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June 3, 2008

Alderman Robert J. Bauman
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

Mr. Jim Owczarski
City Clerk's Office
200 East Wells Street, Room 205
Milwaukee, WI 53202

Re: WE Energies Easement – Henry Maier Festival Grounds

Dear Gentlemen:

Enclosed for introduction at the June 10, 2008 Common Council Meeting is a Resolution authorizing the execution of a Joint Overhead & Underground Gas and Electric Distribution Easement Agreement applicable to the Henry Maier Festival Grounds. WE Energies, working in conjunction with Milwaukee World Festival Inc., implemented extensive upgrades to utility facilities located on the Henry Maier Festival Grounds pursuant to a Right of Entry granted by the Municipal Port Director. This Resolution approves a Joint Overhead & Underground easement which encompasses the final locations for those revised utilities.

Please let me know if there are any questions or comments concerning the attached Resolution and Easement Agreement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas O. Gartner". The signature is fluid and cursive, with a long horizontal line extending from the end.

THOMAS O. GARTNER
Assistant City Attorney

TOG/ml:133713
Enclosure

c: Larry Sullivan, Port (via e-mail)
Bill Finke, WE Energies (via e-mail)
Frank Nicotera, Summerfest (via e-mail)
Marcia Lindholm (via e-mail)

1122-2006-3359

**JOINT OVERHEAD & UNDERGROUND GAS
AND ELECTRIC DISTRIBUTION EASEMENT
AGREEMENT**

Document Number

Document Title

**JOINT OVERHEAD & UNDERGROUND
GAS AND ELECTRIC DISTRIBUTION
EASEMENT AGREEMENT**

Recording Area

Name and Return Address

We Energies
Property Rights & Information Group
231 West Michigan Street, Room A252
P.O. Box 2046
Milwaukee, WI 53201-2046

429-9998-000-1 and 395-9999-111-9

Parcel Identification Number (PIN)

THIS EASEMENT AGREEMENT is made and entered into as of the ____ day of _____, 2008, by and among THE CITY OF MILWAUKEE, a municipal corporation, acting by and through its BOARD OF HARBOR COMMISSIONERS (hereinafter collectively referred to as "CITY"), MILWAUKEE WORLD FESTIVAL, INC., a Wisconsin not-for-profit corporation (hereinafter referred to as "FESTIVAL"), WISCONSIN ELECTRIC POWER COMPANY, a Wisconsin corporation and WISCONSIN GAS LLC, a Wisconsin limited liability company, both d/b/a WE ENERGIES (hereinafter collectively referred to as "GRANTEE") (CITY and FESTIVAL are hereinafter collectively referred to as "GRANTOR").

WITNESSETH

WHEREAS, CITY is the owner of certain real property commonly known as the Henry Maier Festival Grounds depicted on Exhibit A and legally described on Exhibit B (hereinafter referred to as the "Property"); and

WHEREAS, CITY and FESTIVAL have entered into a Lease Agreement dated as of January 1, 2001 and a First Amendment to Lease Agreement dated as of February 1, 2005 (collectively the "Lease") pursuant to which FESTIVAL has leased the Property from CITY; and

WHEREAS, CITY, FESTIVAL and the State of Wisconsin Department of Natural Resources ("DNR") have entered into a Conservation Easement – Lakeshore State Park dated as of February 1, 2005 (the "Conservation Easement") in order to facilitate the construction operation and maintenance of the Lakeshore State Park; and

WHEREAS, the parties to this Agreement previously entered into an Access Agreement dated December 27, 2006, and an Amendment to Access Agreement dated February 13, 2007, providing GRANTEE with access to portions of the Property in order to undertake certain environmental testing and construction activities in order to upgrade electric service to the Property; and

WHEREAS, GRANTOR now desires to grant and GRANTEE desires to secure an easement over those portions of the Property depicted on Exhibits C and D for the construction, operation and maintenance of certain electric facilities in the Easement Area depicted on Exhibit C and certain natural gas facilities in the Easement Area depicted on Exhibit D (collectively the "Easement Area"); and

WHEREAS, Article VII of the Conservation Easement permits CITY to modify existing easements applicable to the Property and to create new easements applicable to the Property where such easements do not materially interfere with DNR's use and enjoyment of the Property for the Lakeshore State Park or Wisconsin State Trail purposes; and

WHEREAS, the DNR has approved the terms of this Agreement and acknowledges that it does not interfere with the exercise of DNR's rights under the Conservation Easement.

NOW, THEREFORE, in consideration of the grant of this Easement and for other good and valuable consideration, receipt of which is hereby acknowledged, CITY, as owner of the Property, does hereby grant, and FESTIVAL hereby approves such grant, to GRANTEE a permanent easement over the areas described on Exhibits C and D upon the terms and subject to the conditions hereafter set forth:

1. **Purpose:** The purpose of this Easement is to allow GRANTEE to construct, erect, operate, maintain and replace overhead utility facilities, including a line of poles, together with the necessary conductors, anchors, guy wires, and all other appurtenant equipment above ground; also to install, operate, maintain and replace underground utility facilities, conduits and cables, electric pad-mounted transformers, electric pad-mounted switch-fuse units, electric pad-mounted vacuum fault interrupters, concrete slabs, power pedestals, riser equipment, terminals and markers, together with all necessary and appurtenant equipment under and above ground as deemed necessary by GRANTEE, all to transmit electric energy, signals, television and telecommunication services; additionally, to install, operate, maintain repair, replace and extend underground utility facilities, pipeline or pipelines with valves, tie-overs, main laterals and service laterals, together with all necessary and appurtenant equipment under and above ground, as deemed necessary by GRANTEE, for the transmission and distribution of natural gas and all by-products thereof, or any liquids, gases, or substances which can or may be transported or distributed through a pipeline. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with GRANTEE's use of the Easement Area.
2. **Buildings or Other Structures:** GRANTOR agrees that no structures will be erected in the Easement Area or in such close proximity to the electric or natural gas facilities as to create a violation of the Wisconsin State Electrical Code, Chapter PSC 135 of the Wisconsin Administrative Code, as amended. This provision does not apply to buildings located on the Easement Area if those buildings were in place as of December 31, 2006.

3. **Elevation:** GRANTOR agrees that the elevation of the existing ground surface within the Easement Area as of the date of the initial installation of GRANTEE's facilities will not be altered by more than four (4) inches without the written consent of GRANTEE.
4. **Access:** GRANTEE shall have the full enjoyment and use of the rights herein granted, including but not limited to the right to remove and to clear all structures and obstructions which might interfere with the rights herein contained, and the free and full right of ingress and egress over and across the Easement Area and other adjacent lands of GRANTOR to and from said Easement Area, and the use of said Easement Area and other adjacent lands of GRANTOR, as necessary or convenient for the full enjoyment and use of the rights herein granted.
5. **Restoration:** GRANTEE agrees to restore or cause to have restored the Property, as nearly as is reasonably possible, to the condition existing prior to entry by the GRANTEE or its agents for maintenance or replacement of its facilities. This restoration, however, does not apply to any trees, bushes, branches or roots which may interfere with GRANTEE's use of the Easement Area. GRANTOR shall be responsible for all restoration in connection with initial installation of GRANTEE'S facilities and any subsequent installation of new service.
6. **Exercise of Rights:** It is agreed that the complete exercise of the rights herein conveyed may be gradual and not fully exercised until some time in the future, and that none of the rights herein granted shall be lost by non-use.
7. **Indemnification:** In consideration of the foregoing grant, it is understood that during the time GRANTEE's underground and overhead facilities are located on the Property pursuant to this grant, GRANTEE will indemnify and hold harmless GRANTOR from any and all claims for injury or death to any person or for damage to property of any person arising out of the installation and the maintenance of such facilities; excepting, however, any claims or actions arising out of negligence or willful acts on the part of GRANTOR, their employees, agents and invitees and further excepting any claims for damages to GRANTEE's facilities due to and arising out of any existing soil contamination or migration of contamination.
8. **Relocation:** In the event that GRANTOR, their successors or assigns require the relocation of GRANTEE's underground and overhead facilities, GRANTEE will relocate the same; provided, however, that GRANTOR, their successors or assigns, shall reimburse GRANTEE for any costs or expenses incurred in such relocation; and provided further, that GRANTOR, their successors and assigns shall provide a suitable alternate location for such facilities with all necessary easement rights for their construction and maintenance at the new location.
9. **Future Facilities.** GRANTOR and GRANTEE acknowledge that, in addition to the relocation of GRANTEE's underground and overhead facilities pursuant to paragraph 8, additional facilities on the Property may be required from time to time. At such time as such additional facilities are required, GRANTEE and GRANTOR's representatives shall meet and confer to prepare any necessary amendments to the legal descriptions of the Easement Area required to accommodate the construction and maintenance of such additional facilities. Such revised legal descriptions shall be substituted for the legal descriptions of

the Easement Area and recorded with the Milwaukee County Register of Deeds with the written approval of CITY's Port Director, FESTIVAL's President and GRANTEE's President, or their designated representatives, which approvals shall not be unreasonably denied, conditioned or withheld.

10. **Soil Contamination:** GRANTOR acknowledges that contamination of soil may exist within and outside of the Easement Area and that said contamination may affect GRANTEE and its installation and future maintenance of its facilities. In order to maintain control of such contamination, GRANTEE's environmental experts may perform soil sampling from time to time.

- GRANTOR acknowledges that GRANTEE's facilities and future extensions installed within and along the Easement Area may be damaged as a result of the existing contamination of the Property of GRANTOR and any potential migration of contamination along the path of such underground facilities as may be located on the Property.
- GRANTEE will make reasonable efforts to reduce or prevent contaminant pathways.
- GRANTOR will indemnify and hold harmless GRANTEE from any and all costs and expenses incurred by GRANTEE by reason of damage to its facilities due to and arising out of existing soil contaminants or migration of such contaminants in connection with the installation and the maintenance of its facilities in such contaminated soil, unless such damage is directly caused by GRANTEE's negligence in the installation and/or maintenance of the underground facilities, or by GRANTEE'S noncompliance with any applicable federal, state or local laws, regulations or ordinances.
- GRANTOR shall designate an area on the Property for the stockpiling of contaminated soil that GRANTEE uncovers during construction work. The stockpile area shall be provided by GRANTOR in accordance with Wisconsin Administrative Code, Section NR 718.05 (3) provisions regarding cover and control of surface water runoff. GRANTOR agrees that the ownership of and responsibility for disposal of any contaminated soil remains with the GRANTOR. In the event that surface and ground water contamination requires collection and disposal of such water, the disposal of such water will be at the GRANTOR's expense.
- GRANTEE shall conduct all work in compliance with any and all applicable federal, state, and local laws, regulations and ordinances.
- Should the investigation or installation work undertaken by GRANTEE reveal an environmental condition on the premises for which a remedial action is required by a federal, state, or local agency, GRANTEE shall notify the GRANTOR so that GRANTOR can undertake such remedial action. GRANTEE shall not be obligated to undertake any remedial action activities whatsoever on the Property should the environmental condition on the Property not be reasonably attributable to any

actions or inaction by GRANTEE. Should GRANTOR be required by a federal, state, or local agency to conduct a remedial action at the Property, GRANTEE shall cooperate with the GRANTOR to the extent practicable.

11. The parties acknowledge that during the term of the Lease and any successor leases or agreements pursuant to which FESTIVAL maintains possession of and/or control over all or any portion of the Property, FESTIVAL shall be solely responsible for all costs and financial obligations of GRANTOR hereunder.
12. This grant of easement shall be binding upon and inure to the benefit of the successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed by their duly authorized officers as of the date first set forth above.

CITY OF MILWAUKEE
a Wisconsin municipal corporation

Mayor

City Clerk

COUNTERSIGNED:

City Comptroller

BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF MILWAUKEE

President

Secretary

The terms of this Agreement are hereby approved.

State of Wisconsin
Department of Natural Resources

By: _____

MILWAUKEE WORLD FESTIVAL, INC.
a Wisconsin corporation

President

Secretary

WISCONSIN ELECTRIC POWER COMPANY
a Wisconsin corporation

President

Secretary

WISCONSIN GAS LLC

By: _____

Its: _____

The signatures of Tom Barrett and Ronald D. Leonhardt are authenticated this ____ day
of _____, 2008.

THOMAS O. GARTNER
Member, State Bar of Wisconsin

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2008, _____, President and Secretary of the Board of Harbor Commissioners of the City of Milwaukee, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Secretary of said municipal corporation, and acknowledged that execution of the foregoing instrument as such officer as the deed of such municipality, by its authority.

Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2008, _____, President and Secretary of Milwaukee World Festival, Inc., to me known to be the persons who executed the foregoing instrument and to me known to be such President and Secretary of said corporation, and acknowledged that execution of the foregoing instrument as such officer as the deed of such corporation, by its authority.

Notary Public, State of Wisconsin
My Commission: _____

Drafted by Thomas O. Gartner
1122-2006-3359:129459

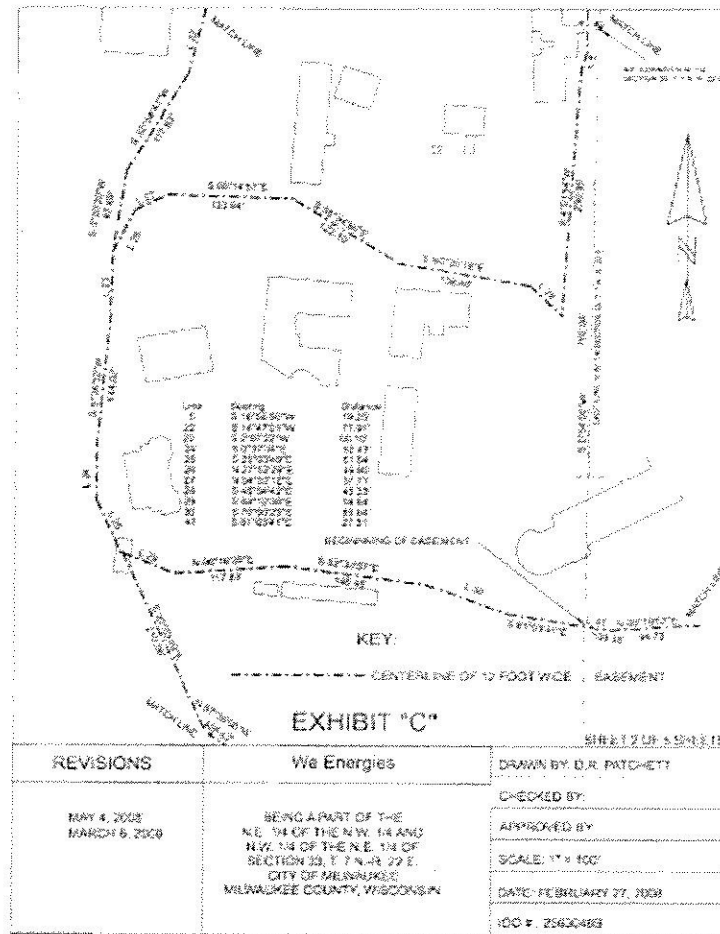
EXHIBIT A

(Exhibit A consists of a depiction of the Henry Maier Festival Grounds)

EXHIBIT B

(Exhibit B consists of a legal description of the Henry Maier Festival Grounds)

EXHIBIT C



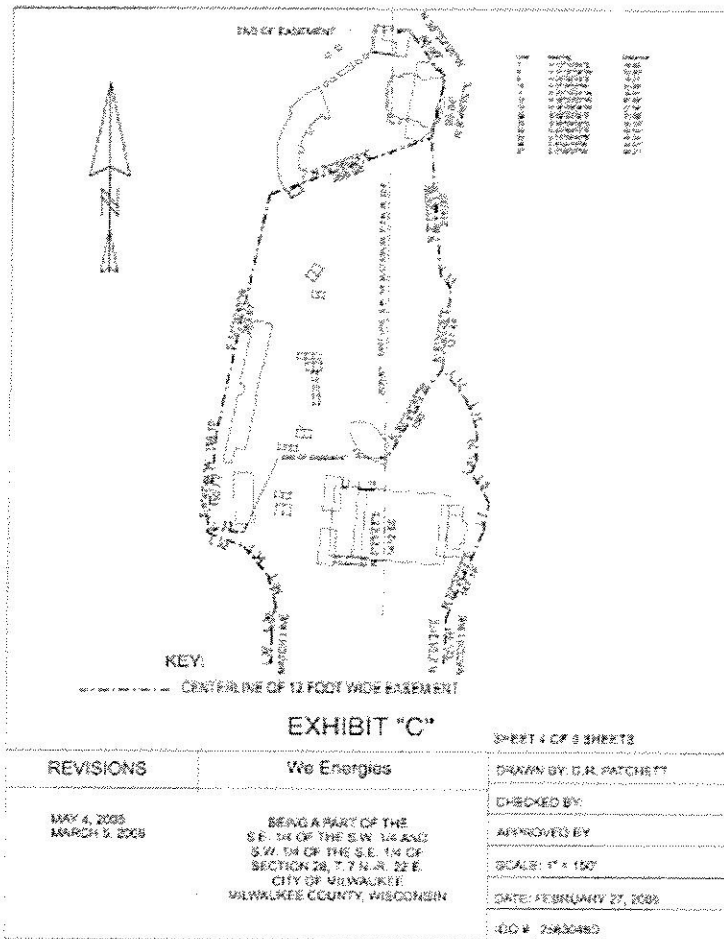


EXHIBIT D

