west of 11th Street, remove and replace contaminated soil at the west end of the Canal, take other remedial action, provide financial assurance against remedy failure, and provide long-term care. To provide additional protection to the aggregate cap and facilitate the District's construction of a wetland west of South 11th Street, Miller is adding a "voluntary betterment" of up to five feet of aggregate fill material above the required aggregate cap. For this work, Miller commenced construction in 2020 and will complete construction in 2021.

BACKGROUND (Cont'd)

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Long-term care is likely to include visual inspections, surveys of the bottom of the Canal, and any needed repairs. In the absence of a wetland, long-term care may extend for up to 30 years. WDNR will specify long-term care after the aggregate cap and voluntary betterment are complete and a period for an initial performance evaluation.

To transform the Canal into an attractive and productive wetland, the District has developed a design for a wetland in the Canal. This wetland would extend from the west end of the Canal to the west side of the I-94/43 overpass on the east. Wetland construction would occur in two phases. The first phase is construction of a wetland base. West of South 11th Street, Miller's voluntary betterment would be the wetland base. East of South 11th Street, the District would construct and pay for the wetland base. After allowing the wetland base to stabilize, which may require up to five years, the District would construct the wetland over the entire Canal.

From WDNR, the District has obtained funding to construct the wetland base east of South 11th Street. The strong interest from WDNR and USEPA in supporting remedial action in the Milwaukee Estuary AOC increases the probability that funding will be available for wetland construction.

The proposed MOU establishes a framework for collaboration between Miller and the District. Further detailed negotiations will be necessary after WDNR has defined long-term care requirements and the District has completed plans, specifications, and a schedule for wetland construction. Importantly, wetland construction is likely to eliminate long-term care requirements for the aggregate cap.

In general, Miller and the District have the following responsibilities under the MOU. Miller will:

- Complete construction of the aggregate cap, voluntary betterment, west end upland remedial action, and other work required by the negotiated agreement;
- Provide financial assurance for the remedial action;
- Pay the District an amount to cover long-term care for the aggregate cap and west end upland remedial action;
- Provide to the District access to Miller's land for long-term care, wetland construction, and wetland maintenance; and
- Provide to the District real estate rights in the Canal needed to construct the wetland for the areas owned by Miller.

BACKGROUND (Cont'd)

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The District will:

- Provide long-term care for the aggregate cap and west end upland remedial action;
- Manage design, permitting, and construction of the wetland base east of South 11th Street;
- Seek funding for wetland construction from WDNR, USEPA, and others; and
- After funding is obtained, manage design, permitting, construction, and maintenance of the wetland.

RESOLUTION

Authorizing the Executive Director to Enter into a Memorandum of Understanding with
Miller Compressing Company for the Burnham Canal Wetland Project

RESOLVED, by the Milwaukee Metropolitan Sewerage Commission, that the Executive Director is authorized to enter into a memorandum of understanding with Miller Compressing Company for the Burnham Canal Wetland Project.