

Document Number	MILLER PARK WATER MAIN EASEMENT AGREEMENT WE-958 Document Title
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**MILLER PARK
WATER MAIN EASEMENT
AGREEMENT WE-958**

**WATER MAIN EASEMENT
IN ASSESSOR’S PLAT OF MILLER PARK, LOT 11
EAST OF VACATED S. 44TH STREET AND
NORTH OF FORMER SOO LINE RR CO. RIGHT-OF-WAY**

Recording Area Name and Return Address Mary L. Schanning Deputy City Attorney City Hall, Room 800 200 East Wells Street Milwaukee, WI 53202

Tax Key Number: 422-9994-100

DRAFTED BY:
Mary L Schanning, Deputy City Attorney
City Attorney’s Office, Milwaukee, Wisconsin,

1049-2007-986:233077

THIS WATER MAIN EASEMENT AGREEMENT (the “**Agreement**”), made by and among the STATE OF WISCONSIN, by its STATE BUILDING COMMISSION and DEPARTMENT OF ADMINISTRATION (collectively, the “**State**”), the CITY OF MILWAUKEE, a municipal corporation of the State of Wisconsin (“**City**”), the SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT, a political subdivision of the State of Wisconsin (“**District**”), and THE MILWAUKEE BREWERS BASEBALL CLUB, LIMITED PARTNERSHIP (“**Brewers**”), is dated as of _____, 2017.

RECITALS

- A. The State owns certain lands that it ground-leased to the District pursuant to a 99-year ground lease dated as of October 21, 1996 (as amended from time to time, the “**Ground Lease**”). A Memorandum of the Ground Lease was recorded in the Milwaukee County Register of Deeds Office as Document Number 7389194, as amended.
- B. The District, in turn, subleased to the Brewers the land subject to the Ground Lease and other real property (the “**Ground Lease Land**,” legally described on Exhibit C attached hereto), pursuant to the Miller Park Lease Agreement, as amended and restated dated as of June 30, 2004 (as amended from time to time, the “**Miller Park Lease**”). A Memorandum of the Miller Park Lease was recorded in the Milwaukee County Register of Deeds Office as Document Number 8834644, as amended.
- C. The District, Brewers, City, the Redevelopment Authority of the City of Milwaukee and the RACM Transferees are parties to that certain “Amended and Restated Reciprocal Operating and Easement Agreement” dated as of July 1, 2015 (the “Amended REO”). The Amended REO was recorded in the Milwaukee County Register of Deeds Office as Document No. 10531386 on January 11, 2016. Capitalized terms not expressly defined herein shall have the meanings ascribed to them in the Amended REO.
- D. During the construction of Miller Park stadium, the City, District and Brewers agreed to the location of public water utility facilities within designated areas of the Ground Lease Land. Those facilities were constructed and have been maintained within such designated areas of the Ground Lease Land.
- E. City desires to acquire, and State, District and Brewers desire to grant to the City, certain permanent easement rights in and to such designated areas of the Ground Lease Land, on the terms and conditions herein, for the public water utility facilities located within the Ground Lease Land.

AGREEMENT

1. **Recitals.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the terms herein. The recitals above are acknowledged and agreed to.

2. **Grant of Easement.** The State, District, and Brewers hereby grant unto City, and City hereby accepts, an easement for the already-existing water utility facilities located within those portions of the Ground Lease Land more particularly described on **Exhibit B** and depicted on **Exhibit A** (“**Water Main Easement Area**”). City shall, subject to this Agreement, use the Water Main Easement Area to construct, operate, maintain, inspect, repair, enlarge, reconstruct, replace and relocate, as City deems necessary, the City’s public water main and related facilities (“**City Water Main Facilities**”).

3. **Accompanying Right of Access.** Subject to the terms in this Agreement and the Amended ROE, the right of access accompanies (and is hereby granted with) the easement thus allowing City (and its employees, agents, contractors and authorized representatives) ingress and egress to the Water Main Easement Area and to the City Water Main Facilities.

4. **Ownership of City Water Main Facilities.** City does, and shall continue to, own the City Water Main Facilities. City heretofore installed the City Water Main Facilities. City accepts and acknowledges that neither the State, District, nor Brewers are, or shall be at any time, obligated or otherwise responsible for any cost, fee, or expense associated with the planning, construction, furnishing or installation of the City Water Main Facilities.

5. **Maintenance of City Water Main Facilities.** City shall operate, maintain, inspect, repair, enlarge, reconstruct, replace and relocate the City Water Main Facilities at its sole cost and expense, and City shall control the scheduling (subject to the restrictions and conditions contained herein and in the Amended ROE) and determinations regarding the requisite maintenance, repair, and replacement of the City Water Main Facilities. City shall keep, or cause to be kept, the City Water Main Facilities in good condition and good working order.

6. **Repair/Restoration.** If any damage occurs to the Ground Lease Land or any improvements situated thereon, which damage is attributable to the acts or omissions of City (including, without limitation, its officers, employees, agents, contractors, licensees and authorized representatives), City shall promptly, at its sole expense, repair such

damage to the Brewers' and District's reasonable satisfaction. If such damage is not promptly or properly repaired, either the Brewers or District (or both) shall have the right to repair such damage, and City shall promptly reimburse the Brewers and District for all costs of such repairs.

7. **Hold Harmless.** City will hold State, District and Brewers harmless from loss or injury resulting from City's willful or negligent acts or omissions under this Agreement. State, District and Brewers, individually or jointly as the case may be, will hold City harmless from loss or injury resulting from State's, District's or Brewers' willful or negligent acts or omissions, respectively, under this Agreement. If there is joint negligence or culpability on the part of any parties, liability shall be borne by them, respectively, in proportion to their respective negligence or culpability. The foregoing provisions are subject to legal defenses available, respectively, to all parties.

8. **Reservation.** The State, District and Brewers reserve the right to use the land within the Water Main Easement Area, without further consent or approval of the City, for any purpose not inconsistent with this Agreement and the rights granted to City herein. However, if the State, District or Brewers constructs any structure, building, or improvement within or adjacent to the Water Main Easement Area, or adjacent to the City Water Main Facilities, or if the State, District or Brewers undertakes any other work within the Water Main Easement Area (other than as contemplated by Section 6 above), the party doing such work assumes liability for any damage to the City Water Main Facilities in the Water Main Easement Area. Any use of the land within or adjacent to the Water Main Easement Area by the State, District or Brewers shall not substantially increase the City's cost of restoration under Section 6 or the City's cost of accessing the City Water Main Facilities for maintenance, repair, reconstruction or replacement purposes.

9. **City's Non-Disturbance; Construction Around Restricted Periods.** City's use of this easement (including access to the Water Main Easement Area and the City Water Main Facilities therein, and City's operation, maintenance, repair, inspection and replacement of those facilities) shall not interfere with the use of the Access Roads or the Ground Lease Land by the State, Brewers, District, or their respective invitees and permittees during Event Periods, as that term is defined in the Amended REO. During Event Periods, City shall not engage in any installation, construction, maintenance or repair or other work on or to the City Water Main Facilities. Instead, City will require its contractors to work around those Event Periods. The Brewers shall promptly provide City with reasonable advance written notice of (and keep City updated with periodic advance written notices concerning) Event Periods. It is the intent hereof to provide as much

advance notice of the Event Periods as reasonably practicable and possible to City so City may schedule accordingly. The City will take all necessary steps to ensure that the Water Main Easement Area will be maintained according to reasonable construction and maintenance standards (including preventive maintenance). City further agrees that during Event Periods, City shall take all necessary steps to ensure the Access Roads and all areas adjacent to them are free from obstructions, equipment, machinery, vehicles, or other items used in conjunction with City’s work in the Water Main Easement Area, or otherwise, and that all areas will be in a safe condition, as determined by the District and Brewers in their sole and absolute discretion, so as to not impose any unreasonable risk of accident or injury to the District’s or Brewers’ employees, agents, guests, invitees and permittees or damage to the District’s, Brewers’ or Imperial Parking’s equipment. In the event City does not comply with the terms set forth herein, the District or Brewers may exercise self-help, and take any action necessary to ensure the Access Roads, the areas adjacent thereto, and any other areas subject to this Agreement are safe for public access during Event Periods. The District’s and Brewers’ self-help actions may include, but are not limited to, removal of any obstruction, equipment, machinery, vehicles, or debris from the Access Roads, areas adjacent to the Access Roads, or any other areas subject to this Agreement. City shall promptly reimburse the District and Brewers for all costs and expenses incurred in exercising such right of self-help.

10. **Notices.** Notices required or desired to be given by any party to another party with respect to this Agreement shall be in writing and shall be delivered personally, sent by facsimile or e-mail (provided that any facsimile or e-mail is successfully sent without error or inability-to-send notification, and sent to the City during any Monday through Friday that City’s City Hall is open for business, and is sent during the hours between 8:30 A.M. and 4:30 P.M., or if sent to the City during any other time, shall be deemed to be received by the City at 8:30 A.M. or the first day that City’s City Hall is open for business following the sending of such facsimile or e-mail), sent by commercial-overnight-courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as herein provided. All notices under this Agreement shall be given to the following:

DISTRICT:	CITY:
Mike Duckett, Executive Director Southeast Wisconsin Professional Baseball Park District Miller Park One Brewers Way Milwaukee, WI 53214 Telephone: (414) 902-4040	Commissioner, Department of Public Works City of Milwaukee 841 North Broadway, Room 510 Milwaukee, WI 53202 Telephone: (414) 286-3301 Facsimile: (414) 286-3953 E-mail: ghasan.korban@milwaukee.gov

Facsimile: (414) 902-4033 E-mail: mduckett@millerparkdistrict.com	
With a copy to: Susan G. Schellinger Davis & Kuelthau, SC 111 East Kilbourn Avenue, #1400 Milwaukee, WI 53202-6677 Telephone: (414) 225-1492 Facsimile: (414) 278-3692 E-mail: sschellinger@dkattorneys.com	With a copy to: Mary L. Schanning Deputy City Attorney 200 East Wells Street, Room 800 Milwaukee, WI 53202 Telephone: (414) 286-2637 Facsimile: (414) 286-8550 E-mail: mschan@milwaukee.gov
BREWERS:	STATE:
Marti Wronski, Vice President & General Counsel Milwaukee Brewers Baseball Club, Limited Partnership Miller Park One Brewers Way Milwaukee, WI 53214 Telephone: (414) 902-4610 Facsimile: (414) 902-4515 E-mail: marti.wronski@milwaukeebrewers.com	Secretary of Department of Administration 101 East Wilson Street, 10 th Floor P.O. Box 7864 Madison, WI 53707-7864 Telephone: (608) 266-1741 Facsimile: (608) 267-3842
With a copy to: Andy Wronski Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202-5300 Telephone: (414) 297-5518 Facsimile: (414) 297-4900 E-mail: awronski@foley.com	

The above contact information may, from time to time, be changed by notice duly sent hereunder.

10. **Recording; Counterparts.** This Agreement shall be recorded by the City, at its expense, in the Milwaukee County Register of Deeds Office against the Ground Lease Land. This Agreement may be signed in one or more counterparts each of which shall, when taken together, constitute one and the same document. Facsimile signatures shall be acceptable as originals. However, a fully-executed original (with original signatures) is needed, and will be provided, for recording.
11. **Binding Effect.** All the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors, heirs, and assigns.

12. **Applicable Laws.** The parties hereto shall abide by all local, State, Federal and other applicable laws, ordinances, regulations and restrictions in their respective actions hereunder. City further acknowledges that it shall abide by all local, State, Federal and other applicable laws, ordinances, regulations and restrictions and in the course of maintaining, repairing and reconstructing the City Water Main Facilities.
13. **Governing Law; Amendment.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. This Agreement may only be amended by a written instrument signed by all of the parties hereto (or their successors in interest).
14. **Agreement Interpretation.** All parties to this Agreement having participated fully and equally in the negotiation and preparation hereof, agree that this Agreement shall not be more strictly construed against any party hereto. The parties intend this Agreement to be binding on all parties and not illusory. Thus, wherever this Agreement grants discretion to the City, State, District or Brewers, that might otherwise make this Agreement illusory, the party exercising its discretion must act according to reasonable standards.
15. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
16. **No Liens.** City hereby covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Ground Lease Land in conjunction with any work hereunder including, but not limited to, City's planning, construction and installation of the City Water Main Facilities and City's maintenance, repair, inspection and replacement of the same; and, in case of any such lien attaching, City shall (at its sole cost) promptly cause same to be removed.
17. **City Self-Insured.** City represents it is self-insured.
18. **Emergency Contact.** City hereby furnishes State, Brewers, and District with emergency telephone, cell phone and facsimile numbers, and e-mail addresses of City representatives who may be contacted outside of normal business hours in the event of concern hereunder or with respect to matters relating hereto. The initial list of such emergency communication information is set forth below and may be revised from time to time by written notice from City per the notice section above.

Jennifer Gonda	Control Center (24-hour emergency service)
Superintendent, Milwaukee Water Works	Milwaukee Water Works
City of Milwaukee	City of Milwaukee
841 North Broadway, Room 409	3850 North 35 TH Street
Milwaukee, WI 53202	Milwaukee, WI 53216
Telephone at work: 414-286-2801	Telephone: 414-286-3710
Email: jgonda@milwaukee.gov	

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized signatories as of the date first written above.

SIGNATURE PAGE FOLLOWS.

CITY: CITY OF MILWAUKEE	DISTRICT: SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT	BREWERS: MILWAUKEE BREWERS BASEBALL CLUB, LIMITED PARTNERSHIP	STATE: STATE OF WISCONSIN
By: _____ Ghassan Korban, P.E. DPW Commissioner Per Common Council File No.	By: _____ Don Smiley, Chairman	By: Milwaukee Brewers Holdings LLC, its Sole General Partner	BUILDING COMMISSION By: _____ Name: _____ Title: _____
COUNTERSIGNED: By: _____ Martin Matson Comptroller		By: MLA Sports LLC, its Sole Manager	DEPARTMENT OF ADMINISTRATION By: _____ Scott A. Neitzel Secretary
		By: _____ Richard C. Schlesinger	
CITY ATTORNEY APPROVAL AND CITY AUTHENTICATION Mary L. Schanning, a State Bar of Wisconsin member, approves City signature per Milw. Code of Ordin. § 304-21 and authenticates the signatures of the City signatories above per Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b). _____ Mary L. Schanning Deputy City Attorney State Bar No. 1029016 Date: _____	DISTRICT AUTHENTICATION Susan G. Schellinger, a State Bar of Wisconsin member, authenticates the signature of the District signatory above per Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b). _____ Susan G. Schellinger State Bar No. 1021147 Date: _____	BREWERS AUTHENTICATION Andy Wronski, a State Bar of Wisconsin member, authenticates the signature of the Brewers signatory above per Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b). _____ Andy J. Wronski State Bar No. 1024029 Date: _____	STATE AUTHENTICATION Mark Herman, a State Bar of Wisconsin member, authenticates the signatures of the State signatories above per Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b). _____ Mark Herman State Bar No. 1031310 Date: _____

EXHIBIT A
DEPICTION OF WATER MAIN EASEMENT AREA; PLAN FILE NO. WE958

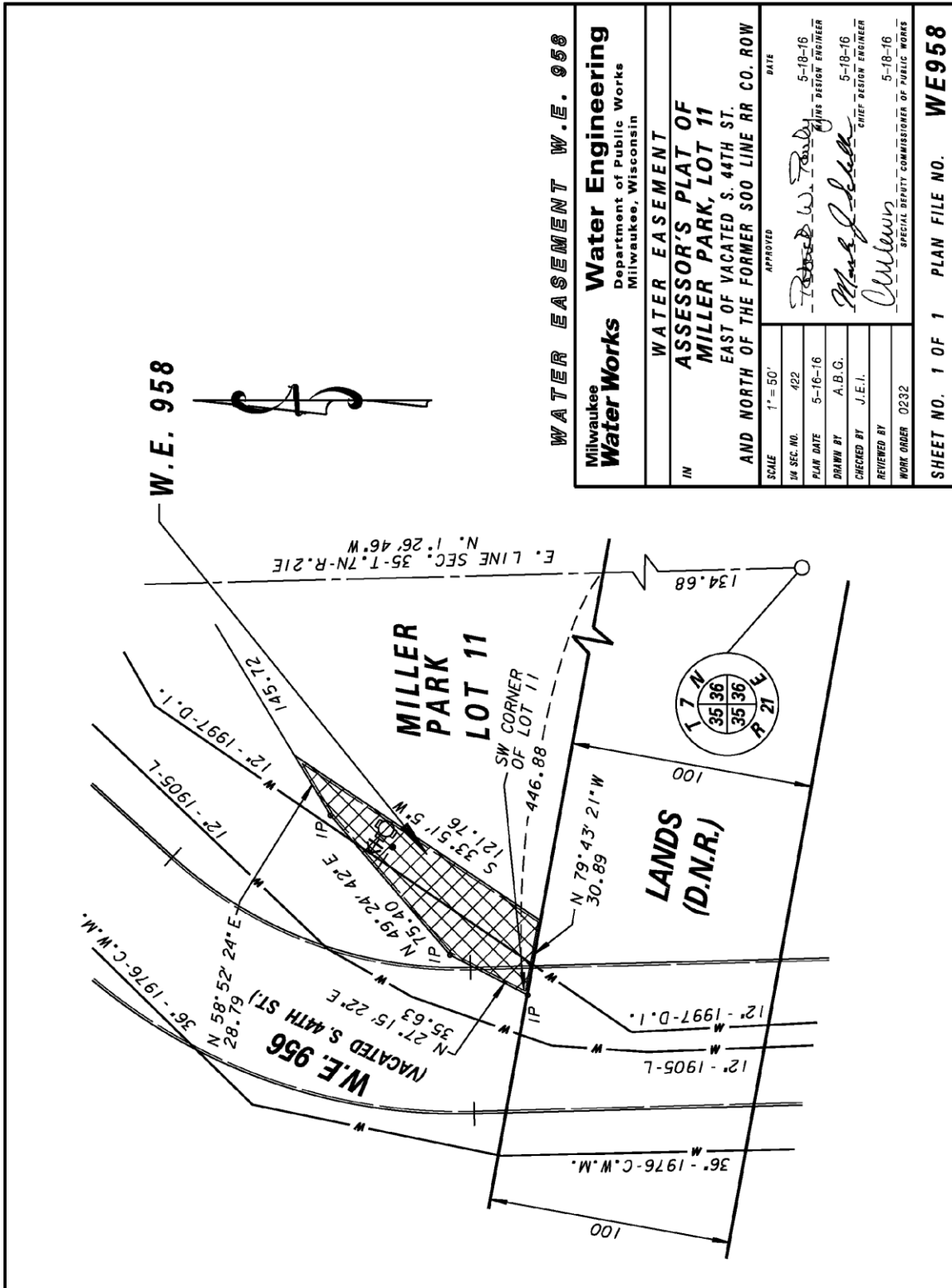


EXHIBIT B

**MILLER PARK
LEGAL DESCRIPTION OF WATER MAIN EASEMENT AREA
City of Milwaukee**

Easement for water main purposes located in that part of Lot 11 of the Assessor's Plat of Miller Park, recorded at the Milwaukee County Register of Deeds Office as Document No. 10634172, Reel No. 9040, on December 21, 2016, lying in that part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Town 7 North, Range 21 East, City of Milwaukee, Milwaukee County, described as follows:

Beginning at the southwest corner of Lot 11 of the Assessor's Plat of Miller Park in the City of Milwaukee; thence N27°15'22"E, 35.63 feet; thence N49°24'42"E, 75.40 feet; thence N58°52'24"E, 28.79 feet; thence S33°51'05"W, 121.76 feet; thence N79°43'21"W, 30.89 feet to the point of beginning.

Exhibit C

Ground Lease Land-Legal Description (including Bluff Park)