

## **MV3, LLC & RACM COOPERATION AGREEMENT**

THIS COOPERATION AGREEMENT, made as of \_\_\_\_\_, 2023, is by and among MV3, LLC ("**MV3**"), and the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE ("**RACM**") (together the "**Parties**").

### **RECITALS**

A. RACM owns 260 North 12<sup>th</sup> Street (TIN 398-1292-000) in Milwaukee, Wisconsin (herein individually and collectively called the "RACM Land").

B. MV3 owns 1205 West Mt. Vernon Avenue (TIN 398-1261-000) in Milwaukee, Wisconsin (the "**MV3 Land**").

C. **EXHIBIT A** attached is a map showing the RACM Land and MV3 Land.

D. RACM is working with the City of Milwaukee Department of Public Works ("**DPW**"), Wisconsin Department of Transportation ("**WisDOT**"), Menomonee Valley Partners, Inc. ("**MVP**"), among other partners to develop three parcels at the east end of the Menomonee Valley. The properties include 260 North 12<sup>th</sup> Street, 825 West Hinman Street, and 907 West Hinman Street and are collectively known as the Kneeland Properties. Based on the Menomonee Valley 2.0 Plan the Kneeland Properties will be improved to support new light industrial uses.

E. RACM received approximately \$3.2 million from the U.S. Department of Commerce Economic Development Administration ("**EDA**") funding to extend West Mt. Vernon Avenue by approximately 1,200 linear feet to the east and install underground utilities ("**Roadway Improvements**") to make the approximately nine (9) acres available for development.

F. **EXHIBIT B** attached is a map showing the Kneeland Properties and the Roadway Improvements.

G. The pavement and sidewalks for the Roadway Improvements are designed to be 60 feet wide to match the existing width of W. Mt., Vernon Ave. However, the area between the northeast corner of the MV3 Land and the western boundary of 272 North 12th Street is narrower than 60 feet. Therefore, RACM is proposing to swap a portion of the RACM Land for a portion of the MV3 Land to create the appropriate width for the Roadway Improvements.

H. **EXHIBIT C** attached is a map showing the areas labeled "**Land Swap Areas**".

I. Certified Survey Maps ("**CSM**") will be created for the MV3 Land and the RACM Land and used to memorialize the Land Swap Areas on the RACM Land and the MV3 Land. CSM's will also be used to dedicate land for public right-of-way on the Kneeland Properties. The closing of the "Land Swap Transaction" shall be contingent on MV3's review and approval (in its reasonable discretion) of the final CSMs. In the event MV3's approval is not granted, MV3 shall have the option to terminate this Agreement and not proceed to a closing of the Land Swap Transaction.

J. The RACM Land and the MV3 Land are both listed on the Wisconsin Department of Natural Resources ("WDNR") Bureau of Remediation and Redevelopment Tracking System ("BRRTS") website as "closed" sites. The closing of the "Land Swap Transaction" shall be contingent on MV3's review and approval (in its reasonable discretion) of all environmental issues associated with the real estate at issue in this Agreement. In the event MV3's approval is not granted, MV3 shall have the option to terminate this Agreement and not proceed to a closing of the Land Swap Transaction.

K. The parties hereto agree to cooperate in good faith and on the terms and conditions contained herein.

### AGREEMENT

1. **Recitals.** The recitals above are hereby agreed to. In consideration of the mutual duties and the benefits hereunder and other good and valuable consideration, receipt and sufficiency of which are agreed to, the parties enter this Agreement.

2. **Title Commitment.** RACM, at its expense, will obtain a title commitment for the RACM Land and MV3 Land so that the title commitment may be available to MV3. The closing of the "Land Swap Transaction" shall be contingent on MV3's review and approval (in its reasonable discretion) of all title issues associated with the real estate at issue in this Agreement. In the event MV3's approval is not granted, MV3 shall have the option to terminate this Agreement and not proceed to a closing of the Land Swap Transaction.

3. **CSM Preparation**, Approvals, and Recording. RACM, at its expense, will hire an engineering consultant to prepare a CSM to reflect the Land Swap Areas for MV3 Land and pay for the recording fees at the Milwaukee County Register of Deeds ("ROD"). RACM will also pay: (a) for fees at the ROD to record the real estate deeds; (b) all costs associated with the approval and recording process for the CSM; and (c) all other costs associated with effectuating the Land Swap Transaction described herein.

4. **Environmental Documentation.** RACM will hire an engineering consultant to prepare the appropriate environmental documentation related to post-closure modification and soil management. Subject at all times to MV3's prior review and prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed, RACM will submit the documentation to the WDNR and pay the related fees for both the MV3 Land and the RACM Land.

5. **Land Use Plan.** RACM agrees to work with MV3 on developing a site plan for MV3 Land that is acceptable to both parties. The closing of the "Land Swap Transaction" shall be contingent on each party's review and approval (in its reasonable discretion) of said final site plan. In the event both party's approval is not granted, either party shall have the option to terminate this Agreement and not proceed to a closing of the Land Swap Transaction.

6. **Land Swap and Development.**

- A. **Land Swap.** MV3 shall convey 1,213.92-square feet of MV3 Land ("**MV3 Swap Area**") to RACM for no monetary consideration, and RACM shall convey 12,753.44-square feet to MV3 ("**RACM Swap Area**") for no monetary consideration. The respective Swap Areas shall be conveyed to the other Party via Quit Claim Deed. The MV3 Swap Area and RACM Swap Area are shown on **EXHIBIT A**. The respective Swap Areas shall be conveyed to the other Party free and clear of all liens and encumbrances, excepting those disclosed herein.
- B. **Site Improvements.** RACM and MV3 agree to the site plan and specific construction activities shown and described on EXHIBIT D. RACM, at its expense, agrees to modify the MV3 Land to construct a new parking lot and to reconfigure the entrance off of W. Mt. Vernon Ave. ("**Construction Activities**") This work will entail the following activities: provide project management and coordination with MV3, geotechnical investigation, design development, obtain permits and plan approvals, and manage bidding and construction.
- C. **Landscaping.** MV3, at its expense, agrees to implement site landscaping plans for the biofiltration facility and the parking lot described in EXHIBIT D. For purposes of clarity RACM will be doing all of the grading, drainage and other work necessary to prepare the site for implementing the landscaping plans (i.e. planting, etc....)
- D. **Existing Easements.** RACM will manage, and if necessary, terminate the following deed instruments associated with the MV3 Land. Provided that none of these terminations shall affect MV3's current use of the property:
  - i. We Energies Underground Distribution Easement (ROD Doc. No. 7950408)
  - ii. Ameritech easement (ROD Doc. No. 8142337)
  - iii. City sewer easement (ROD Doc. No. 1467706)
  - iv. MMSD/WisDOT 66' wide private access easement (ROD Doc. No. 9941596)
  - v. 30' wide private ROW easement (ROD Doc. No. 4245945)
- E. **CSM.** RACM, at its expense, will complete a CSM for dedication of the public road ROW between the MV3 Land and the RACM Land.
- F. **MV 2.0 Plan.** Applicable terms and conditions of the Menomonee Valley 2.0 Plan and the Menomonee Valley Sustainable Design Guidelines apply.

7. **RACM Board and Common Council Approvals; Menomonee Valley Partners, Inc Approval.** This cooperation agreement between RACM and MV3, requires, and is subject to, RACM Board and City Common Council approval, and Menomonee Valley Partners, Inc. board approval. Neither Party shall be found in breach of this Agreement if the necessary approvals are not received. Further, this cooperation agreement between RACM and MV3 may require, and is

subject to, MV3's lender's approval. MV3 shall not be found in breach of this Agreement if the necessary lender approval is not received.

8. **Entry onto MV3 Land.** For the duration of this Agreement and as long as there is no interference in any way with MV3's business operations, MV3 hereby allows RACM and RACM representatives to walk upon and visually inspect the MV3 Land all at their sole respective risk. RACM will make reasonable efforts to provide MV3 with 24-hour notice via email or phone of its intent to access MV3 Land. No testing or borings or ground disturbance may be done without MV3's prior written consent which may be withheld in MV3's sole discretion. RACM's surveyors and engineers are also allowed to walk on the MV3 Land and to visually inspect same for the purpose of preparing the CSM as long as there is no interference in any way with MV3's business operations

9. **Entry onto RACM Land.** For the duration of this Agreement, RACM hereby allows MV3 to walk upon and visually inspect RACM Land at their sole respective risk. No testing or borings or ground disturbance may be done without RACM's prior written consent. MV3 shall indemnify and hold harmless RACM, its employees, agents, and contractors from any liability caused by such entry.

10. **Duration of Agreement.** This Agreement shall commence upon the date first written above and terminate on the 18 month anniversary of that date unless further extended by written amendment signed by all parties hereto.

RACM may terminate this Agreement upon 10 day's notice to MV3 if the RACM Board or the City Common Council or Menomonee Valley Partners, Inc. do not approve the conveyances defined hereunder. MV3 may terminate this agreement pursuant to the other contingencies specifically referenced elsewhere in this Agreement.

11. **Conveyances Between MV3 and RACM.**

- A. The conveyances between MV3 and RACM defined above shall be reflected in the recorded CSM and conveyed via Quit Claim Deed, with the physical and title condition of the conveyed lands being "AS IS, WHERE IS" with no representations or warranties.
- B. MV3 acknowledges that the RACM Land is listed on the WDNR BRRTS site as activity number 02-41-526893, and RACM acknowledges that the MV3 Land is listed on the WDNR BRRTS site as activity number 02-41-545123. The status of both site is listed as "closed." Modifications and changes to both the MV3 Land and the RACM Land will require a post-closure modification submittal to WDNR. Documentation will also be required for any soil that is removed from either site. RACM, at its expense, has hired an environmental consultant to complete the appropriate documentation for post-closure modification and soil management of the MV3 Land and the RACM Land. As noted in the contingency above, MV3 must review and approve the post-closure modification documentation prior to it being submitted to the WDNR.

- C. RACM, at its expense, will manage any soil related to the construction activities that needs to be removed from the site. RACM, at its expense, will manage any new environmental impacts discovered during the construction activities. RACM agrees to indemnify, save harmless, and defend MV3 (including its owners, advisors, agents, directors, officers, employees, and management) from and against any and all claims, actions, damages, liability and expense associated only for the actions of its employees and contractors in carrying out the activities provided in this agreement. RACM shall not indemnify MV3 regarding any existing environmental concerns, known or unknown, at the time of execution.
  - D. Once the Construction Activities are complete, the post-modification documentation is approved by the WDNR, and the CSM is recorded, MV3 agrees that it will be the Responsible Party, as defined by the WDNR, for the newly configured 1205 W. Mt. Vernon Ave. parcel. DPW will be the Responsible Party for the newly created public right-of-way.
12. **Breach.** If either Party shall default in the performance or observance of any of its obligations set forth in this Agreement, the non-breaching Party may send written notice to the Party in breach specifying such default and requesting it be corrected. If such default is not cured to the non-breaching Party's satisfaction within thirty (30) days following receipt of said written notice, the non-breaching Party may pursue any available remedy, either at law or in equity, including specific performance. Any lawsuits filed hereunder shall be venued in Milwaukee County.
13. **Public Records.** This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. Stat. § 19.36(3)) that includes records produced or collected hereunder. MV3 agrees to cooperate with RACM if RACM receives a request under Wisconsin's Open Records Law for any such record.
14. **Good Faith.** The parties acknowledge that the implied covenant of good faith and fair dealing in the performance of contracts is applicable to this Agreement.

15. **Contact Persons.** The following persons are the respective contact persons for purposes of this Agreement.

RACM Benji Timm, 809 N. Broadway, 2nd Floor Milwaukee, WI 53202 Ph: 414-286-5756 <a href="mailto:btimm@milwaukee.gov">btimm@milwaukee.gov</a>	MV3, LLC  Ph:  Email:
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16. **Counterparts.** This Agreement may be signed in multiple counterparts, each of which, when taken together, shall constitute one and the same documents. PDF signatures shall be accepted as originals.

IN WITNESS WHEREOF, the parties caused this Agreement to be duly executed as of the date and year first written above.

<b>RACM: REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE</b>  By: _____ Frances Hardrick, Chair  And By: _____ Dave Misky, Asst. Exec. Dr./Sec.  Signed by RACM per RACM Resolution File No. _____  <b>RACM SIGNATURES APPROVED</b>  By _____ Alex Carson, Assistant City Attorney	<b>MV3, LLC</b>  By: _____  Name Printed: _____  Title: _____
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# Exhibit A

## MV3, LLC & RACM Cooperation Agreement

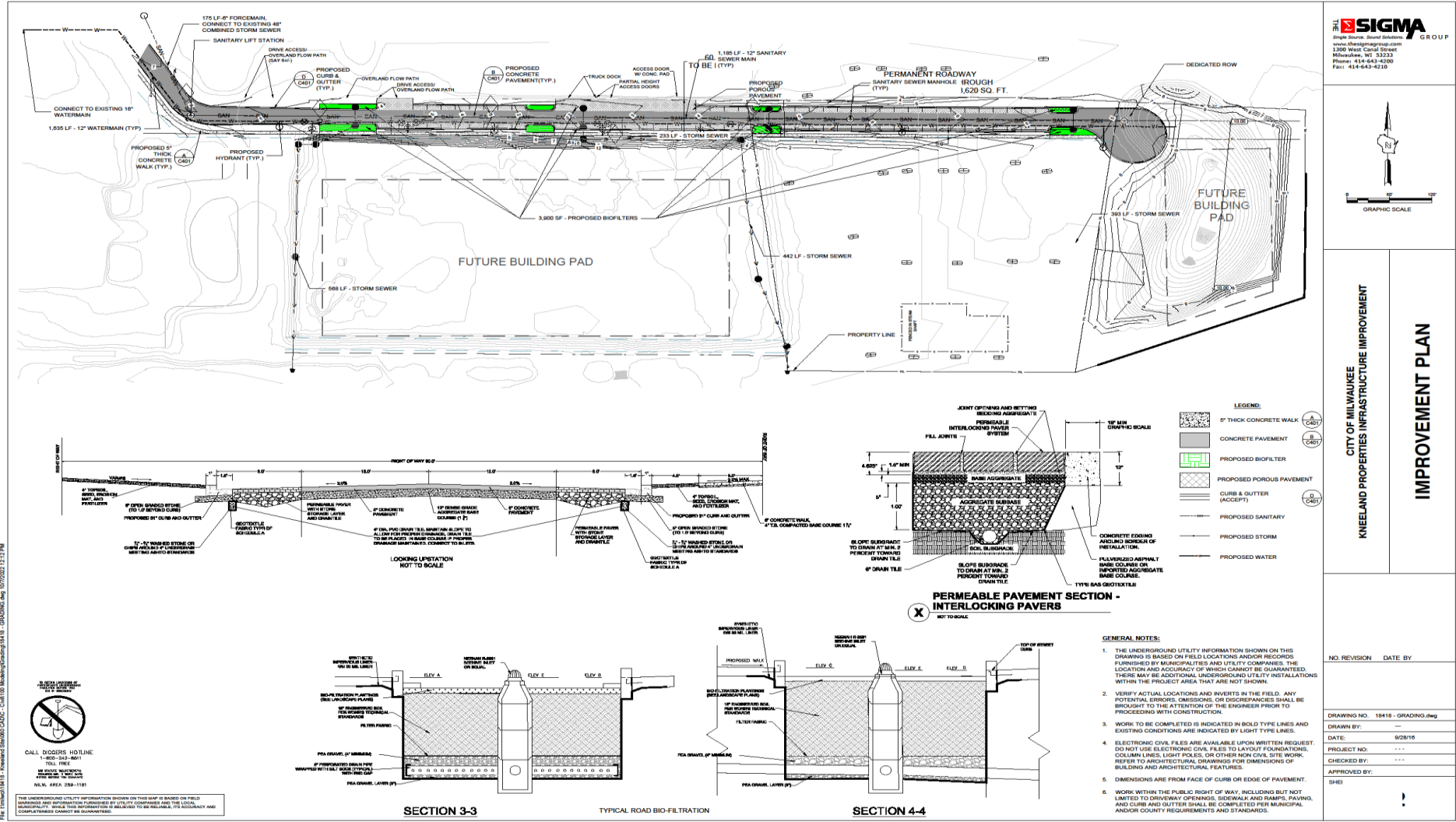
**MV3 Land**



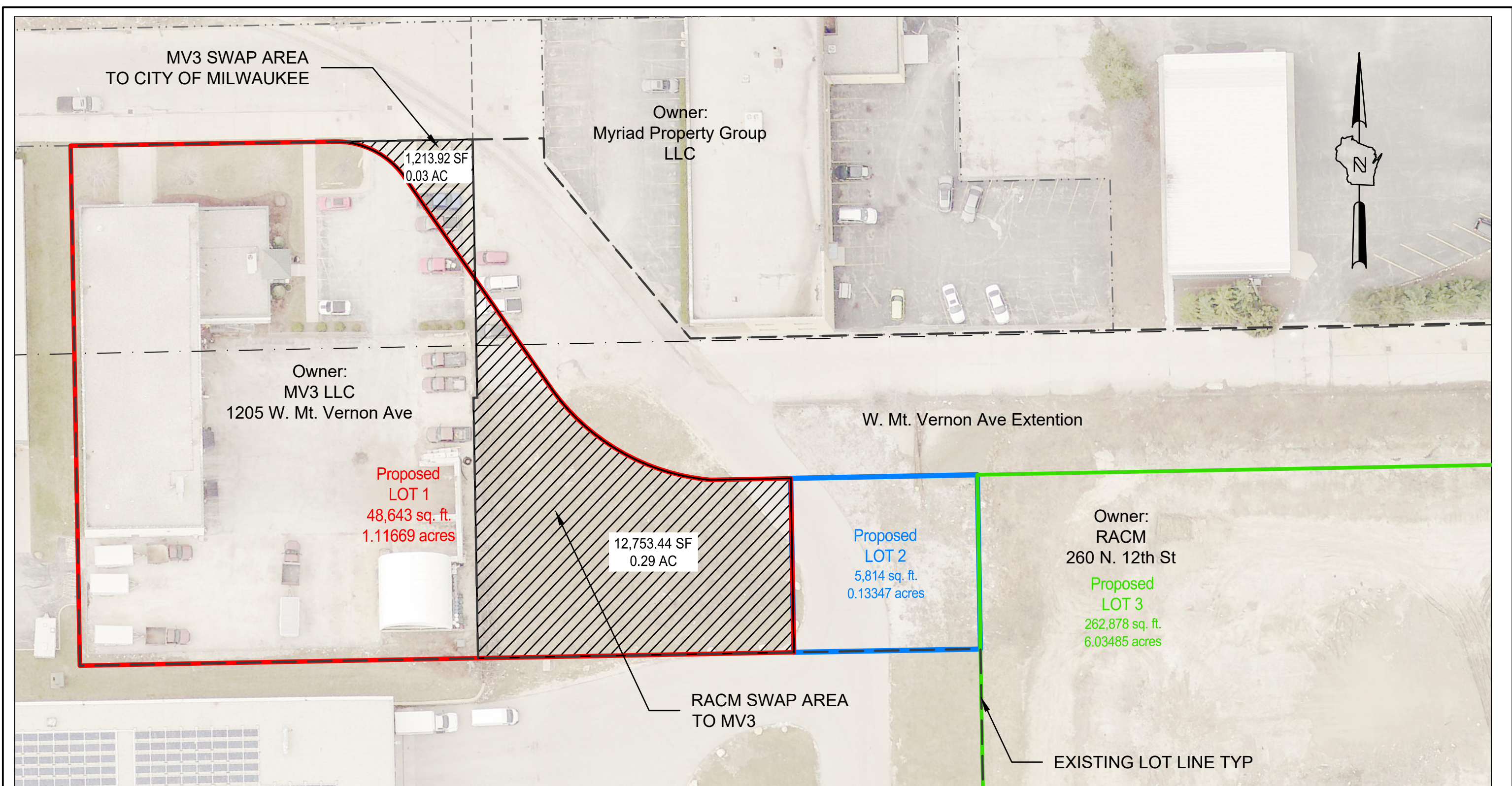


# Exhibit B

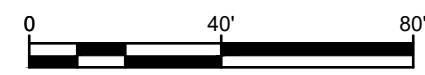
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TOTAL AREA OF PROPERTY SWAP: 13,967.36 SF	
AREA OF MV3 TO CITY SWAP:	1,213.92 SF
AREA OF RACM TO MV3 SWAP:	12,753.44 SF



Kneeland Project			 <small>www.thesigmagroup.com 1300 West Canal Street Milwaukee, WI 53233 Phone: 414-643-4200 Fax: 414-643-4210</small>
DATE: 6/22/23	DRAWN BY: CMM	SCALE: 1" = 40'	
Proposed Landswap Areas			EXHIBIT C