

LICENSE AGREEMENT

This License Agreement ("Agreement"), is made as of this _____ day of _____, 2010 (the "Effective Date") by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY"), as licensor, and the FRIENDS OF THE HANK AARON STATE TRAIL, INC., a Wisconsin non-stock corporation ("FOHAST"), as licensee.

RECITALS

- A. CITY owns certain real estate and improvements known as "Catalano Square" located at 138 North Broadway, Milwaukee, Wisconsin (the "Property"), depicted and shown on Exhibit A attached hereto.
- B. FOHAST wishes to obtain from CITY, and CITY wishes to grant to FOHAST, a personal license (the "License") to install one (1) lighted car stop shelter as depicted on Exhibit B attached hereto (the "Shelter") on that portion of the Property identified and depicted on Exhibit A attached hereto (the "Premises").
- C. CITY is authorized to enter into this Agreement pursuant to CITY Resolution File No. _____, passed _____, 2010.

AGREEMENT

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

1. Recitals Incorporated. The recitals above are hereby acknowledged, agreed to, and incorporated herein by reference.
2. Grant of License to FOHAST. CITY hereby grants to FOHAST a personal and qualified license to enter onto the Premises and to install, use, and maintain the Shelter on the Premises on the terms and conditions contained herein.
3. No Real Property Interest. This is a license and personal privilege. It is not a lease or other conveyance of any interest or estate in real property. FOHAST is not a tenant. FOHAST has no rights under Wis. Stat. Ch. 704. FOHAST is not an easement holder.
4. Ownership. FOHAST is and shall remain owner of the Shelter, unless the parties agree to the contrary.
5. Term. This License shall commence on the date noted above and shall continue in effect unless terminated as provided for herein.
6. AS-IS, WHERE-IS. CITY makes no warranty or representation whatsoever to FOHAST, express or implied, regarding the Property or the Premises. FOHAST acknowledges that the Premises are being licensed to FOHAST on an AS-IS, WHERE-IS

BASIS, with all faults known or unknown, and whether or not suitable for FOHAST's intended use.

7. **License Fee.** In consideration of CITY's grant to FOHAST of the License, FOHAST has paid CITY One and no/100ths Dollars (\$1.00) and other good and valuable consideration, receipt of which CITY acknowledges.
8. **Use.** FOHAST, its employees, agents, or servants, shall have the right to enter, use and occupy the Premises, as a licensee and as a personal privilege, solely for the installation, use, and maintenance of the Shelter (collectively, the "Use"), and to carry out FOHAST's duties hereunder. No other use is permitted unless agreed to by CITY in writing.
9. **Compliance with Laws and Regulations.** FOHAST shall, at its sole cost and expense, comply with, and cause its employees, agents or servants to comply with, any and all laws, statutes, ordinances and regulations, federal, state, county, and municipal, now or hereafter applicable when carrying out the Use, including, but not limited to, any applicable environmental law, rule or regulation of the Wisconsin D.N.R. or the U.S. E.P.A.
10. **No Hazardous Substances.** FOHAST shall not (and it shall prohibit its employees, agents or servants to) store, use, discharge or dispose of any Hazardous Substances on the Property or the Premises. The term "Hazardous Substances" 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).
11. **Responsibility for Damage to Property.** FOHAST shall be responsible (i) for remediateing any Hazardous Substances on the Property or the Premises traced to, caused by, or attributable, directly or indirectly, to the Use, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Property or Premises (and to any improvement at the Property) caused by, or attributable, directly or indirectly to the Use; provided, however, FOHAST shall have no liability under (i) or (ii) to the extent the Hazardous Substances or damage are present or caused by a third party unrelated to FOHAST. In furtherance of the foregoing, CITY acknowledges that FOHAST is not responsible for remediating environmental pollution or Hazardous Substances, or for repairing any damage at the Property or the Premises that existed thereat prior to the commencement of the Term, or that was caused by persons other than FOHAST (or its employees, agents or servants). FOHAST shall promptly provide written notice to CITY of any damage to the Property or Premises, and of any Hazardous Substance on the Property or Premises for which FOHAST is aware of. FOHAST shall also provide prior written notice of, and obtain CITY's prior written approval before conducting, any

remediation or repair work required under (i) or (ii) that it intends to conduct at the Premises or the Property; provided, however, such notice and consent shall not be required in the case of an emergency.

12. **Installation of Shelter by FOHAST; Plans and Specs.** FOHAST shall, at its expense, in a professional manner, in accordance with all applicable laws, rules and regulations, and according to the plans and specifications shown on **Exhibit C** attached hereto which have been approved by CITY (the "Plans and Specs"), install the Shelter on the Premises. No change in the Plans and Specs may be made without the prior written consent of CITY. Prior to installation or subsequent modification of the Shelter, FOHAST shall first obtain all required permits and other approvals from CITY.
13. **Shelter Maintenance.** FOHAST, at its sole cost and expense, will monitor and maintain the Shelter in good repair, and in accordance with all applicable laws and regulations.
14. **Removal of Shelter.** Upon termination of this Agreement, unless CITY agrees otherwise in writing, FOHAST will remove the Shelter and restore and repair the Premises to the condition they were in prior to installation of the Shelter. FOHAST must repair any damage to the Premises or Property caused by its removal of the Shelter.
15. **No Liens Are Permitted.** FOHAST does not have any estate or interest in the Property or Premises, and it has no right to mortgage, pledge as collateral, or to hypothecate, any interest in the Property or Premises. FOHAST shall not permit any lien, including, but not limited to, any lien under Wis. Stat. Ch. 779, Subch. I, any materialman, contractor, construction, or other lien to attach or to exist against the Property or the Premises as a result or consequence of FOHAST's action or inaction. If any such lien does attach, FOHAST shall promptly provide CITY with notice of such lien, and FOHAST shall, at its sole expense and in a reasonable period of time, cause such lien to be removed from title.
16. **Lien Waivers.** Upon completion by FOHAST of any installation or repair work that could result in a lien attaching to the Premises, FOHAST shall obtain, and, if CITY so requests, FOHAST shall provide to CITY lien waivers from each contractor and subcontractor who performed work or labor, or who provided services, materials, or supplies with respect to such work.
17. **Utilities.** The Shelter does not currently require electric service at the Property or Premises. Should FOHAST desire utilities at a future date, it shall be at FOHAST's sole expense and FOHAST shall first obtain approval from the Commissioners of the Department of City Development and the Department of Public Works, or their respective designees, and shall also obtain any required permits for the work.

18. **Insurance.** FOHAST shall obtain and maintain, or cause to be obtained and maintained, in place during the entire Term, at its expense (or at the expense of the third party obtaining and maintaining the insurance on FOHAST's behalf), insurance as described and in strict compliance with **Exhibit D** attached hereto. FOHAST shall provide CITY with a certificate of insurance evidencing such coverage upon written request.
19. **Indemnification.** To the fullest extent permitted by law, FOHAST agrees to defend, indemnify, and hold harmless CITY, 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 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 FOHAST or its employees, agents or servants, in connection with the Use during the Term, including, without limitation, claims related to a breach of FOHAST's obligations under Section 9 of this Agreement. The indemnifications contained herein shall survive the Term of this License.
20. **Retained Rights.** CITY expressly retains its rights, title and interest in and to the Property (including the Premises) and nothing contained herein shall be deemed an amendment to, any such rights, title or interest. CITY expressly retains all rights it has under Wis. Stat. §893.80.
21. **Defaults and Remedies.** Should CITY or FOHAST fail to perform any covenants or conditions herein contained, and such failure shall continue for thirty (30) days after written notice from the other party (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such failure, if such failure cannot be cured within such thirty (30) day period and provided the party responsible for curing such failure commences the process of curing such failure within said thirty (30) day period and continuously and diligently pursues such cure to completion), then in any such case, said party shall be in default under this Agreement and the non-defaulting party shall have all rights provided by law or in equity, including, but not limited to, the right to seek specific performance, and the right to recover damages. Nothing in this Section shall be construed as limiting CITY's rights pursuant to Section 24 of this Agreement.
22. **Condemnation of or Damage to Premises.** If the Premises (or a part thereof), at any time during the Term, get condemned by any public authority with the power of eminent domain (or are voluntarily transferred in lieu of, or under threat of, condemnation), or if the Premises are damaged in whole or in part by fire or some other cause so as to render - in CITY's reasonable opinion - all or any significant portion of the Premises unfit for the Use, CITY may terminate this Agreement, and FOHAST shall not be entitled to any part of the condemnation award or insurance proceeds (if any).

Notwithstanding anything to the contrary contained herein, if the Premises or any part thereof are damaged by act, omission, default or negligence of FOHAST, or its employees, agents or servants, this Agreement shall continue and FOHAST shall be responsible to repair or restore the Premises, but not the Shelter, at FOHAST's cost and expense.

23. **No Right to Assign or Sub-License.** FOHAST has no right to assign or transfer any interest whatsoever in and to this Agreement, or in and to the Property or Premises unless agreed to in writing by CITY.

24. **Termination of Agreement.** Notwithstanding anything to the contrary contained herein, either CITY or FOHAST may (for any reason, including no reason) terminate this Agreement at any time upon ninety (90) days' prior advance written notice. Upon termination, FOHAST shall peaceably and quietly deliver, yield up, and surrender the Premises and remove the Shelter and repair and restore the Premises as called for herein. Any of FOHAST's property not removed (including the Shelter) shall, at CITY's option, either become the sole property of CITY or be stored on-site or off-site at FOHAST's expense.

25. **Waiver.** No delay, waiver, omission or forbearance on the part of CITY or FOHAST to exercise any of either party's respective rights hereunder shall be deemed a waiver of such rights.

26. **Governing Law.** This Agreement shall be construed according to the laws of the State of Wisconsin.

27. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by facsimile, then at the time sent, if sent during business hours (i.e. 8:30 A.M. to 4:30 P.M., Monday through Friday) and so long as 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 addressed to the party intended as follows:

A. **If to CITY:**
City of Milwaukee
c/o City Real Estate
809 North Broadway
Milwaukee, WI 53202
Fax: 414-286-0395
Phone: 414-286-5820

With a copy to:
Danielle M. Bergner
City Attorney's Office

800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2620
Fax: (414) 286-8550

B. **If to FOHAST:**

Friends of the Hank Aaron State Trail, Inc.
Melissa Cook
c/o Wisconsin Department of Natural Resources
2300 North Doctor Martin Luther King Drive
Milwaukee, WI 53212
Phone: (414) 263-8500

The parties hereto may, from time to time, as needed, change the recipient and address information above by providing notice of new/replacement information by notice as required hereunder.

28. **Director.** All submissions to CITY, and all approvals or consents required to be obtained from CITY, hereunder, shall be submitted to, or obtained from the Commissioner of the Department of City Development, or his designee. The Commissioner's or his designee's signature on any document providing approval or consent shall be absolute proof of such approval or consent.
29. **Severability of Provisions.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
30. **Captions.** The captions in this Agreement are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.
31. **Entire Agreement.** This writing constitutes the entire agreement between the parties hereto and may not be amended or altered in any manner except in writing signed by the parties hereto.
32. **Counterparts; Facsimiles; No Recording.** This Agreement may be executed in one or more counterparts, which, when taken together, shall constitute one and the same document. Facsimile signatures shall be accepted as originals. This Agreement, being a personal license, shall not be recorded in the Register of Deeds Office.
33. **Open Records.** This Agreement and certain documents relating thereto are, or may be, subject to Wisconsin's Open Records Law (see Wis. Stat. Ch. 19, Subch. II, and, esp.

Wis. Stat. §19.36(3) which includes records produced or collected under this Agreement). Subject to exercising its legal rights under law, FOHAST agrees to cooperate with CITY in the event CITY receives a request under Wisconsin's Open Records Law for this Agreement or for any record relating to, or produced or collected under, this Agreement. FOHAST acknowledges that failure to do so will be a material breach under this Agreement and FOHAST will defend and hold CITY harmless with respect to liability concerning any such breach. Except as otherwise authorized under Wisconsin's Open Records Law, FOHAST records regarding this Agreement, the Property, the Premises and the Shelter shall be retained for 7 years.

34. **Drafter Doctrine.** The doctrine of construing contracts against the drafter shall not apply to this Agreement, as the parties hereto had the opportunity to review and negotiate this Agreement prior to entry.
35. **Authority.** CITY and FOHAST represent that each has the full power and authority to consummate the transaction contemplated by this Agreement, and all actions, proceedings and/or resolutions of CITY and FOHAST necessary to consummate such transaction have been taken in accordance with applicable law.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY:
CITY OF MILWAUKEE**

By: _____
Elaine Miller
Special Deputy Commissioner
Department of City Development

**FOHAST:
FRIENDS OF THE HANK AARON STATE TRAIL, INC.**

By: _____
Name Printed: _____
Title: _____

Exhibit A

Depiction of Property and Premises

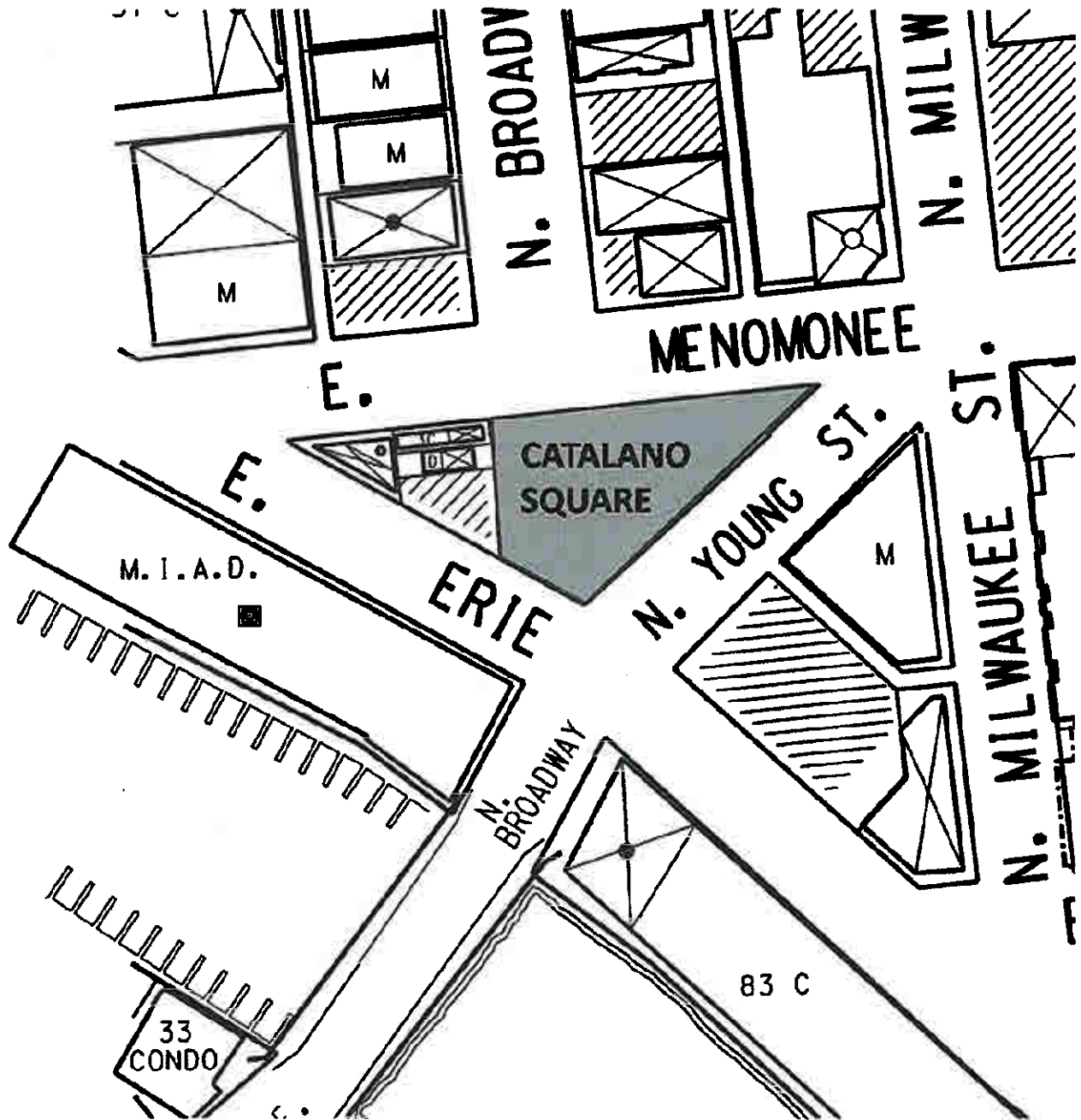


Exhibit B

Depiction of Proposed Shelter

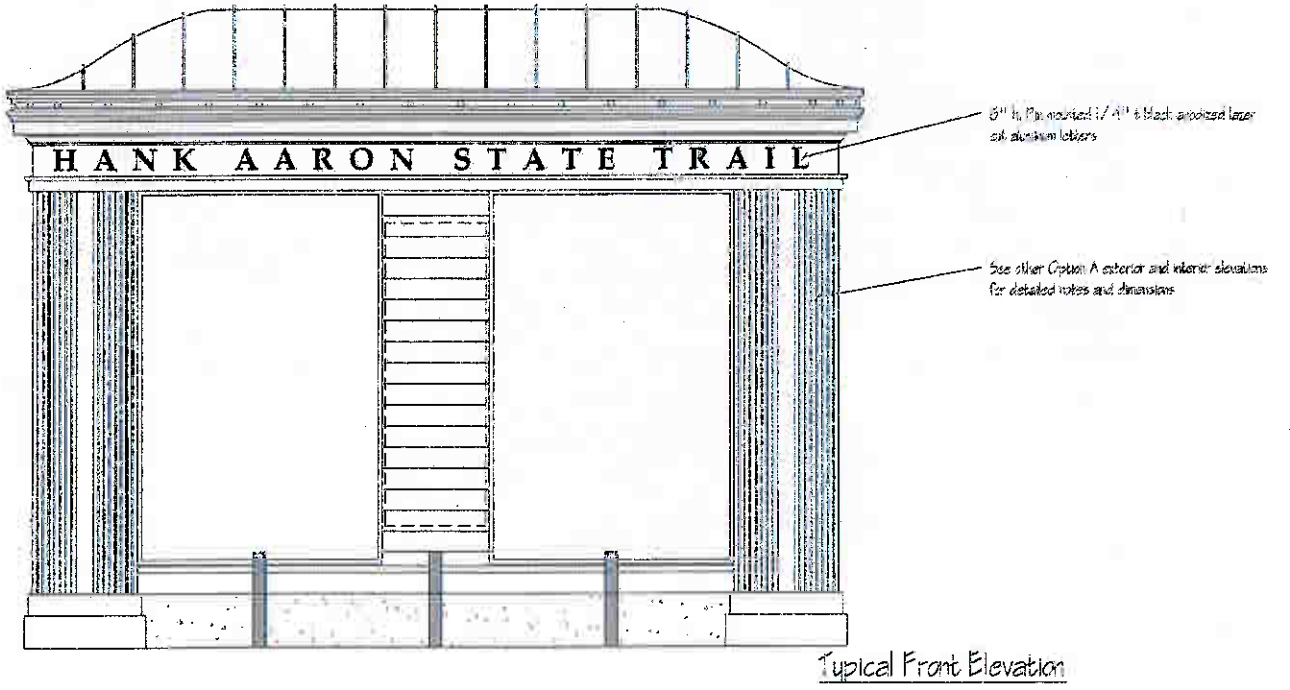


Exhibit C

Site Plan

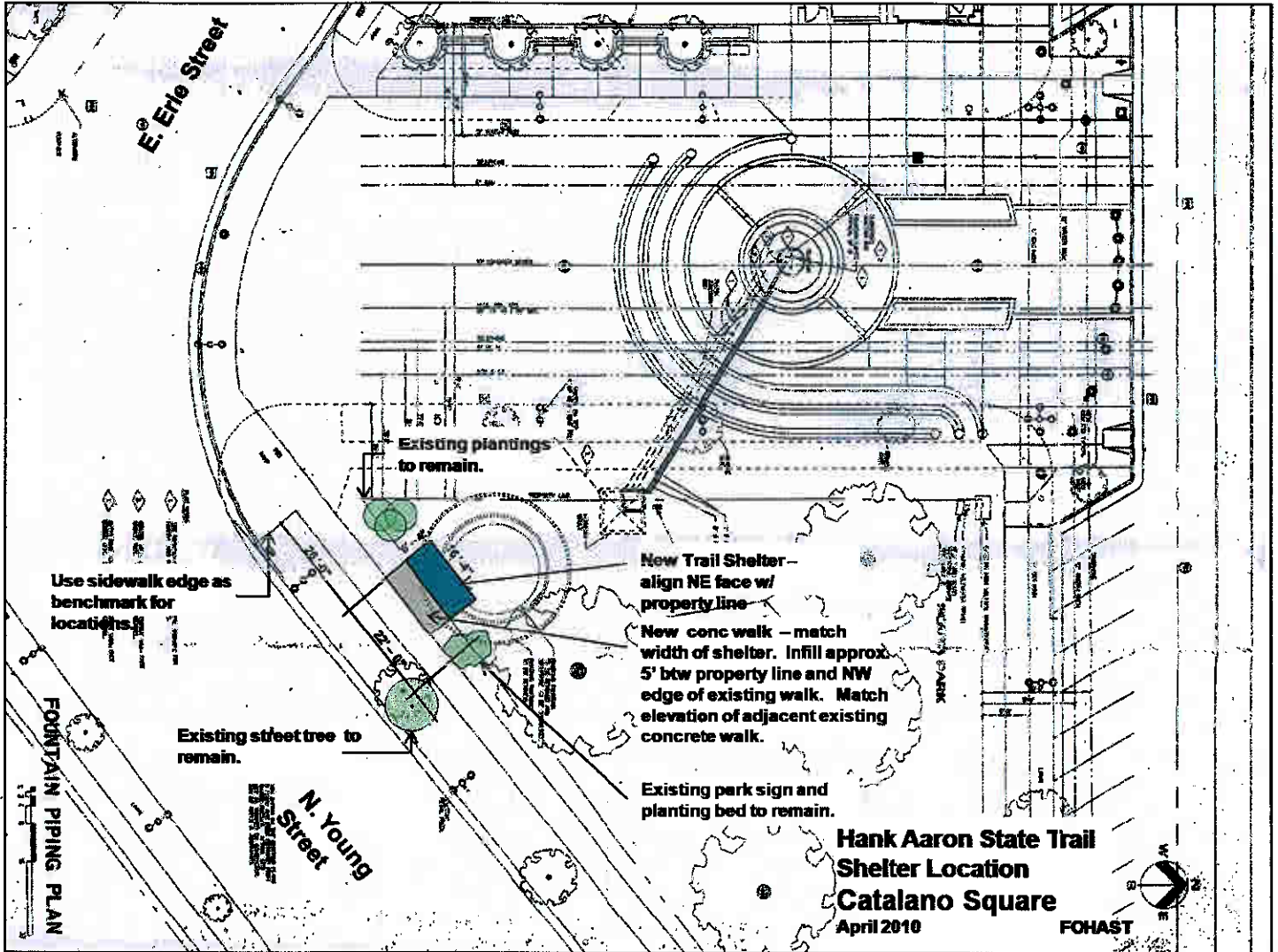


Exhibit D
CITY OF MILWAUKEE

Insurance Requirements - Right of Entry

Insurance certificates must be sent for inspection and approval prior to commencement of the project to: Elaine Miller, Manager of Real Estate Services, City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202-3617 or by facsimile to (414) 286-0395.

For work performed by contractors and subcontractors, such individuals shall maintain:

TYPE OF INSURANCE
LIMITS

Workers' Compensation	Statutory limits
Employers Liability	
Bodily Injury by Accident	Each Accident \$100,000
Bodily Injury by Disease	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

For ongoing occupancy, FOHAST shall maintain or cause to be maintained:

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

**THE CITY OF MILWAUKEE MUST BE NAMED AS ADDITIONAL INSURED PARTY
ON THE POLICY.**