

SEWER EASEMENT
AMENDMENT

Document Number

Document Title

SEWER EASEMENT AMENDMENT
SEA-2417

Drafted by:

City of Milwaukee
Department of Public Works

Recording Area
Name and Return Address

City of Milwaukee
Department of Public Works
Infrastructure Services Division
Environmental Engineering Section
841 North Broadway – Room 820
Milwaukee, WI 53202

428-0322-114

Parcel Identification Number (PIN)

THIS SEWER EASEMENT AMENDMENT, made as of _____, **2018**, is between Building 41, LLC (“**OWNER**”) and the **CITY OF MILWAUKEE** (“**CITY**”), a municipal corporation, and is for good and valuable consideration, the receipt and sufficiency of which are acknowledged.

- 1. Easement.** On January 20, 1986, **CITY** was granted an easement, SE-2417, for sewer purposes which was recorded in the Office of the Register of Deeds of Milwaukee County on May 14, 1986 as Document No. 5914842 (“**Easement**”). There are **CITY** Sewer Facilities in said easement area (“**FACILITIES**”).
- 2. Easement Area.** The Easement is located on a property with an address of 223 West Oregon Street, and a tax key number of 428-0322-114 (the “**Parcel**”) and encumbered a part of the Parcel - which part is herein called the “**Easement Area**” and legally described on **EXHIBIT A** attached.
- 3. Improvements.** **OWNER** requested **CITY’S** permission to construct certain Improvements (“**IMPROVEMENTS**”) in and over the Easement Area as described below:

IMPROVEMENTS shall consist of a mixed-used building with its northerly wall located along the south line of West Oregon Street and its southerly wall located 115-feet ± south of said south line of West Oregon Street.

4. Granting of Permission. CITY hereby grants OWNER permission to construct IMPROVEMENTS within Easement. IMPROVEMENTS are subject to the terms contained herein and in accordance with the attached plan file # 198-7-67 and the following conditions:

- A. OWNER shall bear the costs for rehabilitating and relocating the combined sewer and appurtenances (“Work”) necessitated by IMPROVEMENTS. This Work is shown on plan file # 249-92 and includes the following: the relocation of a combined sewer manhole to a location 5-feet north of the of the southerly line of West Oregon Street, the installation of a new 12-inch diameter combined sewer main from the old combined manhole location to the new combined manhole and then connecting to the combined sewer main located in West Oregon Street, the installation of a Cured-In-Place Pipe Liner from the existing combined sewer manhole located in the public alley south of the Parcel to the new combined manhole, and permanent pavement restoration in West Oregon Street above the combined sewer main trench. Said relocation shall be required to provide free access to all sewer appurtenances and shall be made only with the approval of the Commissioner of Public Works (the “Commissioner”).
- B. OWNER shall deposit with Chicago Title Insurance Company (to be held and disbursed pursuant to a disbursing agreement reasonably acceptable to OWNER and CITY) the amount of \$35,000 which is the estimated cost of engineering and construction of Work. After Work is completed, if the actual total cost exceeds the deposit amount, OWNER shall be billed for the balance and OWNER shall pay the balance within 30 days. If the actual total cost is less than the deposit, the excess shall be refunded to OWNER.
- C. OWNER agrees to have CITY prepare the engineering design, plans, specifications, contract documents, bid documents and inspection of Work and perform the Work (or have the Work performed). In the event that the CITY does not self-perform the Work, CITY shall require its contractor who is performing the Work to comply with CITY’s SBE (Small Business Enterprise) and RPP (Residents Preference Program) requirements in completing the Work.
- D. OWNER shall submit to CITY Footing and Foundation Plans and Calculations for review by CITY and for approval by the Commissioner before any construction of the IMPROVEMENTS is commenced in the Easement Area. Any footings required for the IMPROVEMENTS over the FACILITIES shall be designed so that the weight of the IMPROVEMENTS will not bear on the FACILITIES and that the footings shall not be closer than five feet from the outside edge of the FACILITIES.
- E. If IMPROVEMENTS cause any damage or disturbance to the FACILITIES, any construction costs for repair or replacement of the FACILITIES shall be borne by OWNER at no cost to CITY. Unless damage is caused by construction of the IMPROVEMENTS, CITY agrees that CITY shall remain responsible for the costs of maintenance, repair and replacement to FACILITIES. If CITY needs to access FACILITIES through IMPROVEMENTS (which access would be located in the lower level of IMPROVEMENTS, which area will be the garage), for repair, maintenance or replacement of FACILITIES, CITY agrees that it will limit the size of any trench to minimize any disruption or damage to IMPROVEMENTS. OWNER will be responsible to repair the concrete where the trench is dug; provided, however, that CITY shall contribute to OWNER for such repair and/or replacement, within thirty (30) days of written request from OWNER, the amount of money that CITY would have expended to

restore alley pavement. **OWNER** will be responsible for all other costs associated with restoring the concrete. In the event that any repair, maintenance or replacement to **FACILITIES** by **CITY** causes any damage to the **IMPROVEMENTS** (except as set forth herein as to the concrete), the costs to repair the **IMPROVEMENTS** to substantially the same conditions as existed previously shall be borne by **CITY**.

F. To the extent caused by the construction or maintenance of **IMPROVEMENTS**, **OWNER** hereby assumes all liability for any damage to the **FACILITIES** located within the Easement Area or injuries to a person or persons resulting from construction and/or maintenance of the **IMPROVEMENTS** on, over and abutting said **FACILITIES** and said Easement.

G. In case **CITY** needs to repair, replace, relay or otherwise have access to **FACILITIES**, **CITY** shall provide a 30 day written notice to **OWNER** of such activities. When, in the judgment of Commissioner, the potential for imminent damage to **FACILITIES** exists, the notice from **CITY** may be verbal and immediate without the 30 day advance period.

5. Repair/Replacement of IMPROVEMENTS. Except as set forth in subsection 4(E) and Section 6, any costs for construction, installation, repair or replacement of any part of **IMPROVEMENTS** shall be borne by **OWNER** at no cost to **CITY**.

6. Hold Harmless. **OWNER** shall indemnify and hold **CITY** harmless from any loss or injury resulting from any willful or negligent acts or omissions of **OWNER** (or its agents, contractors and/or representatives), arising out of the construction, maintenance, repair or replacement of the **IMPROVEMENTS**; excepting, however, any claims or actions arising out of the negligence or willful acts on the part of **CITY** or any loss, damage or injury caused by the maintenance of the **FACILITIES**. **OWNER** shall reimburse **CITY** for any damage to **FACILITIES** resulting from the construction, maintenance, repair, replacement, existence, or use of **IMPROVEMENTS**. **CITY** will hold **OWNER** harmless from any loss, damage, injury or liability resulting from any willful or negligent acts or omissions of **CITY** arising out of the operation, repair, and/or maintenance of said **FACILITIES**; excepting, however, any claims or actions arising out of the negligence or willful acts on the part of **OWNER** or any loss, damage, injury, or liability caused by the construction or maintenance of **IMPROVEMENTS**.

7. Other Provisions Unchanged. All provisions of the Easement, which are not inconsistent with this Amendment, shall remain in full force and effect.

8. Recording; Miscellaneous. This Amendment **(a)** shall be recorded with the Milwaukee County Register of Deeds by City, **(b)** is governed by Wisconsin law, **(c)** may only be amended by written instrument signed by all parties, and **(d)** is binding on successors, assigns, and heirs.

EXHIBIT A
LEGAL DESCRIPTION OF “EASEMENT AREA”

Commencing at the southwest corner of Lot 2, Block 16 of Walker’s Point, a recorded subdivision in the Northeast one-quarter (N.E. ¼) of Section thirty-two (32), Township seven (7) North, Range twenty-two (22) East;

Thence, south along the west line of Lot 3 of said subdivision, 7.46 feet to the point of beginning of the easement to be described, said point also being on the east line of the vacated alley bounded by West Oregon Street, SOO Line Rail Road, South 2nd Street and south 3rd Street;

Thence, North 89°53’39” West, 20.01 feet to a point, said point also being on the west line of said vacated alley;

Thence, north along the west line said vacated alley, 107.53 feet to a point, said point also being the northeasterly corner of Lot 12 of said subdivision;

Thence, north, 12 feet along the northerly extension of the west line of said vacated alley;

Thence, east along the north line of the vacated portion of West Oregon Street, 20.00 feet to a point;

Thence, south, 12 feet along the northerly extension of the east line of said vacated alley to a point, said point also being the northwesterly corner of Lot 1 of said subdivision;

Thence, south, 107.46 feet along the east line of said vacated alley, to the point of beginning.

The above described permanent EASEMENT affects the Easement Area which is part of Tax Key Number 428-0322-114