

WETLAND BASE & WETLAND EASEMENT AGREEMENT

Drafted By: Milwaukee Metropolitan Sewerage District
[GH 12-15-2020 word version]

This Wetland Base & Wetland Easement Agreement ("**Agreement**") is dated and effective as of this _____ day of _____, 202__, and is between the **CITY OF MILWAUKEE**, a Wisconsin municipal corporation ("**City**") and the **MILWAUKEE METROPOLITAN SEWERAGE DISTRICT ("**District**")** a Wisconsin statutory entity.

RECITALS

1. The Burnham Canal (the "**Canal**") is in the City of Milwaukee, on the south side of the Menomonee Valley, 0.4 miles south of the Menomonee River. The Canal branches to the southwest from the Menomonee Canal and then goes west. The Canal is north of West Bruce Street on the Canal's west end and is north of West Virginia Street on the Canal's east end. I-94/I-43 and a railroad bridge cross the Canal at its northeastern end. South 11th Street crosses the Canal near its mid-point. The Canal is more particularly described in **Exhibit 1** and shown in **Exhibit 2**, which are attached.
2. The Canal is approximately 3,000 feet long, from 95 to 125 feet wide, and up to 17 feet deep. Navigation is limited by the low clearance under the railroad bridge and the South 11th Street Bridge.
3. According to an 1872 deed recorded with the Milwaukee County Register of Deeds ("**ROD**") Office, on 6-12-1872 in Volume 114 of Deed Page 555, the City may have an ownership interest in the Canal.
4. According to deeds, certificates and an award recorded with the ROD Office as ROD Document Numbers 6018252, 6018249, 6018256, 6018257, 6018255, 6018247, 6018258, 6018259, 6014618, the City may have water navigation and access rights or interests on, over, across and to that portion of the Canal located east of the western boundary of South 11th Street.

This space is reserved for recording data

Return to:

Milwaukee Metropolitan Sewerage District
Attn: Real Estate Department
260 West Seeboth Street
Milwaukee, Wisconsin, 53204-1446

Parcel Identification Number/Tax Key Number

Tax Key Number: Adjacent to TINs
4270417110, 4270418100, 4270571100,
4270611000, 4270612000, 4270103220,
4270103210

5. The City's possible interests in the Canal are referred to herein as the "**City Property.**"
6. The Canal is contaminated and stagnant. The Canal provides limited fish and wildlife habitat and limited recreational value.
7. To improve habitat and water quality, the District intends to construct, at no expense to the City, a wetland in the Canal.
8. The District's wetland construction will occur in two steps. The first step is building a wetland base east of 11th Street, which will add up to 15 feet of granular fill. After the wetland base stabilizes, the District will add additional fill, soil, and plants throughout the Canal as necessary to construct the wetland.
9. To construct the wetland base and the wetland, the District wishes to obtain from the City the Easement referred to below.
10. Upon the terms and conditions contained herein, the District intends to obtain from the City, and the City intends to grant to the District, an easement on, over and across the City Property as necessary to allow the District to construct the wetland base and wetland.

NOW, THEREFORE, in consideration of the sum \$10 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the terms, conditions, and covenants contained herein, the parties accept the recitals above and they further agree as follows.

The City grants to the District, and the District hereby accepts from the City, a perpetual, nonexclusive easement ("**Easement**") on, over and across those portions of the City Property located within the Canal for the District to construct the wetland base and wetland, and for District to maintain same after construction. District shall, at District's expense, construct the wetland base and wetland **(a)** in a good and workmanlike manner, **(b)** in accordance with applicable federal, state and local law, and with requisite permits, including a permit under Wis. Stat. Ch. 30 from the Wisconsin Department of Natural Resources, and **(c)** in accordance with plans and specifications which District shall allow City to review and inspect. After construction, District shall maintain the wetland base and wetland and keep same in good repair.

- 1) Representations; AS IS.** The City represents that it and the District are aware of the recorded documents referenced in Recitals 3 and 4 above. The City's grant of the Easement to the District is on an AS IS, WHERE IS, QUIT-CLAIM basis, with no representations or warranties, express or implied, except that the City's Common Council by resolution (the file number of which appears below the City signature lines) authorized the City to sign this Agreement.
- 2) Notices.** All notices, requests, and demands related to this Agreement will be given in writing and will be **(a)** personally delivered to the parties to their respective contact persons below, or **(b)** sent to the parties to their respective contact persons and addresses indicated below by U.S. mail, postage prepaid, or by private overnight mail courier service, or **(c)** sent to the parties to their respective contact persons below by email. Respective contact persons

and addresses including email addresses may be changed by notice provided in accordance with this Section.

If to City: Rhonda Szallai City of Milwaukee Department of City Development 809 N. Broadway, 2 nd Floor Milwaukee, WI 53202 Phone: 414-286-5674 Email: rszall@milwaukee.gov	<u>If to District:</u> Beth Smith Real Estate Specialist Milwaukee Metropolitan Sewerage District 260 West Seeboth Street Milwaukee, Wisconsin 53204 Phone: 414-225-2275 Email: bsmith@mmsd.com
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- 3) **Successors and Assigns.** The terms, covenants, and conditions of, and obligations under, this Agreement inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, including successor owners of the City Property; and are deemed covenants running with the land. Notwithstanding the foregoing, District must first obtain City DCD Commissioner’s prior written consent prior to assigning District’s rights or duties or interest under this Agreement.
- 4) **Amendment.** Any amendment to this Agreement will be in writing and signed by both the City and the District or their respective successors and assigns.
- 5) **Severability.** If any term or provision of this Agreement is determined by joint agreement by the parties or by a Court of competent jurisdiction to be invalid or unenforceable under applicable law, then the remaining terms and provisions of the Agreement will not be affected. Each remaining term and provision will be valid and enforceable to the fullest extent permitted by law.
- 6) **No Merger.** The rights and interests created by this Agreement, including the Easement created by this Agreement, will remain in full force and effect, notwithstanding the fact that the same party may own and possess all related real property interests.
- 7) **Choice of Law.** This Agreement will be construed and enforced in accordance with Wisconsin law.
- 8) **Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original and all of which, when taken together, will constitute one and the same instrument.
- 9) **Public Records.** The City and the District acknowledge they are subject to Wisconsin public records law, Wis. Stat. Chapter 19, Subchapter I. This Agreement and documents produced or required by this Agreement may be subject to the public records law. The City and the District will cooperate in the event of a public record request relating to this Agreement.

- 10) Damage Repair.** The District will repair any damage to the City Property caused by or attributable to the willful or negligent acts or omissions by the District, or by its employees, agents, contractors, or permittees.
- 11) Informational Meetings.** Before undertaking construction of the wetland base or the wetland, the District will notify the City. The District will describe the work and its schedule at a meeting with the City, if requested by the City.
- 12) Indemnity and Hold Harmless.** The District will indemnify and hold the City harmless from and against any claim, expense, damage, or liability asserted or assessed against the City to the extent it was caused by or attributable to the willful or negligent acts or omissions of the District or by its employees, agents, contractors, or permittees **(a)** on or about the City Property or **(b)** concerning the wetland base or wetland.

IN WITNESS WHEREOF, the authorized representatives of the above-named parties caused this Agreement to be signed and entered into as of the date first written above.

<p>DISTRICT: MILWAUKEE METROPOLITAN SEWERAGE DISTRICT</p> <p>By: _____ Kevin L. Shafer, P.E., Executive Director</p> <p>MMSD LEGAL DEPARTMENT Approved as to form.</p> <p>By: _____</p> <p>Name Printed: _____</p> <p>Title: Attorney for MMSD</p> <p>State Bar No.: _____</p> <p>DISTRICT NOTARY STATE OF WISCONSIN)) ss: COUNTY OF MILWAUKEE)</p> <p>Personally came before me this ____ day of _____, 20__, the above-named Kevin L. Shafer, to me known to be the person who executed the foregoing instrument on behalf of the District, and to me known to be the District's Executive Director, and acknowledged that he executed the foregoing instrument.</p> <p>/s/ _____</p> <p>Name Printed: _____</p> <p>Notary Public, State of Wisconsin My Commission: _____</p> <p>[NOTARIAL STAMP]</p>	<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Tom Barrett, Mayor</p> <p>_____</p> <p>James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED:</p> <p>_____</p> <p>Aycha Sawa, Comptroller</p> <p>Common Council File # _____</p> <p>CITY ATTORNEY APPROVAL & AUTHENTICATION</p> <p>The undersigned, a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City representatives above per MCO 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, Asst. City Attorney State Bar No. 1007373</p> <p>Date: _____</p>
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EXHIBIT 1

Legal Description of Burnham Canal

A permanent easement on, over and across all or any portion of that certain canal in the Northwest ¼ of Section 32, T7N, R 22E, in the City and County of Milwaukee, identified as the Burnham Canal.

EXHIBIT 2

Depiction of Burnham Canal