

DRAINAGE EASEMENT AGREEMENT

THIS CROSS-DRAINAGE EASEMENT AGREEMENT (this "Easement") is made and entered into this day of October, 2021 by and between **RIVERWORKS DEVELOPMENT CORPORATION**, a Wisconsin non-stock corporation ("Riverworks") and **THE CITY OF MILWAUKEE** ("City").

WHEREAS, Riverworks is the owner of a certain parcel of real property located at 3334 North Holton Street, in the City of Milwaukee, Milwaukee County, State of Wisconsin, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Riverworks Premises"); and

WHEREAS, City is the owner of a certain parcel of real property known as the Riverwest Bike Trail, located in the City of Milwaukee, Milwaukee County, State of Wisconsin, as more particularly described in **Exhibit B**, attached hereto and incorporated herein by reference (the "City Premises"); and

WHEREAS, Riverworks will construct certain green infrastructure improvements on the City Premises including but not limited to _____ that will capture storm water and conveyance pipes that will then transfer that storm water across the property line between the two parcels for treatment on the Riverworks Premises prior to discharge into the City's storm sewer; and

WHEREAS, Riverworks is willing to grant City an easement for the mutual benefit of the Riverworks Premises and the City Premises, to allow City to discharge storm water over and across the Riverworks Premises to all current and future storm sewers located on the Riverworks Premises.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

1. **Easement Granted**. Riverworks, for themselves and their successors and assigns, hereby grants to City, and its tenants, invitees and their respective successors and assigns, a drainage easement to allow storm water from the City Premises to flow over and across portions of the Riverworks Premises, as more particularly described and depicted on **Exhibit C**, attached hereto and incorporated herein by reference (the "Easement Area").

2. **No Improvements**. The parties agree that neither Riverworks nor City, nor any of their respective successors or assigns, shall construct any improvements of any kind, remove any trees or foliage, dig drainage ditches, regrade the land or otherwise improve or change the Easement Area in any way without the prior written consent of the other party.

3. **Term and Nature of Easement.**

(a) The drainage easement hereby granted is non-exclusive, irrevocable, perpetual and shall be an easement and covenant running with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns including, but not limited to, all subsequent owners of the City Premises and the Riverworks Premises respectively. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns, of all or any part of its interest in the Riverworks Premises and/or the City Premises shall be deemed to:

(i) require the grantee not to use, occupy or allow any lessee or occupant of such property to use or occupy the property in any manner which would constitute a violation or breach of any of the easements and covenants contained herein; and

(ii) impose upon the grantee the obligation to assume and agree to perform each and all of the obligations of the conveying party under this Agreement with respect to any such property which will be conveyed to such grantee.

(b) Nothing contained in this Easement Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the drainage easement to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Easement Agreement will be strictly limited to and for the purposes expressed herein.

(c) The parties recognize that by virtue of §893.33 of the Wisconsin Statutes currently in effect, easements, covenants, and restrictions on use of real estate set forth in any recorded instrument may be barred or rendered unenforceable, after various periods from the date of recording as set forth in the statutes, unless an instrument as prescribed by such statutes is filed for record. It is agreed that, as to any restriction, easement, condition, or covenant which is, by the terms of this Easement Agreement, to be extended beyond its applicable period as provided in the statute, any party hereto or any successor or assign of a party hereof may file for record the proper instrument for the purpose of extending the same beyond the statutory period so that the same shall terminate only as provided in this Easement Agreement. In the event any party or successor or assign shall fail or refuse to join in the execution of any such instrument, then each and every other party and their successors and assigns are hereby appointed as attorney-in-fact for such party failing or refusing to join in such a request to execute and file such an instrument, which power shall be deemed coupled with an interest. This Easement Agreement, or any easement, covenant, restriction, or undertaking contained herein, may be terminated or amended only by the recording of the appropriate document in the Office of the Register of Deeds of Milwaukee County, Wisconsin, which document must be executed by all of the owners and mortgagees of the City Premises and the Riverworks Premises.

4. **Miscellaneous Provisions.**

(a) Any notice required or permitted under this Easement Agreement shall be deemed sufficiently given if delivered by mail or in person to the party or parties at the addresses set forth

below and either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be sent:

IF TO CITY:

City of Milwaukee
Department of Public Works
841 North Broadway
Milwaukee, WI 53202
Attn: Commissioner

IF TO RIVERWORKS:

Riverworks Development Corporation
526 E Concordia Ave
Milwaukee, WI 53212
Attn: Executive Director

(b) It is expressly agreed that no breach of this Easement Agreement shall entitle any party to cancel, rescind or otherwise terminate this Easement Agreement, but this limitation shall not affect, in any manner, any other rights or remedies which the party may have by reason of any breach of this Easement Agreement.

(c) A fully executed counterpart of this Easement Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin.

(d) This Easement Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, representatives, successors and assigns.

(e) No waiver of any breach of any of the easements, restrictions, covenants and/or agreements contained herein shall be construed as or constitute a waiver of any other breach or as a waiver, acquiescence in or consent to any further or subsequent breach of the same or any other covenant and/or agreement.

(f) If any term or provision of this Easement Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Easement Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

(g) The prevailing party in any action or proceeding involving the enforcement or interpretation of this Easement Agreement shall be entitled to recover from the other party its costs and expenses, including reasonable attorney fees, incurred in such action or proceeding.

(h) This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

(i) This Easement Agreement may be executed in several counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

Riverworks Development Corporation

By: _____
Darryl Johnson, Executive Director

STATE OF WISCONSIN

ss.

MILWAUKEE COUNTY

Personally came before me, this ____ day of October, 2021, Darryl Johnson, Executive Director of Riverworks Development Corporation, to me known to be the person who executed the foregoing instrument on behalf of Riverworks Development Corporation and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

City of Milwaukee

By: _____
Jeff Polenske, Commissioner of Public Works

Countersigned

By: _____
Aycha Sawa, Comptroller

Jeremy McKenzie, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the City representatives/signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).

By: _____
Jeremy McKenzie, Asst. City Attorney

State Bar No. 1051310

Date: _____

THIS DOCUMENT WAS DRAFTED BY:

Attorney Claude J. Krawczyk
O'Neil, Cannon & Hollman, DeJong & Laing, S.C.
Suite 1400, 111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

EXHIBIT A
RIVERWORKS PREMISES

PARCEL I

Lots One (1) and Two (2) and the North 14 feet of Lot Three (3) in Block Three (3) in BANNEN'S SUBDIVISION NO. 1 of a part of the West One-half (1/2) of the Southwest One-quarter (1/4) of Section Nine (9), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, together with the West One-half (1/2) of the vacated alley adjoining said Lots on the East; ALSO Lots Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight, in Block One (1), in H.J. MATHEWS AND BROS. SUBDIVISION NO. 2, in the Southwest One-quarter of Section Nine (9), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, together with the West One-half (1/2) of the vacated alley adjoining Lots Six (6), Seven (7) and Eight (8) on the East; ALSO Block Five (5) in CREAM CITY HEIGHTS being a Subdivision of a part of the West One-half (1/2) of the Southwest One-quarter (1/4) of Section Nine (9), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, Milwaukee County, Wisconsin.

PARCEL II

Lot One (1) in Block One (1) in H.J. MATHEWS AND BROS. SUBDIVISION NO. 2, in the Southwest One-quarter (1/4) of Section Nine (9), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, also the East One-half (1/2) of the vacated alley abutting premises on the West. ALSO Lot Thirteen (13) except the South 5.78 feet and Lot Fourteen (14) in Block Three (3) in BANNEN'S SUBDIVISION NO. 1 of a part of the West One-half (1/2) of the Southwest One-quarter (1/4) of Section Nine (9), in Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, together with the East One-half (1/2) of the vacated alley adjoining said Lots on the West.

Address: 3334 North Holton Street
Tax Key Number: 0523-110-7

EXHIBIT B
CITY PREMISES

EXHIBIT C
EASEMENT AREA