

ACKNOWLEDGMENT/CONSENT

Document Title

Document Number

Drafted By:

Gregg Hagopian, Assistant City Attorney, City of Milwaukee

GH 2-10-2020, CAO 266260

ACKNOWLEDGMENT/CONSENT

Recording Area

Name and Return Address

Gregg Hagopian, Assistant City Attorney
City Attorney's Office
841 N. Broadway – 7th Floor
Milwaukee, WI 53202

Part of 407-9991-110
407-9991-120

Parcel Identification Number (PIN)

RECITALS

A. **1960 Deed.** The City of Milwaukee (“**City**”), by deed dated February 18, 1960, recorded in the Milwaukee County Register of Deeds (“**ROD**”) Office as ROD Document No. 3793554 (the “**1960 Deed**”), conveyed to Milwaukee County (“**County**”) certain real estate in the City and County of Milwaukee, Wisconsin herein called the “**Honey Creek Parkland**” (8001 W. Blue Mound Road, Milwaukee, TIN 407-9991-110).

In the 1960 Deed, when the City conveyed the Honey Creek Parkland to the County, the City imposed a number of restrictive covenants on the Honey Creek Parkland, summarized as follows (see actual 1960 Deed for actual restrictive covenant language):

- Use limited to public park or parkway purposes that County will operate, and County will maintain those uses forever
- County will not alien or convey any of the Honey Creek Parkland except to the City
- Honey Creek Parkland remains subject to municipal and utility easement rights together with the City’s associated right of entry

- Honey Creek Parkland is subject to reversion to the City if the County breaches the restrictive covenants and/or ceases to use or operate the property for park or parkway purposes.

The Honey Creek Parkland includes the 2.523 acre portion of the Honey Creek Parkland that is herein called “**Parcel X.**” Parcel X is shown on **EXHIBIT A** and is legally described on **EXHIBIT B**, attached.

The Honey Creek Parkland also includes that certain portion of the Honey Creek Parkland that is herein called the “**TLE Area.**” The TLE Area is shown and legally described on **EXHIBIT C**, attached.

B. **Land Swap Agreement.** The County, per County Board Resolution File No. 19-777, entered into a Land Swap Agreement with Wisconsin Lutheran High School Conference (“**WLHS**”), dated as of December 1, 2019 (the “**LSA**”). In accordance with the LSA, County wants to convey Parcel X to WLHS for WLHS to incorporate into WLHS’s high school campus at 330 N. Glenview Avenue, Milwaukee (TIN 407-9994-110) (the “**School Parcel**”). WLHS athletic field facilities had encroached upon Parcel X for a number of years, and WLHS acquiring Parcel X will eliminate the encroachment and allow WLHS to expand its campus and athletic facilities.

C. **Parcel Y.** In exchange for Parcel X, the LSA requires WLHS to cause to be conveyed to County a 4.23 acre parcel at 1699 10th Avenue, South Milwaukee, WI (TIN 771-9987-000) (“**Parcel Y**”) for the County to incorporate into Grant Park (existing County parkland with an address at 100 Hawthorne Avenue, South Milwaukee). Parcel Y is adjacent to the County ice skating pavilion on the Mill Pond in Grant Park. County improvements had encroached on Parcel Y for a number of years. The County acquiring Parcel Y will eliminate the encroachment and allow the County (and public) access to the ice skating pavilion, and allow the County to activate the pavilion, and to add more natural space and expanded trail options to Grant Park for the benefit of the public.

D. **More Parkland.** Accordingly, as a result of the LSA and the land swap required thereunder, the County will end up with more parkland, thereby increasing public benefit and enhancing public access and use. The County acquires the 4.23 acre Parcel Y and conveys the 2.523 acre Parcel X for a net gain of 1.707 acres of additional County-owned land used for public park purposes.

E. **TLE.** The LSA requires the County to grant to WLHS a temporary construction easement (“**TLE**”), not to exceed 6 years from the date of conveyance of Parcel X from County to WLHS, to allow WLHS access to the TLE Area in order to construct improvements on Parcel X.

ACKNOWLEDGMENT/CONSENT

1. **Recitals Accepted.** City, County and WLHS hereby acknowledge, accept, and agree to, the above recitals and they further agree as follows.

2. **Amendments to 1960 Deed Restrictive Covenants.** The City ([i] recognizing the benefits of more parkland per Recital D, [ii] recognizing the benefits of resolving encroachments per Recitals B and C, and [iii] recognizing that if the County would have breached the restrictive covenants in the 1960 Deed by conveying Parcel X to WLHS without City consent, that the City could have exercised its reversionary rights to Parcel X, and with City Common Council approval, the City could have conveyed Parcel X directly to WLHS) hereby:

A. Consents to the County conveying Parcel X (and *only Parcel X*) to WLHS

B. Releases Parcel X (and *only Parcel X*) from the 1960 Deed Restrictive Covenants (i) requiring use of Parcel X as a public park or parkway, (ii) requiring operation of Parcel X by the County for those purposes, and (iii) requiring the County to own Parcel X

C. Releases Parcel X (and *only Parcel X*) from the City's reversionary interest

D. Clarifies that, despite language in the 1960 Deed giving the City broad easement rights, including rights to enter and access and expand easement rights, (i) the City's easement, entry and access rights in and to Parcel X shall be limited to the following; and (ii) the City hereby clarifies and reserves the right to clarify some additional easement rights as follows:

(1) Easement dated 10-27-1949 and recorded in the ROD Office as ROD Document No. 2905948 (Knight Barry **205**, City sewer). City reserves the right to replace this easement with City standard, updated easement language and to widen this easement from 12' wide to up to 30' wide [City DPW is reviewing], and to document this interest of record at the ROD Office.

(2) City easement, 20 feet in width (Knight Barry **205** extension), for sewer. City reserves the right to document this interest of record at the ROD Office.

(3) Easement dated 1-14-1953 and recorded in the ROD Office as ROD Document No. 3183995 (Knight Barry **206**, City sewer). City reserves the right to replace this easement with City standard, updated easement language and to widen this

easement from 10' wide to 30' wide, and to document this interest of record at the ROD Office.

(4) Easement dated 5-10-1965 and recorded in the ROD Office as ROD Document No. 4196437 (Knight Barry **209**, City water). City reserves the right to replace this easement with City standard, updated easement language and to widen this easement from 15' wide to 25' wide, and to document this interest of record at the ROD Office.

(5) Entry and access rights to Parcel X and to Honey Creek Parkland associated with the above, including the right to repair, replace, maintain, construct, associated with the easement interests of City and the City facilities. City easement rights associated with sub-items 2.D. (1) through (5) also extend onto that portion of the Honey Creek Parkland (other than Parcel X) as needed for City and its facilities.

(6) Entry and access rights to Parcel X and Honey Creek Parkland for City to physically abandon and remove the City's fire hydrant. City will abandon in place the City's 8" water main (WE 50-2505) and convey ownership of same to WLHS via Quit Claim Deed that WLHS agrees to accept and record at its expense.

Except as otherwise expressly amended hereby and provided for herein, the 1960 Deed terms, conditions, restrictions and covenants, and all of City's rights under that 1960 Deed, remain in full force and effect.

3. **Simultaneous Land Swap.** City, County and WLHS enter this document understanding that County and WLHS will close on their respective land swaps to each other on the same effective day as the effective date of this document (with County conveying Parcel X to WLHS, and with WLHS causing conveyance to County of Parcel Y as of that effective date), and on the same effective date of the TLE (see item 6 below).

4. **Termination of 1991 Lease.** Contrary to the LSA (Section 11.E.), Parcel X is affected by that certain lease between County (as landlord) and WLHS (as tenant), dated January 29, 1991, recorded in the ROD Office as ROD Document No. 6462839 (the "**1991 Lease**"). County and WLHS hereby agree that, due to the County's conveyance of Parcel X to WLHS, (i) the 1991 Lease is hereby terminated in all respects and satisfied of record so that it is no longer an encumbrance against any real estate including Parcel X and including 330 R N. Glenview Ave., TIN 407-9991-120, and (ii) the County no longer claims any interest in or to ownership of any tennis court or any other improvements that WLHS may have constructed on Parcel X.

5. **Joinder.** When the County conveys Parcel X to WLHS, the County shall do so by Special Warranty Deed meeting County's, WLHS's and City's reasonable approval prior to recording, which deed shall contain a Joinder Deed Restriction joining Parcel X to WLHS's abutting lands to the west.

6. **TLE.** Any TLE from County to WLHS (see Recital D above): (i) must be confined to the TLE Area; (ii) must be on terms and conditions that meet County's, WLHS's, and City's reasonable approval prior to the TLE being recorded in the ROD Office; and (iii) the TLE and the TLE Area must remain subject to the terms and conditions of the 1960 Deed including the restrictions and covenants therein.

7. **North Point Pumping Station.** County and City agree, for purposes of this Section 7 (which Section 7 remains subject to further County Board approval), that they will cooperate in good faith to accomplish or to endeavor to promptly accomplish the following goals on terms and conditions acceptable to City and County:

A. City abandonment-in-place of water pipe by Quit Claim Deed from City to County, in City owned lands (north of the North Point Pumping Station)

B. Amendment to the City-to-County Easement at ROD Document No. [REDACTED] or replacement of that easement to allow or provide for an easement from City to County for the abandoned-in-place water pipe. This water pipe serves the Custard Stand located on County-owned land in the parking lot for Bradford Beach. County will assume full maintenance, repair, and replacement for that water pipe.

This Section 7 is the only item in this document that remains subject to further County Board approval.

8. **Counterparts.** This document may be signed in one or more counterparts, and facsimile and/or PDF/email signatures shall be accepted as originals. Original signatures shall be provided for recording purposes.

IN WITNESS WHEREOF, City, County, and WLHS caused this document to be signed and entered, with the effective date as of _____, 2020.

CITY APPROVAL/AUTHENTICATION	CITY: CITY OF MILWAUKEE
Gregg Hagopian, as a member in good standing of	By: _____

<p>the State Bar of Wisconsin, hereby authenticates the signatures of the City representatives/signatories herein per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b), and approves same per MCO 304-21.</p> <p>By: _____ Gregg Hagopian, Asst. City Attorney State Bar No. 1007373</p> <p>Date: _____</p>	<p>Mayor Tom Barrett</p> <p>CITY CLERK</p> <hr/> <p>James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <hr/> <p>Martin Matson, City Comptroller</p> <p>Common Council Res. File # 55-3724-a and Res. File # _____</p>
<p>COUNTY AUTHENTICATION</p> <p>David N. Farwell, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the County representatives/signatories herein per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ David N. Farwell</p> <p>State Bar No.: _____</p> <p>Date: _____</p>	<p>COUNTY: MILWAUKEE COUNTY</p> <p>By: _____ Chris Abele, County Executive</p> <p>By: _____ George Christenson, County Clerk</p> <p>County Board Resolution File # 19-777</p>
<p>WLHS AUTHENTICATION</p> <p>Joseph E. Tierney IV, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signature of the WLHS representative/signatory herein per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Joseph E. Tierney IV</p> <p>State Bar No.: _____</p> <p>Date: _____</p>	<p>WLHS: WISCONSIN LUTHERAN HIGH SCHOOL CONFERENCE</p> <p>By: _____ Dr. Kenneth J. Fisher, President</p>

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EXHIBIT A – DEPICTION OF PARCEL X

EXHIBIT B – LEGAL DESCRIPTION OF PARCEL X

Part of the Southwest 1/4 of the Southeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 28, T7N, R21E, City of Milwaukee, Milwaukee County, Wisconsin, described as:

Commencing at the South 1/4 corner of said Section 28; thence N87°15'31"E 444.91 feet along the South line of said Southwest 1/4 to the POINT OF BEGINNING of this description; thence Northerly 860.43 feet along a 2867.15 foot radius curve to the right, the chord of which bears N6°51'22"E 857.20 feet; thence Northeasterly 528.96 feet along a 1088.57 foot radius curve to the right, the chord of which bears N29°24'02"E 523.77 feet; thence S79°47'09"E 117.82 feet; thence Northeasterly 291.90 feet along a 1023.50 foot radius curve to the left, the chord of which bears N32°11 '09"E 290.91 feet; thence Easterly 5.22 feet along the South Right-of-Way line of West Blue Mound Road on a 1849.86 foot radius curve to the right, the chord of which bears S70°40'51"E 5.22 feet; thence S25°59'24"W 376.09 feet; thence N65°06'16"W 35.45 feet; thence S24°15'54"W 49.76 feet; thence Westerly 69.29 feet along a 212.77 foot radius curve to the left; the chord of which bears N87°19'50"W 68.99 feet; thence S6°39'37"E 25.00 feet; thence Southwesterly 233.35 feet along a 187.77 foot radius curve to the left, the chord of which bears S47°44'20"W 218.62 feet; thence S10°25'15"W 617.92 feet; thence S1°44'24"W 112.95 feet to the Northeast corner of 50 Year Lease per document no. 6462839; thence southeasterly 276.37 feet along a 592.14 foot radius curve to the left, the chord of which bears S13°12'47"E 273.87 feet; thence S87°15'31"W 137.63 feet along the South line of said Southeast 1/4 to the point of beginning.

This parcel contains 109,918 square feet, or 2.523 acres.

PARCEL X ADDRESS: Part of 8001 W. Blue Mound Road, Milwaukee, WI

PARCEL X TIN: Part of 407-9991-110

EXHIBIT C – TLE AREA

ADD DRAWING AND LEGAL OF TLE AREA