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## LIMITED TERM CONSERVATION EASEMENT

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This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the 1<sup>st</sup> day of December 2016 by the City of West Allis (Landowner) to the Milwaukee Metropolitan Sewerage District, a special-purpose municipal corporation established under Wis. Stat. § 200.21 *et seq.* (Easement Holder).

### RECITALS

**A. Property.** The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the Property). The property is at 6215 West National Avenue, West Allis, Wisconsin 53214.

This Limited Term Conservation Easement 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 B shows the areas within the property that are subject to this Limited Term Conservation Easement.

**B. Conservation Values.** In its present state, the Property has conservation value because it has 3,811 square feet of permeable pavers. This Green Infrastructure provides a total retention capacity of 11,433 gallons.

**C. Baseline Documentation.** The condition of the Property, and specifically the Green Infrastructure, is further documented in an inventory of relevant features, characteristics, and Conservation Values, which is on file at the office of the Easement Holder and incorporated into this Conservation Easement 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 Property at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

Recording Area

Name and Return Address:

Milwaukee Metropolitan  
Sewerage District  
Attention: Delbert Dettmann  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204

Part of Tax Key Number: 454-0073-001

**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) 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 ten years. The Landowner intends to place restrictions on the use of the Property 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. The Landowner 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 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 a Conservation Easement (the Easement) for a period of ten years over, in, and to the Property. This Easement consists of the following terms, rights and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed on the Property, which consists of 3,811 square feet of permeable pavers, which provides a retention capacity of 11,433 gallons.
- 2. Effective Dates.** This Easement becomes effective on December 1, 2016, and terminates on November 30, 2026.
- 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 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 the Easement or inconsistent with the purpose of the Easement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

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

- 5.1 The encumbrance or conveyance is subject to the terms of this Easement.
- 5.2 The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.
- 5.3 The Landowner notifies the Easement Holder of any conveyance in writing within fifteen 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 or limit its enforceability in any way.

**6. Easement Holders Rights and Remedies.** To accomplish the purpose of this Easement, the Landowner expressly conveys to the Easement Holder 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 Property.
- 6.2 Prevent Inconsistent Uses. The Easement Holder 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. The Easement Holder 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. The Easement Holder will: provide prior notice to the Landowner before entering the Property, 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 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. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.
- 7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the Landowner fails to respond, 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 Property or if good faith efforts to notify the Landowner are unsuccessful.
- 7.3 Remedies. When enforcing this Easement, the Remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of 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 Non-Waiver. A delay or prior failure of the Easement Holder 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 Landowner hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.
- 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 such causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of the Easement.

## **8. General Provisions.**

- 8.1 Amendment. The Landowner and Easement Holder may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located. However, no amendment shall be allowed if, in the judgment of the Easement Holder, 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 Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign or transfer its interests in this Easement 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 Section 700.40 of the Wisconsin Statutes. 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. The Easement Holder will notify the Landowner of any assignment at least thirty (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 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 Landowner and Easement Holder may execute this Easement 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 Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

8.7 Extinguishment. This Easement may be terminated or extinguished prior to 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) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (b) the Landowner and Easement Holder agree 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 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 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, and all such 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, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against any and 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 or in any way connected with:



- (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property;
- (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 or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes.* Before delinquency, 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 as a result of 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 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.

8.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder 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.

8.13 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.14 Warranties and Representations. The Landowner warrants and represents 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 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 Conservation Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As the Director of Public Works for the City of West Allis, I execute the foregoing Limited Term

Conservation Easement and acknowledge the same on this 6<sup>th</sup> day of

February, 2017

By: \_\_\_\_\_

Michael G. Lewis  
Director of Public Works/City Engineer

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this 6<sup>th</sup> day of February, 2017, the person known as

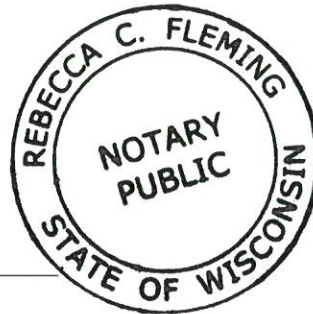
Michael G. Lewis came before me and executed the foregoing

instrument and acknowledged the same.

Rebecca C. Fleming  
Signature of Notary Public

Notary Public, State of Wisconsin

My Commission expires 12-27-19





ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Limited Term Conservation Easement is accepted by the Milwaukee Metropolitan Sewerage District on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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 \_\_\_\_\_, 20\_\_\_, the person known as \_\_\_\_\_ came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, State of \_\_\_\_\_

My Commission is expires \_\_\_\_\_.

Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this conservation easement.

- ATTACHMENTS
- EXHIBIT A Description of the Property
- EXHIBIT B Property Map

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Legal Description: Lot 3 and Lot 10 of Block 3 in Liberty Heights, being a part of the N.E.  $\frac{1}{4}$  of Section 3, Town 6, Range 21 East in the City of West Allis, County of Milwaukee, State of Wisconsin

Tax Key: 454-0073-001

Address: 6215 West National Avenue, West Allis, Wisconsin 53214

EXHIBIT B  
PROPERTY MAP

