

SUPPLEMENTAL EASEMENT AGREEMENT
Document Title

Document Number

**Department of the Army
Detroit District, Corps of Engineers
Supplemental Agreement No. 1
To Department of the Army Easement
No. DACW35-2-90-3002**

Recording Area

Name and Return Address

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

Parcel Identification Number (PIN)
429-9998-000

This document drafted by:
Robert Jameson, LRE
U.S. Army Corps of Engineers
Real Estate Division
Detroit, Buffalo, and Chicago Regions
307 South Harbor Ave.
Grand Haven, MI 49417

**DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
SUPPLEMENTAL AGREEMENT NO. 1
TO DEPARTMENT OF THE ARMY EASEMENT
NO. DACW35-2-90-3002**

THIS SUPPLEMENTAL AGREEMENT entered into this ____ day of _____, _____, by and between the **City of Milwaukee Acting By and Through Its Board of Harbor Commissioners**, hereinafter called the Grantee, and the **Secretary of the Army**, hereinafter called the Government.

WITNESSETH:

WHEREAS, Grantee is the owner of certain real property located in the City of Milwaukee, County of Milwaukee, at 200 North Harbor Drive, as described on Exhibit A, attached hereto (the "City Property"); and

WHEREAS, Department of the Army Easement No. DACW35-2-90-3002, dated 15 January 1991, between the Secretary of the Army and the City of Milwaukee, Port of Milwaukee, a copy of which is attached hereto as Exhibit B, authorized the construction, operation and maintenance of a storm sewer outfall extending through the U.S. North Pier at the Milwaukee Harbor Federal Navigation Project, as more accurately described in the basic easement; and,

WHEREAS, the Grantee has proposed to relocate and resize said storm sewer outfall constructed through the inner portion of the U.S. North Pier; and

WHEREAS, the Government has no objection to the requested construction; and,

WHEREAS, a condition assuring the coordination of all construction on federal property under the administrative jurisdiction of the Department of the Army be added as a on all easements; and,

WHEREAS, by authority of the Defense Authorization Act of 1998, Section 2813 (a), the United States is required to charge a fee to cover administrative expenses associated with the processing of easements including modification of existing easements; and,

WHEREAS, the insurance requirement for the use of federal property was updated in subsequent modifications of standard Department of the Army easements; and,

NOW, THEREFORE, effective 1 July 2011, the easement is modified in the following particulars, but in no others:

The following conditions are **ADDED** hereto and made part of the easement:

"24. This easement authorizes the construction, operation and maintenance of a 36 inch diameter storm sewer outfall structure constructed through that portion of the City Property and Federal North Revetment described on Exhibit C, attached hereto.

"25. All construction activities on the premises including the detailed construction plans and specifications for any structure or improvements, shall be coordinated with the Area Engineer, U.S. Army Corps of Engineers, Kewaunee Sub Office servicing the Lake Michigan Area Office (telephone 920-388-3720, extension 83712) prior to the start of construction. This review is required to insure that the grantee's construction is consistent with the purpose and integrity of the Milwaukee Harbor Federal Navigation Project,

and is not intended as a detailed engineering review. The Federal Government assumes no responsibility or liability for the technical sufficiency of the grantee's construction."

"26. The grantee shall pay in advance to the United States and administrative fee in the amount of four hundred fifty and no/100 dollars (\$450.00) to cover the administrative expenses associated with the processing of Supplemental Agreement No. 1 of this easement. The administrative fee is to be paid in full, by check and included with the signed Supplemental Agreement."

Condition No. 20 is **REPLACED** in its entirety with the following and made a part of the easement:

"20 Insurance - (1) At the commencement of this easement, the grantee shall obtain from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$2,000,000.00, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the grantee under the terms of this easement. The grantee shall require its insurance company to furnish to said officer a copy of the policy or policies, or if acceptable to said officer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by said officer every five years or upon renewal or modification of this easement.

(2) The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The grantee shall require that the insurance company give said officer thirty (30) days written notice of any cancellation or change in such insurance. Said officer may require closure of any or all of the premises during any period for which the grantee does not have the required insurance coverage.

(3) In the event the grantee is self-insured, the grantee shall certify such self-insurance in writing in the minimum amount specified to said officer."

Exhibits "A" and "B" to the easement describing the easement area are **REPLACED** in their entirety with **Exhibit C** attached hereto.

All references to "The City of Milwaukee, The Port of Milwaukee" are **REPLACED** with "the City of Milwaukee Acting By and Through Its Board of Harbor Commissioners."

EXCEPT AS MODIFIED ABOVE, all other terms and conditions of the easement, remain in full force and effect.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1 on the date first above written.

**CITY OF MILWAUKEE,
a Wisconsin municipal corporation**

Tom Barrett
Mayor

Ronald D. Leonhardt
City Clerk

COUNTERSIGNED:

W. Martin Morics
City Comptroller

**BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF MILWAUKEE**

Timothy Hoelter
President

Donna Luty
Secretary

SIGNATURE AUTHENTICATION

_____, Assistant City Attorney, and a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of each of the above City signatories in accordance with Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b).

By: _____
_____, Assistant City Attorney

State Bar No.: _____

Date of Authentication: _____, 2011

EXHIBIT A

Description of Property Owned by City

Part of the North half of fractional Section 33, Township 7 North, Range 22 East, in Milwaukee County, Wisconsin, being more particularly described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said fractional Section 33; thence South 88 degrees 42 minutes 26 seconds West along the South line of the said half Section 176.96 feet; thence North 01 degrees 17 minutes 34 seconds West 618.13 feet to a point on the top North edge of the North pier of the harbor entrance (said point lying South 86 degrees 12 minutes 51 seconds West 443.62 feet from United States Government Monument 307) (said point also being the POINT OF BEGINNING); thence North 07 degrees 16 minutes 22 seconds East 86.15 feet; thence South 85 degrees 30 minutes 35 seconds West 57.57 feet; thence North 04 degrees 29 minutes 24 seconds West 45.00 feet; thence South 85 degrees 30 minutes 35 seconds West 575.00 feet; thence South 04 degrees 29 minutes 24 seconds East 126.27 feet to a point on the Westerly extension of the top of the North edge of the North pier of the harbor entrance; (said point lying South 86 degrees 17 minutes 36 seconds West 278.37 feet from United States Government Monument 305); thence North 85 degrees 47 minutes 46 seconds East along the top of the North edge of the said North pier 615.01 feet to the point of beginning, containing 1.78 acres more or less.

EXHIBIT B

[Attach copy of Department of the Army Easement for
Right of Way (Pipeline), DACW35-2-90-3002]

DEPARTMENT OF THE ARMY
EASEMENT FOR RIGHT OF WAY
(PIPELINE)

ON MILWAUKEE HARBOR, WISCONSIN

THE SECRETARY OF THE ARMY, under and by virtue of the authority vested in him by Title 10, United States Code, Section 2669, hereby grants to the City of Milwaukee, The Port of Milwaukee, a Wisconsin Municipal Corporation, 500 N. Harbor Drive, Milwaukee, Wisconsin 53202-5649,

hereinafter designated as the grantee, for a period not exceeding fifty (50) years from the date hereof, an easement for a right of way for construction, operation and maintenance of a 24-inch storm sewer extending through the U.S. North Inner Pier at Milwaukee Harbor, Wisconsin,

over, across, in, and upon land under the control of the Secretary of the Army at the location shown in red on Exhibit "A" and legally described on Exhibit "B" attached hereto and made a part hereof, and described as follows:

~~THIS EASEMENT is granted subject to the following conditions:~~

- ~~1. The grantee shall pay to the United States compensation in the amount of ~~DELETED~~ (\$ ~~DELETED~~), payable in advance. Compensation shall be made payable to the Treasurer of the United States and forwarded by the grantee to~~

2. The installation and/or operation and maintenance of said line shall be accomplished without cost or expense to the United States under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter designated as "said officer", and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The grantee shall have the right of ingress and egress for such purposes.

3. The use and occupation of said land incident to the exercise of the privileges hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.

4. The grantee shall supervise the said line and cause it to be inspected at reasonable intervals, and shall immediately repair any leaks found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said line and the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of the said officer.

5. Any property of the United States damaged or destroyed by the grantee incident to the use and occupation of the said premises, shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer or in lieu of such repair or replacement the grantee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

6. The United States reserves to itself the right to construct, use, and maintain across, over, and/or under the right of way hereby granted, electric transmission, telephone, telegraph, water, gas, gasoline, oil and sewer lines, and other facilities, in such manner as not to create any unreasonable interference with the use of the right of way herein granted.

7. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, nor for damages to the property of the grantee, or for injuries to the person of the grantee (if an individual), nor for damages to the property or injuries to the person of the grantee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from or incident to government activities, and the grantee shall hold the United States harmless from any and all such claims.

8. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the construction, maintenance, and use of said line.

~~9. That the grantee shall furnish through said line such service as may be required from time to time for governmental purposes on said land, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.~~

10. In the event all or any portion of said land occupied by said line shall be needed by the United States, or in the event the existence of said line shall be considered detrimental to governmental activities, the grantee shall, from time to time, upon notice so to do, and as often as so notified, remove said line and related facilities to such other location or locations on said land as may be designated by said officer, and, in the event said line shall not be removed or relocated within ninety (90) days after any aforesaid notice, the United States may cause the same to be done at the expense of the grantee.

11. This easement may be terminated by the Secretary of the Army upon a reasonable notice to the grantee if the Secretary of the Army shall determine that the right of way hereby granted interferes with the use or disposal of said land or any part thereof by the United States, or it may be terminated by the Secretary of the Army for failure, neglect, or refusal by the grantee fully and promptly to comply with any and all of the conditions of this grant, or for nonuse, or for abandonment.

12. Upon the expiration or termination of this grant, the grantee shall, without expense to the United States, and within such time as the Secretary of the Army may indicate, remove the said line from said land and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the said officer. In the event the grantee shall fail, neglect, or refuse to remove the said line and so restore the premises, the United States shall have the option either to take over the said line as the property of the United States, without compensation therefor, or to remove the said line and perform the restoration work as aforesaid at the expense of the grantee, and in no event shall the grantee have any claim for damages against the United States or its officers or agents, on account of the taking over of said line or on account of its removal.

13. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the heirs, representatives, successors, and assigns of the grantee.

14. That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned; and that the grantee shall obtain such permission as may be necessary on account of any other existing rights.

15. See Condition Nos. 16, 17, 18, 19, 20, 21, 22, and 23 on attached page 4 and 5.

This easement is not subject to Title 10, United States Code, Section 2662.


IN WITNESS WHEREOF I have hereunto set my hand this 15th
day of January 19 91

The terms and conditions of this
easement are hereby accepted.
CITY OF MILWAUKEE, THE PORT OF MILWAUKEE

By: _____

Its: See attached signature page.

8


VICTOR L. KOTWICKI
Chief, Real Estate Division
Detroit District

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PORT OF MILWAUKEE
90 MAR 15 AM 1:41

16. The grantee shall comply with the following construction procedures and specifications:

- a. Care will be taken by the grantee so as not to jeopardize the integrity of the tie-back system.
- b. The tie rods (Dywidag bars) will be supported (prevented from sagging), during excavation, to avoid deformation, or excessive stress on the system.
- c. Care will be taken to avoid damaging the PVC pipe sleeve protecting the tie rods. Any cracked or broken pipe will be reported promptly to the Area Engineer, Kewaunee Area Office, Corps of Engineers, telephone no. (414) 388-3720. The Area Engineer and/or his designated representative will stipulate the corrective action required.
- d. Backfill underneath the tie rods will be compacted in such a manner so as to avoid their settlement.
- e. The Area Engineer, Kewaunee Area Office, shall be notified at the start of excavation operations adjacent to the tie rods.
- f. The reinforced concrete walkway will be restored to "As Built" condition. This is to include saw-cut and doweled joints.

17. The use of any pesticides on the land described herein must be in accordance with Federal, State or local laws, rules and regulations covering such pesticides.

18. The grantee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the said facilities are located.

19. That, within the limits of their respective legal powers, the parties hereto shall protect the project against pollution of its water. The grantee shall comply promptly with any regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency and/or a state, interstate or local government water pollution control agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, state, interstate or local governmental agency are hereby made a condition of this instrument.

20. That the grantee shall procure and maintain during the term of this easement, a liability insurance policy in the following minimum amount naming the United States of America as an insured party and affording coverage against liability for injury to persons, property or deaths of persons arising out of any activities resulting from the issuance of this easement:

<u>TYPE</u>	<u>AMOUNT</u>
Comprehensive Liability	\$250,000.00 per event
Bodily Injury	\$250,000.00 ea. person
Property Damage	\$250,000.00 per event

In the event the grantee is self-insured, the grantee shall certify such self-insurance in writing in the minimum amount specified above to said officer.

21. The grantee shall not discriminate against any person or persons or exclude from participation in the grantee's operations, programs or activities conducted on the said premises, because of race, color, religion, sex, age, handicap, national origin or place of residency. The grantee, by acceptance of this easement, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11, December 28, 1964.

22. There shall be no unreasonable interference with navigation by the exercise of privileges herein granted.

23. Prior to execution of this easement, Condition No. 1 and 9 were deleted, and Condition Nos. 16, 17, 18, 19, 20, 21, 22, and 23 were added on pages 3, 4 and 5, which is hereby made a part of this easement.

The terms and conditions of the attached Easement for Right of Way (Pipeline) (DACW 35-2-90-3002) are hereby accepted.

CITY OF MILWAUKEE
PORT OF MILWAUKEE

John O. Norquist
John O. Norquist, Mayor

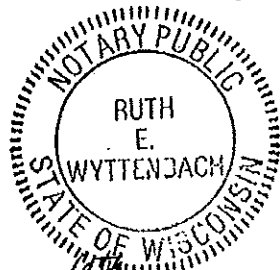
[Signature]
(Deputy) Comptroller GN

Ronald O. Leonard
(Deputy) City Clerk

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this 5th day of September, 1990, John O. Norquist, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

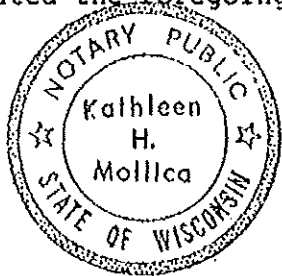
Ruth E. Wyttenbach
NOTARY PUBLIC, State of Wisconsin
My Commission Expires: 3-7-93



STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this 7th day of September, 1990, Ronald O. Leonard, the (Deputy) City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

Kathleen H. Mollica
NOTARY PUBLIC, State of Wisconsin
My Commission Expires: 2-23-92

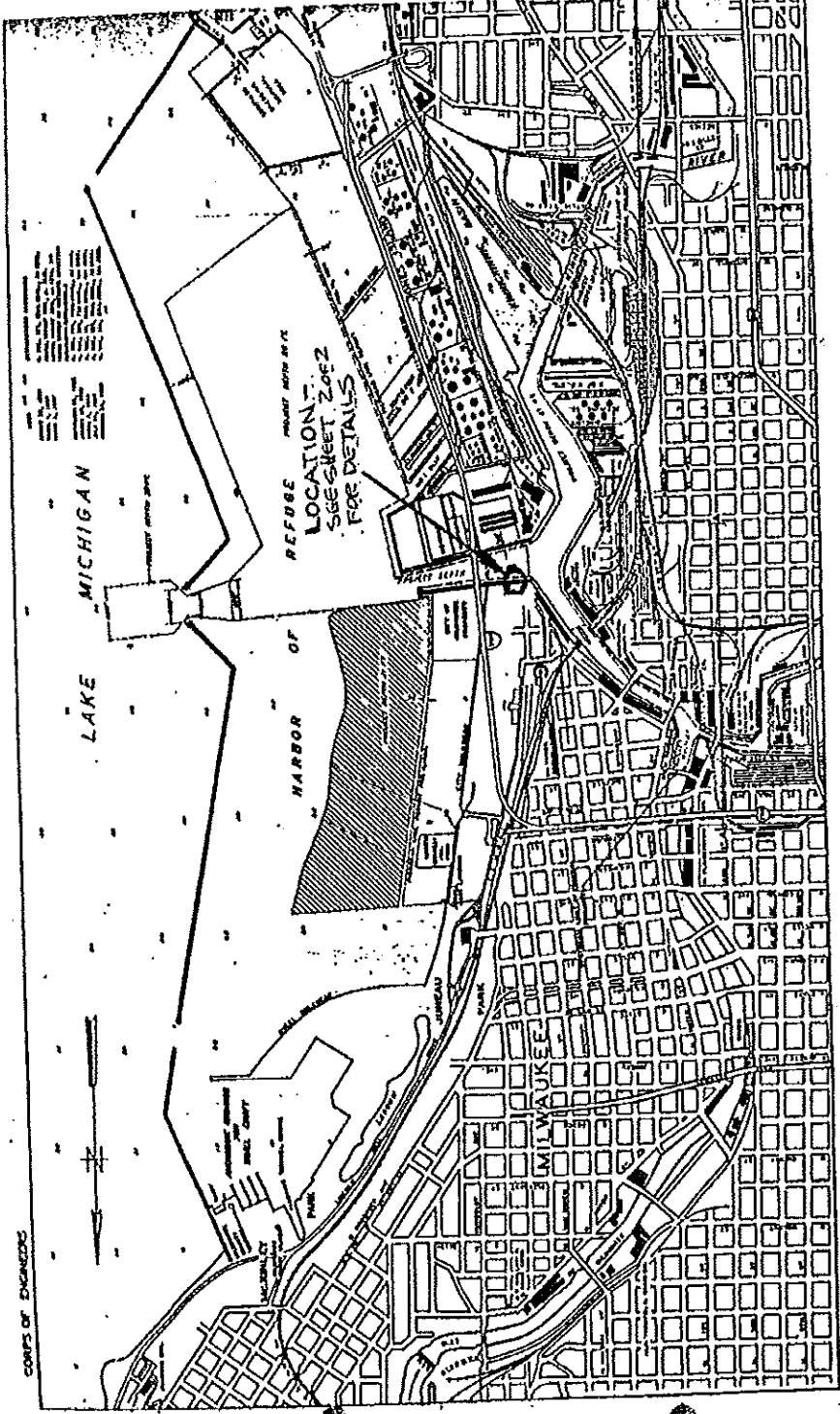


STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this 10 day of September, 1990, W. MARTIN MORICS, the (Deputy) Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

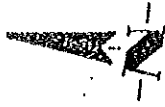
[Signature]
NOTARY PUBLIC, State of Wisconsin
My Commission Expires: 6-24-94

DEPARTMENT OF THE
ARMY ENGINEERING NO.
DAW35-2-90-300Z



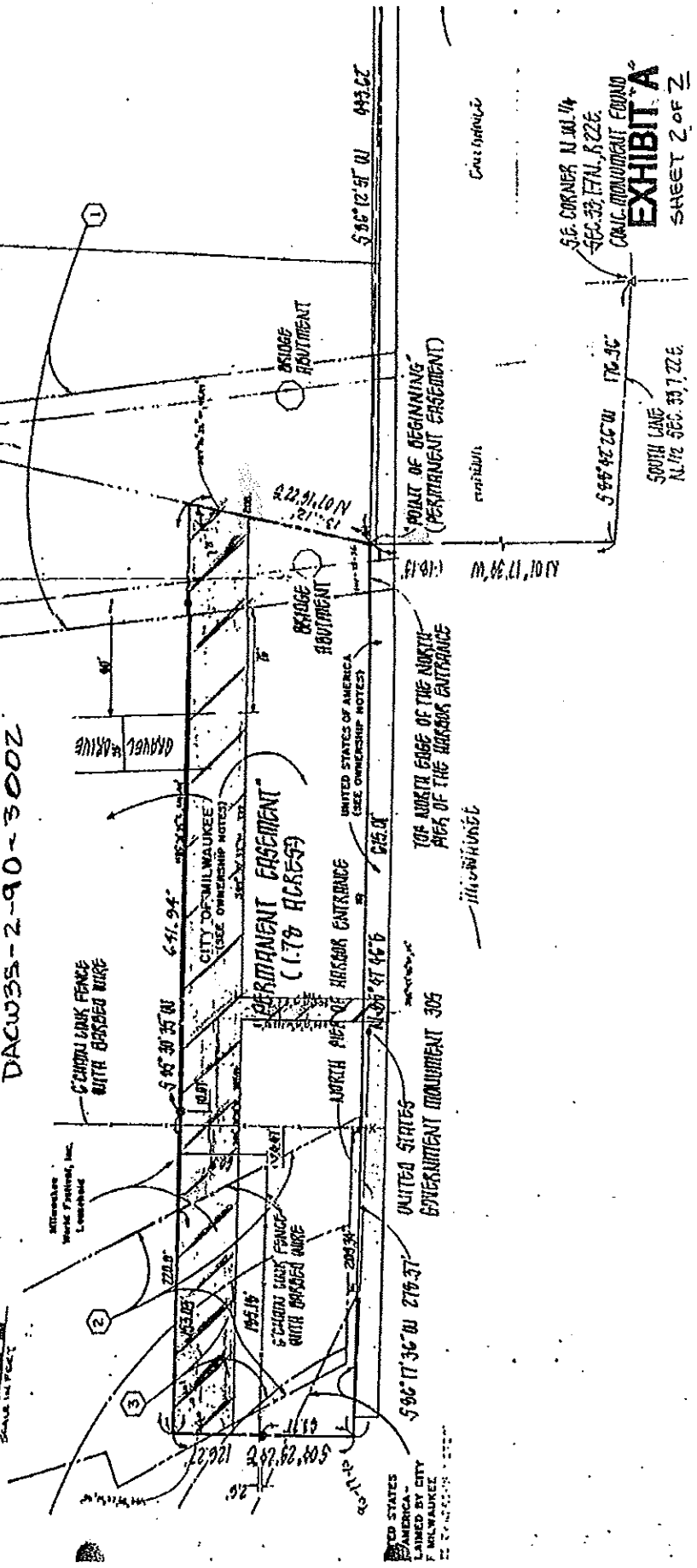
MILWAUKEE HARBOR
WISCONSIN
ENGINEERING NO. DAW 35-2-90-300Z
OFFICE OF ENGINEERING, MILWAUKEE, WIS.

EXHIBIT A
SHEET 1 OF 3



680 NORTH
WISCONSIN SOUTH HIGH
ROAD

NOTE: [Hatched Box] - OUTLINES
EASEMENT AREA UNDER
DEPARTMENT OF THE ARMY
EASEMENT NO.
DACW35-2-90-300Z



S.E. CORNER N.W. 1/4
SEC. 33 T7N. R22E.
CONCRETE MONUMENT FOUND
EXHIBIT A
SHEET 2 OF 2

UNITED STATES
AMERICA -
LAINED BY CITY
F MILWAUKEE

LEGAL DESCRIPTION
DEPARTMENT OF THE ARMY EASEMENT NO. DACW35-2-90-3002

That part of the existing Government Easement in the North half of fractional Section 33, Township 7 North, Range 22 East, in Milwaukee County, Wisconsin, being more particularly described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said Fractional Section 33; thence South 88 degrees 42 minutes 26 seconds West along the south line of the said half Section 176.96 feet, thence North 01 degrees 17 minutes 34 seconds West 618.13 feet (said point being the Southeast corner of existing government easement); thence North 07 degrees 16 minutes 22 seconds East along east line of existing government easement 86.15 feet (said point being the POINT OF BEGINNING); thence South 85 degrees 30 minutes 35 seconds West 332 feet; thence South 04 degrees 12 minutes 14 seconds East 104 feet; thence South 85 degrees 47 minutes 46 seconds West 15 feet; thence North 04 degrees 12 minutes 14 seconds West 103.93 feet; thence South 85 degrees 30 minutes 35 seconds West 285.56 feet (said point lying in the West line of existing government easement); thence North 04 degrees 29 minutes 24 seconds West along west line of existing government easement 45 feet (said point being the Northwest corner of existing government easement); thence North 85 degrees 30 minutes 35 seconds East along north line of existing government easement 641.94 feet (said point being the Northeast corner of existing government easement); thence South 07 degrees 16 minutes 22 seconds West along east line of existing government easement 45.97 feet to point of beginning.

EXHIBIT "B"

CERTIFICATE OF AUTHORITY

I, Ronald D. Leonhardt, certify that I am the
~~(Donny)~~ City Clerk of the Corporation named as GRANTEE
in the attached Agreement; that John O. Norquist, who signed
said Agreement on behalf of the GRANTEE, was then
Mayor of said Corporation; and that said Agreement
was duly signed for and on behalf of said Corporation by
authority of its governing body as is within the scope of its
corporate powers.

(CORPORATE SEAL)

Ronald D. Leonhardt
~~(Donny)~~ City Clerk
DATE: September 6, 1990

PLEASE NOTE:

The CERTIFICATE OF AUTHORITY must be executed by the corporate secretary or an officer of the Corporation (other than the official who signed the Agreement) certifying that the official who signed the Agreement was authorized to act in that capacity. Please affix corporate seal.

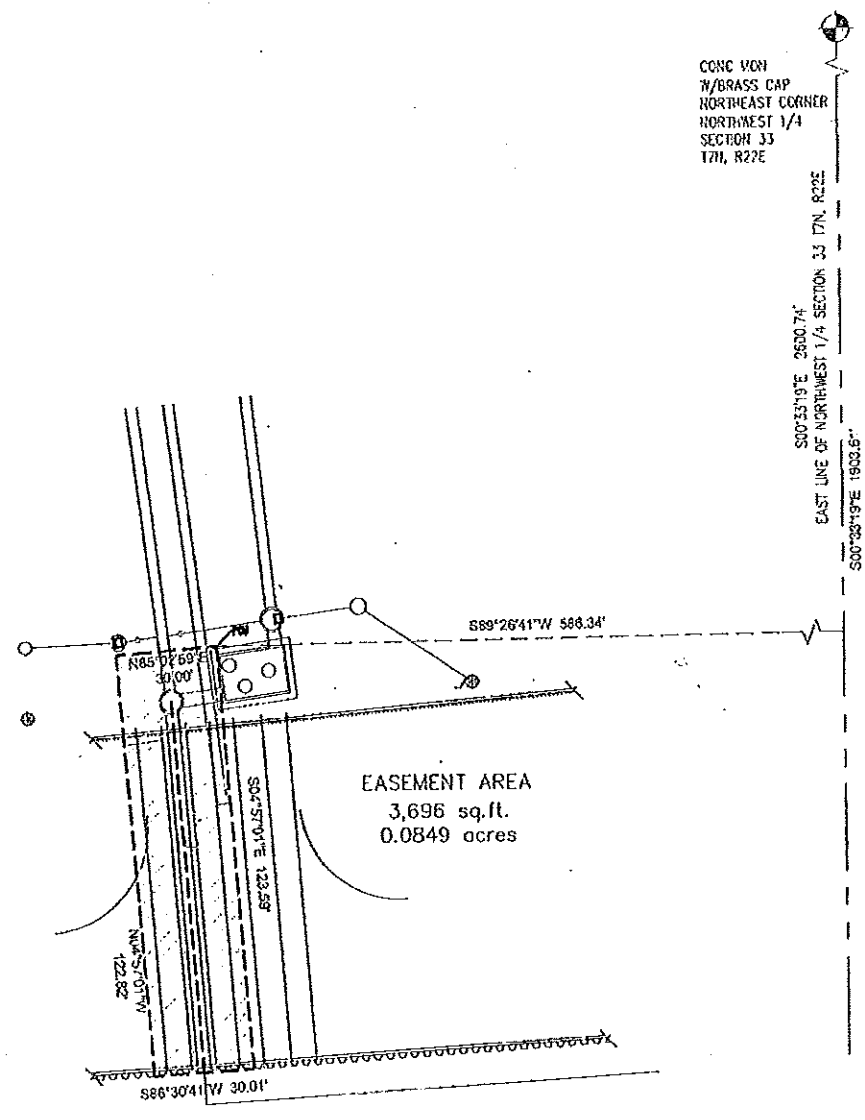
EXHIBIT C

Description of Easement Area

EXHIBIT "C"

Drainage Easement

A 30 foot wide drainage easement located in the Northwest 1/4 of Section 33, Town 7 North, Range 22 East (filled in area) in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at the Northeast corner of the Northwest 1/4 of said Section; thence South 00°33' 19" East, along the East line of said 1/4 Section, 1903.61 feet; thence South 89°26' 41" West, 588.34 feet to the point of beginning of this easement; thence South 04°57' 01" East, 123.59 feet more or less to the face of an existing seawall; thence South 86°30' 41" West along said face, 30.01 feet; thence North 04° 57' 01" West, 122.82 feet; thence North 85°02' 59" East, 30.00 feet to the point of beginning.



DESIGNED BY:	DATE:
CHECKED BY:	PROJECT:
APPROVED BY:	SHEET NO.:
CUSTOMER:	

STORM SEWER EASEMENT
MILWAUKEE WORLD FESTIVALS, INC.

