

ROGERS STREET PEDESTRIAN MALL
EASEMENT AGREEMENT
(SOUTH 24TH STREET)

Document Number

Document Title

This Easement Agreement (“**Agreement**”) is made as of _____, 2024 (“**Effective Date**”) by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“**City**”) and BOYS & GIRLS CLUBS OF GREATER MILWAUKEE, INC., a Wisconsin non-stock corporation (“**Grantor**”). City and Grantor are each a “**Party**”; together, they are the “**Parties**.”

RECITALS

- A. WHEREAS, City controls public right-of-way established as the Rogers Street Academy Pedestrian Mall by City Ordinance No. 231134, effective on February 6, 2024, that is adjacent to land owned by Grantor located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, as both are legally described on the attached **Exhibit A** and referred to in such exhibit and herein as the “**City Property**” and “**Grantor Property**,” respectfully.
- B. WHEREAS, City has requested that (i) City have a permanent easement of ingress and egress on a non-exclusive basis in common with Grantor over and across a portion of land on the Grantor Property for public access to and from the City Property; (ii) City have a permanent easement on an exclusive basis to install certain improvements as described herein; and (iii) City have a permanent easement on a non-exclusive basis to allow City to discharge storm water over and across the Grantor Property to all current and future storm sewers located on the Grantor Property.
- C. WHEREAS, Grantor is willing to grant such easements on the terms and conditions as set forth herein.

Recording Area

Name and Return Address

Joseph M. Dobbs, Esq.
Milwaukee City Attorney’s Office
841 North Broadway, 10th Floor
Milwaukee, WI 53202

4704072000

Parcel Identification Number (PIN)

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

- 1. GRANT OF NON-EXCLUSIVE PUBLIC ACCESS EASEMENT. Grantor hereby grants to City a perpetual non-exclusive access easement over, on, and across the easement area legally described on the attached **Exhibit A** and graphically depicted on the attached **Exhibit B** (“**Access Easement Area**”) for the purpose of providing public access to and from the City Property.

2. USE OF PERMANENT PUBLIC EASEMENT. Subject to the terms of this Agreement, City and members of the public may use the Access Easement Area (in common with Grantor and its tenants, invitees, employees, licensees, customers, successors and assigns) for bicycle and pedestrian ingress and egress to and from West Legion Street, to and from South 24th Street, to and from West Rogers Street, and for access to and for ingress and egress to and from any property adjacent to the Access Easement Area, subject to the provisions herein. Further, City maintenance and emergency service vehicles may use the Access Easement Area for vehicular ingress and egress to and from West Legion Street, to and from South 24th Street, to and from West Rogers Street, and for access to and for ingress and egress to and from any property adjacent to the Access Easement Area solely to the extent such vehicular ingress and egress may be reasonably necessary. The use of the Access Easement Area shall be for normal and customary access by City and the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The rights of City and the public to use the Access Easement Area shall not extend to any unusual uses such as loitering, heavy truck traffic (by trucks weighing more than three tons and other than customary truck traffic for deliveries to adjoining properties) or other types of uses that may constitute a public or private nuisance or which may unreasonably interfere with Grantor's use and enjoyment of the Grantor Property. Grantor reserves the right to grant to third parties additional easements for access and/or utilities affecting the Access Easement Area or portions thereof without City's prior consent, provided the additional easements do not unreasonably interfere with City's use. Notwithstanding anything herein to the contrary, neither Party's use of the Access Easement Area shall unreasonably interfere with the use of the Access Easement Area by the other Party and its respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. PUBLIC ACCESS. The Access Easement Area shall be available for public use at all times, except for such times as the Access Easement Area must be closed for maintenance or repair, to avoid the acquisition of adverse or prescriptive rights or for special events benefiting the public. Further, Grantor may, from time to time, vary or relocate the paved areas on the Access Easement Area available for use by the public and Grantor may, from time to time, restrict use of portions of the Access Easement Area by members of the public in favor of Grantor or its lessees, or Grantor's successors' or assigns' exclusive use; provided that, the prior written notice is provided to the City. City shall keep the Grantor Property and surrounding areas free from accumulation of waste materials and rubbish caused by any exercise of the rights under this Agreement. If City fails to complete such obligation in a reasonable time, Grantor may do so and Grantor shall be entitled to reimbursement from City.

4. CONSTRUCTION AND RIGHT OF ENTRY. Grantor hereby grants to the City temporary permission to enter over, on, across, and under the Grantor Property for the purposes of staging heavy equipment and vehicles for construction consistent with the "Pedestrian Mall Construction Plans," as depicted in the attached Exhibit B, provided that such heavy equipment and vehicles shall not unreasonably interfere with Grantor's, or its invitees, employees, customers, successors' or assigns' open access to the Grantor Property and the improvements thereon except as may be previously consented to by Grantor in writing. Any work beyond the items identified in the Pedestrian Mall Construction Plans requires prior written notice to Grantor and Grantor's consent which may be withheld in Grantor's reasonable discretion. City agrees that no heavy

equipment or vehicles used for the purposes of the Pedestrian Mall Construction Plans will remain above, on, or below the Grantor Property after completion of the Pedestrian Mall Construction Plans. All work connected to the Pedestrian Mall Construction Plans shall be performed by experienced, duly licensed personnel outfitted with the appropriate tools and equipment to complete the job correctly and shall be of the standard and quality which prevail among contractors of professional knowledge and skill engaged in such practices throughout the United States under similar circumstances involving the construction of a similar project. City shall perform all Pedestrian Mall Construction Plans work in a safe manner as permitted and required by applicable laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities. The temporary rights of construction and entry as set forth in this Section 5 shall terminate and be of no further force or effect on the earlier of (i) the date that is ten (10) days after the Pedestrian Mall Construction Plans are substantially completed, or _____.

5. GRANT OF PERMANENT EXCLUSIVE EASEMENT FOR PLACEMENT OF INSTALLMENTS. Grantor hereby grants to City a permanent exclusive easement for the placement of the items to be constructed on the Grantor Property including the “Amphitheater” and “Play Area” as shown in the Pedestrian Mall Construction Plans as depicted in the attached **Exhibit B**. City shall be the sole owner of, and hold title to, any such improvements placed on the Grantor Property.

6. CONSTRUCTION WASTE. City shall keep the Grantor Property and surrounding areas free from accumulation of waste materials and rubbish caused by operations as identified in Section 4. At the completion of the Pedestrian Mall Construction Plans work, City shall remove waste materials, rubbish, City’s tools, construction equipment, machinery, and surplus materials from and about the Grantor Property within fifteen (15) days of the completion of the Pedestrian Mall Construction Plans work. If City fails to clean up as provided in this Agreement, Grantor may do so and Grantor shall be entitled to reimbursement from City.

7. CONSTRUCTION RISK. City shall enter on the Grantor Property at its own risk and shall be solely responsible for all costs and expenses in connection with the Pedestrian Mall Construction Plans work detailed herein and further shall assume all responsibility and liability for any damage to Grantor’s personal property or fixtures located within the Access Easement Area during City’s use. If City fails to repair, replace, and restore any Grantor personal property or fixtures damaged in the course of City’s work, Grantor may do so and Grantor shall be entitled to reimbursement from City.

8. GRANT OF NON-EXCLUSIVE DRAINAGE EASEMENT. Grantor hereby grants to City a permanent drainage easement to allow storm water from the City Property to flow over and across the Access Easement Area, provided, at no time shall the grant of drainage rights hereunder be exercised in such a manner as to interfere with or otherwise unreasonably affect Grantor’s improvements on the Grantor Property. For the purposes of this Section, City shall install, repair, maintain, and replace and maintain the drainage basins and associated facilities as identified in **Exhibit B**.

9. AREAS EXCLUDED TO PUBLIC ACCESS. All areas of the permanent Easements described herein shall be open to the general public, except for the following identified areas:

- a. City shall construct and build five (5) parking spots for the sole use and benefit of Grantor and as identified in the attached **Exhibit B.**
- b. The “Amphitheater” and “Play Area” as depicted in the Pedestrian Mall Construction Plans and as identified in the attached **Exhibit B shall be subject to the exclusive control of the City.** The City agrees to cooperate with Grantor in allowing Grantor to use the Amphitheater at reasonable times when not in use by the City. The City hereby warrants that the Amphitheater and Play Area shall at all times be kept in a safe and clean condition and, if the City fails to maintain the Amphitheater and Play Area in such condition, Grantor may do so and Grantor shall be entitled to reimbursement from the City for the costs Grantor incurs related to such maintenance and cleaning of the area.

10. MAINTENANCE AND REPAIR. City shall be solely responsible at its expense for the maintenance, repair, replacement, alteration (to the extent permitted under this Agreement) and/or operation of the Access Easement Area and all improvements thereon in a good condition and repair and in compliance with all applicable laws and safety standards. Such maintenance shall include, but not be limited to, sealing, striping, repaving, and snow and ice removal, as determined by City in its reasonable discretion. City shall provide Grantor with reasonable prior written notice of any such maintenance, repair, replacement, or alteration work and shall obtain Grantor’s prior written consent for any such work (other than ordinary maintenance), which shall not be unreasonably withheld. Grantor shall be solely responsible at its expense for the maintenance of the remaining adjacent landscaping portions of the Access Easement Area not covered by concrete and asphalt. At all times, City shall maintain signage as required by laws and applicable safety standards related to its ownership of all improvements permitted by this Agreement and disclaiming any liability or responsibility on the part of Grantor in relation to the use of such improvements. If City fails to complete such obligations as set forth in this Section 10 within a reasonable time and after reasonable written notice to City from Grantor, Grantor may do so and Grantor shall be entitled to reimbursement from City.

11. RELEASE; SAVE HARMLESS. City shall forever release and save Grantor and its employees, officers, and directors harmless from any and all claims, demands, suits, losses, damages, costs, expenses, obligations, judgments, or other forms of injury or liability arising out of or resulting from negligence or intentionally wrongful act or omission of the City or its employees, officers, directors, contractors and representatives acting within the scope of their employment or engagement in connection with the exercise of any rights hereunder; provided, however, that these provisions are subject to the legal defenses which, under law, City is entitled to raise. City hereby acknowledges that its obligations under this paragraph 13 shall survive the expiration or earlier termination of this Agreement for acts or omissions allegedly occurring before the expiration or termination of this Agreement.

12. INSURANCE. Grantor shall maintain a policy of comprehensive general liability insurance with respect to the Access Easement Area consistent with that held by the owners of similarly situated properties subject to public easements in the City of Milwaukee.

13. NON-USE. Non-use or limited use of the Access Easement Area and the rights granted herein shall not deprive City from later use of such Access Easement Area and City's exercise of such rights to the fullest extent authorized under this Agreement.

14. LIENS. City shall not allow any construction or materialmen's lien to be filed against the Grantor Property arising out of any exercise of the rights granted to or obligations conferred upon City under this Agreement unless such lien is contested in good faith by City. In the event such a lien is filed against the Grantor Property, City shall have thirty (30) days after written demand from Grantor to satisfy the lien, to bond over the lien in an amount sufficient to clear title to the Grantor Property, or to provide Grantor with title insurance or other security in a form or amount reasonably requested by Grantor.

15. GOVERNING LAW; VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

16. ENTIRE AGREEMENT; AMENDMENTS. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and may not be changed, modified, or amended, except by a written document executed and acknowledged by both Parties to this Agreement, which shall only become effective upon its recordation in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

17. NOTICES. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, electronic mail ("e-mail") with a read receipt request, or by receipted personal delivery to the Parties as follows:

To Grantor:

Boys & Girls Clubs of Greater Milwaukee
1558 N. 6th Street
Milwaukee, WI 53212
Attn: President
Email: _____

with a copy to:

Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202

Attn: Candace Flatley
Email: cflatley@foley.com

To The City:

Department of Public Works – City of Milwaukee
Frank P. Zeidler Municipal Building
841 N Broadway, 5th Floor
Milwaukee, WI 53202
Attn: James Washington
Email: jmwashi@milwaukee.gov

with a copy to:

City Attorney's Office – City of Milwaukee
Frank P. Zeidler Municipal Building
841 N Broadway, 7th Floor
Milwaukee, WI 53202
Attn: Joseph M. Dobbs
Email: jdobbs@milwaukee.gov

18. FORCE MAJEURE. If either Party is delayed or interrupted in the performance or completion of any of its obligations hereunder by any cause beyond its control, including, but not limited to, any act, neglect or default of the other Party or any agent or employee of the other Party (including any delay requested by the other Party), embargo, war, fire, flood, concealed conditions, cyclone, earthquake, epidemic or other calamity, act of God or of the public enemy, riots, insurrection or any strike, illegal walkout or secondary boycott, pandemic, or epidemic, then the delay shall be excused and the time of performance specified in this Agreement shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

19. RECORDING. This Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County.

20. HEADINGS. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

21. WAIVER. One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition. No breach of a covenant or condition of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing signed by both Parties. Wherever in this Agreement a Party's consent is required, such consent shall not be unreasonably withheld or delayed.

22. SEVERABILITY. If any term or provision of this Agreement is held invalid or unenforceable, then the remaining terms and provisions of this Agreement shall be affected thereby, but each remaining term and provision shall be valid.

23. ENFORCEMENT. Enforcement of this Agreement may be at law or equity against any person or persons violating or attempting or threatening to violate any provision hereof, either to restrain or prevent such violation or obtain other relief. In any suit or other action brought to enforce this Agreement, the prevailing Party in such or other action shall be entitled to recover its costs, including reasonable attorneys' fees, as are incurred by the prevailing Party from the non-prevailing Party in such suit or action. Nothing in this Agreement shall be deemed to be a waiver of the City's governmental immunity rights as stated under Wisconsin Statutory Law or under the laws of the City of Milwaukee.

24. ENCUMBRANCES. This Agreement is expressly made subject to all recorded easements and restrictions.

25. NO JOINT VENTURE. No provision hereof shall be deemed to constitute the Parties hereto as partners of one another or joint ventures of one another or in any way obligate any Party hereto for the performance of any obligation of the other Party hereto.

26. ASSIGNMENT. Neither Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

27. PUBLIC RECORDS. The Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Grantor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

28. NONDISCRIMINATION. The City hereby agrees that in its use of the Access Easement Area and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

29. COUNTERPARTS. This Agreement may be signed and executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

30. APPROVAL. The City of Milwaukee Department of Public Works approved this Agreement and authorized its execution, subject to approval by the City of Milwaukee's Common Council, at its meeting on _____, 20___. The City of Milwaukee's Common Council approved this Agreement and authorized its execution on _____, 20___, by passage of Resolution No. _____.

[Signature Page Follows]

The Parties have executed this Agreement effective as of the Effective Date.

BOYS & GIRLS CLUBS OF GREATER MILWAUKEE, INC.

a Wisconsin non-stock corporation

By: _____

Name: _____

Title: _____

STATE OF WISCONSIN)

)SS.

COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2024, _____,
the _____ of Boys & Girls Clubs of Greater Milwaukee, Inc., who by
their authority and on its behalf executed the foregoing instrument and acknowledged the
same.

Name:

Notary Public, State of Wisconsin

My Commission Expires:

CITY OF MILWAUKEE
a Wisconsin municipal company

By: _____
Jerrel Kruschke, Commissioner
Dept. of Public Works

And By: _____
James R. Owczarski, City Clerk

Countersigned:

By: _____
Bill Christianson, Comptroller

City Common Council Resolution File Number: _____

CITY ATTORNEY APPROVAL/AUTHENTICATION

Joseph M. Dobbs, 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).

By: _____
Joseph M. Dobbs, Asst. City Attorney
State Bar No. 1115773
Date: _____

EXHIBIT A

Legal Description of Grantor Property:

Parcel 2 of Certified Survey Map No. 7449, recorded on August 3, 2004, being a division of Lots 1, 2, 3 and 4, in Block 1, in Ogden's Subdivision, Lots 1 thru 14, in Block 2, in Trimborn & Korn's Subdivision and lands in the Northwest 1/4 of the Southwest 1/4 of Section 6, Town 6 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

For informational purposes:

Tax Key Number: 470-4072-000

Address: 2404 West Rogers Street, Milwaukee, Wisconsin 53204

Legal Description of City Property:

A part of South 24th Street a 70-foot-wide street between West Legion Street and West Rogers Street, which is proposed to be designated as a Pedestrian Mall, in the 8th Aldermanic District of the City of Milwaukee, described as follows:

All that portion of the 70-foot-wide South 24th Street lying between the westerly prolongation of the south line of Lot 26, Block 2, Muskego Avenue Heights, and the north right-of-way line of West Rogers Street, as located in the Northwest Quarter of the Southwest Quarter of Section 6, Township 6 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin.

Legal Description of Access Easement Area:

Being a part of Parcel 2, of Certified Survey Map No. 7449, as recorded within the Milwaukee County Registry, and being located within the Northwest 1/4 of the Southwest 1/4 of Section 6, Township 6 North, Range 22 East, situated within the City of Milwaukee, Milwaukee County, Wisconsin, and described as follows:

Beginning at the southeast corner of said Parcel 2, said point being the intersection of the north line of W. Rodgers Street with the west line of S. 24th Street; thence South 89°32'03" West (Recorded as South 89°36'15" West), along said north line of W. Rodgers Street and the south line of said Parcel 2, 179.30 feet to the east edge of an ADA ramp to the entrance to the existing building; thence North 00°42'50" West, along said east edge of an ADA ramp, 11.88 feet to the south line of the existing building; thence North 89°37'45" East, along said south line of the existing building, 80.94 feet; thence North 00°35'12" West, along the existing building 8.20 feet; thence North 89°40'35" East, along the existing building, 37.01 feet; thence North 00°22'31" West, along the existing building, 34.80 feet; thence North 89°49'06" East, along the existing building, 17.99 feet; thence North 00°35'10" East, along the existing building, 11.93 feet; thence North 89°09'23" East, along the existing building, 11.75 feet; thence North 00°23'48" West, along the existing building, 23.83 feet; thence South 89°03'17" West, along the existing building, 30.00 feet; thence

North 00°19'15" West, along the existing building, and the northerly extension thereof, 111.05 feet to the north line of said Parcel 2, also being the south line of W. Legion Street; thence North 89°35'29" East (Recorded as North 89°39'42" East), along said north line of Parcel 2, and also along said south line of W. Legion Street, 59.48 feet to the northeast corner of said Parcel 2, said point being the intersection of said south line of W. Legion Street with said west line of S. 24th Street; thence South 00°55'28" East (Recorded as South 00°52' 16" East), along the east line of said Parcel 2, and along said west line of S. 24th Street, 201.15 feet to the Point of Beginning.

Containing 12,935 square feet I 0.297 acres of land, more or less.

EXHIBIT B

Pedestrian Mall Construction Plans:

