

DOCUMENT NO.

**LIMITED TERM
CONSERVATION
EASEMENT AGREEMENT
FOR GREEN
INFRASTRUCTURE**

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (“Easement Agreement”) is granted as of the — day of ____, 20__, by the City of Milwaukee (“Landowner”) and Milwaukee Public Schools (“MPS”) to the Milwaukee Metropolitan Sewerage District (“Easement Holder”).

RECITALS

A. Property. The Landowner is the sole owner of certain property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the “Property”) having an address at 1728 South 23rd Street, Milwaukee, WI 53204 (Alexander Mitchell Elementary School).

This Limited Term Conservation Easement Agreement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (“Green Infrastructure”). Exhibit C shows the area within the Property that is subject to this Limited Term Conservation Easement.

B. Conservation Values. In its present state, the Easement Area has Conservation Value because it has the following features:

- Underground cisterns with a detention capacity of 74,700 gallons
- 3,100 square feet of bioswales with a detention capacity of 24,200 gallons
- 13,150 square feet of depaving resulting in a detention capacity of 2,630 gallons
- 20 stormwater trees with a detention capacity of 500 gallons
- Total project detention capacity of 102,030 gallons

Recording Area

Name and Return Address:

Milwaukee Metropolitan
Sewerage District
Attention: Michael Hirsch
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Parcel Identification Number:
4590593100

C. Baseline Documentation. The condition of the Property and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation Values (“Baseline Report”) which is on file at the office of the Easement Holder and incorporated into this Easement Agreement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Easement Area at the time of the conveyance of the Easement described herein and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement Agreement.

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic, and open space values of real property; assure its availability for agriculture, forestry, recreation, or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

E. Qualified Organization. The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) of the Wisconsin Statutes because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

F. Conservation Intent. The Landowner and Easement Holder share the common purpose of preserving the Conservation Values for a period of 11 years. The Landowner intends to place restrictions on the use of the Easement Area to protect those Conservation Values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by Easement Holder. The Easement Holder has provided funding to the Landowner for the installation of the Green Infrastructure within the Easement Area. The Landowner acknowledges the receipt and sufficiency of the funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily conveys to the Easement Holder an Easement over the Easement Area (“Easement”) for a period of 11 years on the Property. This Easement consists of the following terms, rights, and restrictions:

1. Purpose. The purpose of this Limited Term Conservation Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed within the Easement Area.

2. Effective Dates. This Limited Term Conservation Easement is deemed effective as of December 2nd, 2024 and terminates on December 2nd, 2035.

3. Recording of Easement. The Easement Holder will record this Easement at the Easement Holder’s expense.

4. Operation and Maintenance. The Landowner will operate and maintain the Green Infrastructure located in the Easement Area so that it remains functional for the entire term of this Easement. The Landowner is solely responsible for operation, maintenance, and evaluating performance.

5. Additional Reserved Rights of the Landowner. The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by this Easement Agreement or inconsistent with the purpose of this Easement Agreement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Easement Area.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions:

5.1 The encumbrance or conveyance is subject to the terms of this Easement Agreement.

5.2 The Landowner incorporates the terms of this Easement Agreement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Easement Area.

5.3 The Landowner notifies the Easement Holder of any conveyance in writing within 15 days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement Agreement or limit its enforceability in any way.

6. Easement Holders Rights and Remedies. To accomplish the purpose of this Easement Agreement, the Landowner expressly conveys to the Easement Holder an Easement over the Easement Area consisting of the following rights and remedies.

6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Easement Area.

6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the Easement Area that is inconsistent with the purpose of this Easement Agreement and to require the restoration of areas or features of the Easement Area that are damaged by any inconsistent activity or use pursuant to the remedies set forth below.

6.3 Enter the Easement Area. The Easement Holder has the right to enter the Easement Area to inspect it and monitor compliance with the terms of this Easement Agreement, obtain evidence for use in seeking judicial or other enforcement of this Easement Agreement, and otherwise exercise its rights under this Easement Agreement. The Easement Holder will provide prior notice to the Landowner before entering the Easement Area, comply with all of

the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's activities.

7. Remedies for Violations. The Easement Holder has the right to enforce the terms of this Easement Agreement and prevent or remedy violations through appropriate legal proceedings.

7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively with Landowner. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.

A. Notices to Milwaukee will be sent to:

Jerrel Kruschke
Department of Public Works
841 North Broadway, Room 820
Milwaukee, Wisconsin 53202
414-286-2400
jkrusc@milwaukee.gov

With a copy to:

Jordan M. Schettle
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202
414-286-2615
jschet@milwaukee.gov

B. Notices to MMSD will be sent to:

Lisa Sasso, Senior Project Planner
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, Wisconsin 53204
414-225-2048
lsasso@mmsd.com

C. Notices to MPS will be sent to:

Heather Dietzel, P.E., Sustainability Project Specialist
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, Wisconsin 53233
414-283-4713
dietzehm@milwaukee.k12.wi.us

With a copy to:

Jordan M. Schettle
Office of the City Attorney
841 North Broadway, 10th Floor
Milwaukee, Wisconsin 53202
414-286-2615
jschet@milwaukee.gov

7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement Agreement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation to Landowner and allow the Landowner at least 30 days to correct the violation. If the Landowner fails to respond or fails to properly correct the violation or threatened violation, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Easement Area or if good faith efforts to notify the Landowner are unsuccessful.

7.3 Remedies. When enforcing this Easement Agreement, the remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of this Easement Agreement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement Agreement, specific performance or declaratory relief, and recovery of actual damages incurred by Easement Holder resulting from a violation of this Easement Agreement or injury to any of the Conservation Values of the Easement Area.

7.4 Enforcement Delays. A delay or prior inability of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right of the Easement Holder to take any action necessary to assure compliance with the terms of this Easement Agreement.

7.5 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches or estoppel as related to this Easement Agreement.

7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury or change in the Property resulting from causes beyond Landowner's control including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from these causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of this Easement Agreement.

8. General Provisions.

8.1 Amendment. The Landowner and the Easement Holder may amend this Easement Agreement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Easement Area is located, provided that no amendment shall be allowed if, in the reasonable judgment of the Easement Holder, it:

- a. Seeks to diminish the Conservation Values of the Easement Area,
- b. Would be inconsistent with the purpose of the Easement,
- c. Would affect the duration of the Easement, or
- d. Would affect the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign, or transfer its interests in this Easement Agreement to a unit of federal, state, or local government or to an organization that is qualified within the meaning of 26 U.S.C. § 170(h)(3) and in the related regulations or any successor provisions then applicable and is qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement Agreement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least 30 days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Headings. The headings in this Easement Agreement have been inserted solely for convenience of reference and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement Agreement. Ambiguities in this Easement Agreement shall be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Property.

8.5 Counterparts. The Landowner and the Easement Holder may execute this Easement Agreement in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

8.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and the Easement Holder with respect to this Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, other than Green Infrastructure Partnership Program Funding Agreement G98004P94 and Green Solutions Funding Agreement G98005P131 all of which are merged into this Easement

Agreement.

8.7 Extinguishment. This Easement Agreement may be terminated or extinguished before the expiration of its term, whether in whole or in part, by the exercise of the power of eminent domain or purchase in lieu of condemnation that takes all or part of the Property or by agreement between the Landowner and the Easement Holder that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Joint Obligation. The obligations imposed by this Easement Agreement upon the Landowner are joint and several.

8.9 Ownership Responsibilities, Costs, and Liabilities. The Landowner retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property including, but not limited to, the following:

a. *Operation, upkeep, and maintenance*. The Landowner is responsible for the operation, upkeep, and maintenance of the Property.

b. *Control*. In the absence of a judicial decree, nothing in this Easement Agreement establishes any right or ability in the Easement Holder to:

(i) Exercise physical or managerial control over the day-to-day operations of the Property;

(ii) Become involved in the management decisions of the Landowner regarding the generation, handling, or disposal of hazardous substances; or

(iii) Otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.

c. *Permits*. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement Agreement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state, and local laws, regulations, and requirements.

d. *Indemnification*. The Landowner releases and will hold harmless and indemnify the Easement Holder from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions including, without limitation, reasonable attorneys’ fees, arising from:

(i) The Landowner’s violation or alleged violation of, or other failure to comply with, any state, federal, or local law or regulation pertaining to management of the

Property including, without limitation, CERCLA;

(iii) The presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful to human health or the environment, unless and to the extent caused solely by the Easement Holder.

e. *Taxes.* The Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “Taxes”), including any taxes imposed upon or incurred in response to this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

8.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement Agreement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement Agreement shall remain valid and binding.

8.12 Successors. This Easement Agreement is binding upon, and inures to the benefit of, the Landowner and the Easement Holder and their respective successors and assigns, and shall continue as a servitude running with the Property for the term of this Easement Agreement.

8.13 Warranties and Representations. The Landowner warrants and represents to the best of its knowledge that:

- a. The Landowner and the Property comply with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way negatively affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands, or orders; and
- c. The person signing this Easement has authority to grant this Easement to the Easement Holder.

<p>CITY OF MILWAUKEE</p> <p>By: _____ Mayor Cavalier Johnson</p> <p>CITY CLERK</p> <p>_____</p> <p>James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Bill Christianson, Comptroller</p> <p>City Common Council Resolution File No. _____</p>	<p>CITY ATTORNEY AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the City signatures per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____</p> <p>Name Printed: _____</p> <p>Title: _____</p> <p>State Bar No.: _____</p> <p>Date: _____</p>
<p>MILWAUKEE BOARD OF SCHOOL DIRECTORS</p> <p>By: _____ Eduardo Galván Interim Superintendent of Schools</p>	<p>MPS AUTHENTICATION</p> <p>The undersigned attorney, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of the MPS signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____</p> <p>Name Printed: _____</p> <p>Title: _____</p> <p>State Bar No.: _____</p> <p>Date: _____</p>

ACCEPTANCE OF EASEMENT HOLDER’S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement Agreement on this _____ day of _____, 20__.

By: _____

Kevin L. Shafer, P.E.
Executive Director

STATE OF WISCONSIN, MILWAUKEE COUNTY

On this _____ day of _____, 20__, the person known as Kevin L. Shafer came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____.

Approved as to Form: _____

Vincent R. Bauer
Attorney for the District

ATTACHMENTS

- EXHIBIT A Description of Property
- EXHIBIT B Location of Property
- EXHIBIT C Location of Easement Area

EXHIBIT A
DESCRIPTION OF PROPERTY

Address: 1728 South 23rd Street, Milwaukee, WI 53204

Tax Number: 4590593100

Legal Description:

MARTIN'S SUBD IN NW 1/4 SEC 6-6-22 BLOCK 7
LOTS 1 THRU 18 INCL & LOTS 1 THRU 10 INCL
BLK 3 MILLBRATH & HARTMANN'S SUBD ADJ &
ALLEY ADJ BID #94

EXHIBIT B
LOCATION OF PROPERTY



EXHIBIT C

LOCATION OF EASEMENT AREA

