
LIMITED TERM CONSERVATION EASEMENT

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (this Easement) is granted on the first day of November 2019 by the Housing Authority of the City of Milwaukee (HACM) to the Milwaukee Metropolitan Sewerage District (Easement Holder).

Recording Area

Name and Return Address:

Milwaukee Metropolitan
Sewerage District
Attention: Michael Hirsch
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Tax Key Number:

189-0891-000

RECITALS

- A. **Property.** HACM is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A (the Property). The portion of the Property which is subject to this Easement is depicted on a map attached as Exhibit B (the Easement Area). The Property is located at 5440 North 64th Street, Milwaukee, Wisconsin.

This Easement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold storm water in place to reduce the quantity and improve the quality of runoff.

- B. **Status of the Property.** HACM and the Milwaukee Board of School Directors (MPS) entered into a Ground Lease Agreement (Lease) dated as of August 1, 2003 which includes the Easement Area. The Lease grants an option to purchase a portion of the Property, including the Easement Area, to MPS.

HACM and MPS also entered into an Agreement dated as of March 1, 2017 regarding certain storm water management facilities located on the Property beneath the Browning School playground (the MPS Agreement).

The Lease and the MPS Agreement are attached to a Memorandum of Ground Lease, Option and Agreement regarding Storm Water Management Facilities (Browning School) recorded with the Milwaukee County Register of Deeds on March 21, 2019 as Document No. 10856291.

HACM and the City of Milwaukee (the City) are parties to a Storm Water Management Facility and Common Area Maintenance and Easement Agreement (Westlawn Gardens) dated as of December 1, 2017 and recorded with the Milwaukee County Register of Deeds on March 21, 2019 as Document No. 10856296 (the Storm Water Easement). The Storm Water Easement grants certain rights to the City with respect to the Easement Area and allocates responsibility for maintenance of the storm water facilities located within the Easement Area to the Westlawn Gardens Property Owners' Association Inc., a Wisconsin Chapter 181 non-stock, non-profit corporation.

- C. **Conservation Values.** In its present state, the Property has conservation value because it has an underground storm water storage system with a detention capacity of 872,175 gallons (Green Infrastructure).
- D. **Baseline Documentation.** The condition of the Property and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation Values (Baseline Report), which is on file at the office of the Easement Holder and incorporated into this Easement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides 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.
- E. **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.
- F. **Qualified Organization.** The Easement Holder 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.
- G. **Conservation Intent.** HACM and Easement Holder share the common purpose of preserving the Conservation Values for a period of twenty years. HACM intends to place restrictions on the use of the Property to protect those Conservation Values. In addition, HACM intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

- H. Funding Provided by Easement Holder.** The Easement Holder has provided funding to HACM for the installation of the Green Infrastructure. HACM 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 the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, HACM voluntarily conveys to the Easement Holder a conservation easement for a period of twenty years on the Property. This Easement consists of the following terms, rights, and restrictions:

1. **Purpose.** The purpose of this Easement is to require HACM to keep, preserve, and maintain the Green Infrastructure installed on the Property.
2. **Effective Dates.** This Easement becomes effective on November 1, 2019 and terminates on October 31, 2039.
3. **Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.
4. **Operation and Maintenance.** HACM will operate and maintain the Green Infrastructure or cause the Green Infrastructure to be operated and maintained so that it remains functional for the entire term of this Easement. HACM is solely responsible for operation, maintenance, and evaluating performance.
5. **Additional Reserved Rights of HACM.** HACM 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 this Easement or inconsistent with the purpose of this Easement. However, HACM may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

HACM expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions.

- 5.1 The encumbrance or conveyance is subject to the terms of this Easement.
- 5.2 HACM incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which HACM transfers any interest in all or part of the Property.
- 5.3 HACM notifies the Easement Holder of any conveyance in writing within fifteen days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 5.4 Failure of HACM to perform any act required in Subparagraphs 5.2 and 5.3 does

not impair the validity of this Easement or limit its enforceability in any way.

6. Easement Holder's Rights and Remedies. To accomplish the purpose of this Easement, HACM expressly conveys to the Easement Holder the following rights and remedies.

6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.

6.2 Prevent Inconsistent Uses. The Easement Holder 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. The Easement Holder 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 this Easement; and otherwise exercise its rights under this Easement. The Easement Holder will: provide prior notice to HACM before entering the Property, comply with HACM's safety rules, and avoid unreasonable disruption of HACM's activities.

7. Remedies for Violations. The Easement Holder and HACM have the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively. The Easement Holder will notify HACM of the problems and request remedial action within a reasonable time.

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

7.3 Remedies. When enforcing this Easement, the Remedies available to the Easement Holder 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.

- 7.4 Enforcement Delays. A delay or prior failure of the Easement Holder 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.
- 7.5 Waiver of Certain Defenses. HACM hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.
- 7.6 Acts Beyond HACM's Control. The Easement Holder may not bring any action against HACM for any injury or change in the Property resulting from causes beyond HACM'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 HACM under emergency conditions to prevent or mitigate damage from these causes, provided that HACM notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of this Easement.

8. General Provisions.

- 8.1 Amendment. HACM and Easement Holder may 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 the Easement Holder, it:
- a. diminishes the Conservation Values of the Property,
 - b. is inconsistent with the purpose of this Easement,
 - c. affects the duration of this Easement, or
 - d. affects the validity of this Easement under Section 700.40 of the Wisconsin Statutes.
- 8.2 Assignment. The Easement Holder 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. The Easement Holder will notify HACM 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.

- 8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of this 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. HACM and Easement Holder 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 Easement sets forth the entire agreement of HACM and Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.
- 8.7 Extinguishment. This Easement may be terminated or extinguished before the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, this Easement may be extinguished only under the following circumstances: (a) exercise of the power of eminent domain or purchase in lieu of condemnation takes all or part of the Property or (b) HACM and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of this Easement impossible.
- 8.8 Ownership Responsibilities, Costs and Liabilities. HACM 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.* HACM 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 the Easement Holder to:
 - i. exercise physical or managerial control over the day-to-day operations of the Property;
 - ii. become involved in the management decisions of HACM

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.* HACM remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations, and requirements.
 - d. *Indemnification.* HACM releases and will hold harmless and indemnify including: the Easement Holder from and against 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 this Easement,
 - i. injury to or the death of any person, or physical damage to any property, resulting from the active or passive negligence of HACM or its employees acting within the scope of their employment, unless due solely to the negligence of the Easement Holder;
 - 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 HACM or its employees or agents acting within the scope of their employment, in any way affecting, involving, or related to the Property;
 - iii. the presence or release in, on, from, or about the Property, caused by HACM or its employees or agents acting within the scope of their employment, 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 the Easement Holder.
 - e. *Taxes.* Before delinquency, HACM shall pay 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 in response to this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

- f. *Retention of Rights.* HACM expressly retains all rights under Wis. Stat. sec. 893.80.
- 8.9 Recording. The Easement Holder 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.
- 8.10 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.
- 8.11 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the Property for the term of this Easement. Notwithstanding the foregoing; the parties acknowledge that, pursuant to paragraph 2 of MPS Agreement, HACM has agreed with MPS to be solely responsible for the maintenance, repair, and upkeep of the stormwater management facilities located in the Easement Area.
- 8.12 Terms. The terms “HACM” and “Easement Holder,” wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include HACM’s and Easement Holder’s respective personal representatives, heirs, successors, and assigns.
- 8.13 Warranties and Representations. HACM warrants and represents that:
- a. HACM and the Property comply with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
 - b. 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 HACM might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
 - c. The person signing this Easement has authority to grant this Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As the Secretary-Executive Director of the Housing Authority of the City of Milwaukee, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this _____ day of _____, 2019.

By: _____
Antonio M. Perez
Secretary-Executive Director

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this _____ day of _____, 2019, the person known as Antonio M. Perez came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____.

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term Conservation Easement on this _____ day of _____, 2019.

By: _____
Kevin L. Shafer, P.E.
Executive Director

Approved as to Form: _____
Attorney for the District

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this _____ day of _____, 2019, the person known as Kevin L. Shafer came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____.

Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this conservation easement.

ATTACHMENTS

EXHIBIT A Description of the Property

EXHIBIT B Map Showing the Location of the Property and the Green Infrastructure Subject to this Easement

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Address: 5440 North 64th Street, Milwaukee, Wisconsin

Tax Key: 189-0891-000

Legal Description: WESTLAWN EAST IN NE ¼ OF SEC 34 T8N R21E LOT 1 OF BLOCK 3

[SEE ALSO ATTACHMENT 1 TO EXHIBIT A.]

ATTACHMENT 1 TO EXHIBIT A

[NOTE THIS IS A COPY OF THE LEGAL DESCRIPTION FOR THE PROPERTY WHICH WAS ATTACHED AS EXHIBIT C TO THE LEASE]

EXHIBIT C

Block 6 in Westlawn, being a Subdivision of a part of the North 1/2 of the North 1/2 of Section 34, in Town 8 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

ALSO, a parcel of land in the North 1/2 of the Northeast 1/4 of Section 34, in Town 8 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Commencing at a point in the Northeast corner of the Northeast 1/4 of Section 34, Town 8 North, Range 21 East, thence West on the North 1/4 Section line 1068.55 feet to a point; thence South at right angles to said 1/4 Section line 380.00 feet to the point of beginning of the land to be described; thence continuing South 193.17 feet to a point; thence West and parallel to the North line of said 1/4 Section 224.05 feet to the East line of North 64th Street; thence North on said East line 193.37 feet to a point; said point being 380.00 feet South of and measured at right angles to the aforesaid North 1/4 Section line; thence East and parallel to the North line of aforesaid 1/4 Section 226.95 feet to the point of beginning.

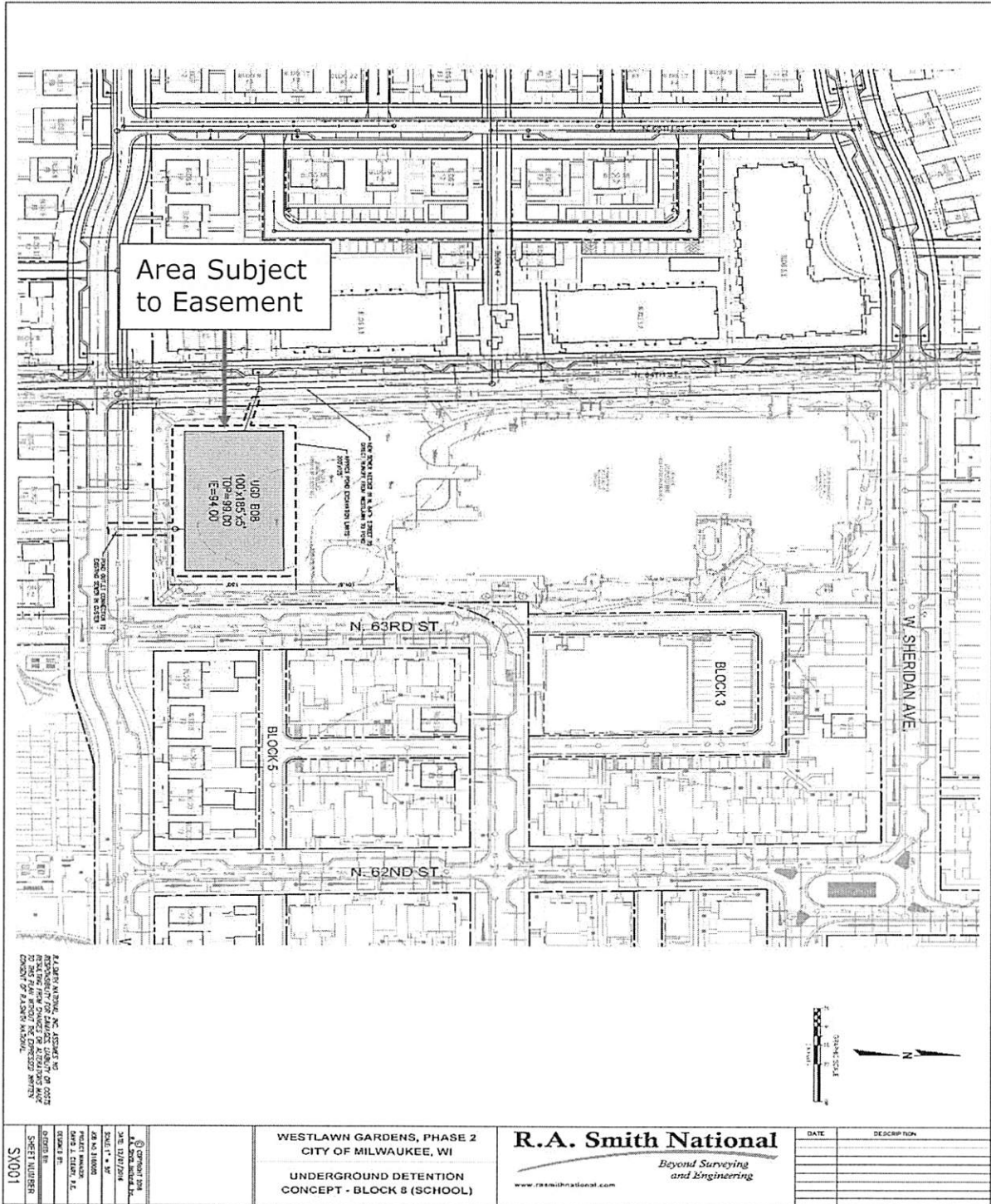
EXCEPTING therefrom, that part conveyed to the City of Milwaukee for street purposes by Quit Claim Deed recorded as Document No. 5774097.

Part of Tax Key No. 189-0701-110-7

EXHIBIT B

MAP SHOWING THE LOCATION OF THE PROPERTY AND GREEN INFRASTRUCTURE SUBJECT TO THIS EASEMENT

1374740001/1374010001/1374020001/1374030001/1374040001/1374050001/1374060001/1374070001/1374080001/1374090001/1374100001



A PERSON WHOSE NAME APPEARS ON THIS PLAN IS NOT NECESSARILY RESPONSIBLE FOR ANY ERROR OR OMISSION ON THIS PLAN. THE USER OF THIS PLAN SHOULD CONSULT THE ORIGINAL RECORD DRAWING FOR A COMPLETE LIST OF CONDITIONS AND RESTRICTIONS.

PROJECT NO.	1374080001
DATE	12/21/2014
SCALE	1" = 50'
DRAWN BY	DAVID J. CLAYTON, P.E.
CHECKED BY	DAVID J. CLAYTON, P.E.
DATE	12/21/2014
SHEET NUMBER	5X001

WESTLAWN GARDENS, PHASE 2
CITY OF MILWAUKEE, WI
UNDERGROUND DETENTION
CONCEPT - BLOCK 5 (SCHOOL)

R.A. Smith National
*Beyond Surveying
and Engineering*
www.ra-smithnational.com

DATE	DESCRIPTION

Exhibit B - Map