
LIMITED TERM CONSERVATION EASEMENT

This LIMITED TERM CONSERVATION EASEMENT (“**Easement**”) is granted on the _____ day of _____ 2016 (the “**Effective Date**”) by the City of Milwaukee, a municipal corporation (the “**City**”), to the Milwaukee Metropolitan Sewerage District, a special-purpose entity under Subch. II of Wis. Stat. Ch. 200 (“**MMSD**”).

RECITALS

A. Property. The City is the sole owner of property located in Milwaukee County, Wisconsin, described in **EXHIBIT A** (the “**Property**”).

B. Green Infrastructure. In 2015, the City constructed green infrastructure on parts of the Property pursuant to the Riverside Pump Station Project Agreement (the “**Project Agreement**”) authorized by City Common Council Resolution File No. 141572 on May 12, 2015. The green infrastructure constructed pursuant to the Project Agreement includes the Surface Drainage Channel, Porous Pavement, Bio Retention Areas, New Storm Sewer, and New Sanitary Sewer as depicted in **EXHIBIT B** (“**Green Infrastructure**”). This infrastructure is designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff and to divert stormwater from the combined sewer to surface water. The Project Agreement requires that City grant to MMSD this Easement.

C. Conservation Values. In its present state, the Property has conservation value because it has 942 feet of new storm sewers, 160 feet of new surface drainage channel, and 1,792 square feet of porous pavement and 1,800 square feet of bioretention which provide a retention capacity of 18,876 gallons (collectively the “**Conservation Values**”).

D. Baseline Documentation. A Baseline Report documents the condition of the Green Infrastructure and includes an inventory of relevant features, characteristics, and conservation values. This Baseline Report consists of reports, maps, photographs and other documentation. This Baseline Report is on file at the office of MMSD and is incorporated into this Easement by reference. City and MMSD agree that the Baseline Report provides an accurate representation of the condition of the Property at the time of the conveyance of this Easement and that the Baseline Report is an objective, but not exclusive, basis for monitoring compliance with the terms of this Easement.

Recording Area

Name and Return Address:

Milwaukee Metropolitan
Sewerage District
Attention: Delbert Dettmann
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Parcel Identification Number:

**Part of Tax Key No. 315-9985-000; and
Part of Tax Key No. 315-9982-100**

E. Public Policies. Preservation of the Green Infrastructure will serve the public policy set forth in Wis. Stat. 700.40, 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. MMSD is qualified to hold conservation easements under Wis. Stat. 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. City and MMSD share the common purpose of preserving the Green Infrastructure for a period of ten years. City intends to place restrictions on the use of the Property pursuant to the terms hereof to protect the Green Infrastructure. In addition, City grants to MMSD and MMSD accepts the right to monitor and enforce these restrictions, as set forth herein.

H. Funding Provided by MMSD. MMSD has provided funding to City for the installation of the Green Infrastructure in the form of a Green Solutions for Separate Infrastructure and Sewer Separation Grant accepted by the City through adoption of City Common Council Resolution File No. 141572. City installed the Green Infrastructure.

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 Wis. Stat. 700.40, City hereby voluntarily grants and conveys to MMSD, and MMSD hereby accepts, subject to the terms and conditions herein, this Easement over, in, and to the Easement Area (defined below) for a period of ten years. This Easement consists of the following terms, rights and restrictions:

1. Purpose. The purpose of this Easement is to require City to keep, preserve and maintain the Green Infrastructure installed on the Property.

2. Easement Area. The portion of the Property subject to this Easement is limited to the Green Infrastructure (the “**Easement Area**”). The construction of any additional green infrastructure will not be included in the Easement Area nor will it be subject to this Easement.

3. Effective Dates. This Easement becomes effective on the Effective Date and terminates ten years later.

4. Recording of Easement. MMSD will record this Easement at MMSD’s expense.

5. Operation and Maintenance. City will operate and maintain the Green Infrastructure so that it remains functional for the entire 10 year term of this Easement, unless otherwise agreed upon by the parties according to the terms of this agreement. City is solely responsible for operation, maintenance and evaluating the performance of the Green Infrastructure.

6. Additional Reserved Rights of City. City retains all rights associated with ownership of the Property, including, but not limited to, the right to operate, maintain, modify, expand, or construct improvements on the Property, and the right to use the Property and invite others to use the Property in any manner. However, City may not, without the prior written approval of MMSD, exercise these rights in a manner that is expressly prohibited by the Easement or that would adversely impact the Conservation Values of the Green Infrastructure.

City expressly reserves the right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the Property, provided that:

6.1 The encumbrance or conveyance is subject to the terms of this Easement.

6.2 City incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which City transfers any interest in all or part of the Property.

6.3 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.

6.4 Failure of City to perform any act required in Subparagraphs 6.2 and 6.3 does not impair the validity of this Easement or limit its enforceability in any way.

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

7.1 Preserve Conservation Values. MMSD has the right to preserve and protect the Conservation Values of the Green Infrastructure according to the terms of this Easement.

7.2 Prevent Inconsistent Uses. MMSD has the right to prevent any unapproved activity or use of the Property that is reasonably likely to impair the Conservation Values of the Green Infrastructure and has the right to require the restoration of areas or features of the Green Infrastructure that are damaged by any such activity or use, pursuant to the remedies set forth below.

7.3 Enter the Property. MMSD has the right to enter the Property to inspect the Green Infrastructure and to monitor compliance with the terms of this Easement and otherwise exercise its rights under the Easement. MMSD will provide reasonable prior notice to City before entering the Property, comply with all of City's safety rules, and avoid unreasonable disruption of City's business activities.

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

8.1 Collaboration; Notice of Violation and Corrective Action. If MMSD identifies a violation of the Easement, the parties will initially attempt to resolve the violation collaboratively. If such collaboration fails, and if MMSD determines that a violation of

the terms of this Easement has occurred or is imminent, MMSD will give written notice of the violation or imminent violation to City and allow at least 30 days from the date of notice for City to correct the violation. If City fails to respond within 30 days, then MMSD may initiate judicial action. If the violation is one that cannot be corrected within 30 days, MMSD shall allow City the amount of time reasonably necessary to correct the violation before 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 Green Infrastructure or if good faith efforts to notify City are unsuccessful.

8.2 Remedies. When enforcing this Easement, the remedies available to MMSD include: temporary or permanent injunctive relief for any violation or imminent violation of the Easement, the right to require restoration of the Green Infrastructure to its condition at the time of the Baseline Report, 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.

8.3 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. Notwithstanding anything to the contrary herein, City and MMSD each retain and do not waive their respective rights under Wis. Stat. 893.80.

8.4 Acts Beyond City's Control. MMSD may not bring any action against City for any injury or change in or to the Green Infrastructure 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 City under emergency conditions to prevent or mitigate damage from such causes, provided that City notifies MMSD of any occurrence that has adversely impacted or interfered with the purpose of the Easement.

9. General Provisions.

9.1 Amendment. City and MMSD may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for Milwaukee County.

9.2 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 Wis. Stat. 700.40. 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 City of any assignment at least 30 days before the date of such assignment, provide City with a copy of the assignment, and record the assignment in the Milwaukee County Register of Deeds Office. However, failure to give

such notice does not affect the validity of assignment or limit its enforceability in any way.

9.3 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.

9.4 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.

9.5 Counterparts. 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.

9.6 Entire Agreement. This instrument sets forth the entire agreement of 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.

9.7 Extinguishment. This Easement may be terminated or extinguished prior to the expiration of its term, whether in whole or in part, through judicial proceedings in a court of competent jurisdiction or through written agreement between the parties, a copy of which shall be recorded in the Office of the Register of Deeds for Milwaukee County. 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) City and MMSD agree that a subsequent, unexpected change in the condition of the Property makes accomplishing the purpose of the Easement impractical or impossible.

9.8 Ownership Responsibilities, Costs and Liabilities. 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*. 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 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.* 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. *Indemnification.* City will hold MMSD harmless from loss or injury resulting from City’s willful or negligent acts or omissions under this Easement. MMSD will hold City harmless from loss or injury resulting from MMSD’s willful or negligent acts or omissions under this Easement. If MMSD and City are jointly negligent or culpable, then MMSD and City will share liability in proportion to their respective negligence or culpability. The foregoing provisions are subject to the legal defenses available to MMSD and to City, including, but not limited to, protections under Wis. Stat. 893.80.

e. *Taxes.* City shall pay before delinquency any applicable 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.

9.9 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.

9.10 Successors. This Easement is binding upon, and inures to the benefit of, 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.

9.11 Notices. All notices permitted or required herein shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by email, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that City’s City Hall is open for business, and the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e. the sender does not receive any error or busy or inability to send notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

<p><u>IF TO CITY:</u> Ghassan Korban Dept. of Public Works 841 N. Broadway, Room 501 Milwaukee, WI 53202 Phone: 414-286-3301 Email: gkorba@milwaukee.gov</p> <p>WITH COPY TO: Carrie Lewis Milwaukee Water Works 841 N. Broadway, Room 406 Milwaukee, WI 53202 Phone: 414-286-2801 Email: Carrie.Lewis@milwaukee.gov</p>	<p><u>IF TO MMSD:</u> Delbert Dettmann 260 W. Seeboth Street Milwaukee, WI 53204 Phone: 414-225-2275 Email: DDettmann@mmsd.com</p> <p>WITH COPY TO: Intentionally Deleted</p>
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Recipient persons and contact information may be changed by providing written notice of the change to the other party.

IN WITNESS WHEREOF, THE PARTIES HERETO caused this Easement to be executed by their authorized signatories as of the date first written above.

<p>GRANTOR/CITY: CITY OF</p> <p>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. _____, adopted on _____ _____.</p>	<p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>_____, 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: _____</p> <p>Name Printed: _____ Assistant City Attorney State Bar No. _____ Date: _____</p> <p>1142-2016-589:227114</p>
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<p>GRANTEE/MMSD: MILWAUKEE METROPOLITAN SEWERAGE DISTRICT</p> <p>By: _____ Kevin L. Shafer, Executive Director Milwaukee Metropolitan Sewerage District</p> <p>_____ Approved as to Form – MMSD Legal Dept.</p>	<p>MMSD NOTARY</p> <p>State of Wisconsin)) ss. Milwaukee County)</p> <p>On the above date, this instrument was acknowledged before me by the above named Executive Director of the Milwaukee Metropolitan Sewerage District, know to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.</p> <p>_____ (Signature, Notary Public, State of Wisconsin)</p> <p>_____ Print or Type Name, Notary Public State of Wisconsin</p> <p>_____ (Date Commission Expires)</p>
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Drafted by Gregg Hagopian, Milwaukee City Attorney’s Office

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Property is comprised of:

1. Part of what is currently 1314 East Chambers Street, Milwaukee, Wisconsin 53212 (TIN 315-9982-100) described as follows:

That part of Lot 32 (School Lands) in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 16, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at a concrete monument with brass cap found at the Northwest corner of the Northeast $\frac{1}{4}$ of said Section 16; thence North $89^{\circ}03'40''$ East (recorded as North $89^{\circ}59'$ East) along the North line of said Section 16, 1104.95 feet to a 1" iron pipe found; thence North $89^{\circ}03'40''$ East, 155.68 feet to a 1.17" copper survey mark meander corner located 42 feet west of the westerly ordinary high water mark of the Milwaukee River; thence South $40^{\circ}09'26''$ East along a meander line, 65.61 feet to a 1" iron pipe meander corner located 25 feet west of the westerly ordinary high water mark of said river; thence South $00^{\circ}29'19''$ East along said meander line, 65.38 feet to a 1" iron pipe meander corner located 25 feet west of the westerly ordinary high water mark of said river; thence South $11^{\circ}28'52''$ West along said meander line, 109.42 feet to a 1" iron pipe meander corner located 25 feet west of the westerly ordinary high water mark of said river; thence South $07^{\circ}45'12''$ West along said meander line, 78.70 feet to a 1" iron pipe meander corner located 25 feet west of the westerly ordinary high water mark of said river and the point of beginning; thence South $01^{\circ}33'30''$ West along said meander line, 30.03 feet to a 1" iron pipe meander corner located 25 feet west of the westerly ordinary high water mark of said river; thence South $89^{\circ}00'30''$ West, 92.13 feet to a 1" iron pipe set; thence North, 30.00 feet to a 1" iron pipe set; thence North $89^{\circ}00'30''$ East, 92.95 feet to the point of beginning.

2. All of 1311 East Chambers Street, Milwaukee, Wisconsin 53212 (TIN 315-9985-000) described as follows:

The north $\frac{1}{2}$ of Lot 30 and all of Lot 31 (School Lands) in the Northeast $\frac{1}{4}$ of Section 16, Township 7 North, Range 22 East, excepting lands previously opened for public street purposes (the west 50 feet of Lots 30 and 31 and the east 1040 feet of the west 1090 feet of the north 25 feet of Lot 31).

EXHIBIT B-1

GREEN INFRASTRUCTURE MAP 1 OF 2

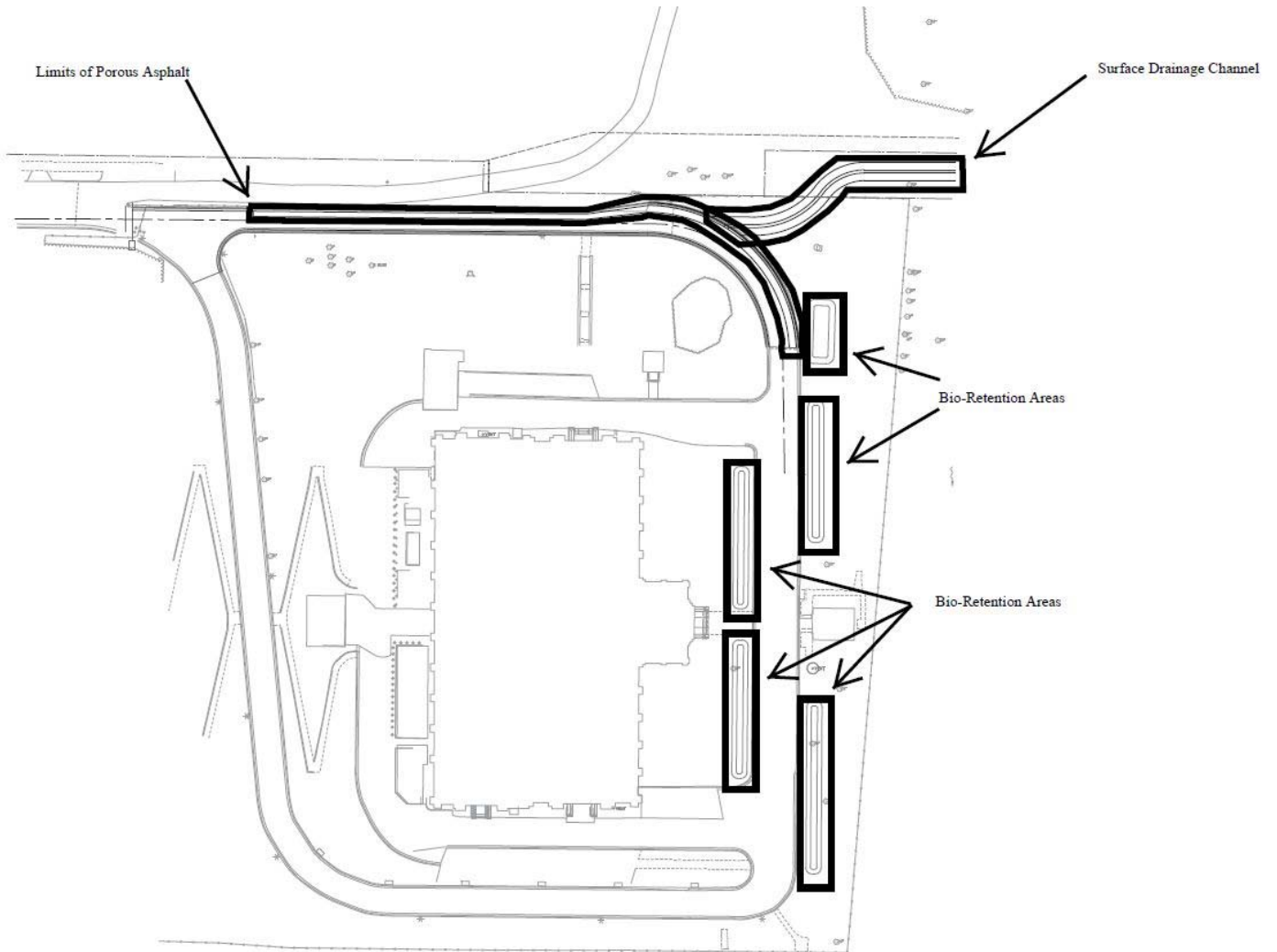


EXHIBIT B-2

GREEN INFRASTRUCTURE MAP 2 OF 2

