

Document Number

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND THE
WISCONSIN CENTER DISTRICT FOR
AN EXISTING BRIDGING
STRUCTURE

Document Title

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BETWEEN
THE CITY OF MILWAUKEE
AND
THE WISCONSIN CENTER DISTRICT
FOR AN EXISTING BRIDGING STRUCTURE**

Recording Area

Name and Return Address

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Parcel Identification Number (PIN)

AIRSPACE LEASE BETWEEN THE CITY OF MILWAUKEE AND THE WISCONSIN CENTER DISTRICT FOR AN EXISTING BRIDGING STRUCTURE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and Wisconsin Center District, a special purpose district that is a unit of government created under Wis. Stats. § 229.42 (“Lessee”), pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2019-20), do hereby make and enter into this Lease Agreement as of the _____ day of _____, 2022 (“Effective Date”).

1. Description. Lessor hereby leases to Lessee airspace over West Wells Street between North Vel R. Phillips Avenue and North 6th Street in the City of Milwaukee (“Airspace”), for the purpose of using and maintaining an existing bridging structure (“Bridging Structure”) connecting the properties at 400 West Wisconsin Avenue and 405 West Kilbourn Avenue, the Airspace being more particularly described as follows: **[NOTE: Legal description from Revision #3 12.13.21]**

That portion of that certain elevated enclosed structure, including air rights appurtenant thereto, lying within the following described traverse and below 110.00 feet, city datum, being a part of West Wells Street as originally platted in Plat of the Town of Milwaukee on the West Side of the River in the Northeast ¼ of Section 29, and part of West Wells Street as presently opened in Plat of the East Half in the Northwest ¼ of section 29, Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of Parcel 1 in Certified Survey Map No. 6234; thence N 89°18’10” E along the north line of said Parcel 1, 45.46 feet to the point of beginning of the WELLS STREET AIR RIGHTS EASEMENT to be described, the ground elevation is 16.2 feet (city datum), the bottom of easement elevation is 32.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence N 00°41’45” W, 79.98 feet to a point on the north line of West Wells Street, the ground elevation is 15.9 feet (city datum), the bottom of easement elevation is 32.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence N 89°19’45” E, along the north line of West Wells Street 138.50 feet to a point, the ground elevation is 14.3 feet (city datum), the bottom of easement elevation is 32.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence travel vertically downward 3.00 feet to a point, the ground elevation is 14.3 feet (city datum), the bottom of easement elevation is 29.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence continuing N 89°19’45” E, along said north line 375.00 feet to a point, the ground elevation is 12.1 feet (city datum), the bottom of easement elevation is 29.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence travel vertically downward 1.00 feet to a point, the ground elevation is 12.1 feet (city datum), the bottom of easement elevation is 28.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence continuing N 89°19’45” E, along said north line 87.50 feet to a point, the ground elevation is 11.1 feet (city datum), the bottom of easement elevation is 28.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence S 00°41’45” E, 79.70 feet to a point on the north line of said Parcel 1, the ground elevation is 11.8 feet (city datum), the bottom of easement elevation is 28.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence S 89°18’10” W, along said north line 87.50 feet to a point, the ground elevation is 11.8 feet (city datum), the bottom of easement elevation is 28.0 feet (city datum), and the top of easement elevation is 110.0 (city datum); thence travel vertically upward 1.00 feet to a point, the ground elevation is 11.8 feet (city datum), the bottom of easement elevation is 29.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence continuing S 89°18’10” W, along said north line 375.00 feet to a point, the ground elevation is 14.0 feet (city datum), the bottom of easement elevation is 29.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence travel vertically upward 3.00 feet to a point, the ground elevation is 14.0 feet (city

datum), the bottom of easement elevation is 32.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum); thence continuing S 89°18'10" W, along said north line 138.50 feet to the point of beginning, the ground elevation is 16.2 feet (city datum), the bottom of easement elevation is 32.0 feet (city datum), and the top of easement elevation is 110.0 feet (city datum), said parcel of land containing **47,983 SF**, or 1.10 Acre more or less, includes a volume of **3,806,388 Cubic Feet** of air space.

See also, Exhibit A.

2. Term. The Lease shall run for a period of 99 years from the Effective Date of this Lease; provided, however, that Lessee may terminate the Lease at any time during the 99-year period by giving Lessor due notice of Lessee's intention to terminate the Lease in writing by registered or certified mail at least six months prior to the termination date specified in the notice; the termination, however, shall not become effective until the structure authorized by the Lease is completely removed and the public right of way restored to the satisfaction of the City's Commissioner of Public Works ("Commissioner"). The Lease shall be effective upon execution by the parties. Lessor, at the expense of Lessee, shall cause this Lease and its authorizing ordinance (No. 210928) to be recorded with the Milwaukee County Register of Deeds upon execution of the Lease. Lessee shall provide Lessor with full payment for recording costs upon execution of the Lease.

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of **\$10,200.00** per year. This rental shall be paid by Lessee in annual payments to the Office of the City Comptroller, the first payment being due upon the Effective Date of the Lease, and future annual payments to be due 30 days prior to the annual anniversary of the Effective Date of the Lease. At the option of Lessor, the rental amount may be reviewed and increased every ten years. Rent increases shall be proportionate to any increase in the average land values of the neighboring properties.

4. Use and Occupancy. Lessee shall in due course construct an additional pedestrian skywalk within the Bridging Structure and the Airspace, as depicted in Exhibit A. Lessee shall operate, use, and maintain the portions of the Bridging Structure located within the Airspace in accordance with operating standards, methods, and procedures that may be established from time to time by the City of Milwaukee.

5. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the additional skywalk prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the Bridging Structure, of which the skywalks are a part, and methods by which pigeons and other birds will be prevented from roosting or nesting on or near the Bridging Structure. The plans and specifications shall be approved by the Commissioner and the Commissioner of the Department of Neighborhood Services prior to the commencement of construction of the skywalk. The skywalk shall be constructed in compliance with the intent of the plans and specifications to the satisfaction of the registered professional engineer who shall supervise the construction thereof. Lessee shall further obtain the necessary permits for the construction of the skywalk, pay all required fees, and comply with all building and zoning regulations of Lessor, the County of Milwaukee, and the State of Wisconsin which shall at any time be applicable to the construction and maintenance of the Bridging Structure of which the skywalks are a part.

6. Operation, Maintenance, and Repairs. Lessee shall safely maintain the Bridging Structure and regulate its use and occupancy so that the Bridging Structure or the use thereof will not be a hazard or danger to persons or property within the public right of way. No material changes to the Bridging Structure that deviate from the approved plans and specifications may be made during the course of this Lease without the prior written approval of the Commissioner.

7. Insurance and Indemnity. Lessee shall maintain and keep in force during the term of the Lease public-liability insurance in no event less than the amount of \$1,000,000.00 for an individual claim and \$5,000,000.00 for multiple claims arising out of an accident involving the Bridging Structure or the use or occupancy of the Airspace, and Lessor shall be named as an additional insured and shall be indemnified and held harmless from all claims, liabilities, or causes of action arising out of any injury to person, or

persons, or damage to real or personal property arising out of the design, construction, maintenance, destruction, or dismantling of the Bridging Structure, or from collapse of the Bridging Structure. A certificate of insurance in those sums, including Lessor as a party insured, shall be deposited with the City Clerk of the City of Milwaukee immediately following execution of the Lease. At the option of Lessor, these minimum amounts may be reviewed and increased or decreased every ten years.

8. Termination of Lease in the Event of Condemnation. In the event that any governmental authority or agency shall require the use of or take all of, or a major portion of either one or both of the buildings which are connected by the Bridging Structure, to the extent that the Bridging Structure would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the Bridging Structure and building or buildings are surrendered and the Bridging Structure is removed pursuant to this Lease. It is further understood that in the event of condemnation or acquisition by any governmental authority or agency of one or both of the adjacent buildings, the value of the leasehold interest created hereunder shall not be an element of damages, nor in any way be considered as a factor of valuation of the property acquired.

9. Removal of Street Facilities. Lessee shall, upon demand by Lessor, pay such charges as may be incurred by Lessor for the removal or relocation of any facilities, utilities, or structures within the public way in the vicinity of the Bridging Structure that are made necessary by reason of the construction of the Bridging Structure. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation that may be required.

10. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the Bridging Structure by an act of God, casualty, public enemies, or by reason of riot or insurrection, the Lease shall terminate and Lessee shall not be required to pay any further rent to Lessor. Notwithstanding the foregoing, Lessee shall have the right to reconstruct the Bridging Structure located in the Airspace and this Lease shall not terminate, provided such reconstruction is commenced within six months of the damage or destruction, and in such event, Lessee shall pay rental for any period during which the Bridging Structure was damaged, destroyed, or inoperative.

11. Entry by Lessor. Lessor, by its officers, agents, or employees, may at all reasonable times during Lessee's business hours and upon reasonable prior notice have access to and enter the Bridging Structure and the Airspace to view the condition of the Bridging Structure and require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate Lessee's obligation of determining and maintaining the structural adequacy of the Bridging Structure.

12. Default and Penalty. In the event default shall be made at any time by Lessee in payment of rent, and such default shall continue for a period of 30 days after written notice thereof by registered mail or certified mail to Lessee by Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by Lessee, and such default shall continue for 30 days after written notice thereof by registered or certified mail to Lessee from Lessor, or if default is of such a nature as to require more than 30 days to effect a cure, and Lessee shall not commence to cure such default within the 30-day period after notice as provided above, and thereafter diligently proceed to cure such default, then Lessor may at any time thereafter prior to the curing of such default within reasonable time, declare the term of Lease ended and terminated by giving Lessee written notice of its intention. If possession of the Airspace is not immediately surrendered, Lessor may re-enter therein and declare the Lease to be terminated; and in such event Lessor may require that Lessee remove and demolish the Bridging Structure at Lessee's own expense or Lessor may remove or demolish the Bridging Structure and require the payment of the expense thereof from Lessee to Lessor within 30 days thereafter.

13. Surrender of Premises. Upon the termination of the Lease, Lessee agrees to surrender or relinquish any claims or right to further utilize the Airspace. Lessee shall, prior to surrender of the Airspace, cause the Bridging Structure to be demolished and removed and the Airspace returned to the same condition as it was prior to Lessee's use of the Airspace in compliance with the applicable building codes, unless otherwise directed by Lessor. In the event of the failure of Lessee to remove the Bridging Structure within six months after the termination of the Lease, Lessee shall pay liquidated damages to

Lessor in the sum of \$100.00 for each and every day it remains in possession of the Airspace after the expiration of six months from the termination of the Lease.

14. Parties to Lease. The term "parties to the Lease" shall include the successors and assigns of Lessor and Lessee, respectively.

15. Effect of Lease. This Lease and the ordinance under which it is executed shall not operate to repeal, rescind, modify, or amend any ordinances or resolutions of the City of Milwaukee relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other similar ordinances, resolutions, or regulations not specifically set forth in the ordinance of which this Lease is a part, or as authorized by sec. 66.0915(3), Wisconsin Statutes (2019-20).

16. Assignment. Lessee, and its successors and assigns, may assign their interest in this Lease to any party who holds fee title or a leasehold estate in the land abutting the Airspace. With respect to each assignment, if the assignee executes a written instrument whereby it agrees to assume and be bound by all of the responsibilities and obligations of Lessee under the Lease, the assignor shall be released from all obligations and liabilities under this Lease, and a notarized copy shall be submitted to the City Engineer for record-keeping purposes and the City Comptroller for billing purposes.

17. Notices. Notices required hereunder shall be sent to:

For the City (Lessor):	For Lessee:
City Engineer	President/CEO
Infrastructure Services Division	Wisconsin Center District
841 North Broadway, Room 701	400 West Wisconsin Avenue
Milwaukee, WI 53202	Milwaukee, WI 53203

18. Street Lighting Requirements. Lessee shall install in the Bridging Structure, at its cost, new street lighting for West Wells Street from North Vel R. Phillips Avenue to North 6th Street as set forth in this section 18. Development of the lighting plans and specifications for the right-of-way shall follow the methodology and recommended luminance and uniformity values as described in American National Standard Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-8-14, Roadway Lighting, Copyright 2014 by the Illuminating Engineering Society of North America.

The minimum illumination standards as described in American National Standard Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-8-14 ANSI/IES RP-8-14, Road Lighting, Copyright 2014, by the Illuminating Engineering Society of North America, shall be increased as defined by the City of Milwaukee such that the right-of-way sidewalk areas and pedestrian crossing of traffic areas shall maintain a minimum average daytime illuminance of 12 foot-candles (fc) and nighttime illuminance of 6 foot-candles(fc). All lighting plans and specifications for West Wells Street from North Vel R. Phillips Avenue to North 6th Street shall be approved by the Commissioner prior to installation of the lighting facilities, which approval shall not be arbitrarily withheld or unreasonably delayed.

Lessee shall operate, maintain and repair at Lessee's cost the West Wells Street lighting installed in the Bridging Structure to the reasonable satisfaction of the Commissioner. Failure to operate, maintain or repair such lighting to the reasonable satisfaction of the Commissioner shall be cause for the Lessor to declare a default under this Lease.

19. Signs. Lessee shall not place or maintain any signs or cause them to be placed in or on the Bridging Structure occupying the Airspace so as to be readable from the street without the written approval of the Commissioner.

20. Amendment or Modification. This Lease shall not be modified or amended without a written document signed by both Lessor and Lessee.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Cavalier Johnson, Acting Mayor, and James R. Owczarski, City Clerk, and countersigned by Aycha Sawa, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2022.

CITY OF MILWAUKEE

COUNTERSIGNED:

CAVALIER JOHNSON, Acting Mayor

AYCHA SAWA, Comptroller

JAMES R. OWCZARSKI, City Clerk

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, Cavalier Johnson, Acting Mayor of the City of Milwaukee, to me known to be the person who executed the foregoing instrument and to me known to be such Acting Mayor of such municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation by its authority and pursuant to Ordinance No. 210928, effective date _____, 2022.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, James R. Owczarski, City Clerk of the City of Milwaukee, to me known to be the person who executed the foregoing instrument, and to me known to be such City Clerk of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, by its authority and pursuant to Ordinance No. 210928, effective date _____, 2022.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, Aycha Sawa, City Comptroller of the City of Milwaukee, to me known to be the person who executed the foregoing instrument and to me known to be such City Comptroller of said municipal corporation and acknowledged that she executed the foregoing instrument as such officer as the deed of said municipal corporation, by its authority, and pursuant to Ordinance No. 210928, effective date _____, 2022.

Notary Public, State of Wisconsin

