

**RIGHT OF ENTRY
AGREEMENT**

**Right of Entry Agreement
for Maintenance of the 16th Street Viaduct**

Between

City of Milwaukee

and

Forest County Potawatomi Community

Recording Area
Name and Return Address

Mary L. Schanning
Assistant City Attorney
City Attorney's Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

4269940111

Parcel Identification Number (PIN)

Drafted By:
Mary L. Schanning
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

1047-2013-3089:199019

THIS RIGHT OF ENTRY AGREEMENT is made as of the ____ day of _____, 2014, by and among the Forest County Potawatomi Community, a federally-recognized Indian Tribe, (“GRANTOR”) and the City of Milwaukee, a Wisconsin municipal corporation (“GRANTEE”) for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

RECITALS

GRANTOR owns a parcel of land described on Exhibit A (“PROPERTY”) on which GRANTOR will construct a parking structure.

GRANTEE desires to acquire a right of entry over the PROPERTY for the purpose of conducting inspections, maintenance and repairs of its 16th Street viaduct (“BRIDGE”) located directly east of and adjacent to the PROPERTY, and Grantor is willing to provide such right of entry on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties, Grantor and Grantee hereby agree as follows:

1. GRANTOR grants to GRANTEE a non-exclusive right to enter upon and over a portion of the PROPERTY that is approximately 9 feet 6 inches wide and approximately 513 feet long located on the eastern boundary of the PROPERTY, east of the parking structure (“LICENSE AREA”).

2. The purpose of the right of entry is limited to allowing GRANTEE, entirely at its own risk and expense, to access and use the LICENSE AREA to inspect, maintain and repair the western face of the BRIDGE, which may include, but not be limited to, using a lift apparatus and any necessary temporary scaffolding and/or shoring within the LICENSE AREA, on the terms and conditions set forth herein.

3. GRANTEE shall see to it that all activities conducted in the exercise of the rights herein granted are conducted in a safe manner and in conformance with all applicable legal requirements and standards of care. Without limiting the generality of the foregoing, Grantee acknowledges that code-mandated emergency exits from the parking structure will exist at two locations within the LICENSE AREA, a sidewalk from the stairwell exit door near the north end of the east face of the parking structure running north to the north boundary of the PROPERTY and a sidewalk from the stairwell exit door near the south end of the east face of the parking structure running south to the south boundary of the PROPERTY, and GRANTEE agrees that it will not at any time block or restrict either of these emergency exit routes.

4. Subject to Paragraph 10, GRANTOR shall not place any permanent facilities except ordinary lawns, shrubbery, gardens, at-grade or below environmental caps (which may include geotextile fabric, clay, clean gravel, stones, soil or other materials used for that purpose) and flat pavement, within the LICENSE AREA. If, in exercising its rights under this Right of Entry Agreement, GRANTEE causes damage to, or removes, any temporary or permitted permanent facilities within the LICENSE AREA, GRANTEE shall repair or replace same, at its expense, to substantially the same condition as existed previous to such damage or removal.

5. To the fullest extent permitted by law, GRANTEE will hold GRANTOR harmless from loss or injury to persons or property resulting in whole or in part from the acts or omissions of GRANTEE or any contractor or agent of GRANTEE under this Right of Entry.

6. Except as otherwise provided below, the LICENSE AREA shall be accessible to GRANTEE at all times.

7. This Right of Entry Agreement **(a)** shall be recorded with the Milwaukee County Register of Deeds by GRANTEE, **(b)** shall be interpreted and construed in accordance with Wisconsin law and **(c)** may only be amended by a written instrument signed by all parties.

8. Except in the case of emergency repairs, GRANTEE will give GRANTOR not fewer than 14 days advance notice of its intention to exercise its rights hereunder. In the case of emergency repairs, GRANTEE will notify GRANTOR's security department shift manager on duty by telephone as soon as possible. The telephone number of the security department is (414) 847-8001. As to non-emergency situations, GRANTEE will coordinate the exercise of its rights hereunder with GRANTOR's Facilities Director so as to eliminate insofar as possible conflicts with GRANTOR's activities on the LICENSE AREA and will exercise such rights in a manner which minimizes insofar as reasonably possible inconvenience to the GRANTOR and the GRANTOR's employees and invitees. The Facilities Director is David Brien, whose telephone number is (414) 847-8400.

9. This Right of Entry Agreement does not extend to the GRANTOR's parking structure. GRANTEE shall not affix equipment to or rest equipment on the parking structure or conduct its activities from the parking structure.

10. GRANTOR makes no warranties or representations of any kind regarding the physical condition of or title to the LICENSE AREA. Nor does GRANTOR make any warranty or representation regarding adequacy of access to the BRIDGE provided herein for the GRANTEE's purposes. GRANTEE acknowledges that it has had full opportunity to inspect the LICENSE AREA. Without limiting the generality of any of the foregoing, GRANTEE acknowledges and accepts each of the following matters: (i) that, in connection with construction of the parking structure, GRANTOR will install a permanent vehicular bridge and a permanent pedestrian bridge connecting the fourth level of the parking structure to the BRIDGE, and that, both during and after construction of these improvements, GRANTEE's access to the BRIDGE may be affected thereby; (ii) that GRANTOR intends to construct stoops and sidewalks approximately 5 to 6 feet in width, which GRANTOR expects to be substantially at grade, providing pedestrian ingress and egress to the parking structure along the east side of the parking structure and within the LICENSE AREA; (iii) that GRANTOR intends to install five decorative lanterns, spaced roughly equally between the stairwell located near the north end of the parking structure and the stairwell located near the south end of the parking structure, mounted on vertical poles affixed to the east wall of the parking structure, the bottom of the pole being located near the elevation of the bottom of the fourth level floor slab of the parking structure approximately 31 feet above grade and the top of the lantern extending upward to an elevation approximately 6 feet above the top of the east wall of the sixth level of the parking structure (being approximately 66 feet above grade), with the centerline of the vertical pole being approximately three feet east of the east face of the parking structure and the outermost point on

the lantern itself (the top of the lantern) being approximately 4 feet three inches east of the east face of the parking structure; (iv) that there exist within the LICENSE AREA certain buried utilities installed by others whose locations are not known to the GRANTOR, including but not necessarily limited to electrical conduits, transformers and vaults, water mains and gas mains; (v) that GRANTOR intends to install a fire hydrant within the LICENSE AREA in the general vicinity of the southeast corner of the parking structure; (vi) that GRANTOR hereafter may install or permit others to install buried utility facilities or other buried facilities within the LICENSE AREA; (vii) that GRANTOR intends to construct a substantial fence along the east boundary of the PROPERTY at the request of Cargill Company, the owner of the property lying to the east of the BRIDGE; (viii); that GRANTOR, pursuant to discussions with the Wisconsin Department of Natural Resources, intends to install a "cap" over those portions of the PROPERTY which will not be covered by the parking structure or other "hardscape" surfaces (including portions of the LICENSE AREA), which cap may include geotextile fabric, clay, imported clean fill, stone, sand, gravel or other materials used for such purposes, and (ix) that the identification of certain existing and potential future uses and installations within the LICENSE AREA set forth within this paragraph is for informational purposes only and is not warranted or represented to be complete, accurate or exhaustive of all existing and future uses and encumbrances of the LICENSE AREA.

11. GRANTOR's security personnel periodically patrol the GRANTOR's entire premises, including the parking structure and the LICENSE AREA. Such patrols will not have as a purpose protection of GRANTEE's equipment or personnel. GRANTOR assumes no responsibility whatsoever for injuries to persons exercising the GRANTEE's rights hereunder or for theft, vandalism, loss or damage to tools, supplies or equipment. GRANTOR likewise assumes no responsibility whatsoever for safety of the LICENSE AREA as a workplace or for compliance with any applicable statutes, rules or regulations pertaining to workplace safety or equipment, all such matters being solely the responsibility of GRANTEE.

12. In the event that GRANTEE or any agent or contractor of GRANTEE shall violate any provision of this Right of Entry Agreement, GRANTOR, in addition to any other remedies it may have, may deliver to GRANTEE's Commissioner of Public Works written notice describing the violation and requiring that it be corrected within a period of time that is reasonable under the circumstances (which period shall not in any event be longer than 14 days). If GRANTEE does not correct the violation within the stated period, GRANTOR may, by an additional written notice to the Commissioner of Public Works delivered anytime after the expiration of the stated period, suspend the right of entry herein provided, which suspension shall continue in effect until the violation is corrected to GRANTOR's reasonable satisfaction and written notice of reinstatement is delivered to the Commissioner of Public Works. Upon receipt of a notice of suspension, GRANTEE shall promptly remove all equipment and supplies and vacate the LICENSE AREA.

13. GRANTEE acknowledges and accepts that (i) the LICENSE AREA will be substantially occupied and unavailable for GRANTEE's use until construction of the parking structure has been completed, and (ii) GRANTOR from time to time may find it necessary to close the LICENSE AREA to GRANTEE's use in whole or in part to inspect, maintain, repair, modify, rebuild or replace the parking structure. During the period of initial construction of the parking structure, GRANTEE may direct requests for limited activity within the LICENSE

AREA to GRANTOR's Facilities Director, but it is understood that the Facilities Director's ability to approve any such activity will be limited by the physical state of construction and by the fact that control of the site (including the LICENSE AREA) and safety responsibility will largely be in the hands of GRANTOR's contractors. With respect to subsequent closures, GRANTOR's Facilities Director will coordinate with GRANTEE's Commissioner of Public Works to minimize insofar as reasonably possible the impact of the closure on GRANTEE's use of the LICENSE AREA.

14. Nothing in this Right of Entry Agreement is intended to be, and no provision or provisions herein shall be construed to be, a waiver, express or implied, of any aspect of GRANTOR's sovereign immunity as a federally-recognized Indian Tribe.

15. This Right of Entry Agreement does not create an easement or other interest in land, but constitutes only a license for an indefinite term.

16. GRANTOR has full right and authority to enter into this Right of Entry Agreement.

**FOREST COUNTY POTAWATOMI
COMMUNITY**

CITY OF MILWAUKEE

By: _____
Harold G. Frank, Chairman

Tom Barrett, Mayor

James R. Owczarski, City Clerk

COUNTERSIGNED:

Martin Matson, Comptroller

Mary L. Schanning, 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).

Mary L. Schanning, Assistant City Attorney
State Bar No. 1029016

STATE OF WISCONSIN)
) ss:
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 2014, Harold G. Frank, the Chairman of the above-named Forest County Potawatomi Community, to me known to be the person who executed the foregoing instrument and to me known to be such Chairman, and acknowledged that he executed the foregoing instrument as such officer.

Name: _____

Notary Public, State of Wisconsin

My Commission (is permanent) (expires: _____)

EXHIBIT A

Legal Description of the Property