



## COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

*Please complete a form for each new proposal review request.*

**Work Proposal Name:**

MMSD Honey Creek Easement

**Date of Request:**

1/10/22

**Requesting Department:**

Parks

**Department Contact Name:**

Erica Goblet

**High Org:**

900

**Low Org:**

9000

**Approval Signature of Department Head:**
*Guy Smith*

### DESCRIPTION

**Please provide a detailed description of the request:**

Grant a permanent non-exclusive easement to Milwaukee Metropolitan Sewerage District (MMSD) so that MMSD can preserve the habitat and flood management features in the Honey Creek after completion of a project with MMSD and the Department of the Army to improve the Honey Creek through concrete removal and habitat restoration.

**How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?**

This \$14 million project is being completed at no cost to the County except for in-kind contributions. Water quality and habitat will be improved. The easement allows MMSD to carry out the ongoing responsibilities of the non-federal partner.

**How does this proposal align with the County's objectives on racial equity?**

Please see the County's Vision/Mission/Values and strategic focus areas attached

1C: The construction for this project will include Targeted Business Enterprises.
2A: By leveraging other funding sources for this project Parks is able to improve the environment while conserving resources to continue advancing health equity across the county.
2C: The Honey Creek Parkway is a major component in the bicycle connector routes between county areas north and south of I-94. Participating in the removal of concrete channels and naturalization of Honey Creek's bank will greatly benefit recreational use of the trail and an opportunity for residents south of I-94 around Wisconsin State Fair Park access to safe fishing and other water recreation.
3A: One root cause of health disparities is environmental. This project addresses the health of the community's waterways.
3B: Leveraging federal and MMSD dollars to reduce flood risks, improve water quality, and address habitat restoration improves the fiscal health and sustainability of the County.
**Desired Timeline:**
**Begin Date:**

2/1/22

**End Date:**

2/1/27

**Duration:**

five years

**Anticipated Funding Source (check all that apply and include amount allocated under each category):**
**Operating Budget:**
**Capital Budget:**
**Other (i.e. grants, donations, etc.; please describe):**
**Request Involves:**
☒ **Parks Property**
☐ **BHD Property**

# The Basics



## Vision

By achieving  
racial equity, Milwaukee  
is the healthiest County  
in Wisconsin

## Mission

We enhance quality of life through great  
public service

## Values

Inclusion

Seek diverse  
perspectives

Influence

Use your power for  
good

Integrity

Do the right thing

# Strategic Focus Areas



## 1. Create Intentional Inclusion

1A: Reflect the full diversity of the County at every level of County government

1B: Create and nurture an inclusive culture across the County government

1C: Increase the number of County contracts awarded to minority and women-owned businesses

## 2. Bridge the Gap

2A: Determine what, where and how we deliver services based on the resolution of health disparities

2B: Break down silos across County government to maximize access to and quality of services offered

2C: Apply a racial equity lens to all decisions

## 3. Invest in Equity

3A: Invest “upstream” to address root causes of health disparities

3B: Enhance the County’s fiscal health and sustainability

3C: Dismantle barriers to diverse and inclusive communities



## COUNTY FACILITIES PLANNING WORK INITIATION REQUEST DETERMINATION

### CFPSC ACTION FOR CFPSC USE ONLY

CFPSC Project Tracking #:

**TYPE OF REQUEST** (Refer to paragraph 4.3 of the CFPSC charter for more details)

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> 1. Asset Management | <input type="checkbox"/> 2. Move Management         | <input type="checkbox"/> 3. Facility Improvements                                 |
| <input type="checkbox"/> 4. New Footprint    | <input type="checkbox"/> 5. Contractual Obligations | <input type="checkbox"/> 6. Centralized Facilities Management Process Improvement |

CFPSC Review Comments:

### FOR EASEMENTS ONLY

Reviewed & Recommended for Approval:

DAS — FM, AE&ES (Legal Description)

Director, DAS

Corporation Counsel

*Note:*

1. Easements affecting lands zoned "Parks" require County Board approval.
2. Forward a copy of the recorded easement to AE&ES.

### CFPSC RECOMMENDATION

The County Facilities Planning Steering Committee reviewed this proposal on . As evidenced by the authorized signature below, the County Facilities Planning Steering Committee approval of this proposal.

Chair or Vice-Chair:

Date:

*County Facilities Planning Steering Committee*

Permanent Easement

Milwaukee County grants this permanent non-exclusive easement to the Milwaukee Metropolitan Sewerage District (District).

Exhibit A describes the property subject to this easement. Exhibit B provides maps showing the locations of the property.

According to a Project Partnership Agreement dated \_\_\_\_\_ (USACE Agreement), Milwaukee County and the District were local partners with the U.S. Army Corps of Engineers for the Honey Creek Section 206 Aquatic Ecosystem Restoration Project (the Project). The USACE Agreement required funding from the local partners. The District provided this funding.

To indicate how they would collaborate to support the USACE Agreement, Milwaukee County and the District executed an Intergovernmental Cooperation Agreement with an effective date of \_\_\_\_\_

(Honey Creek ICA). The Honey Creek ICA is in Exhibit C

Exhibit D provides maps showing the areas where either Milwaukee County or the District are responsible for maintenance and management.

Recording Area	
Name and Return Address	Real Estate Department Milwaukee Metropolitan Sewerage District 260 West Seeboth Street Milwaukee, Wisconsin 53204 Attention: Michael Hirsch
Parcel Identification Numbers:	3700501006, 3710081000, 3820054001, 3820055001, 3820071000, 3820075000, 3820090000, 3820105000, 3830220000, 3830252003, 3830253004, 3830364000, 4070004000, 4070604100, 4079991110

Milwaukee County grants this easement as part of the consideration for the funding provided by the District to support the USACE Agreement and the terms and conditions of the Honey Creek ICA.

- 1. **Grant of Interests.** Milwaukee County grants to the District the easement interests necessary to comply with the USACE Agreement and the Honey Creek ICA.
- 2. **Effective Date:** This easement is effective when it is recorded with the Milwaukee County Register of Deeds. This easement is permanent, unless amended according to paragraph 6.

- 3. Recording.** The District will record this easement and any amendments at the District's expense.
- 4. Enforcement.** The District may take any action necessary to prevent any activity on or use of the property that is inconsistent with the purpose of this easement. The District may require the restoration of any area or feature of the property that is damaged by uses prohibited by the terms of this easement.
- 5. Property Transfer.** If Milwaukee County sells or otherwise transfers the property, then this easement will remain with the property, unless otherwise agreed in writing by the Milwaukee Metropolitan Sewerage District.
- 6. Amendments.** Any amendments to this easement must be in writing, signed by both Milwaukee County and the District, and recorded with the Milwaukee County Register of Deeds.

## GRANT OF INTEREST TO DISTRICT

As County Executive of Milwaukee County, I execute the foregoing easement and acknowledge the same on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
David Crowley  
County Executive

By: \_\_\_\_\_  
George L. Christenson  
County Clerk

\_\_\_\_\_ Date

## County Corporation Counsel Approval and Authentication

\_\_\_\_\_, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the County Executive and County Clerk and authenticates the signatures according to Wis. Stat. sec. 706.06 so this document may be recorded per Wis. Stat. sec. 706.05(2)(b).

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

State Bar Number: \_\_\_\_\_

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

## ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

As Executive Director of the Milwaukee Metropolitan Sewerage District, I accept the foregoing easement on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Approved as to Form

\_\_\_\_\_  
Attorney of the District

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the person known as \_\_\_\_\_ came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, State of \_\_\_\_\_

My Commission is expires \_\_\_\_\_.

## ATTACHMENTS

EXHIBIT A Descriptions of the Properties  
EXHIBIT B Maps Showing the Properties  
EXHIBIT C Honey Creek ICA  
EXHIBIT D Maps Showing Areas of Responsibility



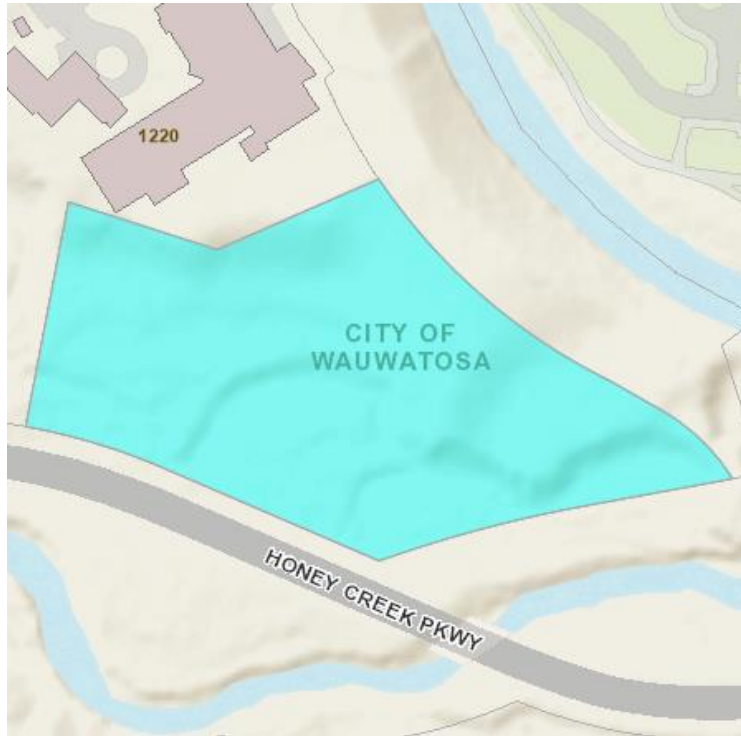


Exhibit A  
DESCRIPTIONS OF THE PROPERTIES

Parcel Identification Number	Description
3700501006	ASSESSOR'S PLAT NO 32, THAT PT OF LOT 3 BLK 2 AS DESC IN DOC # 09179017 2006
3710081000	ASSESSORS PLAT 18 LOT 12 SE 1/4 SEC 21
3820054001	CENTRAL PARK LOTS 15 TO 23 INCL BLK 3 INCL NLYPT VAC CURRIE AVE ADJ ON S, NE 1/4 SEC 28 2014
3820055001	CENTRAL PARK LOTS 1 TO 10 INCL BLK 4 INCL SLY PT VAC CURRIE AVE ADJ ON N, NE 1/4 SEC 28 2014
3820071000	ASSESSORS PLAT NO 29 LOT 8 & ALL OF VAC GRIDLEY AVE LYING E OF KAVAN AUGH PL EXC NW COR THEREOF WH IS 18 FT ON E LI OF KAVANAUGH PL & EXTS E TO INTERS OF E LI OF LOT 2 ASSESS ORS PLAT NO 29 WITH N LI OF GRIDLEY AVE NE 1/4 SEC 28
3820075000	GLENWOOD PARK W 10 FT OF LOT 3 & ALL OF LOTS 4 5 6 7 8 9 10 11 & 12 NE 1/4 SEC 28
3820090000	ASSESSORS PLAT NO 30 LOTS 9 10 11 12 13 & 23 & ALL OF VAC ST LYING BETW LOTS 9 & 10 BLK 2 NE 1/4 SEC 28
3820105000	ASSESSORS PLAT NO 30 LOT 22 BLK 2 NE 1/4 SEC 28
3830220000	FLORDALE LOTS 1 THRU 13 BLK 1 NW 1/4 SEC 27
3830252003	PT OF ASSESSORS PLAT NO 32 LOT 11 BLK 1 NW 29-7-21 LYG SLY OF CENTER THREAD OF THE MENOMONEE RIVER 2017
3830253004	ASSESSOR'S PLAT NO 32 LOT 2 BLK 2 27-7-21 EXC PT LYING N OF CENTER THREAD OF MENOMONEE RIVER 2017
3830364000	WELLAUER HEIGHTS LOT 21 BLK 1 NW 1/4 SEC 27
4070004000	ASSESSORS PLAT NO 36 LOTS 7 8 9 10 11 & 12 & ALL OF LOT 13 EXC S PART THEREOF FOR ST SE 1/4 SEC 28
4070604100	PLEASANT PARK IN SE 1/4 SEC 28-7-21 BLOCK 2 (LOTS 1 & 2 BLK 2 & PART LOT 1 BLK 1 & HONEY CREEK RUNNING SLY & WLY ADJ BLKS 1 & 2) EXC ST & PART (LOTS 5 & 6) BLK 1 & LOTS 6 THRU 17 & PART VAC N 79TH & 80TH STS ADJ
4079991110	LANDS IN SE 1/4 SEC 28-7-21 COM S LI & 514.92' E OF SW COR SD 1/4 SEC-TH E 355.04'-TH NLY ALG CUR 818.17'-TH E 306.40'-TH N 151.40'-TH E 30'-TH N 488.15'-TH NWLY 219.82'- TH SWLY ALG CUR 292.48'-TH NWLY 117.93'-TH SLY ALG CUR 1112.49'-TH SELY 70'-TH SLG ALG CUR 270' TO PT OF COM

**Exhibit B**  
**MAPS SHOWING THE PROPERTIES**

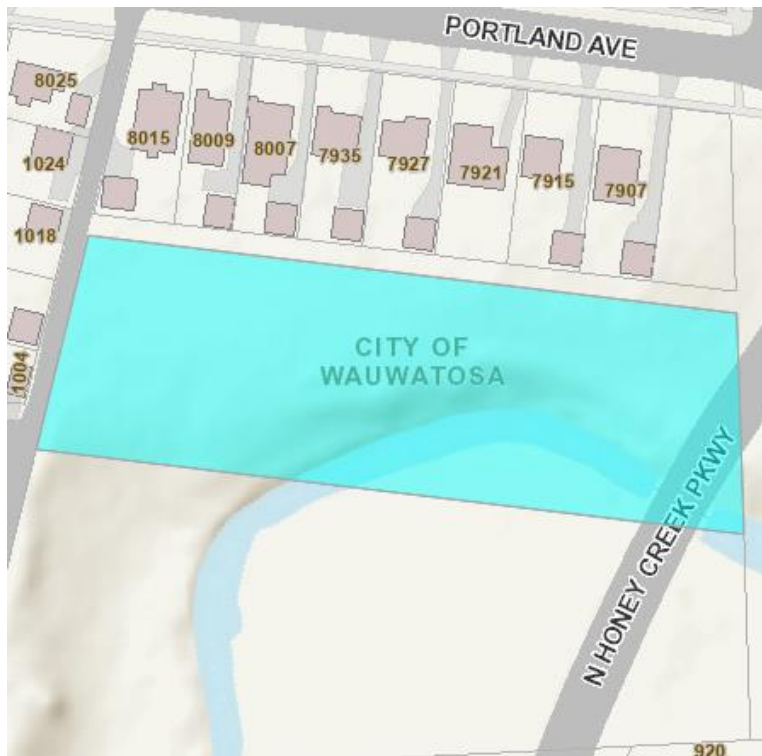
**Parcel 3700501006**



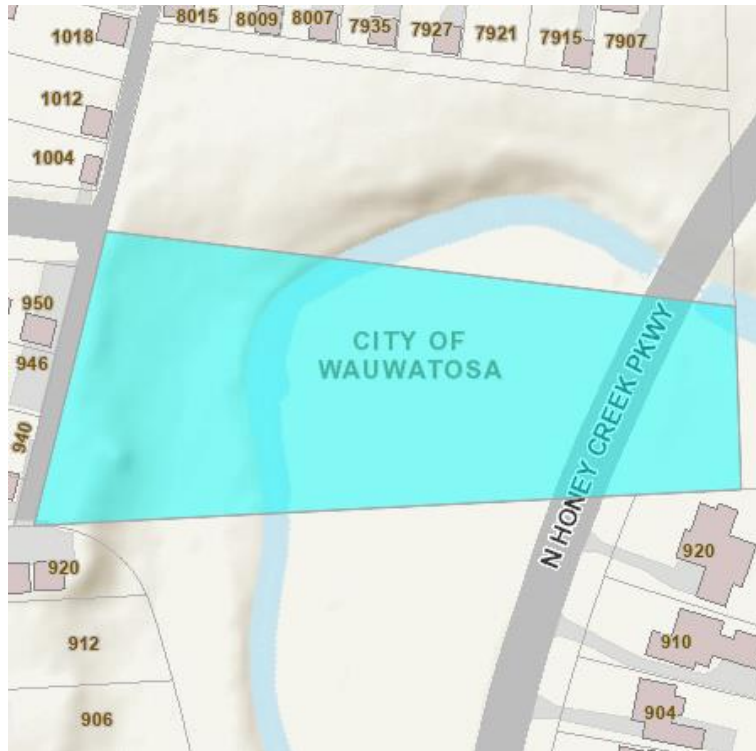
**Parcel 3710081000**



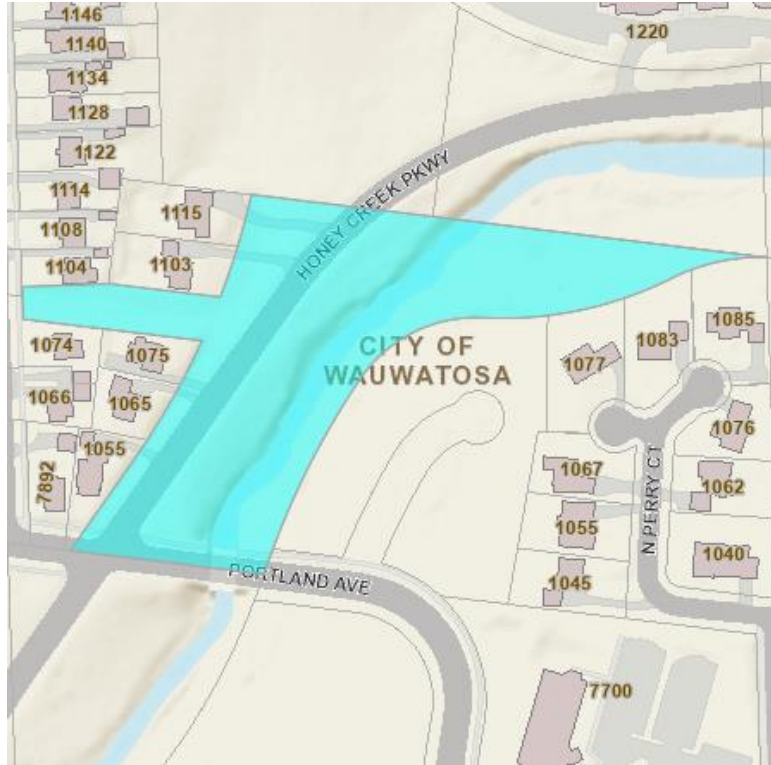
**Parcel 3820054001**



**Parcel 3820055001**



**Parcel 3820071000**



**Parcel 3820075000**



**Parcel 3820090000**

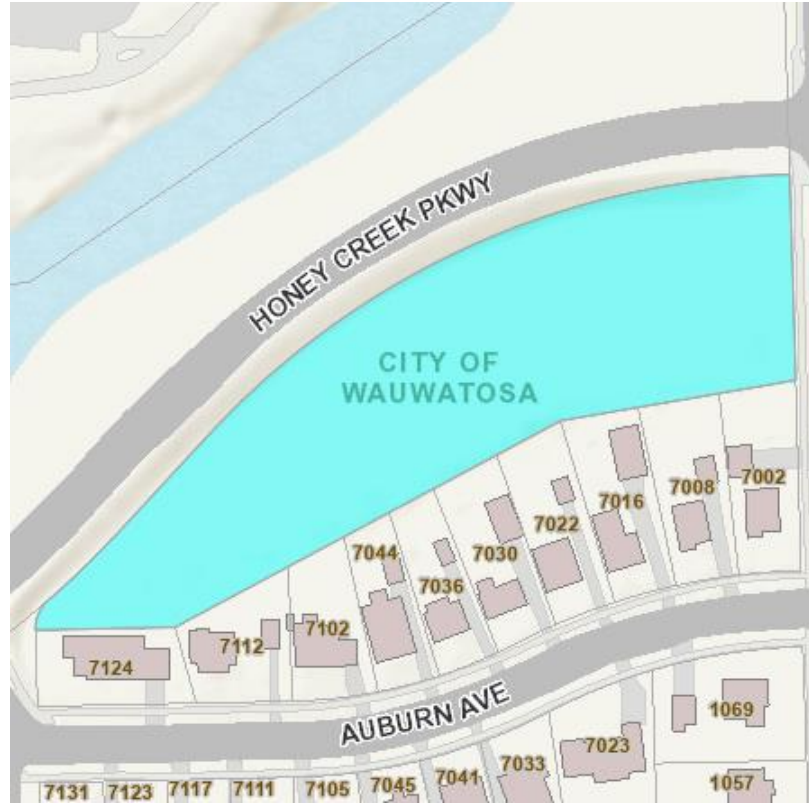


**Parcel 3820105000**



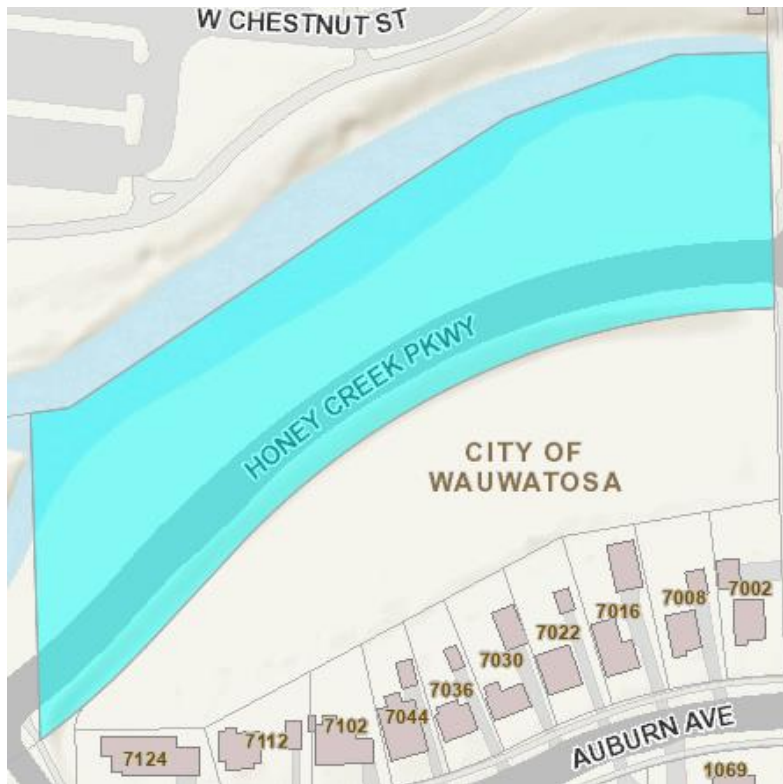


**Parcel 3830220000**

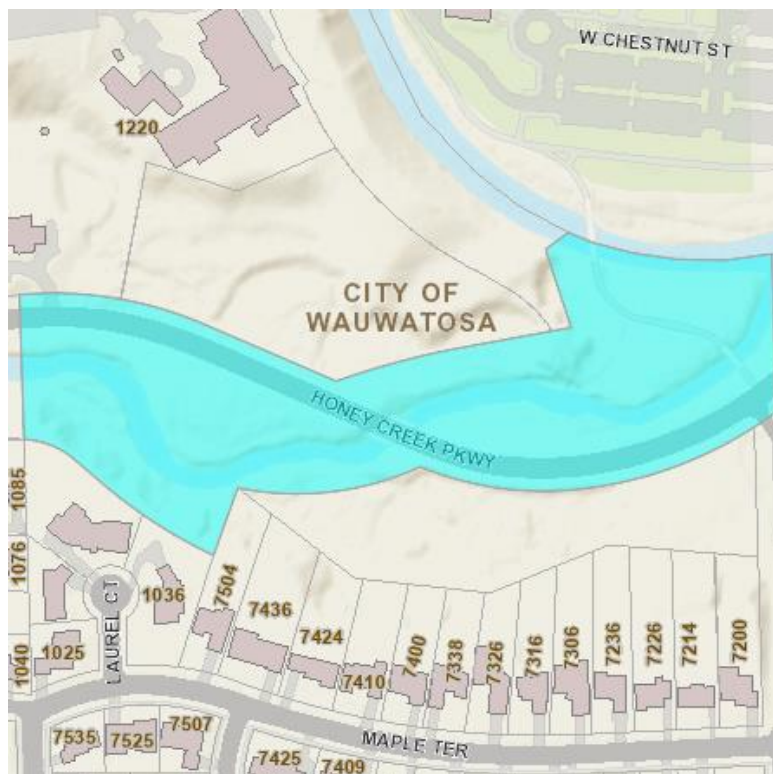


**Parcel 3830252003**

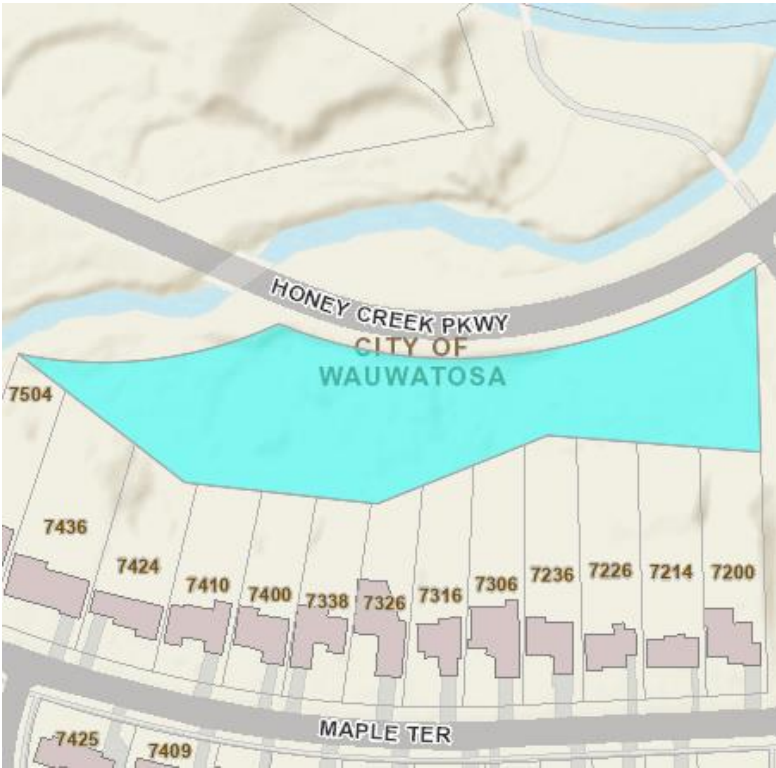




**Parcel 3830253004**



**Parcel 3830364000**



Parcel 4070004000







Exhibit C  
HONEY CREEK ICA

Exhibit D  
MAPS SHOWING AREAS OF RESPONSIBILITY

**Agreement between the  
Milwaukee Metropolitan Sewerage District  
and  
Milwaukee County  
for the  
Honey Creek Flood Management and Habitat Restoration Project**

**1. The Parties**

This Agreement (Agreement) is between the Milwaukee Metropolitan Sewerage District (District), acting through its Executive Director, and Milwaukee County (County), acting through its Executive Director of Milwaukee County Parks.

**2. Effective Date**

This Agreement becomes effective upon execution by the District and the County.

**3. Purpose**

The purpose of this Agreement is to identify the responsibilities of the District and the County for a habitat restoration project to be performed by the United States Army Corps of Engineers (USACE) on Honey Creek, as described in sec. 5 and Figure 1 (the Project).

**4. Background**

- A. Honey Creek is tributary to the Menomonee River. Generally, it flows from south to north, joining the Menomonee River west of North 70<sup>th</sup> Street in the City of Wauwatosa.
- B. In the project area, Honey Creek is within Honey Creek Parkway, which is owned by Milwaukee County Parks.
- C. The project area includes approximately 9,300 feet of creek channel, going upstream from the confluence with the Menomonee River.
- D. Historically, both the County and the District constructed concrete channel in the project area. The total length of concrete channel is 6,700 feet, with 5,560 feet constructed by the District and 1,140 feet constructed by the County. The concrete channel is at least 50-years old and is structurally deficient. The concrete channel causes dangerously high flow velocities at flood stages. These high velocities destabilize the banks and cause erosion where the concrete channel is not present. Also, the concrete channel provides minimal habitat for fish and wildlife.
- E. In the 1930s, the Works Progress Administration constructed masonry block walls in the project area. Now, wall condition ranges from being structurally deficient to complete failure. Also, areas behind the walls are eroding in many locations.

- F. The District is undertaking a comprehensive program to address flood risks and improve habitat within the Menomonee River watershed, pursuant to its authority under Wis. Stat. sec. 200.35(8).
- G. At the District's request, USACE prepared a Honey Creek Aquatic Restoration Study Draft Integrated Feasibility Report and Environmental Assessment (2021). This report evaluated options for restoring fish and wildlife habitat and provided a recommended plan.
- H. USACE has funding available for the Project under Section 206 of the Water Resources Development Act of 1996. This funding will cover 65% of project costs, with one or more non-Federal Sponsors providing the remaining funding. USACE is willing to undertake the Project with the County and the District as non-Federal sponsors, according to the Project Partnership Agreement.
- I. The County supports the removal of concrete channels and walls that are structurally deficient and the restoration of the aquatic ecosystem of Honey Creek.
- J. The final as-built design of the Project will determine where and what maintenance or management is needed to preserve the habitat and flood management features of the Project.

## **5. The Project**

### **A. The Project will**

- (1) remove approximately 6,700 feet of existing concrete channel owned by both the District and the County. Concrete channel near bridges will remain;
- (2) construct a naturalized channel that improves aquatic habitat;
- (3) remove invasive species in riparian upland areas;
- (4) establish native species in riparian upland areas;
- (5) provide a flood conveyance channel that accounts for increased water-surface elevations caused by removal of the concrete channel;
- (6) provide a low-flow channel that is sized to transport the upstream and tributary sediment supply, is hydrologically connected to the floodplain, and is vertically and laterally stable;
- (7) to the extent possible, preserve existing high-quality habitat and mature trees; and
- (8) relocate utilities, primarily storm sewer outfalls, as needed for the channel improvements.

### **B. The Project will not include storage basins.**

### **C. USACE will perform or contract for design and construction. USACE will select a contractor or contractors using public bidding procedures in compliance federal regulations. Work on County Land will occur only after contractors receive a Right of Entry Permit from the County.**



- D. After consultation with County, USACE will be the sole authority to issue substantial completion for all work.
- E. Areas vegetated with turf grass will not be considered completed until the vegetation has been established.

## **6. District Responsibilities**

The District will:

- A. be a non-Federal Sponsor;
- B. negotiate and execute a Project Partnership Agreement with USACE;
- C. make all payments required by the Project Partnership Agreement for the non-federal share of project costs;
- D. pay its own internal labor and expenses for planning, financing, and management of the Project;
- E. restore staging areas to preconstruction condition or better, according to County specifications, if not restored by USACE or its contractors;
- F. in coordination with USACE, perform all environmental remediation and prepare all required reports to the Wisconsin Department of Natural Resources (WDNR), if soil or groundwater contamination is encountered during the Project;
- G. provide public outreach and opportunities for public input in collaboration with the County throughout the Project;
- H. be responsible for obtaining any Federal, state, or local permits required for the Project, other than the County Right of Entry Permit if obtained by USACE or its contractors;
- I. in all non-turf areas, maintain vegetation as necessary to achieve USACE habitat goals for the Project, consistent with any management plans provided by the USACE and the District's standard practices for managing invasive species and native landscaping.
- J. maintain the floodplain channel consistent with USACE floodplain goals for the Project and the District's standard practices for channel maintenance of non-turf areas. The District will not:
  - (1) maintain Works Progress Administration (WPA) era walls or channels, other walls, streetlights, roads, signs, fences, railings, sidewalks, or recreational trails;
  - (2) remove woody vegetation that does not cause or exacerbate flooding; or

(3) remove trash or snow.

- K. prepare maps showing the turf areas to be maintained by the County and the non-turf areas to be maintained by the District. The District will prepare these maps based upon as-built conditions at the conclusion of the Project. The District will include these maps in the easement prepared according to par. L
- L. prepare an easement in which the County will grant interests to the District as necessary to achieve the goals of the Project and this Agreement, as described in sec. 8.

## **7. County Responsibilities**

The County will:

- A. be a non-Federal Sponsor;
- B. negotiate and execute a Project Partnership Agreement with USACE;
- C. promptly issue Right of Entry Permits to the District, USACE, and their contractors. The County will provide these Right of Entry Permits at no cost to the District, USACE, and their contractors. If the project is phased, then the County will issue sequential permits and none of these permits will have a fee;
- D. provide the District, USACE, and their contractors access to Honey Creek Parkway as necessary for design and construction, after issuing a Right of Entry Permit;
- E. not be responsible for any payments to the USACE;
- F. provide input throughout the Project, including prompt reviews of design and construction documents;
- G. cooperate with the District, USACE, and their Contractors to determine the sites to be used for construction staging;
- H. cooperate with the District to prepare any reports to the WDNR regarding environmental contamination;
- I. allow the District to enter the project area at no cost to perform the maintenance described in sec. 6.I and 6.J.
- J. perform all property maintenance other than the District maintenance described in pars. 6.I and J, including, but not limited to, maintenance of turf, Works Progress Administration (WPA) era walls and channels, other walls, streetlights, roads, signs, fences, railings, sidewalks, and recreational trails. The County may remove woody vegetation that does not cause or exacerbate flooding and remove trash and snow; and

K. grant a permanent easement to the District at no cost to the District, as described in sec. 8.

## **8. Grant of Real Estate Interests to the District**

- A. Milwaukee County will grant a permanent easement to the District at no additional cost. This easement will allow the District to preserve the habitat and flood management features of the Project and allow the District to enter the project area at no cost for floodplain channel maintenance, invasive species management, and maintenance of native landscaping.
- B. Milwaukee County will provide the fully executed easement to the District when executing this Agreement.
- C. The District will prepare attachments to the easement to identify the areas where District access is required and the type of maintenance or management activities to be performed. The District will collaborate with Milwaukee County to prepare these attachments.
- D. The District will hold the executed easement in escrow until substantial completion of the Project and the District has completed the attachments.
- E. After completion of the attachments, the District will record the easement with the attachments at the District's expense.

## **9. Communication Between the Parties**

- A. The District and the County will frequently communicate throughout the Project. The District and the County will give each other opportunities to provide comments on reports and participate in meetings.
- B. The District and the County will each provide a designated representative for the purpose of making and receiving communications from the other Party during the Project. Designated representatives may change as the Project proceeds from planning, to design, to construction, and finally to post-construction.
- C. Initial designated representatives

(1) The District will provide notices to:

Guy Smith, Executive Director  
Milwaukee County Parks  
9480 Watertown Plank Road  
Wauwatosa, Wisconsin 53226  
guy.smith@milwaukeecountywi.gov  
414-254-5691

(2) The County will provide notices to:

Mark Mittag, Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street Milwaukee, Wisconsin 53204-1446  
mmittagt@mmsd.com  
414-225-2147

## **10. Rights of the Parties**

The County:

- A. grants to the District only the rights specifically stated in this Agreement;
- B. retains all other rights of use so long as the District can fulfill its duties and responsibilities;
- C. retains the right to grant access to third parties for non-conflicting purposes;
- D. retains the right to have the area open to the public for use and enjoyment except as necessary for safety or security; and
- E. must review any proposal to exclude the public from any area. Any exclusion is ineffective until approved by the County.

## **11. Suitability of County Land for the Project**

The County makes no representation regarding:

- A. the suitability of the land for the Project. The District assumes full responsibility and cost to make the land suitable for the Project.
- B. any conflicting existing use. The District will resolve at its cost any conflicting use.
- C. environmental conditions. The District is fully responsible for any remediation work necessary to complete the Project.

## **12. Contingencies**

District performance is contingent upon approval by the Metropolitan Sewerage Commission for actions needing approval, including budget and contract authorization.

## **13. Modifying this Agreement**

Any modification to this Agreement will be in writing and signed by both Parties.

#### **14. Severability**

If a court finds any part of this Agreement unenforceable, then the remainder of this Agreement continues in effect.

#### **15. Applicable Law**

The laws of the State of Wisconsin apply to this Agreement.

#### **16. Resolving Disputes**

If a dispute arises under this Agreement, then the Parties will try to resolve it with the help of a mutually acceptable mediator in Milwaukee County. The Parties will equally share any costs and fees associated with the mediation, other than attorney fees. If the dispute is not resolved within 30 days after the Parties refer it to a mediator, then either Party may take the matter to court. Venue in any action brought under this Contract is proper only in the Circuit Court for Milwaukee County.

#### **17. Independence of the Parties**

This Agreement does not create a partnership. Neither Party may enter into contracts on behalf of the other Party.

#### **18. Authority of Signatories**

Each person signing this agreement certifies that the person is properly authorized by the Party's governing body to execute this Agreement.

#### **19. General Indemnification**

To the fullest extent permitted by law, the District will indemnify the County for and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers compensation claims, which arise out of or are in any manner connected to the Project, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the District, its agents, or employees. At its own expense, the District will investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action. The County's liability will be limited by Wis. Stats. sec. 345.05(3) for automobile and for sec. 893.80(3) general liability.

#### **20. Environmental Indemnification**

- A. To the fullest extent provided under any environmental laws, rules and regulations, the District is responsible for any required repair, cleanup, remediation or detoxification arising from: (a) any hazardous materials brought onto or introduced into the Project or surrounding areas by the District or its agents or (b) hazardous materials whose presence pre-exists the

commencement of any improvements made by the District, located in the Project area, that are discovered or disturbed as a result of the District's activities connected to the Project.

- B. For this section, "hazardous materials" means any substance: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation, ordinance, or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which on lands within the project limits causes or threatens to cause a nuisance upon the project limits or surrounding area or poses or threatens to pose a hazard to the project limits or surrounding areas or to the health or safety of persons on or about the project limits; or (v) which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation; or (vii) which causes notification of release and required actions in accordance with Chapter 292 Wisconsin Statutes..

## **21. Insurance**

As a special purpose municipality with authority to levy taxes, the District is self-insured for general liability and workers compensation under Wis. Stat. secs. 102, 893.80, and 895.46(1).

**MILWAUKEE METROPOLITAN  
SEWERAGE DISTRICT**

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

Date: \_\_\_\_\_  
Approved as to form

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

**MILWAUKEE COUNTY**

By: \_\_\_\_\_  
Guy D. Smith, CPRP  
Executive Director, Milwaukee County  
Parks

Date: \_\_\_\_\_  
Approved for Execution

\_\_\_\_\_  
Attorney for Milwaukee County  
Approved as compliant per Wis. Stat. sec.  
59.42(2)(b)5.

\_\_\_\_\_  
Corporation Counsel  
Reviewed by:

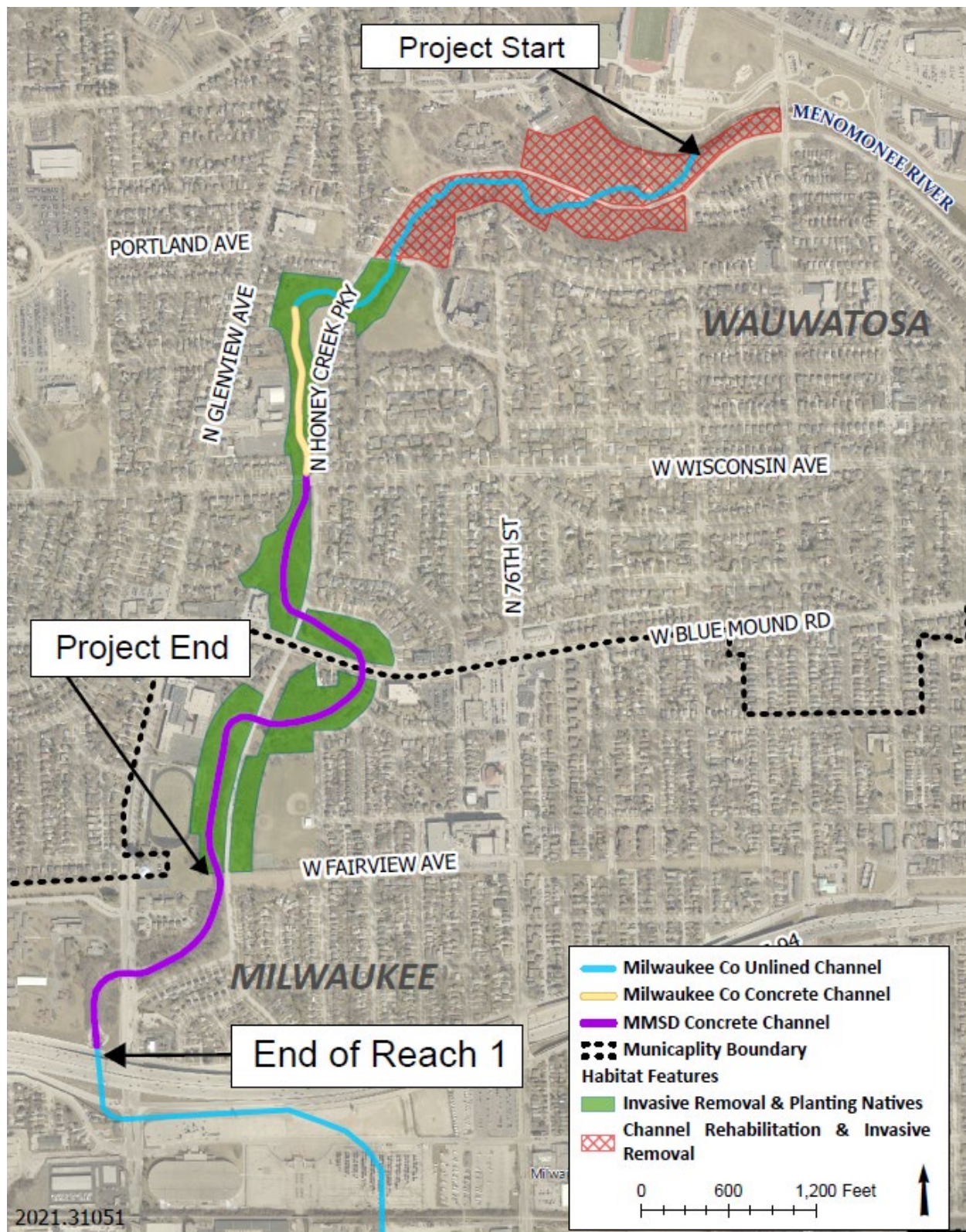
\_\_\_\_\_  
Risk Management  
Approved as to funds available per Wis. Stat.  
sec. 59.255(2)(e).

\_\_\_\_\_  
Comptroller  
Approved

\_\_\_\_\_  
County Executive  
Approved with regards to County Ordinance  
Chapter 42

\_\_\_\_\_  
Community Business Development Partners

Figure 1  
Location of the Project





PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT  
AND  
MILWAUKEE COUNTY, WISCONSIN  
FOR  
THE HONEY CREEK  
SECTION 206 AQUATIC ECOSYSTEM RESTORATION PROJECT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Chicago District, and the Milwaukee Metropolitan Sewerage District, represented by its Executive Director and Milwaukee County, Wisconsin, represented by its **[INSERT TITLE]** (hereinafter the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, Section 206 of the Water Resources Development Act of 1996, as amended (33 U.S.C. 2330) (hereinafter "Section 206"), authorizes the Secretary to undertake construction of aquatic ecosystem restoration projects not specifically authorized by Congress;

WHEREAS, pursuant to the authority provided in Section 206, design and construction of the Honey Creek Section 206 Aquatic Ecosystem Restoration Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was approved by the District Commander for the Detroit District (hereinafter the "District Commander") on 2 September 2021;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Non-Federal Sponsors have waived reimbursement for the value of real property interests and relocations that exceeds 35 percent of construction costs;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 206 may not exceed \$10,000,000; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term “Project” means concrete channel removal, geomorphic contouring, channel restoration, invasive species eradication, and native plant community establishment, as generally described in the Honey Creek Aquatic Ecosystem – Section 206 WRDA 1996 Integrated Feasibility Report & Environmental Assessment, dated 2 September 2, 2021 and approved by the District Commander on 2 September 2021 (hereinafter the “Decision Document”).

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (See 42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsors in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction, including cost shared monitoring and adaptive management, if any; the Government’s supervision and administration costs; the Non-Federal Sponsors’ creditable costs for providing real property interests and relocations and for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and Non-Federal Sponsors in the Project Coordination Team to discuss significant issues and actions; or audits; or the Non-Federal Sponsors’ cost of negotiating this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Chicago District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

G. The term “cost shared monitoring” means those activities, including the collection and analysis of data, for a period not to exceed 10 years, that the Government identifies as necessary to determine if predicted outputs of the Project are being achieved and to determine if adaptive management is necessary, as generally described in the Decision Document. The term does not include monitoring after the District Commander has determined that ecological success has been achieved or monitoring beyond the 10-year period, with any such monitoring the responsibility of the Non-Federal Sponsors, at no cost to the Government.

H. The term “cost shared adaptive management” means physical modifications to the Project, in response to the cost shared monitoring results to ensure the functionality and benefits of the Project are garnered, as explicitly described in the performance standards section of the adaptive management plan or other sections in the Decision Document. The term does not include operational changes, which are the responsibility of the Non-Federal Sponsors, at no cost to the Government, as part of operation and maintenance of the Project.

I. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsors that are identified as being integral to the Project by the District Commander. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsors to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

J. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

K. The term “Federal Participation Limit” means the \$10,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the Project.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsors. However, if after completion of the design portion of the Project the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.E.

In carrying out its obligations under this Agreement, the Non-Federal Sponsors shall comply with all requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsors shall contribute 35 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsors shall provide the real property interests and relocations required for construction, operation, and maintenance of the Project.

2. In providing in-kind contributions, if any, the Non-Federal Sponsors shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsors shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsors shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the estimated amount of credit that will be afforded to the Non-Federal Sponsors pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsors to meet their 35 percent cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.

4. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsors with a written estimate of the full amount of funds required from the Non-Federal Sponsors during that fiscal year to meet their cost share. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government in accordance with Article VI.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall

be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsors from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, excluding cost shared monitoring and adaptive management, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsors in writing and the Non-Federal Sponsors, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work. The Government shall provide the Non-Federal Sponsors with an updated OMRR&R Manual and as-built drawings, as necessary, based on the cost shared monitoring and adaptive management.

1. The Non-Federal Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government in the OMRR&R Manual. The Government and Non-Federal Sponsors shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsors now or hereafter own or control to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsors are failing to perform their obligations under this Agreement and the Non-Federal Sponsors do not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsors of their obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. The Non-Federal Sponsors shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the outputs produced, hinder operation and maintenance, or interfere with the proper function of the Project.

G. The Non-Federal Sponsors shall not use the Project, or real property interests required for construction, operation, and maintenance of the Project, as a wetlands bank or mitigation credit for any other project.

H. The Non-Federal Sponsors shall not use Federal program funds to meet any of their obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsors may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsors' costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

J. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall be responsible for all costs in excess of the Federal Participation Limit.

### ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsors must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition. The Non-Federal Sponsors shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project and, in accordance with Article IV.A., that the real property interests are investigated and that HTRW does not exist in, on, or under the real property interests.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. The Non-Federal Sponsors shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsors written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsors may request in writing that the Government acquire all or specified portions of such real property interests, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsors, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsors except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsors by quitclaim deed or deeds. The Non-Federal Sponsors shall accept delivery of such deed or deeds. The Government's providing real property interests or performing relocations on behalf of the Non-Federal Sponsors does not alter the Non-Federal Sponsors' responsibility under Article IV for the performance and costs of any cleanup and response related thereto.

D. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsors assure that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsors will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

#### ARTICLE IV – HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable laws and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of cleanup and response of the HTRW, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid by the Non-Federal Sponsor without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.



E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

## ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsors' share of such costs, the value of Non-Federal Sponsor provided real property interests and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsors shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsors agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

### 1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsors on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Non-Federal Sponsors provide the Government with authorization for entry thereto shall be used to determine the fair market value. For any real property interests required for in-

kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsors provide the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsors are unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsors the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsors exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsors shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsors shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsors may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsors and releases the Non-Federal Sponsors in writing from their obligation to appraise the real property interest, and the Non-Federal Sponsors submit to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsors determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsors determines that an appraisal is unnecessary, the Non-Federal Sponsors shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsors must offer the owner the option of having the Non-Federal Sponsors appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the incidental costs the Non-Federal Sponsors incur in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D., and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of any relocations performed by the Non-Federal Sponsors that are directly related to construction, operation, and maintenance of the Project.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Wisconsin would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsors' share of such costs, the value of in-kind contributions that are integral the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incur to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsors; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to credit for real property interests and relocations that exceed 35 percent of construction costs or real property interests that were previously provided as an item of local cooperation for another Federal project.

## ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs, excluding cost shared monitoring and adaptive management, are projected to be \$14,332,000, with the Government's share of such costs projected to be \$9,315,800 and the Non-Federal Sponsors' share of such costs projected to be \$5,016,200, which includes creditable real property interests and relocations projected to be \$415,000, creditable in-kind contributions projected to be \$50,000, and the amount of funds required to meet its 35 percent cost share projected to be \$4,551,200. Construction costs for cost shared monitoring and adaptive management are projected to be \$70,000, with the Government's share of such costs projected to be \$45,500 and the Non-Federal Sponsors' share of such costs projected to be \$24,500. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Government shall provide the Non-Federal Sponsors with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsors' estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of any creditable real property interests and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsors during the upcoming fiscal year.

C. The Non-Federal Sponsors shall provide the funds required to meet their share of construction costs by delivering a check payable to "FAO, USAED, Chicago (H6)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' required share of such construction costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds.

E. Upon completion of construction, except for cost shared monitoring and adaptive management, and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the written results of such final accounting. The Government shall conduct another final accounting after completion of cost shared

monitoring and adaptive management and furnish the Non-Federal Sponsors with the written results of such final accounting. Should either final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. A final accounting does not limit the Non-Federal Sponsors' responsibility to pay their share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting after cost shared monitoring and adaptive management determines that funds provided by the Non-Federal Sponsors exceed the amount of funds required to meet their share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund. In addition, if that final accounting determines that the Non-Federal Sponsors' credit for real property interests and relocations, as limited by Article V.D., combined with credit for in-kind contributions exceed its share of construction costs for the Project, the Government, subject to the availability of funds for the reimbursement, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsors.

F. If the Government agrees to acquire or provide, as applicable, real property interests or relocations on behalf of the Non-Federal Sponsors, the Government shall provide written notice to the Non-Federal Sponsors of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Chicago (H6)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

## ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsors in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsors to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to design and construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsors pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsors shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

#### ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and none is to be considered the officer, agent, or employee of the other. No party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Milwaukee Metropolitan Sewerage District :  
Executive Director  
Milwaukee Metropolitan Sewerage District  
260 W Seeboth Street  
Milwaukee, Wisconsin 53204

If to Milwaukee County, Wisconsin  
[TITLE]  
901 N. 9th Street  
Milwaukee, Wisconsin 53233



If to the Government:  
District Commander  
Chicago District  
231 S. LaSalle Street, Suite 1500  
Chicago, Illinois 60604

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other parties in the manner provided in this Article.

#### ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

#### ARTICLE XV – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement,  
which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

MILWAUKEE METROPOLITAN SEWERAGE  
DISTRICT

BY: \_\_\_\_\_

Paul B. Culberson  
Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_

Kevin L. Shafer, P.E.  
Executive Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

MILWAUKEE COUNTY, WISCONSIN

BY: \_\_\_\_\_

NAME  
TITLE

DATE: \_\_\_\_\_

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