

FONDY MARKET & PARK LEASE

Dated as of September 1, 2018

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Exhibit A Recorded Joinder Deed

Exhibit B Map of Fond Premises

Exhibit C Recorded Fondy Easement

Exhibit D Recorded Limited Term Conservation Easement

Exhibit E Insurance Requirements

Exhibit F WI DNR GIS Registry

FONDY MARKET & PARK LEASE
CAO DOC # 253962 (GH 11-5-2018)

This Lease: is by and between the CITY OF MILWAUKEE (“**City**”), as landlord, and FONDY FOOD CENTER, INC., a Wisconsin nonprofit corporation (“**Fondy**” or “**Tenant**”), as tenant; is dated as of **SEPTEMBER 1, 2018** (the “**Effective Date**”); and is for good and valuable consideration, receipt and sufficiency of which are agreed to.

RECITALS

A. City owns:

- 2200 W. Fond du Lac Ave., Milwaukee, Wisconsin, Tax Key No. 325-0543-110 (the “**Market Parcel**”)
- 2210-2224 W. Fond du Lac Ave., Milwaukee, Wisconsin, Tax Key No. 325-0549-100 (the “**Park Parcel**”).

B. By the document recorded in the Milwaukee County Register of Deeds (“**ROD**”) Office as ROD Document No. _____ (a copy of which is attached hereto as **EXHIBIT A**), the Market Parcel and Park Parcel were joined and combined into one parcel, herein called the “**Fondy Premises**.”

C. A map showing the Fondy Premises (the “**Map**”) is attached hereto as **EXHIBIT B**. The map depicts the “**Park**” *portion* of the Fondy Premises (“**Park Portion**”) and the “**Market**” *portion* of the Fondy Premises (“**Market Portion**”).

D. City currently leases the Market Parcel to Fondy per an April 1, 2016 “Fondy Market Lease” (the “**2016 Lease**”). The term under the 2016 Lease was from April 1, 2016 through March 31, 2019.

E. City and Fondy want to (and they do) terminate the 2016 Lease in all respects, including all of Fondy’s right, title, and interest thereunder, and they want this Lease to instead be the lease between them.

AGREEMENT

1. **Recitals.** The recitals above are hereby accepted and agreed to.
2. **2016 Lease Terminated.** The 2016 Lease is, in all respects, terminated. It is no longer in force or of any effect.
3. **Lease; AS IS; Exclusivity.** City, as landlord, hereby leases the Fondy Premises to Fondy, as Tenant, on the terms and conditions contained herein, and on an AS-IS, WHERE-IS basis, with all faults and defects, known or unknown.

A. **Market Portion, Exclusive.** The Market Portion is leased to Fondy on an exclusive basis, subject to the terms hereof.

B. Park Portion, Non-exclusive. The Park Portion is leased to Fondy on a non-exclusive basis with that portion also being subject to continued public use and enjoyment subject to the terms hereof. The intent is that, but for permits issued by the Committee (defined below), but for **Fondy-Controlled Activities** (defined below), and but for special events that may be allowed by the City by special event permit or by agreement entered into by the City, the Park Portion is to be shared with and open to members of the public.

C. City Retained Rights. Notwithstanding the **Committee's** rights hereunder, including Committee permitting rights (see below), the City retains the right to enter the Park Portion, and the right to enter the Market Portion, to the same extent as members of the public may, and to the extent allowed by the "entry" section below, and the City retains the right to issue "Special Event Permits" and to enter "Special Event, Rights of Entry" for the Park Portion for exclusive use of the Park Portion for limited periods.

4. Recreational Immunity. Regarding the Park Portion, City and Fondy intend on City and Fondy both being protected by Wis. Stat. 895.52 (and any amendment or successor statute thereto) to the greatest extent possible.

Fondy may not charge any admission fee for spectators at any event at the Park Portion (Wis. Stat. 895.52 (4)(a)) unless the event is a **Fondy-Controlled Activity** (defined below) approved by the DCD Commissioner.

City or others may charge admission fees for spectators at events at the Park Portion if City issues a Special Event Permit for such, and/or if City allows such by special right of entry or other agreement entered into by the City and the event organizer, or if City undertakes such special event on its own under City's retained rights.

Fondy agrees to comply with any duty it may have under Wis. Stat. 101.11.

Neither Fondy nor the Committee may allow any organized team sport activity sponsored by Fondy to take place at the Park Portion without approval of such as a special event by the DCD Commissioner. Wis. Stat. 895.52 (1)(g).

5. Use; Parking.

A. Market Portion Use. Fondy may ONLY use the Market Portion of the Fondy Premises for the following Fondy and Fondy-supervised purposes:

- an outdoor, open-air farmers market
- classes, seminars, and exhibitions regarding: health; healthy diet; food preparation; gardening; nutrition; and employment opportunities associated with food and nutrition and culinary arts
- community-based and oriented activities with prior City Department of City Development ("DCD") consent

B. Park Portion Use. Fondy may ONLY use the Park Portion of the Fondy Premises for the following purposes. Subject to the terms hereof, it is the parties' intent that the Park Portion remain subject to shared use with the general public for a park open to the public.

- As a park shared with members of the public
- As allowed by the "**Park Committee**" (see below)
- For "recreational activities:" (a) as defined in Wis. Stat. 895.52 (1)(g) (as the same may be amended from time to time); and (b) that are consistent with activities generally associated with other public parks in Milwaukee County and other open green space in the City (herein called "**Recreational Activities**")
- For "recreational activities" per the above that are also ancillary to Fondy's use of the Market Portion on days that the farmers market is open for business (not for additional stalls or sales space for FM Vendors [defined below]). By way of example, this includes use of the stage for music and entertainment, use of picnic tables for market customers, etc.
- activities that are controlled and supervised by Fondy (herein called "**Fondy-Controlled Activities**"). Fondy-Controlled Activities must be approved in advance by the DCD Commissioner, must be in compliance with applicable federal, state and local law, and with the Rules (defined below) (see also Section 8.A.), and may include activities that are not "recreational activities" as defined in Wis. Stat. 895.52(1)(g).
- See also, City retained rights (section 3.C. above).

C. Vehicular Parking. The Market Portion contains a surface parking lot (the "**Parking Lot**"). Fondy may ONLY use the Parking Lot for vehicular parking for itself, its FM Vendors and farmer market customers, and if it wishes for members of the public for Fondy-Controlled Activities.

Notwithstanding the foregoing, Fondy may sublet up to Interstate Blood Bank stalls within the Parking Lot to employees of Interstate Blood Bank (2126 W. Fond du Lac Ave.) for employee parking Monday through Saturday 6AM to 6PM. Any such sublease is subject to, and conditioned upon, City's prior written approval.

On the Parking Lot, there shall be no long-term parking of vehicles on-site to amount to vehicle storage.

Unless the City otherwise directs Fondy in writing upon at least 30 days advance written notice, Fondy has the right to restrict public parking within the Parking Lot during the Term of this Lease. Fondy is responsible for the posting, purchase and replacement of Fondy-provided "No Parking" signage or other signage concerning restricted parking.

6. Lease Term. This is a 10-year lease, the term of which (i) commences on the Effective Date of September 1, 2018, and (ii) expires and terminates at 5 p.m. on August 31, 2028 (the "**Term**"). The Term and this Lease, however, are subject to sooner termination per the "Termination" section below.

On or before the expiration of the Term, if City has not terminated the Lease per the “Termination” section below, City and Fondy may agree to extension of the Term beyond August 31, 2028 by written amendment to this Lease meeting the requirements for amendment (the amendment must be signed by both parties), which amendment shall also address rent during the period of any agreed-upon extension. If there is no such written amendment signed by both parties regarding extension and rent during the extension, then the Term shall not be extended.

7. Rent.

A. Fondy shall pay City “**Rent**” on a monthly basis for the Market Portion of the Fondy Premises, according to the following schedule. There shall be no rent due for the Park Portion.

| Start Date | End Date | Annual Rent Amount |
|-------------------|-----------------|---------------------------|
| Sept 1, 2018 | August 31, 2019 | \$1 |
| Sept. 1, 2019 | August 31, 2020 | \$1 |
| Sept. 1, 2020 | August 31, 2021 | \$1 |
| Sept. 1, 2021 | August 31, 2022 | \$1 |
| Sept. 1, 2022 | August 31, 2023 | \$1 |
| Sept. 1, 2023 | August 31, 2024 | \$1 |
| Sept. 1, 2024 | August 31, 2025 | \$1 |
| Sept. 1, 2025 | August 31, 2026 | \$1 |
| Sept. 1, 2026 | August 31, 2027 | \$1 |
| Sept. 1, 2027 | August 31, 2028 | \$1 |
| | | |

B. Rent payments are due, in advance, for all 10 years of the Term, upon full-execution of this Lease. Rent shall be paid by check or money order (with name and address), in good funds, payable to the Redevelopment Authority of the City of Milwaukee (RACM), and shall be mailed or hand-delivered to:

RACM, Attn: Property Manager
 809 North Broadway – 2nd Floor
 Milwaukee, WI 53202-3617.

8. Compliance with Laws and Regulations; Permits.

A. Laws. Fondy’s use of the Fondy Premises (Market Portion and Park Portion) must be in compliance with applicable federal, state, and local law, and with the Rules set forth below, and may not be changed without the prior written consent of City DCD.

Fondy shall cause those claiming by, through, or under Fondy (including farmers market vendors) (“**FM Vendors**”), to comply with applicable federal, state and local law, and the Rules.

B. Permits. Fondy, and those claiming by, through, or under Fondy (including FM Vendors) must obtain applicable, requisite governmental permits and licenses concerning occupancy and activities at, and use of, the Fondy Premises.

C. Special Events. See sections 14-15 below.

D. No Discrimination. Fondy and the Committee shall not, with respect to use and occupancy of the Park Portion or the Market Portion, and any Fondy-Controlled Activity at the Park Portion or any Committee-issued permit for the Park Portion, discriminate against any person on the basis of race, sex, sexual orientation, creed, national origin or identity, color, religion, marital status, age, or handicap.

9. Fondy's Covenant to Operate Farmers Market; Market Rules; FM Vendors. Fondy covenants to operate on the Market Portion during the Term, a seasonal outdoor farmers market (see the "use" paragraph above). Without affecting or abridging any of Fondy's other duties in this Lease, Fondy will abide by rules from time to time adopted or prescribed by City for the use, operation, and/or management of the farmers market (the "**Market Rules**"). Initial Market Rules are as follows:

- **Sound.** No amplified sound prior to 9:00A.M. or after 8:00 P.M.

A. Market Operation. Fondy shall operate an open-air green market (i.e. a farmers market) at the Market Portion as per the table immediately below. Because the market is dependent on farmer and produce availability, if Fondy so requests, the City DCD Commissioner may, in the Commissioner's discretion, allow minor deviations to days and hours of operation. Any such authorized minor deviation must be in writing.

| Period | Min. Number Days per Week to Operate Farmers Market | Hours |
|-----------------------|--|------------------------|
| May 15 to June 15 | At least 1 day per week | 9:00 A.M. to Noon. |
| June 15 to October 30 | At least 4 days per week | 9:00 A.M. to 3:00 P.M. |
| October 31 to May 14 | Optional | Optional |

B. Recruit FM Vendors. Fondy shall recruit at least 20 local growers (FM Vendors) to sell Wisconsin-grown produce at the open-air market. Recruitment of additional FM Vendors is permissible.

C. Set Stall Rents. Fondy shall set and collect rental fees for FM Vendors occupying market stalls and spaces at the Market Portion. Such occupancy shall be pursuant to written stall agreements between Fondy and the FM Vendors.

D. Assign Stalls. Fondy shall assign stalls and spaces on the Market Portion to individual FM Vendors, and have individual written stall agreements between Fondy and each FM Vendor regarding the FM Vendor use and occupancy. *Those stall agreements are subject to, and subordinate to, the terms and conditions of this Lease.* Fondy shall supervise FM Vendors

activities at the Fondy Premises to ensure compliance with applicable Rules and with the written stall agreements. *Fondy shall provide to each FM Vendor a copy of this Lease.*

E. Vendor List. By June 1 of each year, Fondy shall supply Fondy's list of FM Vendors to DCD and the Health Department, and on the list include whether the FM Vendor has been licensed from the City's Health Department's Consumer Protection Division.

F. Market Rules/Lease Review. By June 1 of each year, Fondy shall meet with all FM Vendors to review Market Rules and Lease requirements regarding the Fondy Premises. Prior to any new FM Vendor doing business at the Fondy Premises, Fondy shall review the Market Rules and Lease Requirements with that FM Vendor if that FM Vendor did not get that review by Fondy along with the other FM Vendors.

G. Site Tour. By July 15 of each year, tour the Fondy Premises with the City DCD Property Manager.

H. Security. Provide security at the site during market days.

I. Public Classes. At least 4 times per year, provide seminars open to the public, on a free (no-charge) basis (donations, however, may be solicited by Fondy but shall not be required) on health, nutrition, gardening, or food preparation.

10. Fondy Annual Market Report. Fondy shall provide a Fondy Annual Market Report containing:

- reference to the Annual Park Report (discussed below) section dealing with the past year uses and activities of the Park Portion by Fondy, including any Fondy-Controlled Activities at the Park Portion, and Fondy ancillary use of the Park Portion during days when the farmers market was open
- a section dealing with the past year uses and activities at the Market Portion by Fondy ("**Market Section**"). The Market Section shall: **(i)** include results of the year's market operations for the past year; **(ii)** identify each FM Vendor who occupied any part of the Market Portion during the reporting period, and the specific space or stall each FM Vendor occupied at the Market Portion, and the amount of sub-rent that each FM Vendor paid to Fondy; and **(iii)** list the classes, seminars, exhibitions and community-based activities that took place at the Market Portion during the reporting period.

Upon request by the City DCD, the Fondy Executive Director shall appear before the City Common Council or its Committee(s) to provide additional information regarding Fondy, its operations, and the Fondy Annual Market Report.

The **Fondy Annual Market Report** shall be provided to the DCD, DNS, and DPW Commissioners by **January 31** of the following year. *For year 2028, however, the Annual Market Report shall be provided to the DCD, DNS and DPW Commissioners by **September 31, 2028.***

11. Park Committee.

A. Park Advisory Representatives Committee. There shall be a group consisting of 6 individuals to be known as the Park Advisory Representatives Committee (the “**Park Committee**”). Fondy, North Avenue/Fond du Lac Marketplace Business Improvement District (BID #32) (the “**BID**”), City DCD, City DPW, City ECO, and a community representative appointed by the Alderperson for the 15th Aldermanic District shall each have and appoint one representative member to the Park Committee.

Fondy’s representative (“**Fondy Rep**”) shall be appointed by Fondy’s Executive Director. BID’s representative (“**BID Rep**”) shall be appointed by the BID’s Executive Director. The City’s respective commissioners of the Department of City Development, the Department of Public Works, and the City’s Environmental Collaboration Office, shall appoint the **DCD Rep**, the **DPW Rep**, and the **ECO Rep** (the “**City Reps**”). The Alderperson for the 15th District shall appoint a community representative (“**Community Rep**”). At all times while this Lease remains in effect, the Park Committee shall exist and operate in accordance herewith.

B. Park Committee Purpose. The Park Committee is a collection of representatives but not a separate partnership or a separate entity. The Park Committee’s purpose is (i) to create and approve an Annual Park Report (“**Annual Park Report**”) (see below), and (ii) to carry out its responsibilities set forth herein. The Park Committee does not, however, replace or stand in the stead of any party hereto – for example, any consent or approval needed from the City under this Lease cannot be provided by the Park Committee, and must still be obtained by that respective party, *unless expressly provided to the contrary in this Lease*.

C. Chairperson is Fondy Rep. The Park Committee shall be chaired by a Chairperson. The Chairperson shall be the Fondy Rep. The Chairperson shall be responsible for calling and coordinating regular and special meetings of the Park Committee, for noticing meetings, for conducting meetings, for keeping and being custodian of Park Committee records, and for performing all duties incident to the office of Chairperson.

D. Secretary is BID Rep. The Park Committee Secretary shall be the BID Rep, and shall be responsible for sending notices of Park Committee meetings to Park Committee members, for keeping and distributing minutes of meetings to Park Committee members, and for performing all duties incident to the office of Secretary.

E. No Compensation. Park Committee members shall not receive compensation for serving as members.

12. Special and Regular Park Committee Meetings.

A. Notice of Park Committee Meetings. At least 72 hours prior to a regular meeting and at least 48 hours prior to a special meeting (except emergency special meetings where the notice time shall be at least 8 hours), written notice of the date, time and place of the Park Committee meeting shall be given by email, facsimile, or personal service, provided to Park Committee

members per the respective contact information provided by members to the Secretary. Notwithstanding anything to the contrary contained herein, notices shall also comply with Wis. Stat. Ch. 19, Subch. V, including Wis. Stat. 19.84. Reasonable meeting times at reasonable locations shall be established by the Chairperson or Secretary.

B. Open Meetings, Open Records. The Park Committee agrees to follow and comply with Wisconsin's Open Meetings Law (Wis. Stat. Ch. 19, Subchapter V) and with Wisconsin's Open Records Law (Wis. Stat. Ch. 19, Subch. II). Per Wis. Stat. 19.36 (3), records produced or collected under this Lease by others are or may be subject to Wisconsin's Open Records Law. The Secretary of the Park Committee shall keep accurate, full and complete records and books concerning this Lease and the Committee's duties hereunder. The Park Committee and the parties hereto agree to cooperate with one another should any receive a request under Wisconsin's Open Records Law for any record relating to, or produced or collected under, this Lease.

C. Voting, Quorum; Telephonic Participation. A quorum of at least 4 Park Committee members is needed at a regular or special meeting to make a Park Committee decision. Park Committee decisions shall (subject to ¶K below) be made by majority vote at a meeting at which a quorum is present. A Park Committee member may participate by telephone or by video conference at any regular or special meeting so long as the meeting (including phone and/or video conferencing) is conducted in accordance with Wisconsin's Open Meetings Law.

D. Particular Representative. Notwithstanding anything to the contrary contained herein, including, voting and quorum provisions above, in those instances where this Lease calls for approval by a particular Park Committee member (such as one of the City Reps), such person's approval is required and must be obtained as called for, even if majority vote of the Park Committee may have otherwise been obtained.

E. Regular Meetings and Regular Annual Park Meeting. The Park Committee shall hold an annual year-end, regular, meeting in December of each year that this Lease is in place. The Park Committee Annual Park Report shall be approved at the regular annual meeting. The Park Committee may also hold such other regular meetings as it establishes.

F. Special Meetings. Special meetings of the Park Committee may be held at any reasonable time and any reasonable place on call of the Chairperson, or on call of the Secretary upon written request of any 2 Park Committee members, providing, however, that any special meeting requires at least 48 hours advance notice to all Park Committee members – unless, in case of emergency (as determined by the Chairperson in his/her reasonable discretion) in which case at least 8 hours advance notice is required.

13. Park Committee Annual Park Report. At the annual year-end meeting, the Park Committee shall approve the Annual Park Report. The Annual Park Report shall have:

- a section dealing with the past year uses and activities of the Park Portion by Fondy or as allowed by the Park Committee (“**Park Section**”), including Park Committee-allowed special uses or events, and Fondy-Controlled Activities, at the Park Portion, and Fondy

ancillary use of the Park Portion during days when the farmers market was open. It shall include programming, usage, observations regarding the park, and repairs and improvements made or anticipated to be needed. It shall identify all permits issued by the Park Committee, to whom, for what area, and for what purpose, and permit fee (if any) charged, as well as revenues and expenses associated with the Park Portion for the Report Year.

- a section dealing with park improvements (including, but not limited to, storm water management infrastructure, the stage, tables, benches, walkways, garbage cans, electrical/lighting, plumbing, and solar energy at the Park Portion) (“**Park Improvements**”), including observations regarding same, and repairs and improvements made or anticipated to be needed.

Upon request by the City DCD, the Fondy Executive Director shall appear before the City Common Council or its Committee(s) to provide additional information regarding the Park Committee, its operations, and the Annual Park Report.

The **Annual Park Report** shall be provided to the DCD, DNS, and DPW Commissioners by **January 31** of the following year. *For year 2028, however, the annual meeting shall take place in August 2028 and the Annual Park Report shall be provided to the DCD, DNS and DPW Commissioners by **September 31, 2028**.*

14. Park Committee Permitting Rights for Park Portion for Recreational Activities. To promote the orderly use and enjoyment of the Park Portion by the general public, the Park Committee may, in its discretion, adopt a permit system whereby members of the general public apply to the Park Committee for a permit to exclusively use a designated area of the Park Portion, for a temporary, specified period, for a specified “Recreational Activity” as allowed in the “Use” Section above (or as otherwise approved in advance by the DCD Commissioner), that is lawful, and that is NOT a Fondy-Controlled Activity. Any use for which the Park Committee issues a permit (while temporarily exclusive) must otherwise be in compliance with this Lease and with applicable law. If the Park Committee does elect to engage in such permitting, the following permitting rules apply.

A. Park Committee Permit Charge. The Park Committee shall not charge for the issuance of permits any amount beyond an amount sufficient to cover the Park Committee’s reasonable expenses associated with the Park Committee’s permitting process and with the issuance of the particular permit.

B. Exclusive Use, Maximum Duration, Limited. The permit shall only allow the permittee the right to exclusively use a designated portion of the Park for a temporary period (***in all cases, less than 12 hours***¹), and the Park Committee may not allow anything that is unlawful or concerning which Fondy or the Park Committee has no authority (for example, neither has authority to allow permittees to possess or consume alcohol). The exclusive use may be for a limited area within the Park Portion or it may be for the entire Park Portion.

¹ See Section 15.B. – any use or event for which the Park Committee issues a permit that is over 3 hours must provide arrangements for restroom use.

C. Recreational Activity Only. The permit may only allow use for a “Recreational Activity” as defined in the “Use” Section above unless otherwise approved in advance by the DCD Commissioner.

D. Notice to Applicants. The Park Committee’s permit process shall provide written notice to applicants advising applicants and permittees: **(i)** that use is limited to “Recreational Activities” (unless the DCD Commissioner agrees otherwise); **(ii)** that they must comply with all federal, state, and local laws, regulations, and ordinances; **(iii)** that the Park Committee may not authorize applicants or permittees to possess or consume alcoholic beverages on the premises; **(iv)** that they may need to obtain a permit from the City of Milwaukee regarding the intended use (call 286-8211 for the City’s Development Center and see <http://city.milwaukee.gov/obtainLicensesPermit54.htm> regarding licenses and permits, including “Special Event Permits”); and **(v)** that the permittee may also be required to enter into a “Right of Entry Agreement” with the City per subsection F below.

E. Waiver, Insurance. The Park Committee may require permit applicants and/or recipients: **(i)** to sign waivers and releases; **(ii)** to assume financial and legal responsibility for their and their guests’ acts, omissions, damages, etc.; and/or **(iii)** to provide evidence of insurance that the Park Committee may specify – in which case any waiver or release or acceptance of responsibility or insurance that the Park Committee requires shall also expressly run to the City’s benefit and protect and cover City to the same extent as Fondy.

F. DCD Rep; Right of Entry Agreement. The DCD Rep shall keep the DCD Commissioner apprised of any permit issued by the Park Committee. Notwithstanding the above, the DCD Commissioner, in his/her discretion, may also require the permittee to enter into a “Right of Entry Agreement” with the City imposing additional requirements for the event as a condition to being able to use the Park Portion for the intended purpose. Additional requirements may include such things as: **(i)** terms and conditions of use and event; **(ii)** special insurance and indemnity requirements; **(iii)** clean-up and preparation requirements; and **(iv)** public health, safety and welfare requirements.

G. City Retained Rights to Allow Use. The City retains the right to use the Park Portion and to allow use of the Park Portion by others, in whole or in part, and on an exclusive basis for special events, City programming, and City-supported programming by others. The DCD Rep shall provide the Park Committee written notice of any City-approved event or programming no later than 5 days prior to the event.

15. Bathrooms at Market Portion.

A. Restrooms at the Market Portion shall remain locked during periods when the farmers market is not in operation, unless the restrooms are used in conjunction with Park Portion programming and are then under Fondy supervision. Except as otherwise agreed to by Fondy (e.g. special events conducted at the Park Portion where some other person or entity, acceptable to Fondy and the DCD

Rep, agrees to assume responsibility), Fondy is responsible for securing the doors and bathroom facilities at the Market Portion when the farmers market is not in operation.

B. The Park Committee may not issue a permit for the Park Portion for any use or event *over 3 hours without making arrangement for restroom use* – either at the Market Portion using the bathrooms there (on terms meeting Fondy’s and the DCD Rep’s prior reasonable approval) or through portable toilets at the Park Portion.

C. **ADA.** City reserves the right, at City expense, to improve and/or replace the bathrooms and/or bathroom building at the Market Portion and sidewalks serving or at the Fondy Premises to meet ADA requirements. City and Fondy understand the current bathrooms and sidewalks are not fully ADA-compliant. City’s entry rights include this related work.

City will coordinate with Fondy regarding any such ADA/improvement/construction work.

City’s goal² is to complete design of a new bathroom structure in 2018 and complete construction in 2019. Reconstruction may require Fondy’s FM Vendors to use temporary bathroom facilities during construction. The City will supply temporary bathroom facilities during construction. Fondy will be responsible, at its expense, for supplying alternative space for Fondy office and maintenance operations and storage during construction.

D. **Bathroom Maintenance.** Fondy is responsible for maintenance and upkeep of the bathroom: hot water heaters, hand dryers, toilets, mirrors, sinks, sink drains, plumbing, and floor drains. The City is responsible for paying for Winterization of the bathroom facilities. Fondy is responsible for any damage or expense associated with Fondy’s breach of its bathroom maintenance and upkeep duties.

16. Stage and Other Park Portion Improvements.

A. **ADA, Stage.** City reserves the right to improve the stage at the Park Portion, including the ramp serving the stage. City and Fondy understand the current stage ramp is not fully ADA compliant, and City is responsible for expense associated with making the stage be ADA compliant.

B. **Other Park Betterments.** City reserves the right to make other improvements to the Park Portion including signage, public art, and other public amenities.

17. Park Rules. City DCD Commissioner retains the right to establish **Park Rules** for the Park Portion. City shall provide Fondy with advance written notice of any such rules that the City establishes. Initial Park Rules are as follows:

- **Sound.** No amplified sound prior to 9:00 A.M. or after 8:00 P.M.
- **No alcohol** unless permitted in conjunction with a special event for which *the City* has issued a Special Event Permit including the right to possess, consume, serve alcohol.

² This is a "goal." Actual timing may vary.

18. Maintenance & Repair.

A. Non-routine structural: Market Portion. City is responsible for major, non-routine, capital and structural repair, of buildings at the Market Portion not necessitated by act or omission of Fondy or those claiming by, through, or under Fondy (including FM Vendors).

B. Routine: Market Portion. Fondy is responsible for day-to-day routine repair and maintenance of the Market Portion including all improvements located thereon. Fondy shall provide prior written notice to City of any repair or maintenance work that is estimated to cost \$2,000 or more, or that may affect the structure or appearance of any building at the Market Portion, or that may require excavation, and obtain City's prior written approval before Fondy undertakes any such repair or maintenance work. Any maintenance or repair must be done with required permits obtained by Fondy at its expense.

C. Roof repairs: Market Portion. Fondy is responsible for regular maintenance and repairs of the roof at the structures at the Market Portion. This includes repairing rust, holes, and other leaks. City is responsible for non-routine repairs.

D. Gutters: Market Portion. Fondy is responsible for maintenance, management, and repair of the gutters, downspouts at the Market Portion. The City will be responsible for any repairs over \$2,000.

E. Electrical: Market Portion. Fondy is responsible for the repair and replacement of interior and exterior light fixtures at the Market Portion, light bulbs, LEDs, ballasts, switches, outlets, conduit, service panels, circuit breakers, and the associate wiring.

F. Trash Pickup: Market Portion. Fondy is responsible for all daily trash pickup and garbage removal at the Market Portion. Fondy is responsible for supplying the appropriately sized containers for trash, recycling, and compost. Fondy is responsible for controlling access (e.g., chains and pad locks) to these containers in an effort to limit unauthorized use of the containers at the Market Portion.

G. Trash Pickup: Park Portion. Fondy is responsible for all daily trash pickup and garbage removal at the Park Portion (including sidewalk and boulevard areas surrounding the Fondy Premises) when there is no special event or special programming at the Park Portion (any Park Committee-approved permit for a special event or special programming, and any City-approved special event or special programming at the Park Portion shall specify responsibility for trash pickup and garbage removal at the Park Portion associated with such event/programming). Fondy must empty garbage cans within the Park Portion so they do not overflow. The City is responsible for garbage can replacement at the Park Portion if the same are damaged.

H. Excessive Dumping at Fondy Premises. In the event of dumping on the Park Portion or Market Portion of excessive garbage or tires or large items by third parties not affiliated with Fondy, Fondy shall notify City and City shall remove.

I. Landscaping.

(1) Generally: mowing & weeds at Fondy Premises. Fondy is responsible for routine care and maintenance of landscaping and vegetation at the Park Portion and Market Portion. This includes mowing and weed removal at the Park Portion and Market Portion, and weed control in the Parking Lot. It also includes mowing and weed control in the public right-of-way areas and the areas between the sidewalk and the Fondy Premises.

(2) Mulch, fertilizing at Park Portion. City is responsible for fertilizing the Park Portion landscaping, and for mulch at the Park Portion, including replenishing.

J. Damage repair. Fondy is responsible for repairing any damage to the Fondy Premises caused by, or attributable, directly or indirectly, to the willful or negligent acts or omissions of Fondy or to any person or entity claiming by, through, or under Fondy (including FM Vendors and farmers market invitees and customers). Damage caused by attendees of special events or special programming whether under permit issued by the Park Committee or as allowed by the City shall be addressed on a case-by-case basis and be discussed between Fondy and City. Damage caused by parties not affiliated or associated with Fondy (or by parties claiming by, through or under Fondy) shall be repaired by City.

K. Snow/Ice Removal at Fondy Premises. Fondy shall remove snow and ice from the entire width of the sidewalks that adjoin the Fondy Premises, from all in-use interior walkways and pedestrian areas, and from the in-use parking lots and driveways at the Fondy Premises. Fondy shall sand or salt those areas as needed.

L. Graffiti. Fondy shall remove graffiti from the Market Portion upon the sooner of **(i)** 5 working days, or **(ii)** any time period ordered or directed by the City DNS. See MCO 275-35, Graffiti Abatement. City shall remove graffiti from the Park Portion.

M. Exterior Harp Lights at Park Portion. The City is responsible for maintenance, repair, and replacement of harp lights in the Park Portion.

N. Other Park Improvements at Park Portion. City is responsible for repair and replacement of tables, chairs, gravel paths, decorative fencing, trees in the Park Portion (unless the need for repair or replacement is attributable to negligent acts or omissions of Fondy (or those claiming by, through, or under Fondy), in which case Fondy is responsible.

O. Bathrooms at Market Portion. See Section 15 above.

P. SWM Facilities. See Section 19 below.

Q. Solar Facilities. See Section 20 below.

R. Pubic WiFi Infrastructure. City is responsible for the utility costs, repair and replacement of the WiFi infrastructure.

19. Storm Water Management Issues, Maintenance, Repair. The park on the Park Portion was designed with special features and facilities (“**SWM Facilities**”) to hold and treat storm water from the Fondy Premises and adjacent public rights-of-way.

A. City shall maintain the bioswale, rip-rap, and pipe components of the SWM Facilities according to City standard practices. City shall also maintain the conveyance pipe and brick walkways included in the “**Fondy Easement**” (ROD Document No. _____), a copy of which is attached hereto as **EXHIBIT C**) according to City standard practices.

B. City is responsible for lawn mowing and weed control at the Park Portion.

C. City will review the storm water improvements on the Park Portion to determine if these improvements can reduce the Storm Water Management Charges for the Fondy Premise.

D. City is responsible for re-routing downspouts of structures on the Market Portion (if City desires) to take advantage of the SWM Facilities serving the Fondy Premises.

E. Fondy understands that the SWM Facilities require certain documents to be recorded against title to the Fondy Premises at the Milwaukee County Register of Deeds Office: a conservation easement between City and MMSD (the “**Limited Term Conservation Easement**”) (ROD Document No. _____), a copy of which is attached hereto as **EXHIBIT D**), and the Fondy Easement.

F. Fondy is responsible, at its expense, for keeping the storm sewer catch basins in the parking lots free and clear of debris. Notwithstanding the foregoing, however, to the extent any such work requires any particular expenditure for cleanout in excess of \$2,000, the City will be responsible for that particular item.

20. Solar. City may install solar facilities serving the Park Portion and/or Market Portion. City’s entry rights include entry to the Fondy Premises to test structural and weight strength of facilities, structures, and roofs, and to install solar facilities. City is responsible for repair and replacement of solar facilities (unless the need for repair or replacement is attributable to negligent acts or omissions of Fondy (or those claiming by, through, or under Fondy), in which case Fondy is responsible.

21. Utilities.

A. Generally: Market Portion. Fondy is responsible for the cost of all utility service provided to or associated with the Market Portion, including sewer, water, gas, electric, telephone, cable, trash pickup, internet service, etc. Fondy shall provide prompt written notice to the City DCD Property Manager of any extraordinary utility bill, of any delinquent utility bill, and of any sewer, water, gas, or electric facility or component suspected of needing repair of \$2,000 or more.

B. Electricity: Market Portion. Fondy is responsible for the electric utility bill for electricity for the Market Portion. Fondy is aware that its electricity expense may be lowered if City installs solar facilities to serve the Market Portion.

C. Gas: Market Portion. Fondy is responsible for any gas service serving the Market Portion.

D. Water: Market Portion. Fondy is responsible for the water bill for the Market Portion.

E. Electricity: Park Portion, Separate Meter. City will install a separate meter for electricity serving the Park Portion. Fondy is responsible for the electric utility bill for the Park Portion.

F. Water: Park Portion. City is responsible for water for the Park Portion. For water needs at the Park Portion (special watering or flushing of SWM Facilities), City will tap the hydrant near the Fondy Premises.

22. New Art Installations. The Park Committee may approve temporary installations of art at the Park Portion (that shall be displayed no longer than 30 days). Any installation of art that will be displayed beyond 30 days requires written approval by the City DCD Commissioner (any such other approvals as may be required under applicable federal, state, or local law).

23. Taxes, Assessments.

A. To the extent it is not entitled to exemption under state law, Fondy shall pay all taxes, assessments, and charges levied or assessed upon its personal property and trade fixtures on, or at, the Market Portion.

B. Fondy shall also be responsible for, and pay, any special charge, special assessment, or special tax, that may be levied against the Market Portion at any time during the Term, concerning which the expense item is attributable to Fondy duties hereunder or to Fondy's acts or omissions.

C. The Fondy Premises are currently exempt from general property taxes under Wis. Stat. 70.11(2) (as that statute currently exists and as it has been interpreted) in that now, and hereafter, such land and buildings shall constitute property owned by the City of Milwaukee. The foregoing, however, is subject to any change in the law (or in the Wisconsin Property Assessment Manual) which may hereafter develop or take place. If the land and buildings at the Market Portion subsequently become subject to general property taxes during the Term hereof, Fondy shall be responsible for, and timely pay, such taxes, with the understanding that Fondy may dispute such by following the procedure set forth in Wis. Stat. 74.35(2m).

24. Alterations; Improvements. Fondy may not alter or improve the Fondy Premises without City's prior written consent. Any such alteration or improvement must be in accordance with plans and specifications approved by City.

25. Contaminants. Fondy shall not, and it shall prohibit those claiming by, through, or under Fondy, including FM Vendors, store, use, discharge or dispose of any hazardous or toxic

substances, pollutants or contaminants (“**Contaminants**”) on the Fondy Premises other than conventional household items such as cleaning materials which must nonetheless be stored, used, discharged, and disposed of in compliance with applicable federal, state, and local law. Fondy must obtain City’s prior written approval before conducting any environmental testing or investigation on or at the Fondy Premises.

26. Insurance. Fondy, at its expense, must maintain in place during this Lease insurance regarding Fondy and the Market Portion meeting City’s prior approval, and meeting the requirements and minimum coverages outlined in **EXHIBIT E** attached. Fondy must provide City with evidence of insurance in the form of a certificate of insurance, meeting the **EXHIBIT E** requirements. The certificate must show Fondy as the insured, and City as a certificate holder and additional insured. City must be afforded prior written notice prior to cancellation or change in coverage or nonrenewal. To the extent triggered, coverage shall include a waiver of subrogation in favor of City.

27. Indemnity; Hold Harmless. Fondy shall indemnify and hold City harmless from and against claim, expense, damage, or liability to the extent caused by or attributable to the willful or negligent acts or omissions **(i)** of Fondy, its employees, agents or contractors, or **(ii)** of those claiming by, through or under Fondy, including FM Vendors, or **(iii)** of any invitee. City however waives right of recovery against Fondy only to the extent City actually receives payment as a result of any insurance carried by Fondy.

28. City Access/Entry Rights, Inspections, Keys.

A. City has the right, without notice, to enter the Park Portion and Parking Lot part of the Market Portion at any time.

B. City has the right to enter the Market Portion at any time when the farmers market is open to the general public, and to the same extent, the same are open to the general public.

C. City has the right, upon 24 hours prior written notice, to enter and inspect the Market Portion, and to show same to prospective buyers, when the farmers market is not open or to access areas not otherwise open to the general public.

D. City and its contractors have the right to enter the Market Portion at any time without notice to supervise, undertake, or conduct, the improvements, repairs, and/or maintenance duties required of City hereunder including solar facility installation and inspection and bathroom-ADA-related construction, improvement and inspection – provided however that prior to initial construction regarding solar or bathroom ADA, City will provide Fondy with written notice specifying the estimated start date of construction and anticipated time construction will take.

E. City has the right to enter at any time without notice to inspect, maintain, repair, replace or reconstruct any City utilities now or hereafter at the Fondy Premises.

F. City’s entry onto the Market Portion shall be conducted in such a way so as to minimize interference or disruption of Fondy’s and FM Vendors’ use and occupancy.

G. City reserves the right to enter in case of threat or danger to human safety and if City believes entry is necessary to preserve or protect the Fondy Premises. Wis. Stat. 704.05(2).

H. Nothing contained in this Lease restricts or limits City entry under City police powers, including entry by police, fire, building inspector, and health inspector personnel.

I. Fondy shall provide to City a duplicate key and access codes for all entry locks and security systems at the Market Portion, including FM Vendor space, office space, and bathrooms.

29. No Assignment; No Subletting. With the exception of (a) written stall agreements between Fondy as sub landlord and FM Vendors as subtenants for FM Vendors to be able to vend at the open farmers market at the Market Portion, and (b) a written sublease between Fondy, a sub-landlord and the Interstate Blood Bank, a sub-tenant (per **Section 5.C.**), Fondy may not convey, transfer, assign or sublet this Lease, any right of Fondy hereunder, or any interest in and to the Fondy Premises without City's prior written approval. *Any FM Vendor sublease or Interstate Blood Bank parking sub-lease shall be subject and subordinate hereto in all respects, and shall be limited to the particular farmer's market season, or in the case of parking for the Interstate Blood Bank, shall be limited to parking (per Section 5.C.).*

30. Breach; 893.80.

A. Fondy is in breach if Fondy fails to perform Fondy's obligations under this Lease as required, or if Fondy commits waste.

B. Without affecting any City termination right herein, in the event of Fondy breach, City may provide written notice of breach to Fondy demanding cure and compliance with this Lease.

C. In the event of breach, the non-breaching party shall have all rights and remedies at law and in equity against the breaching party.

D. Wisconsin law applies.

E. City reserves all rights at law and in equity, including, but not limited to, all rights under Wis. Stat. 893.80.

31. Termination; Partial Termination.

A. Notwithstanding the Term of this Lease, or anything else to the contrary contained herein, City may terminate this Lease for *any reason* upon 90 days advance written notice provided to Fondy.

B. City reserves the right to terminate on less than 90-days advance written notice as allowed by Wis. Stat. Ch. 704.

C. City may, per Wis. Stat. 704.17, terminate on less than 28 days notice for Fondy failure to pay rent, or Fondy breach of Lease, or if Fondy commits waste, or per 704.19 (2)(a)2, if Fondy

surrenders the Fondy Premises. If Fondy fails to conduct farmers market operations at the Fondy Premises during the periods required by the Rules, and without City approval, City may, in its discretion, deem that Fondy has surrendered and abandoned the Fondy Premises. And, under Wis. Stat. 704.19 (2)(a)1, the parties agree that City may terminate this Lease on less than 28 days notice if City determines the Fondy Premises are unsafe for occupants.

D. Unless otherwise sooner terminated, and unless a duly signed amendment is entered into prior to the end of the Term to extend the Term, the Lease terminates at 5 PM on the last day of the Term.

E. Nothing contained herein affects City other rights under law, including, but not limited to: City building-inspection rights; rights under MCO 200-11-5 and 200-12.5 to placard and order the closing and discontinuation of occupancy of unsafe structures and units; the right to terminate under Wis. Stat. 704.17 (1)(c) after notice from law enforcement of an 823.113 nuisance regarding controlled substances or criminal gangs; City rights under Wis. Stat. 704.27 to recover against Fondy if Fondy remains in possession without City's consent after Lease expiration or termination; and City rights under Wis. Stat. 799.40 regarding past due rent and eviction.

F. Any termination of this Lease also automatically terminates any stall agreement of any FM Vendor.

G. If all or a substantial part of the Fondy Premises shall become damaged or destroyed by fire, earthquake, wind, tornado, or other such similar force or event, City may terminate this Lease upon written notice to Fondy.

H. City may terminate the Park Portion of this Lease *for any reason* upon 90 days advance written notice provided to Fondy, in which case the Lease shall continue in effect regarding the Market Portion.

32. Departure At Termination; Key Return; Personal Property.

A. Upon Lease termination, Fondy must: vacate the Fondy Premises; remove all Fondy personal property; remove all vehicles from the Fondy Premises; cause any FM Vendor to vacate and remove all FM Vendor personal property; repair any damage attributable to Fondy, FM Vendors or occupants, or to customers or invitees; repair any damage attributable to departure, or move-out, or removal required hereunder; and leave the Fondy Premises in broom-clean condition.

B. Unless agreed to in writing by City, Fondy shall not remove, or allow to be removed, any fixtures or attached equipment, including, but not limited to, lighting, plumbing or HVAC fixtures.

C. Per Wis. Stat. 704.05 (5)(bf), this is notice to Fondy that City does not intend to store personal property left behind by Fondy or by any FM Vendor or others. Per Wis. Stat. 704.05 (5)(a)1, if Fondy, FM Vendors or others remove from the Fondy Premises and leave personal property, City may presume that such personal property is abandoned and City may dispose of same in any manner that City, in its sole discretion, determines appropriate. Wis. Stat. 704.05. MCO 308-5. If Fondy, FM Vendors, or others leave behind a "manufactured home," a "mobile

home,” or a “titled vehicle” as defined in Wis. Stat. 704.05 (b)1, prior to disposing of same, City will give notice of intent to dispose per Wis. Stat. 704.05 (b)(2).

D. Upon Lease termination, Fondy shall provide City with all keys to the Fondy Premises.

33. Smoke & Carbon-Monoxide Detectors; Fire Suppression. Fondy agrees that the Fondy Premises are not, and do not contain, a “residential building”³ as defined in either Wis. Stat. 101.145 or 101.149. Fondy shall supply and maintain, and be responsible for, properly functioning smoke and carbon monoxide detectors in the Market Portion, and fire suppression equipment as required by law, including fire extinguishers. Fondy agrees to test all detectors at least monthly. Fondy shall abide by all required fire inspections.

34. Lead-Based Paint Risk. Structures, especially those built before 1978, may contain lead-based paint. Lead from paint, paint chips, and dust, may pose health hazards if not properly managed. Exposure to lead may be harmful – especially to children and pregnant women. Fondy shall adopt lead-safe practices.

35. Notices. Notices required or desired to be given by one party to another party under this Lease shall be in writing and shall be: **(i)** delivered personally; **(ii)** sent by e-mail, provided any e-mail is sent successfully (for example, no error or inability to send message is generated as a result of any such e-mail sent); **(iii)** sent by commercial overnight courier service, prepaid; or **(iv)** sent by United States mail, postage prepaid; and, notices shall be addressed and given as follows, provided that recipient address information (such as change in e-mail address, or contact person) may, from time to time, be changed by notice duly sent hereunder:

| If to CITY: | If to FONDY: |
|--|--|
| <p>Cindy Wright-Smith Property Manager Department of City Development 809 North Broadway, 2nd Floor Milwaukee, WI 53202 Telephone:(414) 286-5759 E-mail: cindy.wright-smith @milwaukee.gov</p> <p>With a copy to: Amy E. Turim Department of City Development 809 North Broadway, 2nd Floor Milwaukee, WI 53202 Telephone: (414) 286-5732 Email: aturim@milwaukee.gov</p> | <p>Jennifer Casey Executive Director Fondy Food Center 1617 W. North Ave., #4 Milwaukee, WI 53205 Telephone: (414) 562-2282 E-mail: jcasey@fondymarket.org</p> |

³ “Residential building” under 101.145 (1)(a) is “any public building which is used for sleeping or lodging purposes and includes any apartment house, rooming house, hotel, children’s home, community-based residential facility or dormitory but does not include a hospital or nursing home.” Under 101.149 (1)(b) it is “a tourist rooming house, a bed and breakfast establishment, or any public building that is used for sleeping or lodging purposes” but does not include a hospital or nursing home.

36. City Property Manager. When City or City DCD consent is required hereunder it shall be sought from the City DCD Commissioner or his/her designee.

37. Public Records. Fondy acknowledges that City is subject to Wisconsin public records law. See Wis. Stat. Chapter 19, Subchapter II. This document, and certain documents produced or required hereunder (including but not limited to written stall agreements), is or may be subject to the public records law. Fondy shall assist the City in retaining and producing records subject to the Wisconsin Public Records Law. Fondy failure to do so shall constitute breach of this Lease, concerning which Fondy must indemnify and hold the City harmless. If City receives a public records request for any such document, Fondy agrees to cooperate with City so that records required to be produced may be produced.

38. Signage; Brochures. Fondy shall obtain City DCD's prior written approval before installing signage at the Fondy Premises (in addition to obtaining any permit that may be required to install such signage). Fondy agrees to include on any of its brochures advertising Fondy's operations or programs at the Fondy Premises evidence of City ownership of the Fondy Premises. City Property Manager will provide the City's clock tower logo.

39. No Naming Rights. Fondy has no naming rights regarding any part of the Fondy Premises or any appurtenance, fixture or improvement thereon.

40. Annual Financial Audit. Fondy's fiscal year ends October 31st of each year.

A. Fondy Audited Financial Statements. Fondy shall promptly, and in any event prior to November 30 of each year, provide to City copies of Fondy annual audited financial statements for any year in which this Agreement is in effect.

B. Fondy Records. Fondy shall keep accurate, full and complete records regarding activities under this Lease ("**Records**"), including FM Vendor stall agreements, records of expenditures for repair and maintenance, and records of farmers market operations.

C. City Audits, Inspections. At any time during normal business hours, and upon reasonable notice, Fondy shall make available to the City (and to its representatives, agents, and auditors) (such others are for purposes of this section also called "**City**") for examination the Records, and Fondy shall permit the City to audit, examine, and make copies, excerpts or transcripts from such Records.

41. Neighbor Complaints. If City DCD or Fondy receive neighbor complaints about Fondy, a FM Vendor, the Fondy Premises, failure to maintain or repair, noise, the farmers market, or activities conducted at the Fondy Premises, the receiving party shall provide written notice of such to the other party, and Fondy shall provide a prompt written response to DCD in writing, by email, regarding Fondy's position concerning the complaint and steps to resolve same. City may require that Fondy meet personally with the complainant or that Fondy provide a written response to the complainant.

42. Wisconsin Department of Natural Resources (“WDNR”) Environmental Cap. City has informed Fondy that the Fondy Premises are affected by BRRTS file number 03-41-285515 which requires an environmental cap. Fondy must notify the City’s property manager, and obtain the DCD Commissioner’s prior written approval, prior to undertaking any activities that will disturb the asphalt or concrete cap that covers the Fondy Premises. Information related to the WDNR’s GIS Registry for the Fondy Premises is attached hereto as **EXHIBIT F**.

43. Counterparts. This Lease may be signed in one or more counterparts, each of which, when taken together, shall be construed as one and the same document. Facsimile and/or email (PDF) signatures shall be accepted as originals.

44. Severability. Per Wis. Stat. 704.02, the provisions of this Lease are severable such that the invalidity or unenforceability of a provision does not affect other provisions of the Lease.

45. Entire Agreement; Amendments. Fondy has no other interest in the Fondy Premises except as a Tenant under this Lease. This Lease is the entire agreement between the parties with respect to the subject matter herein and all oral statements are of no effect. This Lease may only be amended by written document signed by both City and Fondy.

46. Captions. The captions in this Lease are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.

IN WITNESS WHEREOF, City and Fondy enter this Lease as of the Effective Date specified above.

| | |
|---|---|
| <p>CITY: THE CITY OF MILWAUKEE</p> <p>By: _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____ James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <p>_____ Martin Matson, City Comptroller</p> <p>CITY ATTORNEY APPROVAL (MCO 304-21)</p> <p>_____ Gregg C. Hagopian, Asst. City Attorney</p> <p>Common Council Resolution _____</p> | <p>FONDY: FONDY FOOD CENTER, INC.</p> <p>By: _____ David Frazer, Board President</p> <p>And By: _____ Jennifer Casey, Executive Director</p> |
|---|---|

EXHIBITS:

- A: recorded Joinder Deed**
- B: Map of Fondy Premises**
- C: recorded Fondy Easement**
- D: recorded Limited Term Conservation Easement**
- E: Insurance requirements**
- F: WI DNR GIS Registry**

Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit A

Recorded Joinder Deed

**RESTRICTIVE COVENANT
(JOINDER DEED RESTRICTION)**

Document Number

Document Title

**RESTRICTIVE COVENANT
(JOINDER DEED RESTRICTION)**

Drafted by:

Gregg Hagopian, Asst. City Attorney, Milwaukee
CAO Doc. 247439 (8-15-2018)

Recording Area

Name and Return Address

Amy Turim
City of Milwaukee - DCD
809 North Broadway – 2nd Floor
Milwaukee, WI 53202

325-0543-110

325-0549-100

Parcel Identification Number (PIN)

THIS RESTRICTIVE COVENANT is made as of _____, 2018 by the City of Milwaukee (“City”), a municipal corporation.

The City owns **Parcel A** and **Parcel B**, described on **EXHIBIT A**. Those two parcels are also referred to herein as the “**Component Parcels**” and they are both located in the City of Milwaukee, Milwaukee County, Wisconsin.

The Component Parcels are adjacent to each other and they abut each other as shown on **EXHIBIT B**.

The City wants to combine, and join together, the two Component Parcels so that they will be one sole and single parcel (the “**Combined Whole**”)¹.

City records this Restrictive Covenant document to subject the Component Parcels, and the Combined Whole, to the terms, conditions and restrictions herein, which shall run with the land and be binding upon City and its successors and assigns.

¹ See Milwaukee Code of Ordinances 119-3-3-c.

The Component Parcels are subject to the restrictive covenant that they are hereby combined, merged, and joined together to create the Combined Whole. The intent is that the Combined Whole be treated as one whole parcel, and that no portion of the Combined Whole may be conveyed in fee or mortgaged without the entirety of the Combined Whole being conveyed or mortgaged, unless otherwise allowed by MCO 119-3-3-c or by resolution of the City Common Council recorded along with such conveyance or mortgage.

The City Department of City Development will provide notice of this recorded document to the City Assessor.

As of the date hereof, there are no outstanding property taxes, special assessments, special taxes or special charges against any of the Component Parcels, and there is no outstanding mortgage liens or land contracts against any of the Component Parcels.

IN WITNESS WHEREOF, the City caused this document to be executed as of the date first written above.

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|--|---|
| <p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____ James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No.</p> <p>_____</p> | <p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City signatories per M.C.O. 304-21, and also authenticates those signatures per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Assistant City Attorney State Bar No. 1007373</p> <p>Date: _____</p> |
|--|---|

EXHIBIT A

August 15, 2018

Parcel A
2200 W. Fond du Lac Ave.
325-0543-110 (part)

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision in said Southwest 1/4 Section, Lot 7 and part of Lot 6 in Block 19 of said Fritze's Subdivision, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to a point; thence Northeasterly to a point in the east line of said Block 19, said point lying 103.93 feet north of the southerly corner of said Block 19; thence Southerly, along said east line, 103.93 feet to the point of commencement also vacated North 22nd Street adjacent to said Blocks.

Parcel B
2210-2224 W. Fond du Lac Ave.
325-0549-100 (part)

That part of Lots 5 and 6 in Block 19 of Fritze's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning.

Parcels A and B combined

COMBINED WHOLE

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision, in said Southwest 1/4 Section, Lot 7 and part of Lots 5 and 6 in Block 19 of said Fritze's Subdivision described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning also vacated North 22nd Street adjacent to said Blocks

A-1

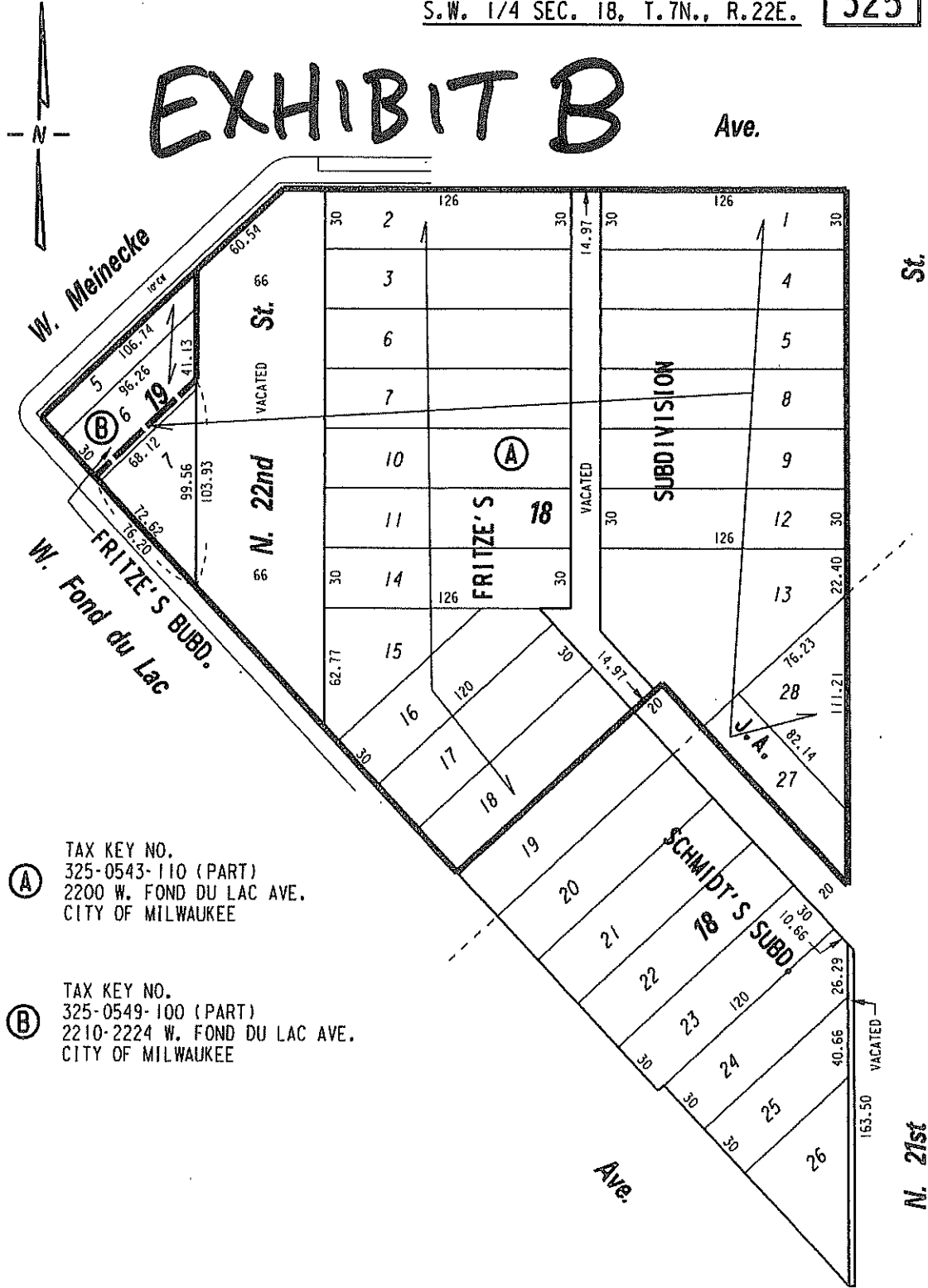
Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit B

Map of Fondy Premises

EXHIBIT B



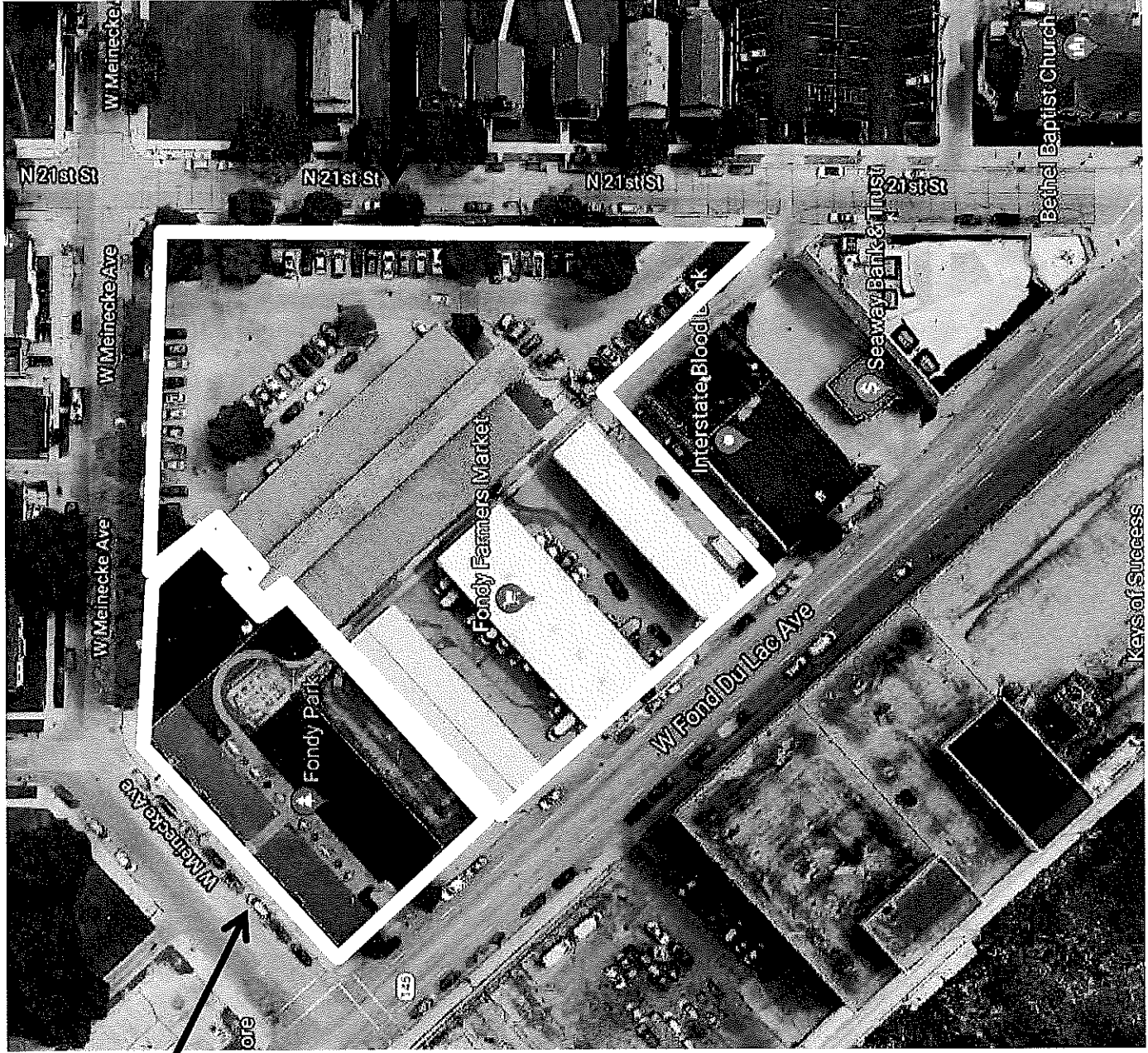
Ⓐ TAX KEY NO.
325-0543-110 (PART)
2200 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

Ⓑ TAX KEY NO.
325-0549-100 (PART)
2210-2224 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

DATE: 8-15-2018 SCALE: 1" = 70'

B-1

Exhibit B - Fondy Premises Map



Park Portion

Market Portion

Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit C

Recorded Fondy Easement

FONDY EASEMENT

Document Number

Document Title

FONDY EASEMENT

Drafted by:

Gregg Hagopian, Asst. City Attorney

GH (8-15-2018), CAO 251671

Recording Area

Name and Return Address

City of Milwaukee
Department of Public Works
Infrastructure Services Division
Environmental Engineering Section
841 North Broadway – Room 820
Milwaukee, WI 53202

325-0543-110

325-0549-100

Parcel Identification Number (PIN)

THIS FONDY EASEMENT (the “**Easement**”) is made as of _____, 2018, and is by and from the CITY OF MILWAUKEE (“**City**”), a municipal corporation.

1. **Fondy Parcel.** City owns property in the City of Milwaukee, Wisconsin, with Tax Key Numbers 325-0543-110 and 325-0549-100, legally described on **EXHIBIT A** and depicted on **EXHIBIT B** (the “**Fondy Parcel**”). City improved the park portion of the Fondy Parcel with an outdoor green space including a lawn area, walkways, a stage, tables, and storm water management facilities (“**SWM Facilities**”) as depicted on **EXHIBIT C**. As **EXHIBIT D** depicts, one of the SWM Facilities, the “**Coneyance Pipe,**” and several brick walkways (the “**Brick Walkways**”) extend over the Fondy Parcel lot line into public right-of-way (“**ROW**”).

2. **Easement Grant.** City signs and records this Easement to grant to itself and to memorialize an easement within the ROW area for the locations of the Conveyance Pipe and of the Brick Walkways so that those improvements may extend into and exist within the ROW. Within the easement area, City (as owner of the Fondy Parcel and as owner of the Conveyance Pipe and the Brick Walkways) may construct, operate, maintain, inspect, repair, enlarge, reconstruct, replace, and relocate, as City deems necessary, the Conveyance Pipe and the Brick Walkways. City is responsible for maintaining in good condition and repair the Conveyance Pipe and the Brick Walkways within the easement area.

City also grants to itself an easement for water-flow and storm water management purposes so that waters flowing from public ROW may enter into the Conveyance Pipe and flow into the Fondy Parcel for storm water management on and in the Fondy Parcel and on and in the SWM Facilities at the Fondy Parcel.

IN WITNESS WHEREOF, City signed this Easement as of the date first written above.

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| <p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City representatives above per M.C.O. 304-21, and also authenticates the signatures of those City representatives/signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Asst. City Attorney State Bar No. 1007373 Date: _____</p> | <p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Ghassan Korban, Commissioner Dept. of Public Works</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No. _____.</p> |
|--|---|

EXHIBIT A

August 15, 2018

Parcel A
2200 W. Fond du Lac Ave.
325-0543-110 (part)

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision in said Southwest 1/4 Section, Lot 7 and part of Lot 6 in Block 19 of said Fritze's Subdivision, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to a point; thence Northeasterly to a point in the east line of said Block 19, said point lying 103.93 feet north of the southerly corner of said Block 19; thence Southerly, along said east line, 103.93 feet to the point of commencement also vacated North 22nd Street adjacent to said Blocks.

Parcel B
2210-2224 W. Fond du Lac Ave.
325-0549-100 (part)

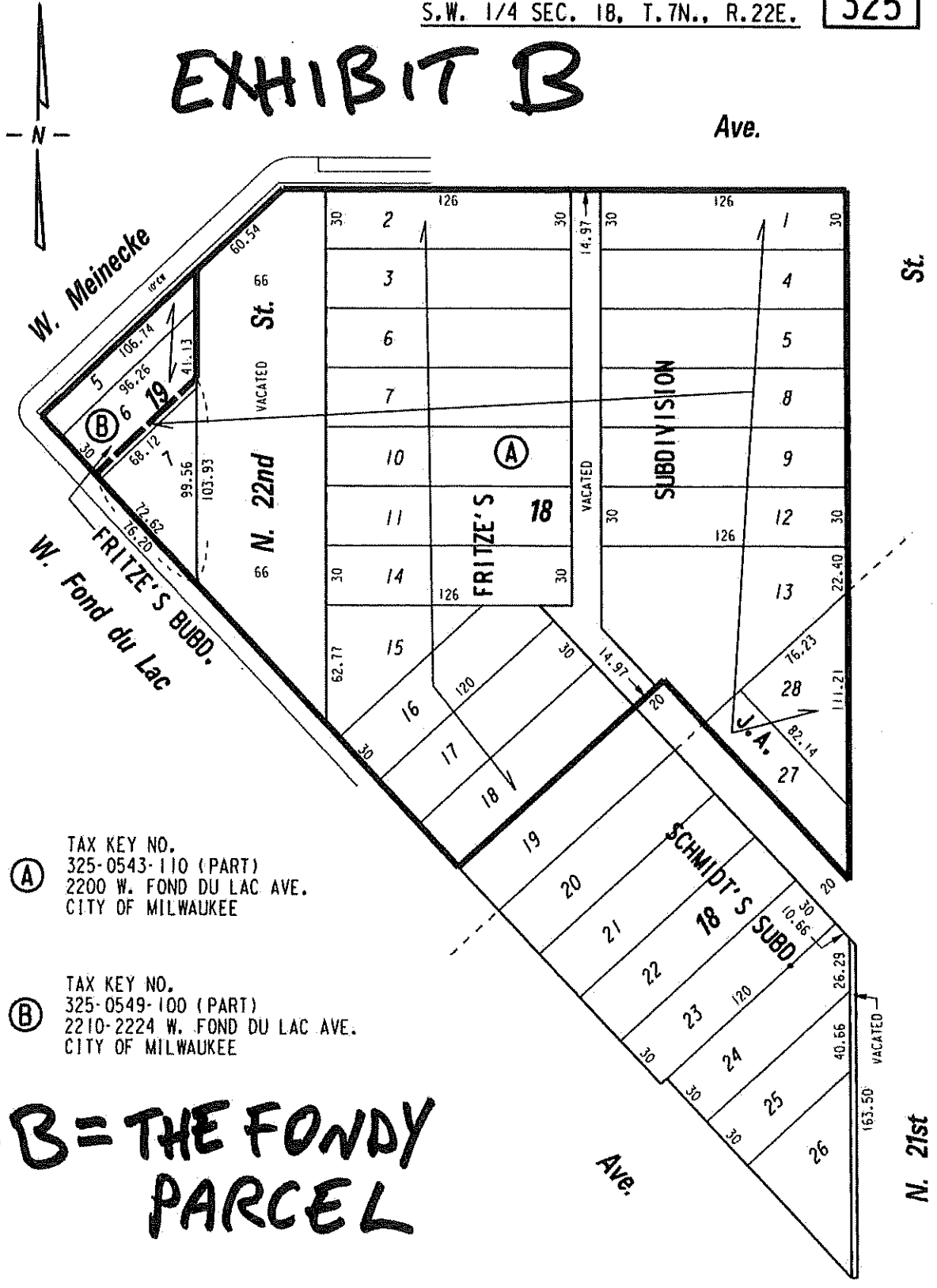
That part of Lots 5 and 6 in Block 19 of Fritze's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning.

Parcels A and B combined **=THE FONDY PARCEL**

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision, in said Southwest 1/4 Section, Lot 7 and part of Lots 5 and 6 in Block 19 of said Fritze's Subdivision described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning also vacated North 22nd Street adjacent to said Blocks

A-1

EXHIBIT B



Ⓐ TAX KEY NO.
325-0543-110 (PART)
2200 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

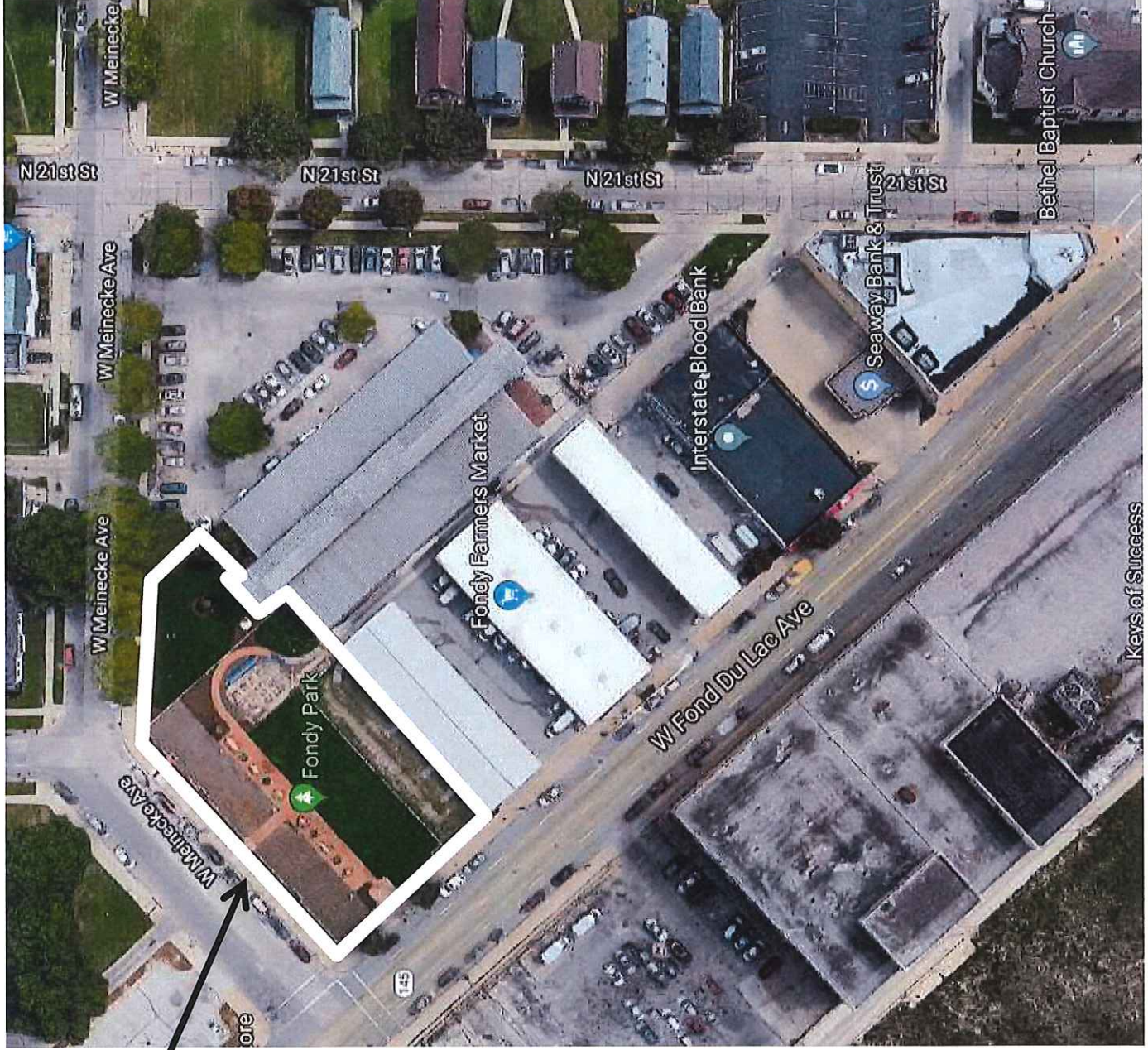
Ⓑ TAX KEY NO.
325-0549-100 (PART)
2210-2224 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

A + B = THE FONDY PARCEL

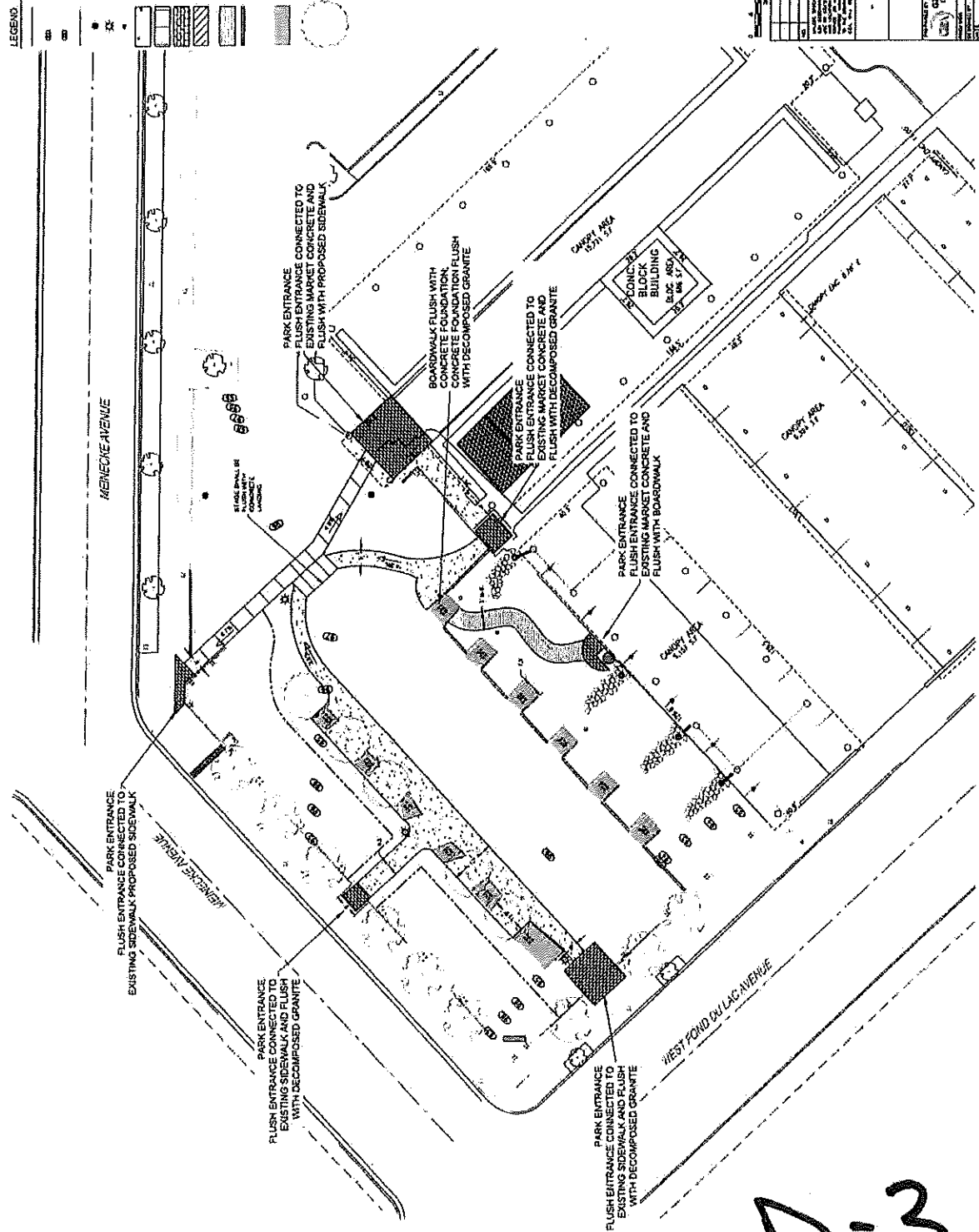
DATE: 8-15-2018 SCALE: 1" = 70'

B-1

Exhibit C - SWM Facilities



SWM
Facilities



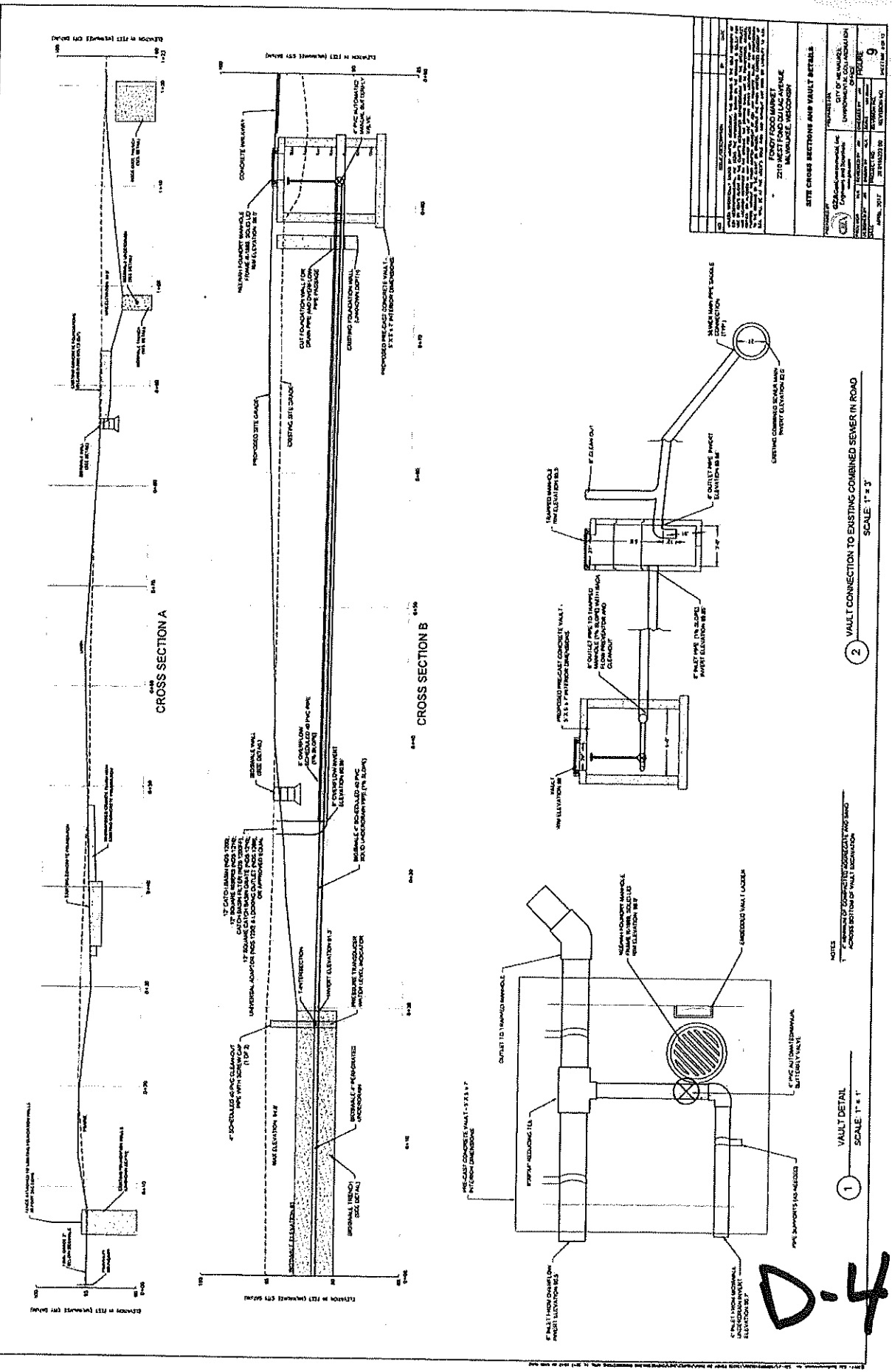
- LEGEND**
- EDGE OF EXISTING CONCRETE
 - PROPOSED MAJOR 5' CONTOUR
 - PROPOSED MINOR 1' CONTOUR
 - PROPOSED FENCING
 - PROPOSED VAULT
 - PROPOSED POLE LIGHTING
 - PROPOSED DOWN LIGHTING
 - CRUSHED GRANITE PATHWAY
 - CONCRETE PATHWAY
 - BRICK ENTRANCES
 - AREA OF UNDERGROUND STONE TRENCH
 - PROPOSED BOARDWALK
 - PROPOSED RUNNEL
 - STONE EDGING / EROSION CONTROL
 - EXISTING CONCRETE FOUNDATIONS USED FOR SEATING FOUNDATION OR ART DISPLAYS
 - PROPOSED TREE PLACEMENT



SCALE: 1" = 10'

| | |
|--|----------------------------|
| PENNY FOOD MARKET 217 WEST POND DRIVE MENAHECE, MISSOURI | |
| ASAP CONSIDERATIONS | |
| PREPARED FOR: GZA CONSULTANTS, INC. ENGINEERS AND ARCHITECTS | PROJECT NO.: 2011-001 |
| DRAWN BY: J. W. BROWN | CHECKED BY: J. W. BROWN |
| DATE: 08/14/11 | SHEET NO.: 8 |

D-3



| PROJECT INFORMATION | |
|---------------------|-------------------|
| PROJECT NO. | 210-001-0001-0001 |
| DATE | APRIL 2017 |
| SCALE | AS SHOWN |
| DESIGNER | CEA |
| CHECKER | CEA |
| APPROVER | CEA |
| DATE | APRIL 2017 |
| SCALE | AS SHOWN |
| PROJECT NO. | 210-001-0001-0001 |
| DATE | APRIL 2017 |
| SCALE | AS SHOWN |
| DESIGNER | CEA |
| CHECKER | CEA |
| APPROVER | CEA |
| DATE | APRIL 2017 |
| SCALE | AS SHOWN |

NOTES:
 1. EXISTING COMBINED SEWER IN ROAD CONNECTION TO VAULT.
 2. VAULT CONNECTION TO EXISTING COMBINED SEWER IN ROAD.
 3. VAULT DETAIL.
 4. VAULT DETAIL.

D-4

Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit D

Recorded Limited Term Conservation Easement

LIMITED TERM CONSERVATION EASEMENT

GH 8-15-2018, CAO 251743

This CONSERVATION EASEMENT is granted this _____ day of _____, 2018, by the Grantor, City of Milwaukee (the Landowner) (herein called "City") to the Grantee, Milwaukee Metropolitan Sewerage District, a special-purpose municipal corporation under Wis. Stat. §200.21 *et seq.* (the Easement Holder) (herein called "MMSD").

RECITALS

A. Property. The City is the sole owner of the property located in the City of Milwaukee, Milwaukee County, Wisconsin, which is legally described in **Exhibit A** and depicted on a map shown in **Exhibit B** (the "Property"). The current address of the Property is 2200 W. Fond du Lac Ave., Milwaukee, TIN 325-0543-110 (Parcel A) and 2210-2224 W. Fond du Lac Ave, Milwaukee, TIN 325-0549-100 (Parcel B), and the Property is known locally as the Fondy Farmer's Market.

Portions of the Property are designated as Conservation Zones for installation of certain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (Green Infrastructure). The Zones are shown on the Zone Map (**Exhibit C**).

B. Conservation Values. In its present state, the Property has conservation value because it has the following Green Infrastructure: 19 trees – 475 gallons; Bioswale – 4,034 square feet – 30,253 gallons; Native plantings – 21,293 square feet – 8,517 gallons; Underground storage – 31,596 gallons. Totaling 70,841 gallons. This Green Infrastructure will hold stormwater on the Property for infiltration to soil and groundwater, which will reduce the amount of stormwater that will flow into the MMSD's sewerage system and reduce contaminated stormwater runoff into surface waters. Reducing the volume of flow into the MMSD's sewerage system reduces the risk of sewer overflows to surface waters during wet weather.

C. Baseline Documentation. The condition of the Property, and specifically the Conservation Zones, is further documented in an inventory of relevant features, characteristics, and Conservation Values, which is on file at the MMSD's offices and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs and other documentation that both parties agree provide an accurate representation of the condition of the Property at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

| |
|---|
| Recording Area |
| Name and Return Address: Attn: Real Estate Dept. Milwaukee Metropolitan Sewerage District 260 West Seeboth Street Milwaukee, Wisconsin 53204 |
| Parcel Identification Number: 325-0543-110 325-0549-100 |

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

E. Qualified Organization. MMSD is qualified to hold conservation easements under Section 700.40(1)(b) because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

F. Conservation Intent. The City and MMSD share the common purpose of preserving the Conservation Values for a period of ten years. The City intends to place restrictions on the use of the Property to protect those Conservation Values. In addition, the City intends to convey to MMSD and MMSD agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by MMSD. MMSD has provided funding to the City for the installation of the Green Infrastructure. The City acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by MMSD, and the provisions of Section 700.40 of the Wisconsin Statutes, the City voluntarily grants and conveys to MMSD a Conservation Easement (the **Easement**) for a period of ten (10) years over, in, and to the Property. This Easement consists of the following terms, rights and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the City to keep, preserve, and maintain the Green Infrastructure installed on the Property including and per the terms set forth in this document.
- 2. Effective Dates.** This Easement becomes effective on the date of signature by MMSD and remains valid until ten years from that effective date.
- 3. Recording of Easement.** MMSD will record this Easement at MMSD's expense in the Milwaukee County Register of Deeds Office.
- 4. Operation and Maintenance.** The City will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. The City is solely responsible for operation, maintenance, and evaluating performance.
- 5. Additional Reserved Rights of the City.** The City retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the Purpose of the Easement. However, the City may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property. The City expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise

encumber or convey the Property, provided that:

- a. The encumbrance or conveyance is subject to the terms of this Easement.
- b. The City incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the City transfers any interest in all or part of the Property.
- c. The City notifies MMSD of any conveyance in writing within fifteen days after the conveyance and provides MMSD with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- d. Failure of the City to perform any act required in Subparagraphs 5.1b and 5.1c does not impair the validity of this Easement or limit its enforceability in any way.

6. MMSD's Rights and Remedies. To accomplish the Purpose of this Easement, the City expressly conveys to MMSD the following rights and remedies:

- 6.1 Preserve Conservation Values. MMSD has the right to preserve and protect the Conservation Values of the Property.
- 6.2 Prevent Inconsistent Uses. MMSD has the right to prevent any activity or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 6.3 Enter the Property. MMSD has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. MMSD will: provide prior notice to the City before entering the Property, comply with all of the City's safety rules, and avoid unreasonable disruption of the City's business activities, or the business activities of any tenant of which City has made MMSD aware.

7. Remedies for Violations. MMSD has the right to enforce the terms of this Easement and to prevent or remedy violations through appropriate legal proceedings.

- 7.1 Notice of Violation and Corrective Action. If MMSD determines that a violation of the terms of this Easement has occurred or is threatened, MMSD will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the City fails to respond, then MMSD may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of MMSD, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the City are unsuccessful.

7.2 Remedies. When enforcing this Easement, the Remedies available to MMSD include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property.

7.3 Non-Waiver. A delay or prior failure of MMSD to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.

7.4 Waiver of Certain Defenses. The City hereby waives any defense of laches, such as failure by MMSD to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of MMSD.

7.5 Acts Beyond City's Control. MMSD may not bring any action against the City for any injury or change in the Property resulting from causes beyond City's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the City under emergency conditions to prevent or mitigate damage from such causes, provided that the City notifies MMSD of any occurrence that has adversely impacted or interfered with the Purpose of the Easement.

8. General Provisions.

8.1 Amendment. The City and MMSD may jointly amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of MMSD it:

- (a) diminishes the Conservation Values of the Property,
- (b) is inconsistent with the Purpose of the Easement,
- (c) affects the duration of the Easement, or
- (d) affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. MMSD may convey, assign or transfer its interests in this Easement to a unit of federal, state or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its Purpose for the remainder of its term. MMSD will notify the City of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way. Any such assignment will be recorded in the Register of

Deeds Office.

- 8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and have no effect on construction or interpretation.
- 8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement. Ambiguities in this Easement shall be construed in a manner that best effectuates the Purpose of the Easement and protection of the Conservation Values of the Property.
- 8.5 Counterparts. The City and MMSD may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 8.6 Entire Agreement. This instrument sets forth the entire agreement of the City and MMSD with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 8.7 Extinguishment. This Easement may be terminated or extinguished prior to the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (b) the City and MMSD agree that a subsequent, unexpected change in the condition of or surrounding the Property makes it impossible to accomplish the Purpose of the Easement.
- 8.8 Joint Obligation. Non-applicable, City is sole owner of the Property.
- 8.9 Ownership Responsibilities, Costs and Liabilities. The City retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:
- a. *Operation, upkeep and maintenance*. The City is responsible for the operation, upkeep and maintenance of the Property.
 - b. *Control*. In the absence of a judicial decree, nothing in this Easement establishes any right or ability in MMSD to:
 - (i) exercise physical or managerial control over the day-to-day operations of the Property;
 - (ii) become involved in the management decisions of the City regarding the generation, handling or disposal of hazardous substances; or

(iii) otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.

c. *Permits.* The City remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations and requirements.

d. *Hold Harmless.* The City releases and will hold harmless, indemnify, and defend MMSD and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

(i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;

(ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property;

(iii) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes.* The City shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred as a result of this Easement, and shall furnish MMSD with satisfactory evidence of payment upon request. 8.10 Recording. MMSD shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located, and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement shall remain valid and binding.

8.12 Successors. This Easement is binding upon, and inures to the benefit of, the City and MMSD and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the Property for the term of the Easement.

8.13 Terms. The terms "City" and "MMSD," wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include City's and MMSD's respective personal representatives, heirs, successors, and assigns.

8.15 Warranties and Representations. The City warrants and represents that:

- a. The City is the sole owner of the Property in fee simple and has the right and the ability to grant and convey this Easement to MMSD;
- b. As of the date of this Easement, there are no liens or mortgages outstanding against the Property, except any that are subordinated to the MMSD's rights under this Easement;
- c. The City and Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;
- d. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the City might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders.

| | |
|---|--|
| <p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____</p> <p>James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No.</p> <p>_____</p> | <p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City signatories per M.C.O. 304-21, and also authenticates those signatures per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Assistant City Attorney State Bar No. 1007373</p> <p>Date: _____</p> |
|---|--|

August 15, 2018

EXHIBIT A LEGAL DESCRIPTION

Parcel A
2200 W. Fond du Lac Ave.
325-0543-110 (part)

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision in said Southwest 1/4 Section, Lot 7 and part of Lot 6 in Block 19 of said Fritze's Subdivision, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to a point; thence Northeasterly to a point in the east line of said Block 19, said point lying 103.93 feet north of the southerly corner of said Block 19; thence Southerly, along said east line, 103.93 feet to the point of commencement also vacated North 22nd Street adjacent to said Blocks.

Parcel B
2210-2224 W. Fond du Lac Ave.
325-0549-100 (part)

That part of Lots 5 and 6 in Block 19 of Fritze's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning.

Parcels A and B combined

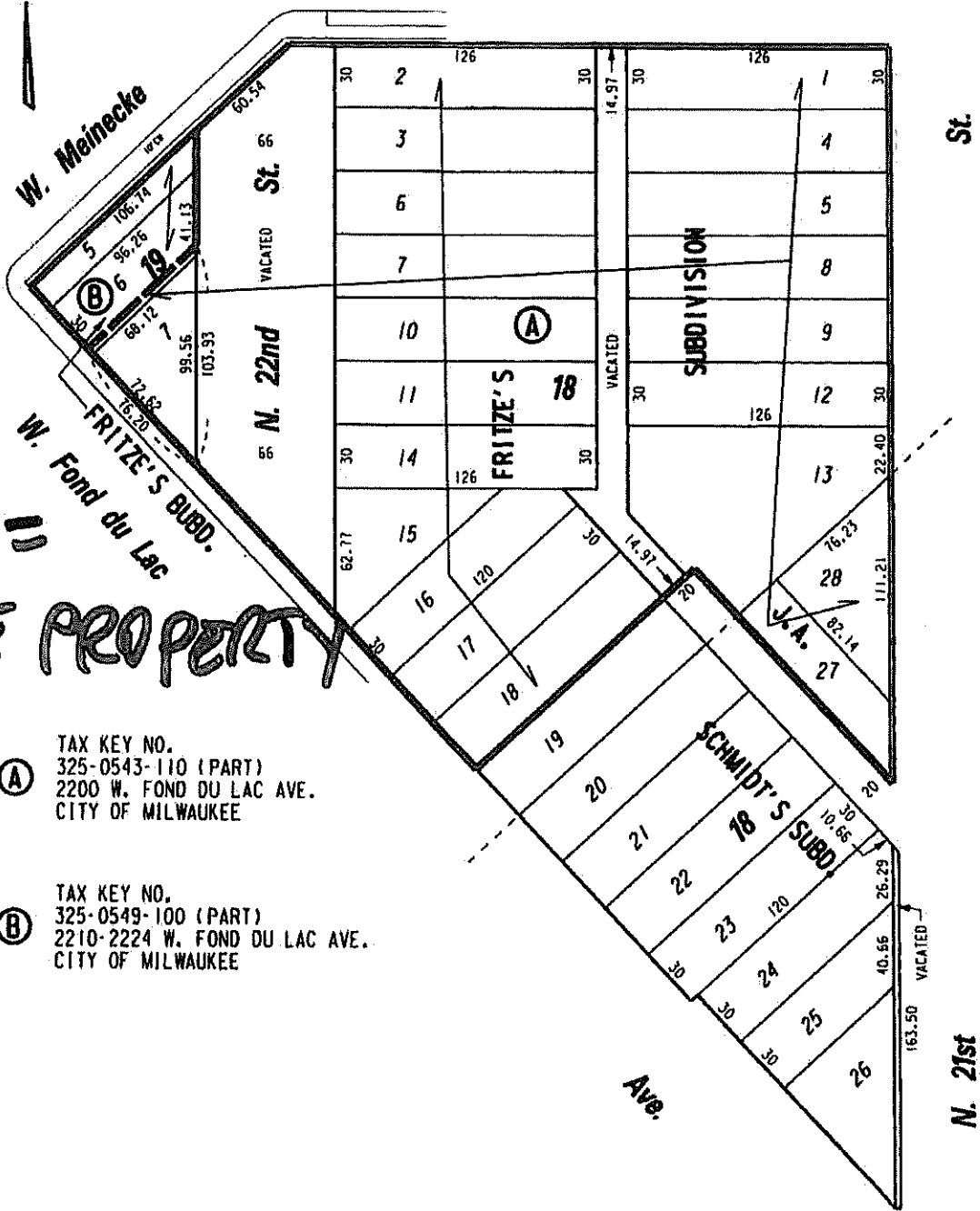
= THE PROPERTY = A+B

Lot 28 and part of Lot 27 in Block 18 of J.A. Schmidt's Subdivision, a recorded subdivision, in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, Lots 1 through 18 inclusive and vacated alley adjacent to said lots in Block 18 of Fritze's Subdivision, a recorded subdivision, in said Southwest 1/4 Section, Lot 7 and part of Lots 5 and 6 in Block 19 of said Fritze's Subdivision described as follows: commencing at the southerly corner of said Block 19; thence Northwesterly, along the southwesterly line of Block 19 aforesaid, 76.20 feet to the point of beginning of the lands to be described; thence Northwesterly, continuing along said southwesterly line, to its point of intersection with the southerly line of relocated West Meinecke Avenue; thence Northeasterly, along said southerly line, to a point in the east line of said Block 19; thence Southerly, along said east line, to a point lying 103.93 feet north of the southerly corner of said Block 19; thence Southwesterly to the point of beginning also vacated North 22nd Street adjacent to said Blocks

A-1

S.W. 1/4 SEC. 18, T.7N., R.22E. 325

EXHIBIT B PROPERTY MAP



**A+B =
THE PROPERTY**

Ⓐ TAX KEY NO.
325-0543-110 (PART)
2200 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

Ⓑ TAX KEY NO.
325-0549-100 (PART)
2210-2224 W. FOND DU LAC AVE.
CITY OF MILWAUKEE

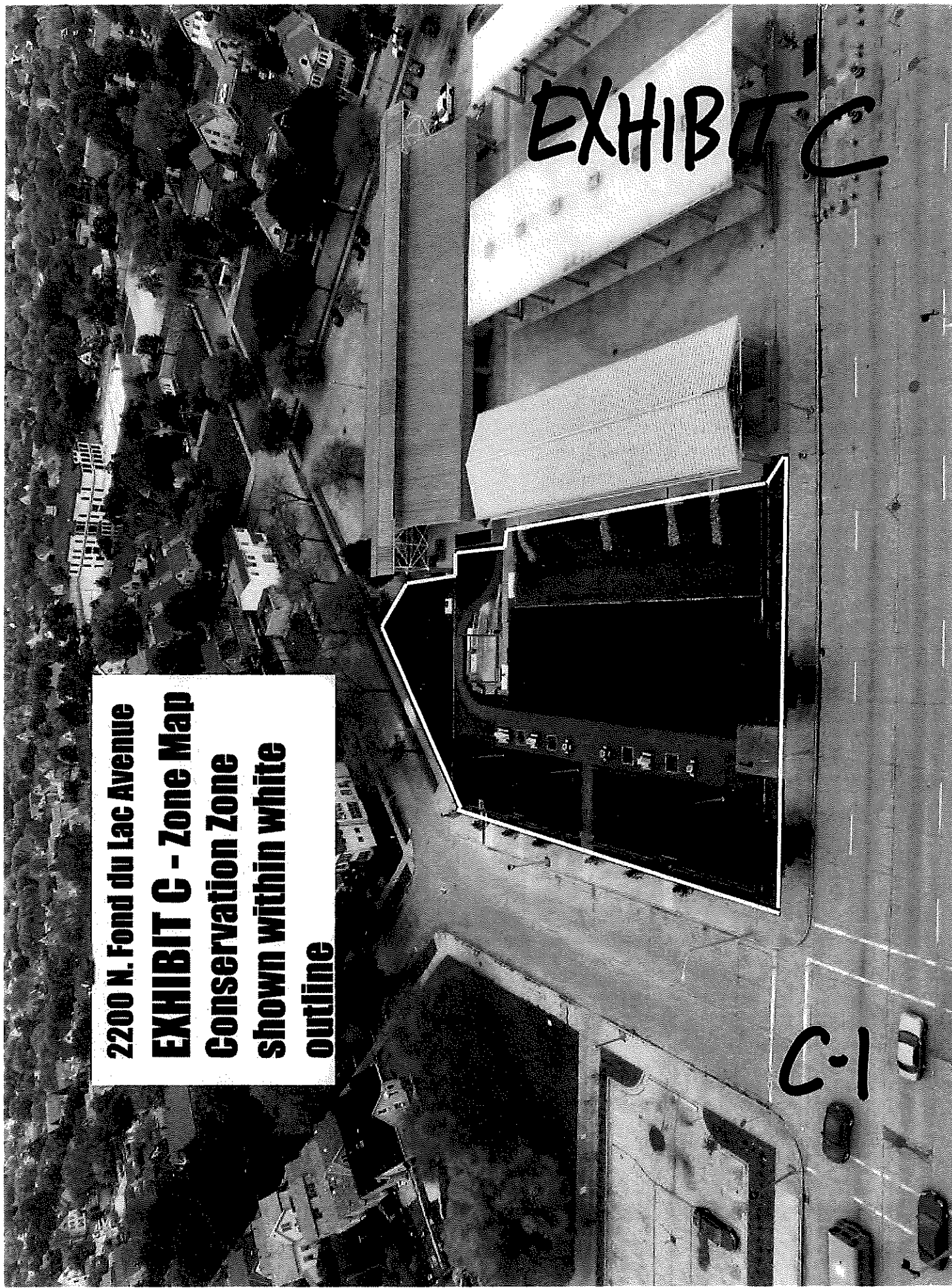
DATE: 8-15-2018 SCALE: 1" = 70'

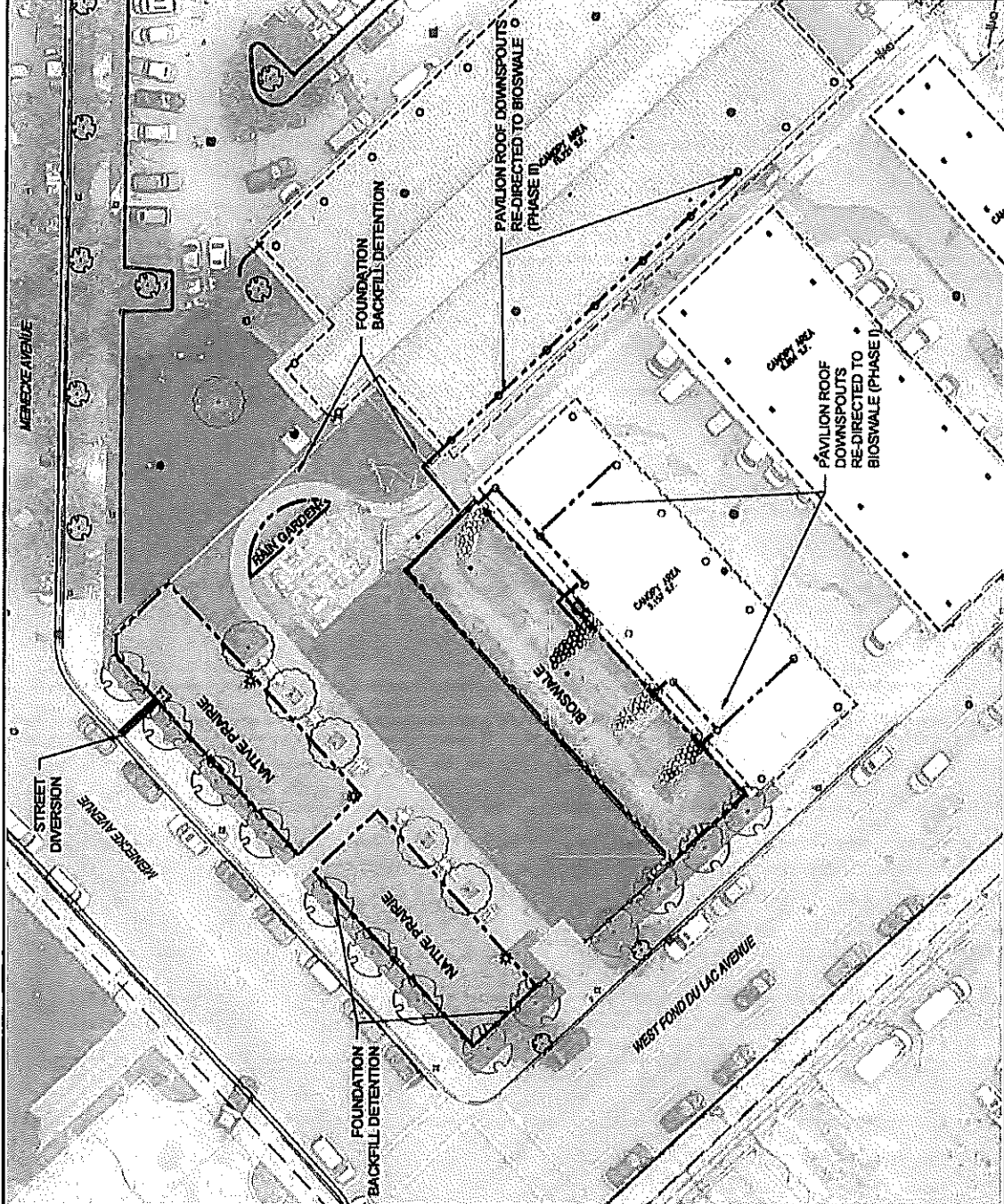
B-1

**2200 N. Fond du Lac Avenue
EXHIBIT C - Zone Map
Conservation Zone
shown within white
outline**

EXHIBIT C

C-1





LEGEND

- ◆ DOWNSPOUT RELOCATED
- FENCING
- VAULT (SEE DETAILS)
- ☀ POLE LIGHTING (PHASE II)
- CRUSHED GRANITE PATHWAY
- BRICK ENTRANCES (SEE DETAILS)
- ▒ RUNNEL TRENCH FOR DOWNSPOUTS
- ▒ STONE EDGING / EROSION CONTROL
- ▒ BIOSWALE WALL (COBBLES)
- TREE PLACEMENT



| | |
|--|--|
| FONDY FOOD MARKET 2210 WEST FOND DU LAC AVENUE MILWAUKEE, WISCONSIN | |
| FORMY AS-BUILT | |
| <small>DESIGNED BY: M. J. REYER, INC. DATE: 08/20/18 DRAWN BY: M. J. REYER, INC. DATE: 08/20/18 CHECKED BY: M. J. REYER, INC. DATE: 08/20/18 PROJECT NO.: 20180222.RS DATE: AUGUST 20, 2018 DRAWN NO.: 01</small> | |

C-2

Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit E

Insurance Requirements



Department of City Development
 City Plan Commission
 Redevelopment Authority of the City of Milwaukee
 Neighborhood Improvement Development Corporation

Rocky Marcoux
 Commissioner
 rmarco@milwaukee.gov

Martha L. Brown
 Deputy Commissioner
 mbrown@milwaukee.gov

CITY OF MILWAUKEE INSURANCE REQUIREMENTS

Insurance certificates must be sent for inspection and approval prior to commencement of the project to:
 Amy Turim, Real Estate Manager, Department of City Development, 809 North Broadway, Milwaukee, WI 53202
 or via email to aturim@milwaukee.gov or facsimile to (414) 286-0395.

TYPE OF INSURANCE

LIMITS

Workers' Compensation

Statutory limits

Employers Liability

Bodily Injury by Accident
 Bodily Injury by Disease

Each Accident \$100,000
 Each Employee \$100,000
 Policy Limit \$500,000

Public Liability

A Comprehensive General or Commercial General Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection
 Products Completed Operations Protection
 Independent Contractors (owners, contractors protective coverage)
 Contractual Liability for Risks Assumed to this agreement

NOTE: If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000
 General occurrence \$1,000,000
 Products/completed operation aggregate \$2,000,000

Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned and hired vehicles
 Sudden and Accidental Pollution Coverage
 Provide MCS-90 Endorsement when applicable in accordance with the Motor Carrier Act of 1980
 Bodily Injury/Property Damage

Each accident \$1,000,000

THE CITY OF MILWAUKEE AND THE REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE MUST BE NAMED AS ADDITIONAL INSURED PARTY ON THE POLICY.

(Continued on the following page)

E-1



Indemnification

To the fullest extent permitted by law, contractor agrees to defend, indemnify, and hold harmless the Redevelopment Authority and the City of Milwaukee, its officers, agents and employees from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against the City on account of injury or death of any person or persons or damage to any property occurring directly or indirectly from the performance or lack of performance or work hereunder, or negligence or carelessness, by contractor or its employees, agents or servants, including, without limitation, claims related to hazardous substances or environmental liability. The term "hazardous substance" shall include all substances identified as hazardous by Federal, State, County or Municipal Law, Statute, Ordinance, Order or Regulation related to the protection of the environment (including, without limitation, any regulations promulgated by the Federal Environmental Protection Agency or the Wisconsin Department of Natural Resources). The indemnifications contained herein shall survive the completion of the work.

E-2

Fondy Market & Park Lease

Dated as of September 1, 2018

Exhibit F

WI DNR GIS Registry

GIS REGISTRY
Cover Sheet

May, 2009
(RR 5367)

Source Property Information

BRRTS #: 03-41-285515
ACTIVITY NAME: FOND FOOD MARKET - PROPOSED
PROPERTY ADDRESS: 2144-2148 W Fond du Lac Ave
MUNICIPALITY: Milwaukee
PARCEL ID #: 325-0543-110-2

CLOSURE DATE: Apr 28, 2009
FID #: 341046750
DATCP #:
COMM #: 53206153348

*WTM COORDINATES:

X: 687728 Y: 289746

*Coordinates are in
WTM83, NAD83 (1991)

WTM COORDINATES REPRESENT:

- Approximate Center Of Contaminant Source
 Approximate Source Parcel Center

Please check as appropriate: (BRRTS Action Code)

Contaminated Media:

- Groundwater Contamination > ES (236)
 Contamination in ROW
 Off-Source Contamination
(note: for list of off-source properties see "Impacted Off-Source Property")
- Soil Contamination > *RCL or **SSRCL (232)
 Contamination in ROW
 Off-Source Contamination
(note: for list of off-source properties see "Impacted Off-Source Property")

Land Use Controls:

- N/A (Not Applicable)
 Soil: maintain industrial zoning (220)
(note: soil contamination concentrations between non-industrial and industrial levels)
 Structural Impediment (224)
 Site Specific Condition (228)
- Cover or Barrier (222)
(note: maintenance plan for groundwater or direct contact)
 Vapor Mitigation (226)
 Maintain Liability Exemption (230)
(note: local government or economic development corporation)

Monitoring Wells:

Are all monitoring wells properly abandoned per NR 141? (234)

- Yes No N/A

*Residual Contaminant Level
**Site Specific Residual Contaminant Level

F-1

This Adobe Fillable form is intended to provide a list of information that is required for evaluation for case closure. It is to be used in conjunction with Form 4400-202, Case Closure Request. The closure of a case means that the Department has determined that no further response is required at that time based on the information that has been submitted to the Department.

NOTICE: Completion of this form is mandatory for applications for case closure pursuant to ch. 292, Wis. Stats. and ch. NR 726, Wis. Adm. Code, including cases closed under ch. NR 746 and ch. NR 726. The Department will not consider, or act upon your application, unless all applicable sections are completed on this form and the closure fee and any other applicable fees, required under ch. NR 749, Wis. Adm. Code, Table 1 are included. It is not the Department's intention to use any personally identifiable information from this form for any purpose other than reviewing closure requests and determining the need for additional response action. The Department may provide this information to requesters as required by Wisconsin's Open Records law [ss. 19.31 - 19.39, Wis. Stats.].

BRRTS #:

03-41-285515

PARCEL ID #:

325-0543-110-2

ACTIVITY NAME:

Proposed Fondi Food Market

WTM COORDINATES:

X: 687728

Y: 289746

CLOSURE DOCUMENTS (the Department adds these items to the final GIS packet for posting on the Registry)

- Closure Letter**
- Maintenance Plan** (if activity is closed with a land use limitation or condition (land use control) under s. 292.12, Wis. Stats.)
- Conditional Closure Letter**
- Certificate of Completion (COC)** for VPLE sites

SOURCE LEGAL DOCUMENTS

- Deed:** The most recent deed as well as legal descriptions, for the **Source Property** (where the contamination originated). Deeds for other, off-source (off-site) properties are located in the **Notification** section.
Note: If a property has been purchased with a land contract and the purchaser has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted instead of the most recent deed. If the property has been inherited, written documentation of the property transfer should be submitted along with the most recent deed.
- Certified Survey Map:** A copy of the certified survey map or the relevant section of the recorded plat map for those properties where the legal description in the most recent deed refers to a certified survey map or a recorded plat map. (lots on subdivided or platted property (e.g. lot 2 of xyz subdivision)).

Figure #: NA Title:

- Signed Statement:** A statement signed by the Responsible Party (RP), which states that he or she believes that the attached legal description accurately describes the correct contaminated property.

MAPS (meeting the visual requirements of s. NR 726.15(2)(h))

Maps must be no larger than 8.5 x 14 inches unless the map is submitted electronically.

- Location Map:** A map outlining all properties within the contaminated site boundaries on a U.S.G.S. topographic map or plat map in sufficient detail to permit easy location of all parcels. If groundwater standards are exceeded, include the location of all potable wells within 1200 feet of the site.
Note: Due to security reasons municipal wells are not identified on GIS Packet maps. However, the locations of these municipal wells must be identified on Case Closure Request maps.

Figure #: 1 Title: Subject Property Location

- Detailed Site Map:** A map that shows all relevant features (buildings, roads, individual property boundaries, contaminant sources, utility lines, monitoring wells and potable wells) within the contaminated area. This map is to show the location of all contaminated public streets, and highway and railroad rights-of-way in relation to the source property and in relation to the boundaries of groundwater contamination exceeding a ch. NR 140 Enforcement Standard (ES), and/or in relation to the boundaries of soil contamination exceeding a Residual Contaminant Level (RCL) or a Site Specific Residual Contaminant Levels (SSRCL) as determined under s. NR 720.09, 720.11 and 720.19.

Figure #: 2 Title: Site Features

- Soil Contamination Contour Map:** For sites closing with residual soil contamination, this map is to show the location of all contaminated soil and a single contour showing the horizontal extent of each area of contiguous residual soil contamination that exceeds a Residual Contaminant Level (RCL) or a Site Specific Residual Contaminant Level (SSRCL) as determined under s. NR 720.09, 720.11 and 720.19.

Figure #: 3 Title: Soil Analytical Results

F-2

BRRTS #: 03-41-285515

ACTIVITY NAME: Proposed Fondi Food Market

MAPS (continued)

- Geologic Cross-Section Map:** A map showing the source location and vertical extent of residual soil contamination exceeding a Residual Contaminant Level (RCL) or a Site Specific Residual Contaminant Level (SSRCL). If groundwater contamination exceeds a ch. NR 140 Enforcement Standard (ES) when closure is requested, show the source location and vertical extent, water table and piezometric elevations, and locations and elevations of geologic units, bedrock and confining units, if any.

Figure #: 4 Title: Cross Section A - A'

Figure #: Title:

- Groundwater Isoconcentration Map:** For sites closing with residual groundwater contamination, this map shows the horizontal extent of all groundwater contamination exceeding a ch. NR140 Preventive Action Limit (PAL) and an Enforcement Standard (ES). Indicate the direction and date of groundwater flow, based on the most recent sampling data.

Note: This is intended to show the total area of contaminated groundwater.

Figure #: NA Title:

- Groundwater Flow Direction Map:** A map that represents groundwater movement at the site. If the flow direction varies by more than 20° over the history of the site, submit 2 groundwater flow maps showing the maximum variation in flow direction.

Figure #: NA Title:

Figure #: Title:

TABLES (meeting the requirements of s. NR 116.15(2)(b)(3))

Tables must be no larger than 8.5 x 14 inches unless the table is submitted electronically. Tables must not contain shading and/or cross-hatching. The use of **BOLD** or *ITALICS* is acceptable.

- Soil Analytical Table:** A table showing remaining soil contamination with analytical results and collection dates.
Note: This is one table of results for the contaminants of concern. Contaminants of concern are those that were found during the site investigation, that remain after remediation. It may be necessary to create a new table to meet this requirement.

Table #: 2 Title: Soil Analytical Results

- Groundwater Analytical Table:** Table(s) that show the most recent analytical results and collection dates, for all monitoring wells and any potable wells for which samples have been collected.

Table #: NA Title:

- Water Level Elevations:** Table(s) that show the previous four (at minimum) water level elevation measurements/dates from all monitoring wells. If present, free product is to be noted on the table.

Table #: NA Title:

IMPROPERLY ABANDONED MONITORING WELLS

For each monitoring well not properly abandoned according to requirements of s. NR 141.25 include the following documents.

Note: If the site is being listed on the GIS Registry for only an improperly abandoned monitoring well you will only need to submit the documents in this section for the GIS Registry Packet.

- Not Applicable**

- Site Location Map:** A map showing all surveyed monitoring wells with specific identification of the monitoring wells which have not been properly abandoned.

Note: If the applicable monitoring wells are distinctly identified on the Detailed Site Map this Site Location Map is not needed.

Figure #: Title:

- Well Construction Report:** Form 4440-113A for the applicable monitoring wells.
- Deed:** The most recent deed as well as legal descriptions for each property where a monitoring well was not properly abandoned.
- Notification Letter:** Copy of the notification letter to the affected property owner(s).

F-3

BRRTS #: 03-41-285515

ACTIVITY NAME: Proposed Fondi Food Market

NOTIFICATIONS

Source Property

- Letter To Current Source Property Owner:** If the source property is owned by someone other than the person who is applying for case closure, include a copy of the letter notifying the current owner of the source property that case closure has been requested.
- Return Receipt/Signature Confirmation:** Written proof of date on which confirmation was received for notifying current source property owner.

Off-Source Property

Group the following information per individual property and label each group according to alphabetic listing on the "Impacted Off-Source Property" attachment.

- Letter To "Off-Source" Property Owners:** Copies of all letters sent by the Responsible Party (RP) to owners of properties with groundwater exceeding an Enforcement Standard (ES), and to owners of properties that will be affected by a land use control under s. 292.12, Wis. Stats.
Note: Letters sent to off-source properties regarding residual contamination must contain standard provisions in Appendix A of ch. NR 726.

Number of "Off-Source" Letters:

- Return Receipt/Signature Confirmation:** Written proof of date on which confirmation was received for notifying any off-source property owner.
- Deed of "Off-Source" Property:** The most recent deed(s) as well as legal descriptions, for all affected deeded **off-source property(ies)**. This does not apply to right-of-ways.
Note: If a property has been purchased with a land contract and the purchaser has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted instead of the most recent deed. If the property has been inherited, written documentation of the property transfer should be submitted along with the most recent deed.
- Letter To "Governmental Unit/Right-Of-Way" Owners:** Copies of all letters sent by the Responsible Party (RP) to a city, village, municipality, state agency or any other entity responsible for maintenance of a public street, highway, or railroad right-of-way, within or partially within the contaminated area, for contamination exceeding a groundwater Enforcement Standard (ES) and/or soil exceeding a Residual Contaminant Level (RCL) or a Site Specific Residual Contaminant Level (SSRCL).

Number of "Governmental Unit/Right-Of-Way Owner" Letters:

F-4



ENVIRONMENTAL & REGULATORY SERVICES DIVISION
BUREAU OF PECFA
9316 North 107th Street
Milwaukee, Wisconsin 53224-1121
TTY: Contact Through Relay
Fax: (414) 357-4700
Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

April 28, 2009

Ms. Tory Kress
Redevelopment Authority
City of Milwaukee
809 North Broadway
Milwaukee, WI 53202

RE: **Final Closure**

Commerce # 53206-1533-48-A DNR BRRTS # 03-41-285515
Proposed Fondi Food Market, 2144-48 West Fond du Lac Avenue, Milwaukee

Dear Ms. Kress:

The Wisconsin Department of Commerce (Commerce) has received all items required as conditions for closure of the site referenced above. This site is now listed as "closed" on the Commerce database and will be included on the Department of Natural Resources (DNR) Geographic Information System (GIS) Registry of Closed Remediation Sites to address residual soil contamination. To review all sites on the GIS Registry web page, visit <http://dnr.wi.gov/org/aw/rr/gis/index.htm>. If you intend to construct or reconstruct a potable well on this property, you must get prior DNR approval.

All current and future owners and occupants of the property need to be aware that excavation of contaminated soil may pose a hazard. Special precautions may be needed to prevent inhalation, ingestion or dermal contact with the residual contamination when it is removed. If soil is excavated, the property owner at the time of excavation must have the soil sampled and analyzed to determine if residual contamination remains. If sampling confirms that contamination is present, the property owner at the time of excavation must determine whether the material would be considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable State regulations and standards.

Costs for sampling and excavation activities conducted after case closure are not eligible for PECFA reimbursement. However, if it is determined that any undisturbed remaining petroleum contamination poses a threat, the case may be reopened and further investigation or remediation may be required. If this case is reopened, any original claim under the PECFA fund would also reopen and you may apply for assistance to the extent of remaining eligibility. It is in your best interest to keep all documentation related to environmental activities at your site.

Thank you for your efforts to bring this case to closure. If you have any questions, please contact me in writing at the letterhead address or by telephone at (414) 357-4705.

Sincerely,

A handwritten signature in cursive script that reads "Monica Weis".

Monica L. Weis
Senior Hydrogeologist
Site Review Section

F-5

cc: Giles Engineering Associates, Inc.



ENVIRONMENTAL & REGULATORY SERVICES
BUREAU OF PECFA
101 West Pleasant Street, Suite 100A
Milwaukee, Wisconsin 53212-3963
TDD #: (608) 264-8777
Fax #: (414) 220-5374
<http://www.commerce.state.wi.us>
<http://www.wisconsin.gov>
Scott McCallum, Governor
Philip Edw. Albert, Secretary

February 13, 2002

Karen Harris
Hunger Task Force
201 S. Hawley Ct.
Milwaukee, WI 53214

RE: **Conditional Case Closure**

Commerce # 53206-1533-48A **WDNR BRRTS # 03-41-285515**
Proposed Fondi Food Market, 2144-48 W. Fond Du Lac Rd., Milwaukee

Dear Ms. Harris:

On January 15, 2002, the Wisconsin Department of Commerce (Commerce) PECFA Site Review Section received a request for case closure, from Giles Engineering Associates, Inc., (Giles). It is understood that residual soil contamination remains on-site. Using the standards established in the NR 700 series, Wisconsin Administrative Code (Wis. Adm. Code), Commerce has determined that this site does not pose a significant threat to the environment and human health. No further investigation or remedial action is necessary.

The following conditions must be satisfied to obtain final closure:

- A notification must be placed on the property deed addressing residual petroleum impacts to the soil. For case closure, we will need a copy of the deed notification that contains the County Register of Deeds' recording information. Enclosed is an example of a "Notice of Contamination to Property" ("Notice") for your use. If you wish to modify the language, submit a copy to this office for approval prior to recording. If an electronic copy of the "Notice" is desired, you may contact Commerce and a copy will be forwarded to you.

Commerce requires a site map indicating where the remaining contamination exists. Please attach figure three, titled 'Soil Analytical Results', to the executed "Notice". The figure must be recorded with the Notice for Commerce to accept the document as completed.

- The monitoring well must be properly abandoned and the appropriate documentation must be forwarded to the letterhead address.

Thank you for your efforts to protect Wisconsin's environment. If you have any questions, please contact me in writing at the letterhead address or by telephone at (414) 220-5375.

Sincerely,

Greg Michael
Hydrogeologist
Site Review Section

Enclosure

cc: Giles, Case File
BRS-5524-E (R. 4/98)

F-5

NOV 22 10 41 AM '88

QUIT CLAIM DEED

RECORDED BY 15-100

This indenture, made this 16 day of April, 1988, between SEARS, ROEBUCK & CO., a New York Corporation qualified to do business in the State of Wisconsin, party of the first part, and City of Milwaukee, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Milwaukee, Wisconsin, party of second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released and quit-claimed, and by these presents does give, grant, bargain, sell, remise, release and quit-claim unto the said party of the second part, and to its successors and assigns forever, the following described real estate, situated in the County of Milwaukee, State of Wisconsin, to-wit:

Lot 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and all of Lot 13 except the Southwesterly 5.03 feet thereof in Block 18 in Fritze's Subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, in the City of Milwaukee, including that part of the East 1/2 of vacated N. 22nd St. which lies adjacent thereto.

Lot 27 except the Southwesterly 5 feet thereof and all of Lot 28 in Block 18 in J. A. Schmidt's Subdivision of Lot 1 in Charles H. Williams Subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, in the City of Milwaukee.

Also, so much of the vacated alley in said Block described as follows: Commencing at the Northeast corner of Lot 2 in Block 18 of Fritze's Subdivision in the Southwest 1/4 of Section 18, Township 7 North, Range 22 East, running thence South along the East line of Lots 2, 3, 6, 7, 10, 11 and 14 in Block 18 aforesaid, 210.00 feet to the southeast corner of said Lot 14 to a point which is 20.00 feet Northwesterly of, as measured normal to, the Northwesterly line of the Northwest-Southeast alley in said Block 18; thence Southeast on a line which is 20.00 feet Northwesterly of and parallel to the Southwesterly of said Northwest-Southeast alley, to a point in the West line of Lots 13, 12, 9, 8, 5, 4 and 1 in said Block 18 to the Northwest corner of said Lot 1; thence Westerly 14.97 feet to the point of Commencement.

FEE #77-25(2) EXEMPT 7.10 TOTAL 7.10 CHARGE #073370 001 R01 70943

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereto appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, to

Handwritten initials and numbers: 163, EXM, 0 230, 633510 #, RECORDED 7-10, 17B, 77, 50.

MEEL 2393 IMAG 126

55444

the only proper use, benefit and behoof of said party of the second part, its successors and assigns FOREVER.

In Witness Whereof, the said SEARS, ROEBUCK & CO. party of the first part, has caused there presents to be signed by Eric D. Saunders, its Executive Vice-President, and countersigned by John Lehrer, its Assistant Secretary, at Skokie, Illinois, and its corporate seal to be hereto affixed, this 16 day of April, A.D., 1988.

SIGNED AND SEALED IN PRESENCE OF

APPROVED SEARS, ROEBUCK & CO.

Signature of Eric D. Saunders, Executive Vice President.

Signature of John Lehrer, Assistant Secretary.

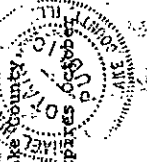


STATE OF ILLINOIS)
LAKE COUNTY) SS

Personally came before me, this 16 day of April, 1988, Eric D. Saunders Executive Vice President, and John Lehrer, Assistant Secretary of the above named Corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such president and Secretary of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said Corporation, by its authority.

Received for Record this day of 5'clock, A.D., 19 at Register of Deeds Deputy Register of Deeds

Signature of Notary Public Lake County, Illinois.



My Commission expires October 29, A.D., 1988.

Execution this 16 day of April, 1988.

Signature of Notary Public Lake County, Illinois.

RETURN TO RECORDER'S OFFICE 205 CITY HALL MILWAUKEE, WI 53202

Handwritten initials

Document Number

QUIT CLAIM DEED

Name and Return Address
City of Milwaukee
Real Estate Section
P.O. Box 324
Milwaukee, WI 53201-0324

Tax Key No.: 325-0545-100-5

This transaction is exempt from the Wisconsin Real Estate Transfer Fee and Transfer Return pursuant to Sec. 77.25(2) of the Wisconsin Statutes.

8115162

REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED AT 8:09 AM
08-10-2001

WALTER R. BARCZAK
REGISTER OF DEEDS

AMOUNT 10.00

REEL 5134

IMAGE 0561

Recording Area

THIS INDENTURE, Made this Twenty-Fifth Day of June, 2001, between the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE, an agency created, organized and existing as a separate and distinct body corporate of the State of Wisconsin, under Section 66.431, Wisconsin Statutes, hereinafter referred to as the Act, as Grantor, and the CITY OF MILWAUKEE, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Milwaukee, Wisconsin as Grantee:

WITNESSETH, That the said Grantor, for and in consideration of No Monetary Consideration, has given, granted, bargained, sold, remised, released, and quit claimed, and by these presents does give, grant, bargain, sell, remise, release, and quit claim unto the said Grantee, and to its successors and assigns forever, the following described real estate, situated in the City of Milwaukee, County of Milwaukee, State of Wisconsin, to-wit:

Lots 15, 16, 17 Block 18, Fritze's Subdivision of Lots 2, 3 and 4 of Williams' Subdivision in the Southwest 1/4 of Section 18, Town 7 North, Range 22 East, City of Milwaukee, County of Milwaukee, State of Wisconsin, EXCEPTING the East 1/2 of vacated North 22nd Street adjoining.
Address: 2144-48 West Fond du Lac Avenue

The Common Council approved the Land Disposition Report of the aforescribed parcel of property on July 25, 2000, by adoption of Resolution File 000420 and the Redeveloper subsequently assigned its purchase rights to the City of Milwaukee upon concurrence of the Executive Director-Secretary. The City of Milwaukee by adoption of Resolution File 010225 on June 19, 2001 authorized acceptance of the deed.

TO HAVE AND TO HOLD, the same, together with all and singular the appurtenances and privileges as thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said Grantor, either in law or equity, either in possession or expectancy of, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns forever, but subject to the terms and conditions hereinbefore set forth in this Deed.

IN WITNESS WHEREOF, Grantor has executed this Deed in its name by its Chair and its Assistant Executive Director-Secretary and has affixed its corporate seal hereunto this Twenty-Fifth Day of June, 2001.

Signed and Sealed
in the Presence of

REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE

Signature of Lenore Hernandez

Signature of Tom D. Mellencamp
Tom D. Mellencamp
Chair

Signature of Lenore Hernandez

Signature of Gregory J. Shelko
Gregory J. Shelko
Assistant Executive Director-Secretary

STATE OF WISCONSIN)
)SS
COUNTY OF MILWAUKEE)

Personally came before me this 25 Twenty-Fifth Day of June, 2001, Tom D. Mellencamp and Gregory J. Shelko, who acknowledged themselves to be the Chair and Assistant Executive Director-Secretary of the Redevelopment Authority of the City of Milwaukee, a Corporation, and that they, as such officers of said Corporation, being authorized so to do, executed the foregoing instrument as such officers of the Redevelopment Authority, by its authority.



Signature of Notary Public
Notary Public
Milwaukee County, Wisconsin
My commission 6/30/03

This document was drafted by the City of Milwaukee, Department of City Development.

F-8

COMBINATION / DIVISION INFORMATION FOR # 2002-251

DROPPED RECORDS

Asmt. Year / Taxkey: 2002 3250543100 Address: 2200-2200 W FOND DU LAC AV
Owner: CITY OF MILWAUKEE % CITY REAL ESTATE
Mail Address: 809 N BROADWAY MILWAUKEE WI 53202
Legals FRITZE'S SUBD OF LOTS 2,3&4 WILLIAMS SUBD SW 1/4 SEC 18-7-22 BLOCK 18
LOTS 1 THRU 14 & 18 BLK 18 & LOT 7 & SELY 3.58' ON SW LI LOT 6 BLK 19 SD SUBD
& LOTS 27 & 28 BLK 18 J A SCHMIDT'S SUBD & VAC ST & ALLEY & EXC ALLEY

DROPPED RECORDS

Asmt. Year / Taxkey: 2002 3250545100 Address: 2144-2148 W FOND DU LAC AV
Owner: CITY OF MILW
Mail Address: 2144 W FOND DU LAC AV MILWAUKEE, WI 53206
Legals FRITZE'S SUBD OF LOTS 2,3&4 WILLIAMS SUBD SW 1/4 SEC 18-7-22 BLOCK 18
LOTS 15-16 & 17

ADDED RECORDS

Asmt. Year / Taxkey: 2002 3250543110 Address: 2200-2200 W FOND DU LAC AV
Owner: CITY OF MILWAUKEE
Mail Address: 809 N BROADWAY MILWAUKEE WI 53202
Legals FRITZE'S SUBD OF LOTS 2,3&4 WILLIAMS SUBD SW 1/4 SEC 18-7-22 BLOCK 18
LOTS 1 TO 18 INCL & LOT 7 & SELY 3,58' ON SW LI OF LOT 6 BLOCK 19, SD SUBD &
LOTS 27 & 28 BLK 18 J A SCHMIDT'S SUBD ADJ & VAC ST & ALLEY

Data Provided By Assessor

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Signed Statement By Responsible Party (Representative) That the Following Legal Description is Complete and Accurate for the Referenced Property

As a representative of the responsible party for the property located at 2200 West Fond du Lac Avenue, Milwaukee (formerly known as 2144-2148 West Fond du Lac Avenue), I believe the legal description provided to the Wisconsin Department of Commerce and following below for the case file reference Commerce #53206-1533-48-A and DNR BRRTS # 03-41-285515 is complete and accurate to the best of my knowledge.

FRITZE'S SUBD OF LOTS 2,3&4 WILLIAMS SUBD SW 1/4 SEC 18-7-22 BLOCK 18
LOTS 1 TO 18 INCL & LOT 7 & SELY 3,58' ON SW LI OF LOT 6 BLOCK 19, SD SUBD
& LOTS 27 & 28 BLK 18 J A SCHMIDT'S SUBD ADJ & VAC ST & ALLEY

Note: The attached deeds are the most recent deeds for:

- 2200 West Fond du Lac Avenue (tax key 325-0543-100-5); and
- 2144-48 West Fond du Lac Avenue (tax key 325-0545-100-5).

Please note that these two properties were combined in 2002 as shown in the attached document: "Combination/Division Information for # 2002-251." *This site is now known as 2200 W Fond du Lac Avenue, has the legal description listed above, and is assigned the tax key 325-0543-110-2.*

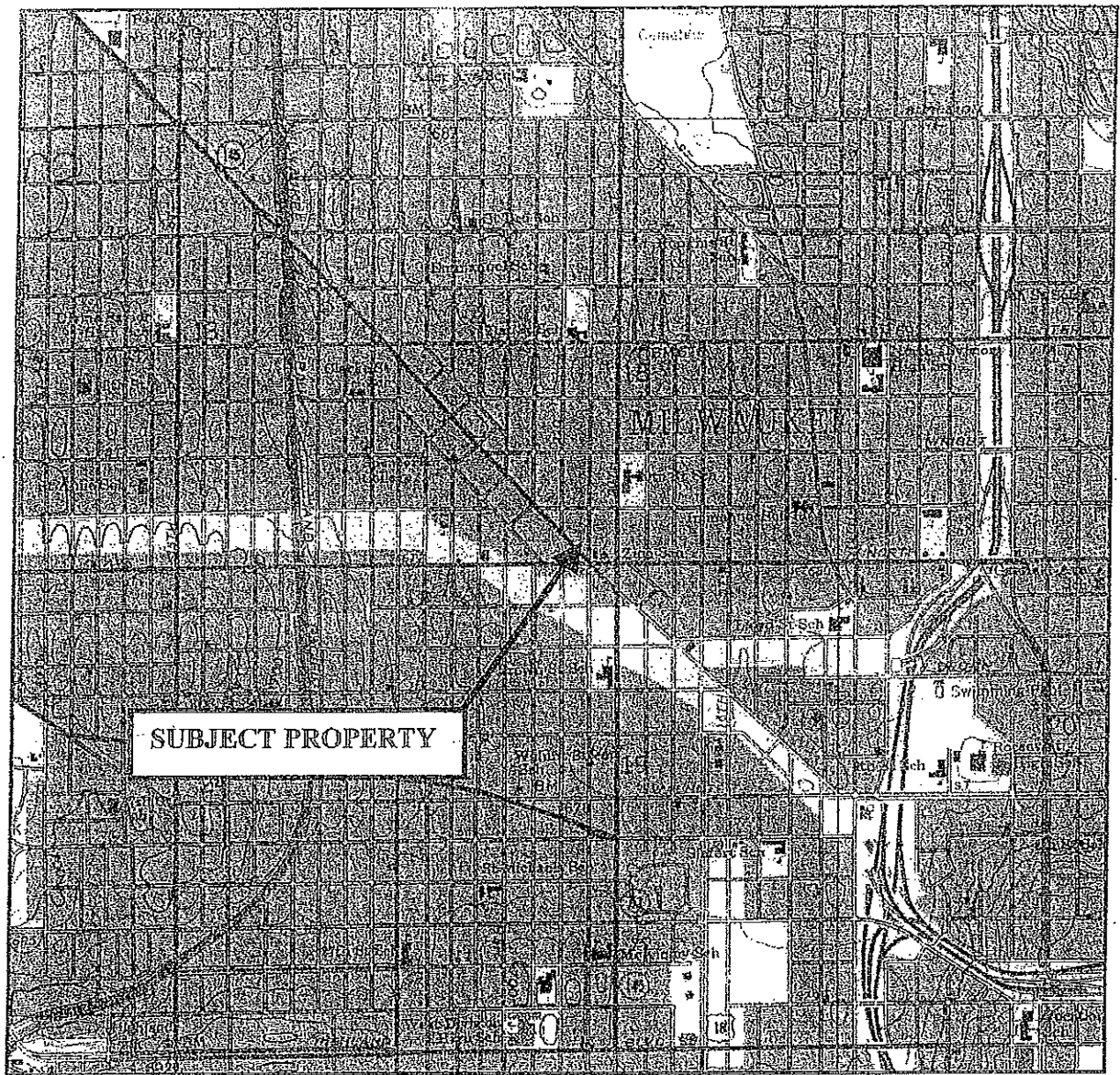
Signed,

Jody Kress

Sr. Environmental Project Coordinator

Title

F-10



Source: USGS Milwaukee, WI (1958, photorevised in 1971) 7.5 Minute Series
(topographic) Quadrangle Map

Scale: 1:24,000
Contour Interval: 10 Feet

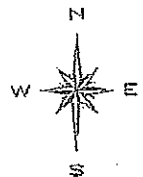


FIGURE 1
SUBJECT PROPERTY LOCATION

F-11

2144-48 West Fond du Lac Avenue
Milwaukee, Wisconsin
Project No. 1E-0110017

 GILES
ENGINEERING ASSOCIATES, INC.



EXISTING
OPEN AIR
MARKET

LEGEND:

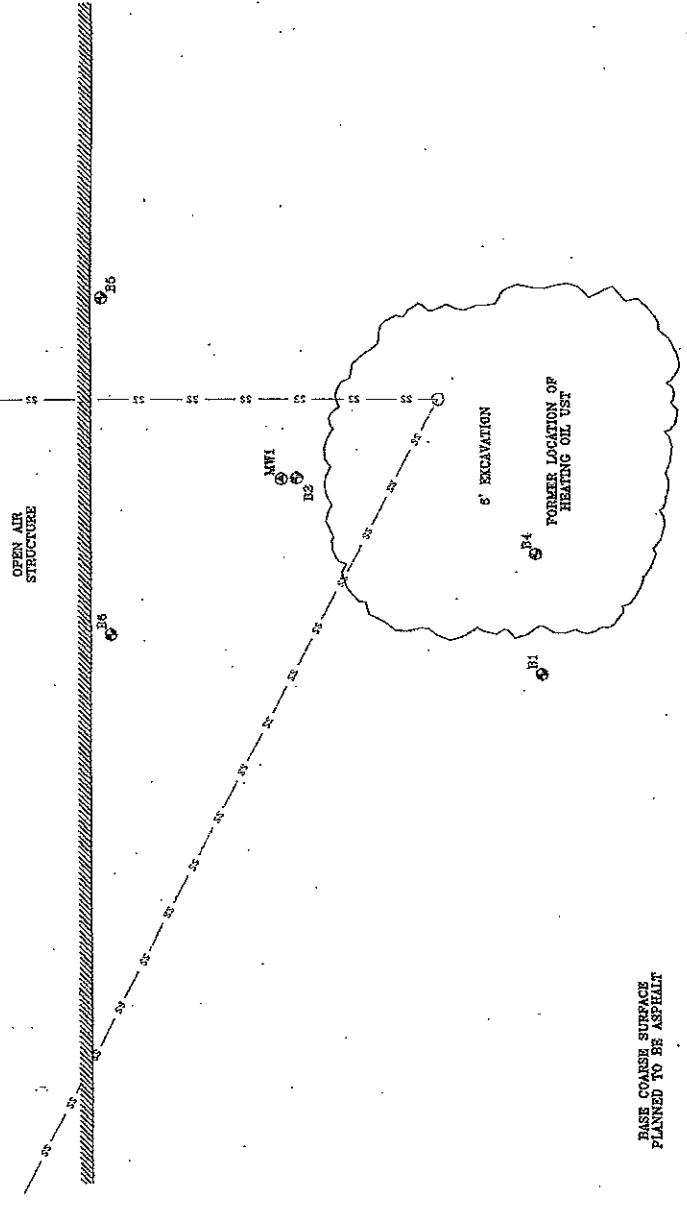
- GW1 GROUNDWATER MONITORING WELL
- S1 SOIL BORING
- ▲ BENCHMARK, FINISHED FLOOR ELEVATION = 681.00
- STROM SEWER
- /// EXISTING BUILDING

GC

GRUBBS ENGINEERING ASSOCIATES, INC.
20 YERGEN JUNCTION RD., MAUDSLER, W. VA. 26106
(304) 344-0118

DATE: 12/14/01
SCALE: 1" = 10'

PROJECT NO.: 01-01017



(2134 WEST FOND DU LAC AVENUE)

F-12

WEST FOND DU LAC AVENUE



EXISTING
OPEN AIR
MARKET

CHEMICAL KEY:
 -AC: ANTHRACENE
 -B(a): BENZO (a) ANTHRACENE
 -B(a)P: BENZO (a) PYRENE
 -B(b): BENZO (b) FLUORANTHENE
 -C: CHRYSENE
 -B(a)A: di BENZO (a,h) ANTERACENE
 -E: ETHYLENE
 -F: FLUORANTHENE
 -I-P: INDENO (1,2,3-cd) PYRENE
 -M: METHYLANTHRACENE
 -P: PHTHALENE
 -T: TOLUENE
 -TMB: TRIMETHYLENE
 -X: TOTAL XYLENES

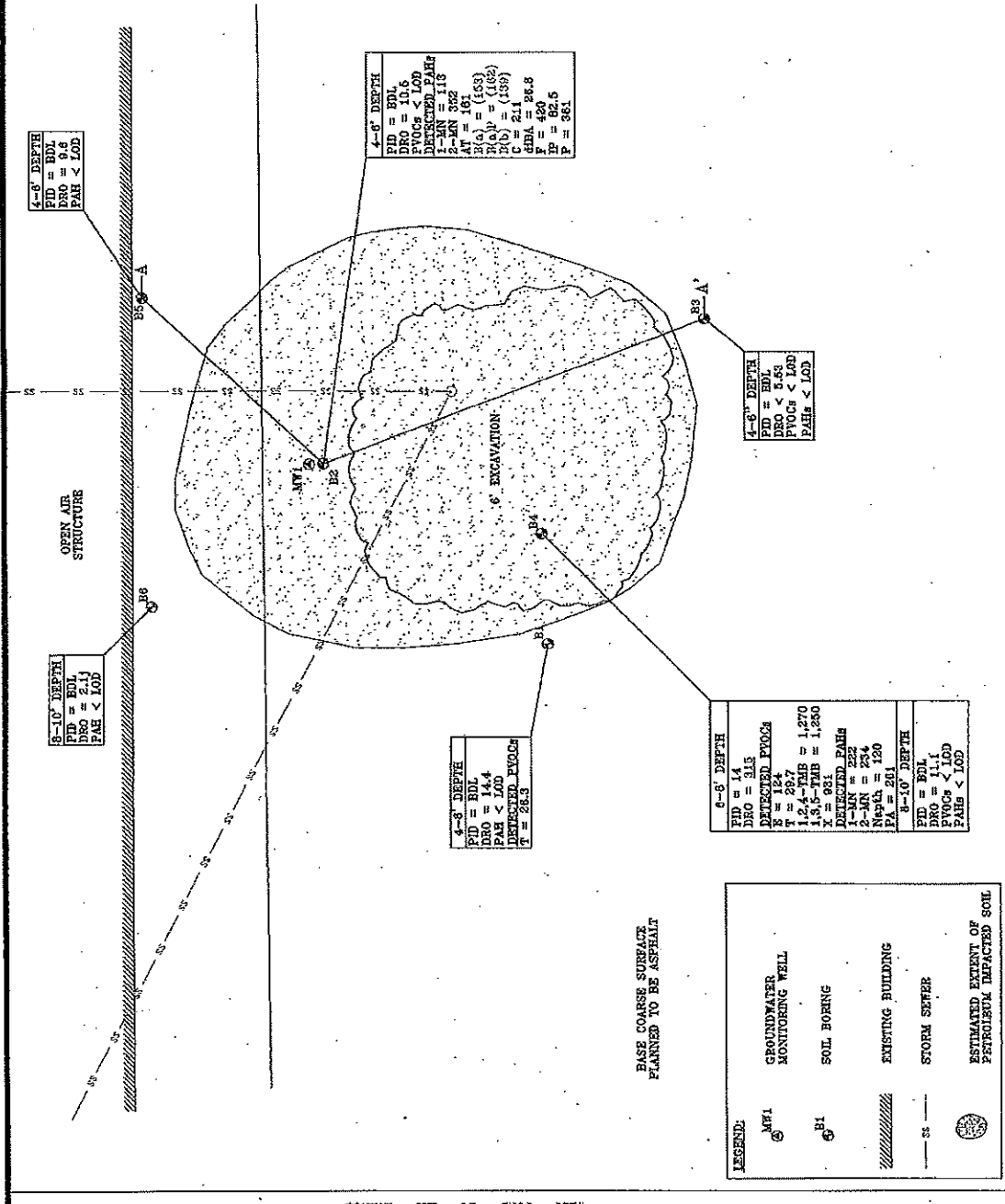
ABBREVIATIONS:
 -DRO: DIESEL RANGE ORGANICS
 -LOD: LIMIT OF DETECTION
 -PAH: POLYNUCLEAR AROMATIC HYDROCARBONS
 -PID: PHOTOIONIZATION DETECTOR (FIELD)
 -PPOC: PETROLEUM VOLATILE ORGANIC COMPOUNDS
 -T: CONCENTRATION DETECTED BETWEEN THE LABORATORY DETECTION LIMITED QUANTIFICATION LIMIT

NOTES:
 FIELD PID RESULTS EXPRESSED IN INSTRUMENTS UNITS
 GPO AND DRO RESULTS EXPRESSED IN MILLIGRAMS PER KILOGRAM (mg/kg)
 VOC AND PPOC RESULTS EXPRESSED IN MICROGRAMS PER KILOGRAM (ug/kg)
 RESULTS INDICATED IN RED/UNDERLINED ARE ABOVE THE RESIDUAL CONTAMINANT LEVEL FOR SOIL SET FORTH IN NR 720.
 RESULTS INDICATED IN GREEN/PARTIALLY SCORED THIS WERE DIRECT CONTACT RESIDUAL CONTAMINANT LEVEL.

GF

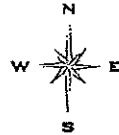
GREENBERG ASSOCIATES, INC.
 25 WEST WISCONSIN RD., WAUKESHA, WI. 53190
 (414) 542-0111

| | | | |
|-------------|-----------|-----------|----------|
| PROJECT NO. | 13-010007 | SHEET NO. | 10/21 |
| DATE | 12/12/01 | SCALE | 1" = 10' |
| APPROVED | | DATE | |
| DESIGNED | | SCALE | |
| REVISIONS | | DATE | |

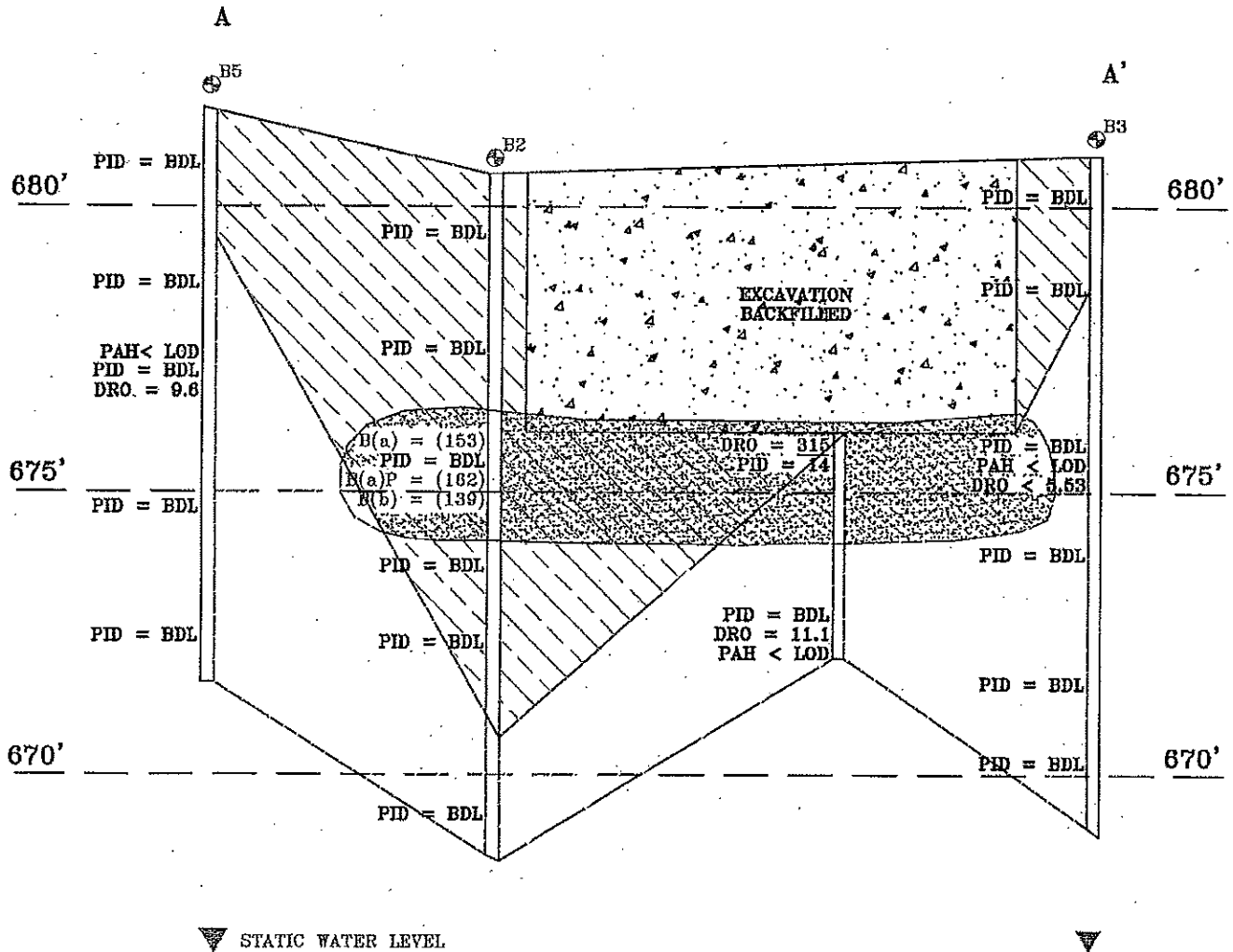


(2194 WEST POND DU LAC AVENUE)

17.3



SCALE
 HORIZONTAL: 1" = 10'
 VERTICAL: 1" = 3'



665' F-14 665'

LEGEND:

| | |
|--|--|
| | FILL MATERIAL CONSISTING OF BROWN SILTY CLAY TO CLAYEY SILT WITH CONCRETE AND BRICK FRAGMENTS |
| | NATURAL SOILS CONSISTING OF SILTY SILTY CLAY TO CLAYEY SILT WITH TRACE TO LITTLE FINE TO COARSE SAND |
| | EXCAVATION BACKFILL MATERIAL CONSISTING OF 2" TO 3" CRUSHED ROCK |

GILES ENGINEERING ASSOCIATES, INC.
 86 W22350 JOHNSON RD.; WAUKESHA, WI, 53186
 (414)-544-0118

FIGURE 4
 CROSS SECTION A-A'
 FONDI FOODS MARKET
 2144-48 WEST FOND DU LAC AVENUE
 MILWAUKEE, WISCONSIN

| DESIGNED | DRAWN | APPROVED | SCALE | DATE |
|----------|-------|----------|-----------|----------|
| DBR | RH | X | SEE ABOVE | 12/19/01 |

PROJECT NO.: 1E-0110017 CAD No.: E1100175

TABLE 2

SOIL ANALYTICAL RESULTS

2221-2319 W. AUSTIN AVENUE - 244-48 W. FONDU LAKE AVENUE

Milwaukee, Wisconsin

Project No. 1E-0006034

| Analytes | NR 720.09 RCLs Table 1/Table 2 | NR 746.06 Table 1 Product Indicator | Direct Contact RCLs | SAMPLING LOCATIONS | | | | | | |
|------------------------------|-----------------------------------|---|------------------------|--------------------|------|-------|-------|-------|-----|-----|
| | | | | B1 | B2 | B3 | B4 | B5 | B6 | |
| Detected VOCs (ug/kg) | | | | | | | | | | |
| Ethylbenzene | 2,900 | 4,800 | - | <25 | <25 | <25 | <25 | <25 | <25 | <25 |
| Toluene | 1,500 | - | - | 26.3 | <25 | <25 | 28.7 | <25 | - | - |
| 1,2,4-Trimethylbenzene | 4,100 | 42,000 | - | <25 | <25 | <25 | 1270 | <25 | - | - |
| 1,3,5-Trimethylbenzene | - | - | - | <25 | <25 | <25 | 1250 | <25 | - | - |
| Total Xylenes | - | 2,700 | - | <25 | <25 | <25 | 931 | <25 | - | - |
| 1-Methylnaphthalene | - | - | 1,100,000 | <122 | 113 | <111 | 222 | <123 | <55 | <53 |
| 2-Methylnaphthalene | - | - | 600,000 | <122 | 352 | <111 | 234 | <123 | <55 | <54 |
| Anthracene | - | - | 5,000,000 | <122 | 161 | <111 | <114 | <123 | <25 | <27 |
| Benzo(e)anthracene | - | - | 88 | <60.8 | 153 | <55.3 | <57.2 | <61.3 | <27 | <20 |
| Benzo(a)pyrene | - | - | 8.8 | <6.08 | 162 | <5.93 | <6.72 | <6.43 | <21 | <21 |
| Benzo(b)fluoranthene | - | - | 88 | <60.8 | 139 | <56.3 | <57.2 | <61.3 | <31 | <30 |
| Chrysene | - | - | 8,800 | <122 | 211 | <111 | <114 | <123 | <27 | <26 |
| Dibenz(a,h)anthracene | - | - | 8.8 | <6.08 | 26.8 | <5.93 | <5.72 | <6.13 | <37 | <36 |
| Fluoranthene | - | - | 600,000 | <122 | 420 | <111 | <114 | <123 | <25 | <25 |
| Indeno(1,2,3-cd)pyrene | - | - | 88 | <60.8 | 82.5 | <55.3 | <57.2 | <61.3 | <35 | <34 |
| Naphthalene | - | - | 20,000 | <122 | <111 | <111 | 120 | <123 | <55 | <54 |
| Phenanthrene | - | - | 18,000 | <122 | <111 | <111 | 201 | <123 | <23 | <22 |
| Pyrene | - | - | 500,000 | <122 | 381 | <111 | <114 | <123 | <23 | <22 |
| Detected PAHs (ug/kg) | | | | | | | | | | |

VOC: Volatile Organic Compound

WDNR: Wisconsin Department of Natural Resources

PID: Photoionization Detector

J: Concentration measured between the laboratory detection limit and the quantitation limit

Results in bold/italic exceed the WDNR NR 720 Residual Contaminant Level (RCL)

Results in bold/green exceed the WDNR Direct Contact Residual Contaminant Level (RCL)

mg/kg: Milligrams per kilogram; equivalent to parts per million (ppm)
ug/kg: Micrograms per kilogram; equivalent to parts per billion (ppb)

*: Indicates sample was taken at or below the historic measured high water table, based on monitoring well data

--: Not Applicable / Not Analyzed

PAHs: Polynuclear Aromatic Hydrocarbons

BDL: Below Detection Limit

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