

LIMITED TERM CONSERVATION EASEMENT

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the first day of October 2022 by the City of Milwaukee (City) and Riverworks City Center LLC (Riverworks) to the Milwaukee Metropolitan Sewerage District (Easement Holder).

RECITALS

A. Property. The Property consists of two parcels. The City is the sole owner of property at 450 East Townsend Street, Milwaukee, Wisconsin 53212. Riverworks is the sole owner of property at 3334 North Holton Street, Milwaukee, Wisconsin 53212. Exhibit A describes the Property. Exhibit B shows the location of the Property.

This Limited Term Conservation Easement applies only to the area of the Property that has conservation value. This area contains infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff. Exhibits C and D show the areas within the Property that are subject to this Limited Term Conservation Easement.

B. Conservation Values. In its present state, the Property has conservation value because it has 5,500 square feet of native landscaping, 2,600 square feet of permeable pavers, 670 square feet of bioretention basins, and 8 trees (the Green Infrastructure). This Green Infrastructure provides a total design detention capacity of 18,700 gallons.

C. 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 Conservation 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.

Recording Area

Name and Return Address:

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

Tax Key Number:

2810523110

2812773000

D. 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.

E. 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.

F. Conservation Intent. The City, Riverworks, and the Easement Holder share the common purpose of preserving the Conservation Values for a period of twenty years. The City and Riverworks intend to place restrictions on the use of the Property to protect those Conservation Values. In addition, the City and Riverworks intend to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by Easement Holder. The Easement Holder has provided funding to Riverworks for the installation of the Green Infrastructure. Riverworks 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, the City and Riverworks voluntarily convey to the Easement Holder a Conservation Easement (the 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 the City and Riverworks to keep, preserve, and maintain the Green Infrastructure installed on the Property.
- 2. Effective Dates.** This Easement becomes effective October 1, 2022 and terminates on September 30, 2042.
- 3. Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.
- 4. Operation and Maintenance.** Riverworks will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. Riverworks is solely responsible for operation, maintenance, and evaluating performance.
- 5. Additional Reserved Rights of the Landowner.** The City and Riverworks retain 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 the Easement or inconsistent with the purpose of the Easement. However, the City and Riverworks may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property. The City and Riverworks expressly reserve 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 The City or Riverworks incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the City or Riverworks transfers any interest in all or part of the Property.

5.3 The City or Riverworks 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 the City or Riverworks 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 Holders Rights and Remedies. To accomplish the purpose of this Easement, the City and Riverworks expressly convey 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 the Easement; and otherwise exercise its rights under the Easement. The Easement Holder will provide prior notice to the City and Riverworks before entering the Property, comply with all applicable safety rules, and avoid unreasonable disruption of the use of the Property.

7. Remedies for Violations. The Easement Holder, the City, and Riverworks 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 Riverworks 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 Riverworks 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 Riverworks 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. The City and Riverworks waive 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 the Control of the City or Riverworks. The Easement Holder may not bring any action against the City or Riverworks for any injury or change in the Property resulting from causes beyond the control of the City or Riverworks, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the City or Riverworks under emergency conditions to prevent or mitigate damage from these causes, provided that the City or Riverworks 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. The City, Riverworks, and the 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 will 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 the Easement,
 - c. affects the duration of the Easement, or
 - d. affects the validity of the 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 the City and Riverworks 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 the 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 will 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. The City, Riverworks, and the Easement Holder may execute this Easement in two or more counterparts, which will, in the aggregate, be signed by both parties. Each counterpart will 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 will be controlling.
- 8.6 Entire Agreement. This instrument sets forth the entire agreement of the City, Riverworks, and the Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the 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, the 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) the City, Riverworks, and the Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Ownership Responsibilities, Costs and Liabilities. The City and Riverworks retain 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*. The City and Riverworks are 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 the Landowner 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*. The City and Riverworks remain 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 will be undertaken in accordance with applicable federal, state and local laws, regulations, and requirements.
- d. *Indemnification*. The City and Riverworks release and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") 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:

- (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- (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 any person other than the Indemnified Parties, in any way affecting, involving, or related to the Property;
- (iii) the presence or release in, on, from, or about the Property, at any time 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 any of the Indemnified Parties.

e. *Taxes.* Before delinquency, Riverworks will 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 will furnish the Easement Holder with satisfactory evidence of payment upon request.

8.9 Recording. The Easement Holder will 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 will 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 will continue as a servitude running with the Property for the term of the Easement.

8.12 Terms. The terms "City," "Riverworks," and "Easement Holder" include all personal representatives, heirs, successors, and assigns.

8.13 Warranties and Representations. The City and Riverworks warrant and represent that:

- a. The Property complies 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 the City or Riverworks 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 Conservation Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As Interim Commissioner of Public Works for the City of Milwaukee, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this _____ day of _____, _____.

By: _____
Jerrel Kruschke, P.E.
Interim Commissioner

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this _____ day of _____, _____, the person known as Jerrel Kruschke came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Printed Name _____

Notary Public, State of _____

My Commission expires _____.

GRANT OF INTEREST TO EASEMENT HOLDER

As Executive Director of Riverworks City Center LLC, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this _____ day of _____, _____.

By: _____
Darryl Johnson
Executive Director

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this _____ day of _____, _____, the person known as Darryl Johnson came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Printed Name _____

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 _____, _____.

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

STATE OF WISCONSIN

MILWAUKEE COUNTY

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

Signature of Notary Public

Printed Name _____

Notary Public, State of _____

My Commission expires _____.

Approved as to Form: _____
Attorney for the District

Printed Name _____

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

ATTACHMENTS

EXHIBIT A Description of the Property

EXHIBIT B Maps Showing the Location of the Property

EXHIBIT C Map Showing the Green Infrastructure Subject to this Easement at 450 East
Townsend Street

EXHIBIT D Map Showing the Green Infrastructure Subject to this Easement at 3334 North
Holton Street

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Address: 450 East Townsend Street, Milwaukee, Wisconsin 53212

Tax Key: 2812773000

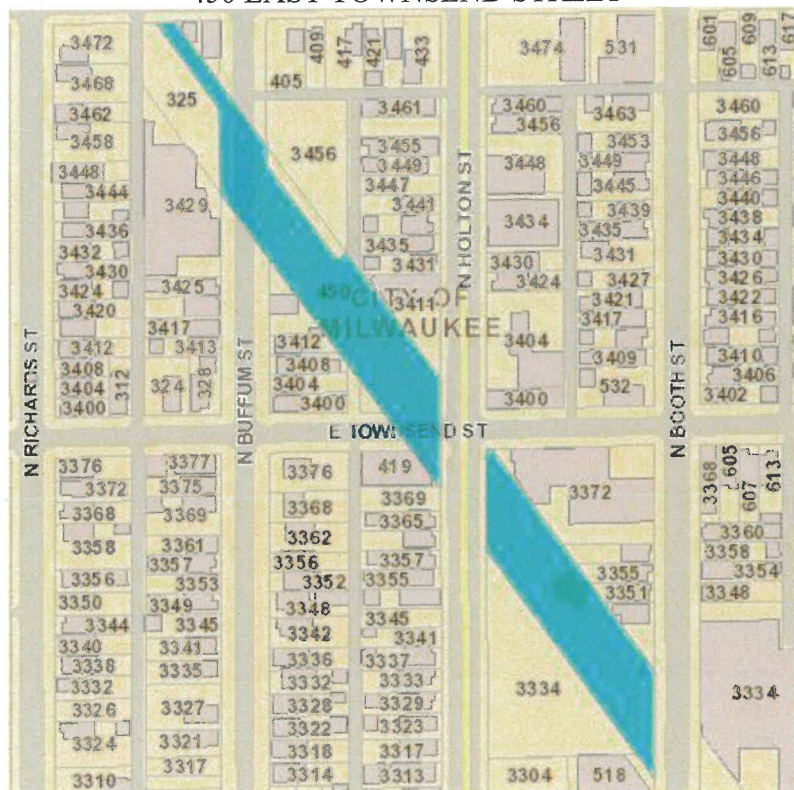
Legal Description: Parcel 3 of Certified Survey Map No. 7873 (Document No. 09376473) along with that part of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 9, Town 7 North, Range 22 East, bounded and described as follows: Commencing at the Northwest corner of said Southwest $\frac{1}{4}$ of Section 9; thence North $89^{\circ}12'11''$ East along the North line of said Southwest $\frac{1}{4}$, 695.20 feet to the East line of North Holton Street extended; thence South $00^{\circ}05'49''$ East (recorded as South) along said East line, 695.53 feet to the South line of East Townsend Avenue and the point of beginning; thence North $89^{\circ}12'30''$ East (recorded as East) along said North line, 12.32 feet to the Northeasterly line of the former Chicago, Milwaukee and St. Paul Railroad; thence South $36^{\circ}14'12''$ East (recorded as South $36^{\circ}06'$ East and South $36^{\circ}04'$ East) along said Northeasterly line, 419.36 feet to the West line of North Booth Street; thence South $00^{\circ}04'31''$ East (Recorded as South) along said West line, 169.47 feet to the Southwesterly line of the former Chicago, Milwaukee and St. Paul Railroad; thence North $36^{\circ}14'12''$ West (recorded as North $36^{\circ}06'$ West) along said Southwesterly line, 440.13 feet to the East line of North Holton Street; thence North $00^{\circ}05'49''$ West (recorded as North) along said East line, 152.54 feet to the point of beginning; all said lands being part of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 9, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin.

Address: 3334 North Holton Street, Milwaukee, Wisconsin 53212

Tax Key: 2810523110

Legal Description: Lots 1, 2, 14, the north 14 feet of Lot 3, all of Lot 13 except the south 5.78 feet, and the abutting portion of the vacated alley in Block 3 of Bannen's Subdivision No. 1 (Document No. 205179); also Lots 1 through 8 along with the vacated alley in Block 1 of H.J. Mathews and Bros. Subdivision No. 2 (Document No. 187988); also Block 5 of Cream City Heights (Document No. 190620); all being part of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 9, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin.

450 EAST TOWNSEND STREET



3334 NORTH HOLTON STREET

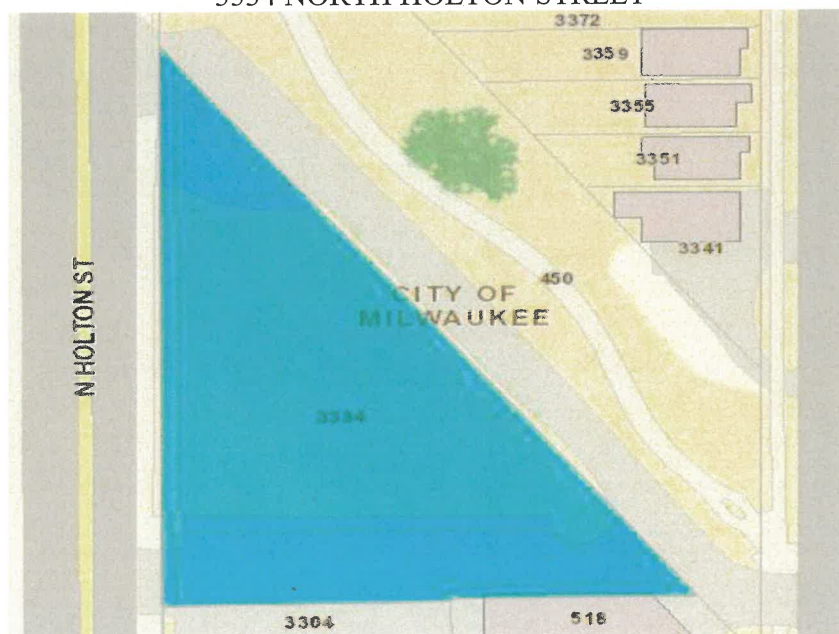


EXHIBIT C

MAP SHOWING GREEN INFRASTRUCTURE SUBJECT TO THIS EASEMENT AT 450 EAST TOWNSEND STREET

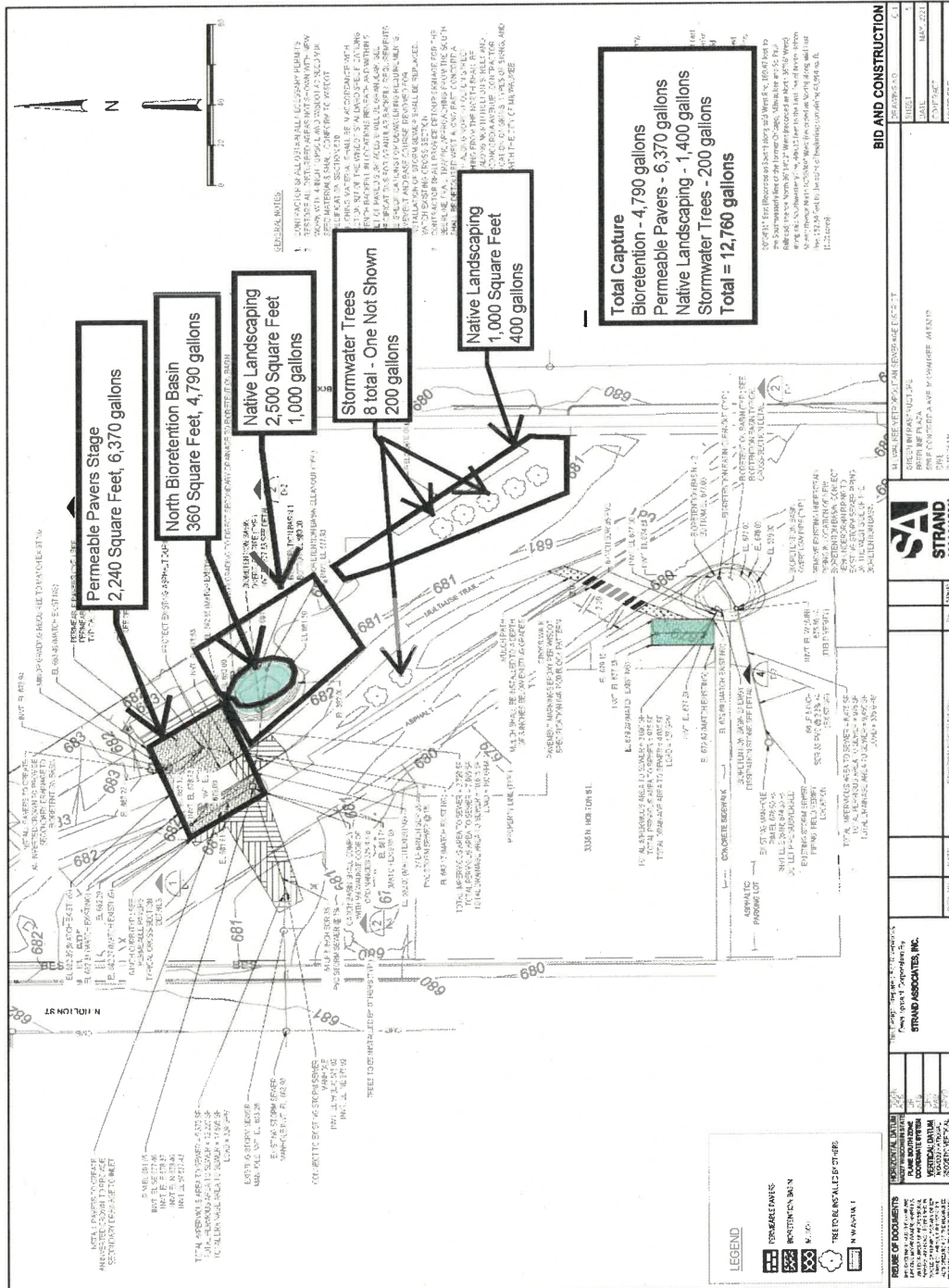


EXHIBIT D
MAP SHOWING GREEN INFRASTRUCTURE SUBJECT TO THIS EASEMENT AT
3334 NORTH HOLTON STREET

