

(ATTACHMENT 3) ACTION ON A REQUEST TO APPROVE CONSERVATION EASEMENTS BETWEEN MILWAUKEE PUBLIC SCHOOLS, THE CITY OF MILWAUKEE, AND MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

LIMITED TERM CONSERVATION EASEMENT

5610 West Wisconsin Avenue, Milwaukee, Wisconsin 53213
GH 2-12-2019, CAO 256768

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE (“**Conservation Easement**”) is dated as of _____, 20____, (the “**Effective Date**”) and is among the City of Milwaukee (“**City**”) as Landowner, the Milwaukee Public Schools (“**MPS**”), and the Milwaukee Metropolitan Sewerage District (“**MMSD**”) as Easement Holder.

RECITALS

A. Property. The City is the fee owner of property located in Milwaukee County, Wisconsin, which is described in **Exhibit A** and depicted on the map shown in **Exhibit B** (the “**Property**”). The Property is at 5610 West Wisconsin Avenue, Milwaukee, Wisconsin 53213. The City owns the Property for the benefit of MPS per Wis. Stat. 119.16, 119.60.

B. Conservation Values. This Conservation Easement applies only to certain areas of the Property that have conservation value (the “**Easement Areas**”). The Easement Areas contain the following infrastructure (the “**Green Infrastructure**”) designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff: 18,430 square feet of native landscaping, a cistern with a capacity of 20,000 gallons, four trees, and 770 square feet of bioswale.

The Green Infrastructure provides a total detention capacity of 37,087 gallons.

Exhibit B shows the Easement Areas.

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 offices of MMSD and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that provides an accurate representation of the condition of the Property at the time of the conveyance of this Conservation Easement and is

Recording Area

Name and Return Address:
Milwaukee Metropolitan
Sewerage District
Attention: Michael Hirsch
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Tax Key Number:
3850612100

intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Conservation Easement.

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Wis. Stat. 700.40 , which provides for: the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assurance of availability of conservation easements for agriculture, forestry, recreation or open space uses; protection of natural resources; maintenance or enhancement of air and water quality; and preservation of archaeological sites.

E. Qualified Organization. MMSD is qualified to hold conservation easements under Wis. Stat. 700.40 (1)(b) 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. City, MPS and MMSD share the common purpose of preserving the Conservation Values for a period of eleven years. The City and MPS intend to place restrictions on the use of the Property to protect those Conservation Values. In addition, the City and MPS intend to convey to MMSD and MMSD agrees to accept the right to monitor and enforce these restrictions.

G. Assignment of Operation and Maintenance Responsibilities. MPS, through its Board of School Directors, operates and maintains the Property per Wis. Stat. 119.16 (1m). MPS accepts the responsibilities and duties under this Conservation Easement to operate and maintain the Green Infrastructure.

H. Funding Provided by MMSD. MMSD provided, or will provide, funding to MPS for the installation of the Green Infrastructure. MPS acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Conservation Easement, the funding provided by MMSD, and the provisions of Wis. Stat. 700.40, the City voluntarily conveys to MMSD a Conservation Easement (the **Easement**) for a period of eleven years in and to the Easement Areas of the Property. This Easement consists of the following terms, rights, and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the MPS to keep, preserve, and maintain the Green Infrastructure installed on the Property.
- 2. Effective Dates.** This Easement is effective for **11 years from the Effective Date** and terminates after said 11-year anniversary.
- 3. Recording of Easement.** The City will record this Easement at MMSD's expense.

4. Operation and Maintenance. MPS is solely responsible for operation and maintenance of the Green Infrastructure so that it remains functional for the entire term of this Easement. MPS is solely responsible for evaluating performance of the Green Infrastructure and for maintaining and preserving Conservation Values.

5. Additional Reserved Rights of the Landowner. The City and MPS retain 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 the Easement or inconsistent with the purpose of the Easement. However, City and MPS may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

The City and MPS expressly reserve 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.

5.2 The City and MPS incorporate the terms of this Easement by reference in any subsequent deed or other legal instrument by which City and/or MPS transfers any interest in all or part of the Property.

5.3 The City and MPS notify MMSD of any conveyance in writing within fifteen days after the conveyance and provide MMSD with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

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

6. MMSD's Rights and Remedies. To accomplish the purpose of this Easement, City and MPS expressly convey to the Easement Holder the following rights and remedies.

6.1 Preserve Conservation Values. MMSD has the right to preserve and protect the Conservation Values of the Property.

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

6.3 Enter the Property. MMSD has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. MMSD will: provide prior notice to the City and MPS before entering the Property, comply with the City's and MPS's safety rules, and

avoid unreasonable disruption of the City’s and MPS’s activities, including MPS student use and activities.

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

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

For purposes of this Easement, notices shall be sent to the following persons (or to such other persons as may from time to time be designated per this Section).

<p><u>If to City:</u> Nader Jaber Milwaukee DPW 841 N. Broadway, Room 820 Milwaukee, WI 53202</p> <p>Ph 414-286-0514 Email: njaber@milwaukee.gov</p> <p><u>With Copy to:</u> Gregg Hagopian City Attorney’s Office 841 N. Broadway, 7th Floor Milwaukee, WI 53202</p> <p>Ph 414-286-2620 Email: ghagop@milwaukee.gov</p>	<p><u>If to MPS:</u> Travis Luzney MPS 1124 N. 11th Street Milwaukee, WI 53233</p> <p>Ph: 414-283-4600 Email: luzneytr@milwaukee.k12.wi.us</p> <p><u>With Copy to:</u> Sheila Thobani City Attorney’s Office 841 N. Broadway, 7th Floor Milwaukee, WI 53202</p> <p>Ph 414-286-5440 Email: sthob@milwaukee.gov</p>
	<p><u>If to MMSD:</u> Lisa Sasso MMSD 260 W. Seeboth St. Milwaukee, WI 53204-1446</p> <p>Ph 414-225-2048 Email: lsasso@mmsd.com</p>

7.2 Notice of Violation and Corrective Action. If MMSD determines that a violation of the terms of this Easement has occurred or is threatened, MMSD will give written notice of the violation or threatened violation and allow at least 30 days to correct the

violation. If the City or MPS fails to respond, then MMSD may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of MMSD, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the City and MPS are unsuccessful.

- 7.3 Remedies. When enforcing this Easement, the Remedies available to MMSD include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require MPS to restore the Green Infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property.
- 7.4 Enforcement Delays. A delay or prior failure of MMSD to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.
- 7.5 Waiver of Certain Defenses. The City and MPS waive any defense of laches, such as failure by MMSD to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of MMSD.
- 7.6 Acts Beyond Landowner's Control. MMSD may not bring any action against the City or MPS for any injury or change in the Property resulting from causes beyond City's and MPS'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 City or MPS under emergency conditions to prevent or mitigate damage from these causes, provided that the City and MPS notify MMSD of any occurrence that has adversely impacted or interfered with the purpose of this Easement.

8. General Provisions.

- 8.1 Amendment. The City, MPS and MMSD may amend this Easement in a written instrument executed by all parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of MMSD, it:
- a. diminishes the Conservation Values of the Property,
 - b. is inconsistent with the purpose of the Easement,
 - c. affects the duration of the Easement, or
 - d. affects the validity of the Easement under Wis. Stat. 700.40.
- 8.2 Assignment. MMSD may convey, assign, or transfer its interests in this Easement, with approval of the City and MPS, to a unit of federal, state, or local government or

to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Wis. Stat. 700.40. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its purpose for the remainder of its term. MMSD will provide to City and MPS a copy of the written assignment which shall be recorded in the Register of Deeds Office.

8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement 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. Ambiguities in this Easement 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 City, MPS and MMSD may execute this Easement in counterparts, which shall, in the aggregate, be signed by all 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 parties hereto with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.

8.7 Extinguishment. This Easement may be terminated or extinguished before the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) exercise of the power of eminent domain or purchase in lieu of condemnation takes all or part of the Property or (b) the City, MPS and MMSD agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible or impractical.

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

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

b. *Control*. In the absence of a judicial decree, nothing in this Easement establishes any right or ability in MMSD 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 City or MPS 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.* MPS remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations, and requirements.

d. *Responsibility.* Each party will be responsible for their own acts of negligence, including all claims, liabilities, penalties, fines, charges, costs, losses, damages, causes of action, claims, judgments or administrative actions, arising from the Project.

e. *Taxes.* Before delinquency, if applicable, MPS 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 MMSD with satisfactory evidence of payment upon request. MMSD is aware that the Property is currently property tax exempt.

8.9 Recording. MMSD shall pay for the City’s recording of 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.

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

8.11 Successors. This Easement is binding upon, and inures to the benefit of, the City, MPS, and MMSD and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running with the Property for the term of the Easement.

8.12 Terms. The terms “City,” “MMSD,” and “MPS,” wherever used in this Easement include personal representatives, heirs, successors, and assigns.

8.13 Warranties and Representations. The City and MPS warrant and represent, to the best of their knowledge, that:

- a. The the Property and its current use do not violate 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 affect, involve, or relate to the Property. No facts or circumstances exist that the City or MPS might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands or orders; and
- c. The persons signing this Easement have authority to grant this Conservation Easement to MMSD.

Dated as of the date first written above.

<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____</p> <p>James R. Owczarski, City Clerk</p> <p>Countersigned:</p> <p>By: _____ Aycha Sawa, Comptroller</p> <p>City Common Council Resolution File No.</p> <p>_____</p>	<p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>Gregg Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City signatories per M.C.O. 304-21, and also authenticates those signatures per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Assistant City Attorney State Bar No. 1007373</p> <p>Date: _____</p>
<p>MPS: MILWAUKEE PUBLIC SCHOOLS</p> <p>By: _____ Keith P. Posley, Ed.D. Superintendent of Schools</p> <p>MPS Board Resolution Dated:</p> <p>_____</p>	<p>MPS AUTHENTICATION</p> <p>The undersigned, 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: Assistant City Attorney</p> <p>State Bar No.: _____</p> <p>Date: _____</p>

ACCEPTANCE OF EASEMENT HOLDER’S (MMSD’S) INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement on this _____ day of _____, _____.

By: _____

Kevin L. Shafer, P.E.
Executive Director

Approved as to Form: _____

Attorney for the District

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this ____ day of _____, _____, 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 _____.

ATTACHMENTS

EXHIBIT A Description of the Property

EXHIBIT B Maps Showing the Location of the Property and the Green Infrastructure Subject to
this Easement

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Address: 5610 West Wisconsin Avenue, Milwaukee, Wisconsin 53213

Tax Key: 3850612100

Legal Description: MURRAY HILL IN NE & NW 1/4 SEC 26-7-21 BLOCK 4 LOTS 1 TO 14 EXC THAT PART COM SE COR SD LOT 14-TH W 372.36'-TH NE 135.66' TO A PT IN WLY LISD LOT 8-TH SW ALG A CURVE 111.54'-TH E 357.33'-TH S 20' TO BEG

EXHIBIT B

MAPS SHOWING THE LOCATION OF THE PROPERTY AND THE GREEN
INFRASTRUCTURE SUBJECT TO THIS EASEMENT



