

**MMSD PPII Reduction Program
Approved Contractor MOU
Municipal (M) Program**

This Memorandum of Understanding ("MOU") is entered into by and between the Milwaukee Metropolitan Sewerage District (the "District"), with its principal place of business at 260 West Seeboth Street, Milwaukee, Wisconsin, 53204, and Hoerr Construction, Inc. (the "Contractor") with its principal place of business at 1416 County Road North, Goodfield, IL 61742.

WHEREAS, the District has a Private Property Infiltration and Inflow Reduction municipal program ("Program") that provides reimbursements to municipalities for undertaking work on private properties to reduce the amount of clean water and stormwater entering the District's sewerage system; and

WHEREAS, such work may include, but is not limited to, disconnecting foundation drains and downspouts, rehabilitating or replacing private sewer laterals, and clear water evaluation, as set forth in the Statement of Policy-Milwaukee Metropolitan Sewerage District's Private Property Infiltration and Inflow Reduction Program ("Policy"); and

WHEREAS, to ensure all work done under the Program is effective, the District has established certain quality standards with respect to products and installation methods; and

WHEREAS, the District, through a public procurement process, has established criteria to qualify contractors to undertake work under the Program; and

WHEREAS, Contractor was determined to be eligible to participate in the Program pursuant to the District's Request for Qualifications P-3300 ("RFQ"), and has participated in the District's contractor training session;

NOW THEREFORE, the District and the Contractor agree to the following as it relates to participation in the Program:

1. **TERM.** This MOU shall be effective as of the date of last signature below and shall remain in effect until December 31, 2031, provided Contractor remains in good standing to participate in the Program as set forth herein. Thereafter, the Contractor may be required to re-qualify under a Request for Qualifications process should Contractor wish to continue work under the Program.
2. **CONTRACTOR ELIGIBILITY**
Contractor is eligible to complete the following work types as a TIER 4 contractor under the Program:
 - A. Work Regulated under Wisconsin Administrative Code Chapter NR 110, excavated repair, and/or replacement of sewer/storm/water laterals in the right-of-way and public mainline utility repair
 - B. Internal CCTV Push Camera field inspection with recording capabilities

- C. LETS (Lateral Evaluation Television System) truck mounted inspection of laterals with recording capabilities
- D. NASSCO Certified CCTV inspection of laterals
- E. Sonde locating of laterals
- F. Wet-weather simulation (dye water injection and/or dye water flooding)
- G. Pressure Grouting of sanitary laterals 4" to 8" diameter and/or sanitary lateral connection
 - a. Inflatable T-packer from mainline
 - b. Inflatable packer from manhole/access point
 - c. Pull through packer train through cleanout/access point

3. PROGRAM REQUIREMENTS. Contractor agrees to adhere to the following Program requirements:

- a. Contractor shall be licensed and bonded in the State of Wisconsin and maintain insurance with the minimum coverages as set forth in the application the Contractor submitted for RFQ P-3300. Proof of appropriate licenses, bonding capabilities, and insurance coverages shall be provided to the District upon request.
- b. Contractor shall comply with all applicable laws, ordinances, regulations, and codes.
- c. Contractor will only use those products, techniques, and systems generally available and as defined by Wisconsin Administrative Code Chapters SPS 381, 382, 384, and NR 110 excluding Alternate or Experimental Product Approvals as granted under SPS § 384.10(1) and any products meeting these criteria must be listed on the District's Approved Products List. No "or equal" products will be considered.
- d. Contractor will maintain all certifications, licenses, and trainings as represented in the submitted application for approval for all work types deemed eligible under this MOU.
- e. Contractor will provide all deliverables required pursuant to its contract with the municipality for submission to the District.
- f. Contractor will warranty the work it completes under the Program. The duration of such warranties will be controlled by the particular funding agreement a given municipality will enter into with the District. Such warranties shall be enforceable by the municipality, the applicable property owners, and the District. Contractor shall cooperate with the District to remediate any defects or failures in the work partially or fully funded by the District during the warranty period.
- g. Contractor will provide excellent customer service to the municipality and the participating property owners.
- h. Contractor shall act as a responsible and good faith representative of the municipality and the District when performing work under the Program.
- i. Contractor will be subject to a performance review process set forth in the Policy, and the Contractor Evaluation Process ("CEP").

4. **SUBCONTRACTING.** All work to be completed under a given project's scope of work that falls under the "Work-Types" as listed in Article 2 of this MOU shall be completed by the Contractor.

Notwithstanding the above, the Contractor may subcontract out up to 30% of the value of a given project to another contractor that is found on the Program's Approved Contractors List for work on a given project that the other contractor has Program authority to provide under "Work-Types" that contractor is approved for through the Program. Variances in such subcontract distributions may be adjustable subject to District review and approval.

Contractor may subcontract to a contractor not found on the Program's Approved Contractors List for restoration and electrical work on a given project. Excavation work cannot be subcontracted for. All plumbing work that qualifies for financial incentive shall be completed by the Contractor and is not permitted to be subcontracted out.

5. **REIMBURSEMENTS UNDER THE PROGRAM.** No payments will be made to Contractor under this MOU. All payments to the Contractor participating in the Program will be made by the municipality in accordance with the terms of the contract between the Contractor and the municipality. District reimbursements will only be made to the municipality, provided the municipality has fully complied with the terms of its funding agreement with the District. If the District contracts directly with Contractor, payment shall be made in accordance with the terms of that contract.
6. **PROGRAM MATERIALS.** The municipality (or District) is responsible for the creation and distribution of Program materials. The Contractor is not permitted to use the District's logo, nor is Contractor permitted to create its own materials relating to the Program, nor is Contractor permitted to represent itself as a partner of the District unless expressly authorized to do so by the District in writing. The District will provide informational materials to the Contractor as needed.
7. **DISTRICT OVERSIGHT.** The District reserves the right to conduct inspections of any and all portions of work it funds both during construction and throughout the warranty period.
8. **INDEMNIFICATION.** The Contractor shall indemnify and hold harmless the District, its commissioners, agents, officers, and employees against any and all claims, losses, damages, expenses, fees, costs, and liabilities arising in any way from the Contractor's failure to meet Program requirements, Contractor's failure to properly perform any and all work on a participating property owner's property, and/or Contractor's failure to remain in good standing under this MOU including, but not limited to, failing to provide

deliverables to the municipality, not utilizing the Approved Products List, and/or tarnishing the District's reputation.

9. **AMENDMENT.** Except as outlined below, any modification to this MOU will be in writing and signed by both the District and the Contractor. The District may make changes to Article 2, Contractor Eligibility without Contractor's consent, provided such changes were determined in accordance with the CEP performance review.
10. **SEVERABILITY.** If a court of competent jurisdiction finds any part of this MOU unenforceable, the remainder of this MOU shall continue in full force and effect.
11. **APPLICABLE LAW AND VENUE.** The laws of the State of Wisconsin shall apply to this MOU. Any disputes arising under this MOU shall be brought either in Milwaukee County Circuit Court or the United States District Court for the Eastern District of Wisconsin.
12. **CONFLICTS OF INTEREST.** No officer, employee, or agent of the District or the Contractor who has the responsibility of implementing this MOU may have any interest in any residential property owner benefitting from the Program supported by this MOU.
13. **TERMINATION FOR CAUSE.** The District may terminate this MOU for cause and immediately remove the Contractor from the Approved Contractor List. Whether the District has cause to terminate shall be determined in accordance with the CEP performance review. Upon termination for cause, the Contractor will remain ineligible to submit a proposal under any future RFQ's concerning the Program for a period of three years from the date of termination.
14. **TERMINATION FOR CONVENIENCE.** The Contractor may elect to terminate this MOU at any time by providing 10 days written notice to the District. Upon termination, Contractor shall be immediately removed from the Approved Contractor List. In the event that the Contractor elects to terminate this MOU for convenience, it shall fully complete any work currently in process for a property owner under the Program.
15. **INDEPENDENCE OF THE PARTIES.** This MOU does not create a partnership. Neither party may contract on behalf of the other party.
16. **AUTHORITY OF SIGNATORIES.** Each person signing this MOU certifies that the person is properly authorized by the party's governing body to execute this MOU.
17. **ASSIGNMENT.** Contractor may not assign any rights or obligations under this MOU without prior written approval by the District.

18. PUBLIC RECORDS. Contractor shall produce any records in its possession that relate to this MOU and are requested from the District pursuant to the State of Wisconsin's Open Records Laws, Wis. Stat. §§ 19.31 to 19.39. Contractor shall indemnify the District against any claims, demands, and causes of action resulting from a failure to comply with this requirement.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

By: _____

Kevin L. Shafer, P.E.
Executive Director

Date: _____

7/14/20

HOERR CONSTRUCTION, INC.

By: _____

Kurt Plattner
Chief Financial Officer

Date: _____

7/7/20

Approved as to form

Attorney for the District