

**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 70th 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

