

MEMORANDUM OF UNDERSTANDING

Between

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION,

And the

CITY OF MILWAUKEE

This Memorandum of Understanding ("MOU"), entered into this ____ day of January 2016, by and between the State of Wisconsin, Department of Transportation ("WisDOT") and the City of Milwaukee ("City"), a municipal corporation (each a "Party" and collectively the "Parties"), for the relocation of the Park East Freeway Sewer (as defined below), as required by the contemplated development of former Park East Freeway right-of-way lands.

WITNESSETH:

WHEREAS, the "Park East Freeway Sewer" (also referred to herein as "Sewer") is a combined sewer overflow system located in the central section of the City of Milwaukee, originating as a 72-inch diameter sewer near North 24th Street and West North Avenue and continuing southeast generally along and under West Fond du Lac Avenue (portions of which are designated state trunk highway WIS 145), crossing Interstate Highway 43 ("I-43") at the Hillside Interchange and continuing to West McKinley Avenue (portions of which are designated state trunk highway WIS 145); at approximately west 6th Street, the Sewer changes to an 84-inch diameter sewer and continues more or less easterly between West McKinley and West Juneau Avenue, ultimately discharging into Milwaukee Metropolitan Sewerage District's ("MMSD") North Shore 9 dropshaft of MMSD's inline storage system through diversion structure 113A, east of Old World 3rd Street; and

WHEREAS, the Sewer serves areas of the City as well as highway lands owned and maintained by WisDOT, and therefore both City and WisDOT benefit from the Sewer; and

WHEREAS, the portion of the Park Freeway Sewer between North 8th Street to North 3rd Street runs through and under the City's Park East Redevelopment Corridor's "McKinley Avenue District"; and

WHEREAS, the 2005 plat *Park East on the West Side of the Milwaukee River*, recorded at Doc. No. 09434632 at the Milwaukee County Register of Deeds ("Plat"), concerning certain lands within the McKinley Avenue District, conveys a 25-foot sewer easement for the benefit of the Sewer through a portion of Block 1 of the Plat; the Plat also dedicates 25-foot public alley ways through the remainder of Blocks 1, and through Blocks 2, 3, and 4, through and under which the Sewer runs; and

WHEREAS, the lands described in the Plat, other than those dedicated or conveyed by the Plat or otherwise, are generally titled to Milwaukee County ("County") as successor in interest to the Milwaukee County Expressway Commission; said lands were acquired as part of the construction of the Park East Freeway; and

WHEREAS, the Park East Freeway was removed starting in 2002, and County-titled lands are now vacant and ready for redevelopment; and

WHEREAS, both Parties, in conjunction with the County and MMSD, have determined that the public interest is best served by relocating the Sewer between North 8th Street and North 3rd Street, thereby increasing the development potential of former Park East Freeway lands.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the City and WisDOT agree as follows:

I. GENERAL

A. The foregoing recitals are incorporated herein and, by this reference, made a part of this MOU as if fully set forth herein.

B. This MOU provides for the relocation of the Sewer from approximately North 8th Street (or westerly, as necessary) to approximately North 3rd Street, relocating said Sewer from alleys to easements and the West McKinley Street right-of-way. The contemplated and approximate relocation areas, as of the date of this MOU, and further shown in Exhibit A, attached hereto and made a part hereof by reference. Both Parties acknowledge and accept the information set forth in Exhibit A is approximate and subject to change in the process of completing the final relocation design. The Parties further acknowledge and accept that the final relocation design has not been completed and the Parties agree to work in good faith to determine the final relocation design.

C. As further specified below, WisDOT shall perform all work, including design, construction, abandonment or removal, and restoration required to relocate said Sewer from its current location to the final agreed-upon location as part of a WisDOT-let project, which shall be referred herein as the "WisDOT Sewer Project."

D. The City shall be responsible for specifying restoration in accordance with its standards within City rights-of-way, under the McKinley Avenue Location cost share item. Restoration shall be at a minimum to "development-ready condition" in areas outside the City's right-of-way. As used in this MOU, "development-ready condition" means a short-term yet functional condition, such as grass seeding and temporary sidewalks, that can be easily removed and readily brought to final condition through future development. Restoration inside or outside the City's right-of-way shall only include subsurface improvements to the extent necessary for relocating the Sewer, and shall not include the removal of any remaining expressway structures, foundations or piling, nor the removal of hazardous materials, from areas not directly impacted by Sewer relocation.

E. This MOU shall serve as the City's written consent authorizing WisDOT to relocate the Sewer into the City's West McKinley Street right-of-way, as generally depicted in Exhibit A, in accordance with ss. 66.0831, 86.16 and 182.017, Wis. Stats., and Milw. Ord. s. 115-22; as applicable. The Parties anticipate that all other utilities impacted by the relocation of the Sewer as part of the contemplated WisDOT Sewer Project shall be completed pursuant to ss. 66.0831 and 182.017, Wis. Stats., and/or Milw. Ord. s. 115-22; as applicable, except for the amounts WisDOT and City shall pay pursuant to this MOU. As such, the Parties hereby expressly contract for the joint exercise of authority under s. 66.0831, Wis. Stats., and either

Party shall be considered the appropriate authority to determine what public utility work may be reasonably necessary to enable the WisDOT Sewer Project.

II. COST SHARE PROVISIONS AND SPECIFIC RESPONSIBILITIES

A. WisDOT and the City agree to share certain costs that are directly or indirectly related to the relocation of the Sewer. This cost share agreement and specific responsibilities relating to performance and scheduling timelines are further described below.

B. Summary Table of Estimated Costs and Share ("Summary Table")

The following Summary Table provides good-faith estimates per item, and which party is responsible for funding each item:

Item No.	Item Description	WisDOT Share	City Share	Total
1	Sewer Relocation Base	\$3,500,000	\$0	\$3,500,000
2	McKinley Avenue Location	\$530,000	\$0	\$530,000
3	City Waterworks Relocation	\$0	\$190,000	\$190,000
4	Signal & Light Relocations	\$0	\$420,000	\$420,000
5	Hazardous Material Tipping Fee	\$240,000	\$0	\$240,000
6	Delivery	\$870,000	NTE \$155,000	\$1,025,000
	Total	\$5,140,000	\$765,000	\$5,905,000

C. Item Definitions and Specific Responsibilities

Item No. 1: "Sewer Relocation Base" is the estimated base cost of relocating the Sewer. WisDOT will perform this work under the WisDOT Sewer Project.

Item No. 2: "McKinley Avenue Location" is the estimated additional restoration costs above the Relocation Sewer Base of relocating the Sewer in McKinley Avenue and includes items such as pavement and landscaping to be designated by the City. While WisDOT believes this should be a City cost, WisDOT agrees to pick up this cost in exchange for City performing the work related to Signal & Light Relocations (#4). WisDOT will incorporate this work into the WisDOT Sewer Project.

Item No. 3: "City Waterworks Relocation" is the estimated cost for relocating City waterworks facilities, including mains, valves, etc., impacted by Sewer relocation work. WisDOT will incorporate this work into the WisDOT Sewer Project.

Item No. 4: "Signal & Light Relocations" is the estimated cost for the design, plan development and construction of the following electrical items, as impacted by Sewer relocation work, and will be performed by City:

- Removing existing traffic signals and providing temporary and permanent traffic signals at the intersection of North 6th Street and West McKinley Avenue (WIS 145).

- Removing existing traffic signals and providing temporary and permanent traffic signals at the intersection of North 4th Street and West McKinley Avenue.
- Removing and salvaging light poles, and installing new or salvaged conduits and salvaged light poles.

Item No. 5: "Hazardous Material Tipping Fee" is the estimated tipping fee cost for the proper disposition of hazardous materials expected to be encountered in the excavation area of the existing Sewer.

Item No. 6: "Delivery" is the estimated cost for project planning, management and engineering, including without limitation design (including design of City utilities), plan review, specifications, estimate preparation, bidding, and construction inspection (including inspection of City utilities). WisDOT will design and perform construction inspection of City utilities that are impacted by the Sewer relocation. The City will reimburse WisDOT for the design and construction inspection costs associated with City utility work constructed as part of the WisDOT Sewer contract. The City share of this item shall not exceed the amount listed in the Table above (designated as "NTE").

D. Any work actually performed by one Party above its cost share responsibilities may be included as a credit to that Party's contribution with prior written approval of the other Party.

E. Estimated costs will be updated at the PS&E date for the WisDOT Sewer Project.

F. WisDOT's obligations under this MOU are contingent upon the County conveying the land rights to WisDOT that are required to relocate the Sewer. Such land rights are to be determined and agreed to by the Parties and the County upon final determination of the Sewer relocation. The Parties agree to work together in good faith with the County in determining the final location of the appropriate land rights.

G. WisDOT will not provide resources, including surveyors or other technical or administrative staff, to pursue the vacation of public alley ways.

H. The Parties acknowledge that there are City communications conduit located within the West McKinley Avenue right-of-way that cannot be relocated or interfered with as the WisDOT Sewer Project progresses.

III. TENTATIVE SCHEDULE

The Parties agree to the following tentative schedule. This schedule is intended to be binding only to the extent it defines performance dependencies, as specifically defined below; the Parties acknowledge that specific dates may change.

- WisDOT will let the WisDOT Sewer Project contract by February 9, 2016.

- WisDOT will lead non-City utility relocation coordination efforts, with anticipated completion by February 28, 2016. The relocation of non-City utilities is a condition precedent of the WisDOT Sewer Project. WisDOT may postpone the let or notice to proceed of the WisDOT Sewer Project if non-City utilities cannot be relocated in a timely manner.
- WisDOT will issue the construction notice to proceed for the WisDOT Sewer Project by March 1, 2016.
- WisDOT and the City shall coordinate to schedule the City's Signal & Light Relocations with the WisDOT Sewer Project construction schedule. The City agrees it shall be liable to WisDOT and its contractor for unreasonable delays the City may cause to the WisDOT Sewer Project construction schedule.
- Sewer relocation and removals will be substantially complete by June 1, 2016 for the general area of Block 1 of the Plat.
- Sewer relocation and removals will be substantially complete by July 1, 2016 for the general area of Blocks 2, 3, and 4 of the Plat.
- McKinley Avenue restoration work will be substantially complete by August 1, 2016.

IV. MISCELLANEOUS PROVISIONS

A. Future Impacts and Connections.

1. The Sewer currently serves major state highway facilities, including I-43, the Hillside Interchange, and WIS 145. Farther upstream, the Sewer also serves some areas of the City and a combined sewer overflow connection. In the area of the WisDOT Sewer Project, the Sewer was originally installed as part of the Park East Freeway Project using federal, State, and Milwaukee County Expressway funds. The Parties therefore acknowledge that in this area the Sewer is a state trunk highway facility, and that the Sewer is not a public utility or a public utility facility.

2. The Parties agree to work in good faith and in accordance with state statutes and City ordinances, as applicable, to accomplish future work upon, over, along or under the public rights-of-way that may be necessary to maintain the Sewer or that may interfere with, destroy or disturb the Sewer.

3. The City is prohibited from granting any additional storm sewer connections to the Sewer without prior WisDOT approval.

B. Nothing herein shall be deemed to create a partnership between the WisDOT and the City and neither WisDOT nor the City shall have the authority to obligate the other.

C. The Parties agree to be separately and individually responsible for their own acts or omissions and those of their officers, employees and agents, and those of its boards, commissions, agencies and officials, if any; and shall be separately and individually responsible

for any loss or expense (including costs, damages and attorney fees) by reason of liability imposed by law, attributable to such acts or omissions to the extent provided by law. Nothing in this paragraph is intended to, nor shall be construed as, imposing any standard of liability to third parties beyond that provided by applicable law.

D. Nothing in this MOU is intended to, nor shall be construed as, a waiver of any immunity or defense the State of Wisconsin or City of Milwaukee would otherwise have.

E. This MOU shall be construed according to the laws of the State of Wisconsin.

F. Any payment responsibilities found in this MOU that are beyond the limits of funds already available to either Party shall be considered contingent upon legislative appropriation of the necessary funds.

G. If any term, covenant, condition, or provision (or part thereof) of this MOU, or the application thereof to any party or circumstance, shall at any time or to any extent, be held invalid or unenforceable, the remainder of the MOU, or the application of such term or provision (or remainder thereof), to parties and circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this MOU shall be valid and enforced to the fullest extent permitted by law.

H. This MOU may not be modified or amended unless set forth expressly in writing and signed by all Parties hereto. This MOU may not be assigned to any other party unless such assignment is set forth expressly in writing and signed by all Parties hereto. In the event this MOU is assigned, the terms and conditions of this MOU shall be binding upon any successor or assign of any Party hereto and the successor or assign shall fully perform all of the assigning Party's obligations set forth in this MOU.

I. The Parties agree to abide by their own respective non-discrimination policies and procedures during the term of this MOU. Further, the Parties agree that this MOU does not subject any Party to another's jurisdiction for the administration of such matters.

J. The MOU together with any documents referred to herein contain the entire agreement of the Parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the Parties.

SIGNATURES ARE ON THE FOLLOWING PAGE

FOR THE STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

Brett Wallace, P.E.
Southeast Region Director

Date

CITY OF MILWAUKEE

By: _____
Ghassan Korban
Commissioner of Public Works

Date

Attest: _____
Martin Matson
Comptroller

Date

1050-2014-2970:223971

Exhibit A

