

Document Number

TEMPORARY
LIMITED EASEMENT
VACATED 10TH STREET
Document Title

TEMPORARY LIMITED EASEMENT – VACATED 10TH STREET

Recording Area

Name and Return Address

Mr. Larry Stein
WISDOT
141 NW Barstow St.
P.O. Box 798
Waukesha, WI 53187-0798

Part of 391-0261-111-3

Parcel Identification Number (PIN)

TEMPORARY LIMITED EASEMENT – VACATED 10TH STREET

Wisconsin Department of Transportation

THIS AGREEMENT, dated as of this _____ day of _____, 200__, is made and entered into by and between the City of Milwaukee (for the Board of School Directors of the Milwaukee Public Schools [“MPS”] under Wis. Stat. § 119.60(2)), hereinafter called CITY, and the State of Wisconsin, Department of Transportation, hereinafter call WISDOT.

1. **Grant of TLE.** To avoid condemnation, upon the terms and conditions herein contained (including the exhibits hereto), the City hereby grants to WISDOT, for transportation purposes within the meaning of Wis. Stat. § 84.09, a temporary limited easement (“TLE”) in approximately 6,519 square feet of real estate in Milwaukee County, Wisconsin described on **EXHIBIT A** attached hereto (the “TLE Area”).
2. **Map.** The TLE Area is depicted on the map attached hereto as **EXHIBIT B**, and is part of MPS’s facility at 1111 N. 10th Street, Milwaukee, Tax Key No. 391-0261-111-3 (sometimes referred to as 1110 North 10th Street or 1124 North 11th Street). WISDOT refers to said real estate as Parcel 36, Project I.D. No. 1060-05-20.
3. **Purpose of TLE.** The TLE that CITY grants to WISDOT in and to the TLE Area will be for the right to perform Marquette Interchange reconstruction work (including the right to operate necessary equipment on the TLE Area).
4. **No Representations re TLE Area.** CITY makes no representations or warranties whatsoever (express or implied) with respect to the TLE Area. The TLE and TLE Area are on an “AS-IS, WHERE-IS” basis, with all faults, known or unknown.
5. **Payment Upon Full Execution of This Document.** WISDOT shall pay to the City, upon full execution of this document by all parties, **\$19,455.68** calculated as follows:
 - (a) \$6,537.68 for the TLE over the TLE Area from October 25, 2004 through May 25, 2005 calculated as follows. 6,191 s.f. (i.e. 151’ by 41’ = 6,191 s.f.) x \$20 x .0905141202 ROR x 7/12 (i.e. 7 months) = \$6,537.68; and
 - (b) \$12,918 for site improvements made by MPS due to occupancy of TLE Area by WISDOT and its contractors (i.e. removal of old fences, installation of temporary fence, misc. paving, striping, raising certain infrastructure so same protrude above new paving).
6. **TLE Termination on May 25, 2005; and Possible Extension.** The TLE and WISDOT’s easement rights and interest hereunder, and in and to the TLE Area, shall terminate at midnight on **May 25, 2005**.

Notwithstanding the foregoing, however, WISDOT may extend the termination date beyond May 31, 2005 for any length of time, measured in whole days, up to midnight on **August 31, 2005**, by:

- (a) WISDOT providing written notice to City of WISDOT's desire to extend (the "Extension Notice"), in such a manner so that the Extension Notice is received by City on or before **May 15, 2005**; and
 - (b) WISDOT tendering to City, along with the Extension Notice, good funds in an amount calculated on a per diem basis using the formula in ¶5 (a) above to cover the period of occupancy of the TLE Area beyond May 31, 2005 up to the new end-date selected by WISDOT (which new end-date may not extend beyond August 31, 2005).
7. **Recording Agreement.** This Agreement shall promptly be recorded by WISDOT at WISDOT's expense.
8. **Automatic Termination of this Agreement of Record.** This Agreement (and the TLE granted hereby) shall automatically terminate of record (and automatically terminate as an encumbrance against title to the real estate) as of midnight on August 31, 2005 without the need to record any document in the Register of Deeds Office. In the event WISDOT fails to extend the term of the TLE beyond May 15, 2005 by timely and properly sending the Extension Notice along with the required per diem occupancy amount, then City may file an affidavit to such effect with the Register of Deeds Office so that this Agreement and the TLE may be terminated of record sooner than the August 31, 2005 date.
9. **Restoration.** Prior to any expiration of the term of the TLE, WISDOT shall cause the TLE Area to be restored, at WISDOT's expense, so that MPS may continue to use the TLE Area for parking serving its facility. WISDOT to obtain all necessary governmental permits and approvals for the work required of WISDOT under this ¶ 9. In particular, WISDOT's restoration duties shall include:
 - (a) Grade the TLE area;
 - (b) Pave the TLE area for vehicular parking;
 - (c) Stripe the TLE area for 16 parking stalls as per plan attached hereto as **EXHIBIT C**;
 - (d) Add permanent, chain-link fence so that MPS's parking facility will be fenced in as per plan attached hereto as **EXHIBIT C**. Fence to run at or just west of centerline of vacated 10th Street to area by Highland Ave, and then to area by curb cut and parking arm.
 - (e) WISDOT shall continue to have all its restoration duties, including its gate, lockbox and fencing duties, in that certain "Agreement for Purchase and Sale

of Real Estate and Temporary Limited Easement,” between the parties, dated July 22, 2004.

- (f) Re-sod area between fence and sidewalk along Highland Ave.
 - (g) Repair any damage or disruption to retaining wall to the extent same may have been caused by or be attributable to WISDOT or its contractors or subcontractors, or to WISDOT’s project.
 - (h) WISDOT and City shall use good faith and cooperate with respect to WISDOT’s ¶ 9 duties and the **EXHIBIT C** plan (including any amendments thereto that City may reasonably request). In any event, WISDOT to coordinate with City regarding location of fences and gates.
10. **Construction Engineer.** WISDOT agrees to provide to its construction engineer a copy of this Agreement (complete with all exhibits).
11. **WISDOT.** WISDOT shall be solely responsible for any expense that may be necessitated due to construction of its Marquette interchange project (including, but not limited to, buried rubble or adverse geotechnical or environmental conditions at or affecting the TLE Area), and WISDOT shall not levy any special assessment against City (or MPS) with respect to its project.
12. **Survival.** Notwithstanding the termination date of the TLE, WISDOT’s express agreements concerning the TLE and TLE Area survive the TLE termination or expiration (for example, WISDOT’s duty to restore, add fence, pave, etc.).
13. **Binding Upon WISDOT Acceptance.** This Agreement is binding upon the parties upon acceptance by WISDOT as evidenced by the signature of an authorized representative of WISDOT. If this Agreement is not accepted by WISDOT within 30 days after CITY’s signature, this Agreement shall be null and void, and City (and MPS) shall retain all rights at law and in equity with respect to WISDOT’s entry onto the MPS facility without consent. If this Agreement is, on the other hand, accepted by WISDOT within 30 days after City signature, then this Agreement binds and inures to the benefit of the parties hereto and their successors in interest.
14. **Good Faith.** CITY and WISDOT agree to act in good faith and to use diligence in completing the terms of this Agreement.
15. **Headings.** The headings used herein are for convenience only.
16. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by facsimile, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that the City of Milwaukee’s City Hall is open for business, and the notice shall be deemed given when sent as per the following

and so long as the notice is successfully sent (i.e. the sender does not receive any error or “busy” or “inability to send” notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

A. If to MPS or to City:

Rick Moore
MPS – Division of Facilities and Maintenance Services
1124 N. 11th Street
Milwaukee, WI 53202

Fax: 414-283-4682
Phone: 414-283-4600

With a further copy to:

Gregg Hagopian
City Attorney’s Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Fax: 414-286-8550
Phone: 414-286-2620

B. If to WISDOT:

Larry Stein
WISDOT
141 NW Barstow Street
Waukesha, WI 53187-0798

Fax: 262-548-8737
Phone: 262-548-8781

With a further copy to:

Mike Perino
WISDOT
4802 Sheboygan Ave. Room 115B
Madison, WI 53707-7910

Fax: 608-267-6734
Phone: 608-267-2153

17. **Approvals.** This Agreement was:

- (a) approved by the City per Common Council Resolution File No. _____;
- (b) approved by the School Board of MPS per MPS Resolution dated _____; and
- (c) approved by WISDOT.

IN WITNESS WHEREOF, the parties entered into this Agreement, dated as of the date first written above.

CITY: City of Milwaukee (acting upon request of the School Board of the Milwaukee Public Schools under Wis. Stat. § 119.60(2)).

By: _____
Tom Barrett, Mayor

Attest: _____
Ronald D. Leonhardt, City Clerk

COMPTROLLER COUNTERSIGNATURE
(Milwaukee City Charter § 3-18-2)

By: _____
Name Printed: _____
Comptroller's Office

CITY ATTORNEY'S OFFICE
(Milwaukee Code of Ordinances § 304-21)

Approved by: _____
Gregg C. Hagopian
Assistant City Attorney

WISDOT: State of Wisconsin, Department of Transportation

Date: _____

By: _____

Name Printed: _____

Title: _____

(An authorized WISDOT representative). NOTE: must be signed by a WISDOT Administrator or WISDOT authorized representative.

87856

CITY NOTARIES

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, Tom Barrett, Mayor of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, Ronald D. Leonhardt, the City Clerk of the City of Milwaukee, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, _____, of the City of Milwaukee Comptroller's Office, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires: _____

EXHIBIT A – LEGAL DESCRIPTION OF TLE AREA

The TLE Area contains a total of approximately 6,191 square feet. The TLE Area is part of tax key number 391-0261-111-3, with an address of 1111 N. 10th Street (sometimes also referred to as 1110 N. 10th Street or 1124 N. 11th Street), Milwaukee Wisconsin. More particularly, the TLE Area is that part of 391-0261-111-3 that is the west ½ of vacated North 10th Street extending to the existing retaining wall.

The TLE Area is more particularly shown on the Map attached hereto as **EXHIBIT B.**

EXHIBIT B -- THE MAP

EXHIBIT C – THE PLAN



Acrobat Document