

SEWER EASEMENT AMENDMENT

Document Title

Document Number

**SEWER EASEMENT AMENDMENT
SEA-2546**

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

079-0181-000

Parcel Identification Number (PIN)

THIS SEWER EASEMENT AMENDMENT is made as of _____, 202__, and is by and among, the CITY OF MILWAUKEE (“**City**”), a Wisconsin municipal corporation, NEW TESTAMENT CHURCH OF MILWAUKEE, INC. (“**Church**”), a Wisconsin nonprofit corporation, the MILWAUKEE METROPOLITAN SEWERAGE DISTRICT (“**MMSD**”), a Wisconsin statutory entity, and CORVIAS INFRASTRUCTURE SOLUTIONS, LLC (“**Corvias**”), a Rhode Island Limited Liability Company authorized to do business in the State of Wisconsin, and is for good and valuable consideration, receipt and sufficiency of which are acknowledged.

RECITALS

A. **City Sewer Easement SE-2546.** Norwest Bank Wisconsin, N.A. (“**Bank**”), as grantor, and the City, as grantee, are parties to an Easement dated May 13, 1992, recorded in the Milwaukee County Register of Deeds (“**ROD**”) Office on July 23, 1992 as ROD Doc. No. 6641483 (the “**Easement**”) (a/k/a “**SE-2546**”), affecting the property in Milwaukee, Wisconsin that is now known as 7901 N. Granville Road, TIN 079-0181-000 (the “**Property**”). The legal description of the Property is attached as **EXHIBIT A.**

B. **Church Owns Property, and is Successor to Bank.** The Church is the current owner of the Property. As such, Church is the successor-in-interest to Bank under the Easement.

C. **Fresh Coast Protection Partnership.** Corvias and MMSD formed a working relationship they call the Fresh Coast Protection Partnership (“**FCPP**”), a purpose of which is to install green

infrastructure on properties in order to reduce storm water runoff into the MMSD sewerage system.

D. **Green Infrastructure on Church Property.** Under the FCPP Program, MMSD wants to have Corvias install (or to have Corvias hire an agent or contractor to install) certain green infrastructure improvements (“**Green Infrastructure**”) on the Church’s Property, including Constructed Stormwater Wetland(s) (“**CSW**”), and Church wants to have that work done. Upon completion of the work, and after MMSD inspection and acceptance of the work, MMSD will pay Corvias for the work, and Church and MMSD will enter into a Conservation Easement (copies of which have been provided to City, Corvias, and Church by MMSD).

MMSD, Church, and Corvias, as part of the above-described work, also want, at no cost to the City (and as part of the work cost that MMSD will pay Corvias for) for Corvias (or Corvias’ agent or contractor): to remove and dispose of the 160 linear feet of the City’s sewer pipe within the southern 160 feet of the easement area under the Easement; to modify a City manhole serving that removed pipe; to install a new manhole and cover near the new terminus of the City’s sewer (the new southerly terminus after removing the 160 feet of sewer); to change the grading over the southern 160 feet of the easement area under the Easement to integrate with the Green Infrastructure project on Church’s Property; and to install a new connector pipe to the City’s sewer pipe (the “**Connector Pipe**”). The new manhole and cover, and the new Connector Pipe, upon installation (and after City inspection and acceptance of the work), will be owned by the City.

The Connector Pipe will drain storm sewer waters out of, and from, the City’s sewer pipe, onto the surface of the Church’s Property, into a CSW that will be part of the Green Infrastructure. The CSW will abut the City’s easement area under the Easement. See **EXHIBIT B** diagram attached.

E. **FCPP-Church Documents.** Corvias and Church entered into a Letter of Intent (“**LOI**”), dated September 18, 2020, and a License Agreement (“**License**”) dated November 25, 2020, concerning the Green Infrastructure work on Church’s Property. Corvias provided signed copies of the LOI and License to MMSD, Church, and City.

F. **Amend Easement.** In light of the above, City, Church (as owner of the Property and as successor-in-interest to Bank under the Easement), MMSD, and Corvias, all want to enter into this Amendment document. The parties all have a copy of the Easement. The parties hereto hereby agree to the provisions of this Amendment document, and they agree that the Easement shall be, and is, amended on the terms and conditions contained herein.

AGREED

1. **Recitals Accepted.** The recitals above are accepted and agreed to.
2. **Work Affecting City Sewer and Easement.** City, Church, and MMSD, hereby allow Corvias, or an agent or contractor of Corvias to be selected by Corvias and to be under Corvias’ supervision, to enter the easement area under the Easement to perform the work described in

Recital D above. Any such work shall be done: at no cost to City; at MMSD's cost; in a good and workmanlike manner; according to plans and specifications that have been first reviewed and approved in writing by the City's Commissioner of the Department of Public Works ("DPW") or his designee ("Commissioner"); in accordance with applicable federal, state and local law; and in accordance with applicable governmental permits.

Corvias (or an agent or contractor selected by Corvias, under Corvias' supervision) ("Contractor") shall commence the work required by Recital D by **April 1, 2021** and complete same by **July 31, 2021**. No work shall be started on the City sewer until the City's necessary inspection fee has been deposited with DPW, Contract and Permit Section (Room 507, 841 N. Broadway, Milwaukee, WI 53201). The Contractor shall notify DPW Construction Section at (414) 286-8623, at least 3 working days prior to start of work on the City sewer so the City inspection of work can be arranged. Upon completion of the Recital D work, Corvias shall provide written notice to Church, MMSD, and City, and allow inspection by those parties. Upon MMSD inspection and acceptance, MMSD shall pay Corvias, and Church shall sign the Conservation Easement between Church and MMSD, and MMSD shall ensure that the Conservation Easement is recorded in the ROD Office. MMSD shall provide a copy of the recorded Conservation Easement to Corvias, Church and City. After the recording of the Conservation Easement in the ROD Office against the Property, and after the 24-month period for Corvias (or its agent or contractor) to undertake contractual vegetation establishment and maintenance work, Corvias' (and its agent's and contractor's) entry and access rights to the Property hereunder shall terminate.

Upon City inspection and acceptance of Corvias' Recital D work, the new manhole and cover, and the new Connector Pipe shall be owned by City.

3. **City Retained Rights Under Easement.** City retains all rights under the Easement as originally drafted, in addition to any and all rights hereunder. For example, even though the southern 160 linear feet of City's sewer pipe will be removed, City retains its easement rights under the Easement to that (and to the entire) easement area under the Easement.

4. **Additional Easement Rights to City; Maintenance.** MMSD and Church agree that City shall be a third party beneficiary to the Conservation Easement. MMSD, Church and Corvias further agree that City shall have access rights over, and an easement to, Church's Property to allow City access, not only to the easement area under the Easement (that includes the area where the Connector Pipe will be located), but to the area where the Connector Pipe drains into the CSW.

Church agrees that it shall keep, at its expense, the drainage area where the Connector Pipe drains into the CSW, and the rip rap around that area, and the CSW, in good maintenance and repair, so that the Connector Pipe may drain storm waters to the CSW in good and efficient manner, unobstructed.

The rights and responsibilities of Church hereunder shall continue even after the 11-year period under the Conservation Easement ends. The parties acknowledge that, after that 11-year period, the Connector Pipe will need to keep draining storm waters to the CSW. Consequently, Church

agrees to continue maintaining and operating the CSW on its Property. The City's rights and Church's duties hereunder shall be, and are, covenants running with the land, binding upon successors and assigns, including successor owners of the Property.

Church, Corvias, and MMSD may not require City to remove the Connector Pipe or to stop discharging storm water from the Connector Pipe to the CSW or to the surface of the Property. Any such cessation will require a written amendment to this document, and any such written amendment must specify that: **(a)** Church or MMSD will pay for removal of the Connector Pipe, and reconnection and reinstallation of 160 linear feet of sewer pipe between the two future existing manholes, all to replace the City facilities that were removed to accommodate the FCPP and Green Infrastructure Project; and **(b)** all of the foregoing work must be done at no cost to the City, and in accordance with plans and specifications that Commissioner must first approve in writing.

5. **Extension of Indemnification Provisions.** Church agrees that the release, indemnification and hold harmless provisions in the Conservation Easement and in the License Agreement are hereby incorporated herein, and also extended to the benefit of the City. Church further agrees that that extension to the City for its benefit also survives the termination of those respective documents. The Church releases, indemnifies and holds harmless City concerning loss, claim, damage, expense, or injury (including death), concerning or attributable, directly or indirectly, to the CSW, the Green Infrastructure, and/or the Connector Pipe draining to Church's Property.

6. **Successors and Assigns.** This document binds and inures to the benefit of the parties hereto and their successors and assigns. However, no party may assign any rights, or obligations, hereunder without City Commissioner's written consent.

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

8. **Entire Agreement; Amendment.** This document may only be amended by a written agreement signed by all the parties hereto. After MMSD accepts Corvias' Recital D work, and during the 11-year term of the Conservation Easement, an amendment to this document requires only the signatures of MMSD, Church, and City. After the 11-year term of the Conservation Easement ends, an amendment to this document requires only the signatures of Church and City, providing however that any amendment of the sort contemplated by the last paragraph of Section 4 above, requires signature by City, Church, and MMSD.

9. **Severable.** The terms and provisions of this document are severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.

10. **Recording.** MMSD shall record this document in the ROD Office at MMSD's expense and provide copies of that recorded document to each of Corvias, Church, and City.

11. **Survival (no merger).** The terms, provisions, and agreements herein shall survive signing and delivery and recording of the Conservation Easement between Church and MMSD, and also the expiration or termination of the Conservation Easement.

12. **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 email, 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 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. Notice information and contact persons may, from time to time, be changed by providing notice to the parties in accordance with this Notice section.

<p><u>IF TO CITY:</u> City of Milwaukee</p> <p>Attn: Robert Seleen Department of Public Works 841 North Broadway, Room 820 Milwaukee, WI 53202</p> <p>Phone: 414-286-2465 Email: rselee@milwaukee.gov</p> <p><u>WITH COPY TO:</u> Gregg Hagopian Asst. City Attorney 841 North Broadway, 7th Floor Milwaukee, WI 53202</p> <p>Phone: (414) 286-2620 Email: ghagop@milwaukee.gov</p>	<p><u>IF TO CHURCH:</u> New Testament Church of Milwaukee, Inc.</p> <p>Attn: James E. Davis, Business Manager 10201 West Bradley Road Milwaukee, WI 53224</p> <p>Phone: (414) 365-1690, extension 202 Email: newtchurch@twcbc.com</p>
<p><u>IF TO MMSD:</u> Milwaukee Metropolitan Sewerage District</p> <p>Attn: Bre Plier 260 West Seeboth Street Milwaukee, WI 53204</p> <p>Phone: 414-225-2079 Email: bpplier@mmsd.com</p>	<p><u>IF TO CORVIAS:</u> Corvias Infrastructure Solutions, LLC</p> <p>Attn: William E. Culton, Jr. 1405 South County Trail Suite 530 East Greenwich, Rhode Island 02818</p> <p>Phone: (401) 228-2805 Email: bill.culton@corvias.com</p>

13. **Remedies.** Except as otherwise provided herein, in the event of breach of this document, the non-breaching party shall have all rights and remedies available at law and in equity against the breaching party. City retains all rights, including all rights under Wis. Stat. 893.80.

IN WITNESS WHEREOF, the parties hereto sign and enter this Amendment document as of the date first written above.

<p>CITY ATTORNEY AUTHENTICATION AND APPROVAL</p> <p>Gregg Hagopian, a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the City representatives/signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b), and approves those signatures per MCO 304-21.</p> <p>By: _____ Gregg Hagopian Assistant City Attorney State Bar No. 1007373 Date: _____</p>	<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Jeff Polenske, DPW Commissioner</p> <p>_____ James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <p>_____ Aycha Sawa, Comptroller</p> <p>City Common Council Res. File # 201102</p>
<p>STATE OF WISCONSIN)) ss. MILWAUKEE COUNTY)</p> <p>Personally came before me this ___ day of _____, 20__, James E. Davis, to me personally known, who signed this document on behalf of Church and acknowledged the same.</p> <p>_____</p> <p>Notary Public, State of Wisconsin</p> <p>Name Printed: _____</p> <p>My commission expires: _____</p>	<p>CHURCH: NEW TESTAMENT CHURCH OF MILWAUKEE, INC.</p> <p>By: _____ James E. Davis, Business Manager</p>

EXHIBIT A – LEGAL DESCRIPTION of 7901 N. Granville Road, Milwaukee

Parcel 1 of Certified Survey Map Number 5682 in the Northeast ¼ of Section 17, Township 8 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

TIN: 079-0181-000

EXHIBIT B – DIAGRAM WITH LABELS