

Easement Agreement

Document Number

Document Title

This Easement Agreement (“Agreement”) is made as of _____, 20__ (“Effective Date”) by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“City”) and the COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF MILWAUKEE (“County”). City and County are each a “Party”; together, they are the “Parties.”

RECITALS

- A. WHEREAS, City and County are the owners of adjacent properties located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, as legally described on the attached Exhibit A and referred to in such exhibit and herein as the “City Property” and “County Property”, respectfully.
- B. WHEREAS, City has requested that City have an easement of ingress and egress on a non-exclusive basis in common with County over and across a portion of land on the County Property for public access to and from the City Property.
- C. WHEREAS, County is willing to grant such easement on the terms and conditions as set forth herein.

Recording Area

Name and Return Address

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

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 PUBLIC EASEMENT. County hereby grants to City a perpetual non-exclusive easement over, on, and across the easement area graphically depicted on the attached Exhibit B (“Easement Area”) for the purpose of providing general public vehicular access to and from the City Property.
- 2. USE OF PUBLIC EASEMENT. Subject to the terms of this Agreement, City and members of the public may use the Easement Area (in common with County and its tenants, invitees, employees, licensees, customers, successors and assigns) for vehicular ingress and egress to and from North 12th Lane and to and from North 13th Street, subject to the provisions herein. The use of the 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 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. County reserves the right to grant to third parties additional easements for access and/or utilities affecting the Easement Area or portions thereof. Notwithstanding anything herein to the contrary, neither Party's use of the Easement Area shall unreasonably interfere with the use of the Easement Area by the other Party and its respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. PUBLIC ACCESS. The Easement Area shall be available for public use at all times, except for such times as the 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. County shall have the right periodically to close off the Easement Area for any of these purposes, provided that County obtain any and all permits required for same. Further, County may, from time to time, vary or relocate the paved areas on the Easement Area available for use by the public and County may, from time to time, restrict use of portions of the Easement Area by members of the public in favor of County or its lessees, or County's successors' or assigns' exclusive use; provided that, the prior written consent is obtained from the City.

4. MAINTENANCE AND REPAIR. County shall be solely responsible at its expense for maintenance of the Easement Area as reasonably determined by County in its discretion, which maintenance may include and not be limited to, sealing, striping, repaving, and snow removal, as determined by County in its discretion.

5. CITY'S ACCESS TO EXISTING FACILITIES. The Parties acknowledge that City has and may maintain any existing facilities (such as sewer or water mains) currently located in the Easement Area as set forth in other written easement agreements benefiting City and recorded against the County's Property. City has the right to reasonably access such facilities for maintenance upon reasonable notice to County, provided that City's access does not unreasonably interfere with County's use or occupancy of County's Property.

6. INDEMNIFICATION. City shall save County harmless from any loss, damage, injury or liability resulting from negligence on the part of City in connection with the exercise of any rights of City hereunder; provided, however, that these provisions are subject to the legal defenses which, under law, City is entitled to raise.

7. INSURANCE. This section is intentionally left blank.

8. RULES AND REGULATIONS. County may, at all times, exclude any vendors or other commercial activities from the Easement Area. Further, County shall have the right to promulgate and enforce rules and regulations governing the use of the Easement Area by the public, including any and all rules relating to parking in and on the Easement Area.

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

10. 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.

11. 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.

12. 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”), or by receipted personal delivery to the Parties as follows:

To County:

[add]

with a copy to:

To The City:

Department of Public Works – City of Milwaukee
Frank P. Zeidler Municipal Building
841 N Broadway, 5th Floor
Milwaukee, WI 53202

with a copy to:

City Attorney’s Office – City of Milwaukee
Frank P. Zeidler Municipal Building
841 N Broadway, 7th Floor
Milwaukee, WI 53202

13. 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.

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

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

16. 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.

17. 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.

18. 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.

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

20. NO JOINT VENTURE OR GOVERNMENT ENTITY. No provision hereof shall be deemed to constitute the Parties hereto as partners of one another or joint ventures of one another or as the creation of a governmental entity or in any way obligate any Party hereto for the performance of any obligation of the other Party hereto.

21. 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.

22. PUBLIC RECORDS. The Parties understand that the City and County are 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. City and County acknowledge that each are obligated to assist the other Party 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 revocation or termination of this Agreement.

23. NONDISCRIMINATION. City and County hereby agree that in its use of the 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.

24. 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.

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

[Signature Page Follows]

CITY OF MILWAUKEE
a Wisconsin municipal company

By: _____
Cavalier Johnson, Mayor

And By: _____
James R. Owczarski, City Clerk

Countersigned:

By: _____
Aycha Sawa, Comptroller

City Common Council Resolution File Number: _____

CITY ATTORNEY APPROVAL/AUTHENTICATION

Jordan M. Schettle, 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: _____
Jordan M. Schettle, Asst. City Attorney
State Bar No. 1104571
Date: _____

EXHIBIT A

Legal Description of County Property:

Legal Description of City Property:

EXHIBIT B

Easement Area Depiction: