

PERMANENT FLOWAGE EASEMENT

THIS FLOWAGE EASEMENT AGREEMENT (the "Agreement"), is entered into as of the _____ day of _____, 2021, by and between the Milwaukee County Parks Department ("County"), and the Milwaukee Metropolitan Sewerage District, a Wisconsin municipal corporation (the "District.")

RECITALS:

WHEREAS, County is the owner of certain lands described on the attached Exhibit A and depicted on the attached Exhibit B (the "Properties"), which is located near the Menomonee River, a waterway that flows along Doyme Park and Hart Park in Sections 22 & 26, in Township 7 North, Range 21 East, in the Cities of Milwaukee and Wauwatosa, Milwaukee County, Wisconsin; and

WHEREAS, the State of Wisconsin Department of Natural Resources (the "WDNR") has determined that the regional flood elevations (A) at the Properties has increased, and that the backwater resulting from the Menomonee River Stream Management Project - Phase II will cause increases in the regional flood elevations (B), which are in excess of the acceptable maximum permitted increases (C) in the absence of appropriate legal arrangements under Chapter NR 116 of the Wisconsin Administrative Code as shown in the following table;

Parcel Number	Parcel Address	Regional Flood Elevation (A)	Increase to flood Elevation (B)	Amount in excess of acceptable maximum increase (C)
3861101100	4724 W Wells St	624.7 feet	1.42 feet	1.42 feet
3860227120	4900 W James St	624.7 feet	1.23 feet	1.23 feet
3860228112	900 N 51st St	624.8 feet	0.65 feet	0.65 feet
3830254004	Honey Creek Parkway	652.8 feet	0.42 feet	0.42 feet

and

WHEREAS, the WDNR has indicated that if affected landowners grant to the District flooding easements, Menomonee River Stream Management Project - Phase II work and the resulting flood elevation changes would be approved by the WDNR.

WHEREAS, the District desires to obtain a flowage easement from County concerning the Properties and County is willing to grant such easement, upon the terms and conditions set forth herein.

DRAFT

This space is reserved for recording data

Return to:
Milwaukee Metropolitan Sewerage District
Attn: Real Estate Department
260 West Seeboth Street
Milwaukee, Wisconsin, 53204-1446

Parcel Identification Number/Tax Key Number
3861101100, 3860227120,
3860228112, 3830254004

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the sum of One Dollar (\$1.00) and other valuable consideration, the parties agree as follows:

1. Grant of Easement. County hereby grants to the District a nonexclusive flowage easement permitting surface flood waters from the Menomonee River to go upon that portion of the Properties as is shown on the attached Exhibit B as lying within the 2020 FEMA CLOMR Application Proposed 1%-Annual-Chance Floodplain, should the same become necessary to accommodate any backwater resulting from the Menomonee River Stream Management Project - Phase II (hereafter, the "Easement"). County acknowledges that the District intends that the 2020 FEMA CLOMR Application Proposed 1%-Annual-Chance Floodplain shall be included on the official floodplain maps for the City of Milwaukee and Milwaukee County as part of the regional floodplain when the existing floodplain zoning ordinance is amended.
2. Indemnification. To the extent permitted by law, the District shall indemnify County from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with any negligence or misconduct by the District in utilizing the Easement.
3. Consistent Uses Allowed. County reserves the right to use the Property for purposes that will not interfere with the District's full enjoyment of the Easement granted in this Agreement.
4. Covenants Run with Land. All terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by County and the District and their respective successors and assigns.
5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
6. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin.
7. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
8. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

9. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

10. No Public Dedication. Nothing in this Agreement shall be deemed a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

11. Right-of-Entry Fee. Grantee shall, at all times, obtain a Right-of-Entry Permit from County before performing any ground disturbing activities in any part of the Premises. The Permit to disturb or dig in the Premises requires fees for inspection. Any Grantee failing to obtain a Permit to disturb or dig in the Premises is subject to penalty. The Permit to disturb or dig in the Premises can be obtained at the Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Rd. Wauwatosa, Wisconsin, 53226.

12. Assignment and Subletting. The Grantee shall not assign this Easement nor sublet the Premises, or any portion thereof, without the prior written consent of the County. Said consent may be withheld at the sole discretion of the County, but shall not be unreasonably withheld. Before an assignment shall be effective, any assignee shall assume in writing all obligations of the Grantee under the terms and conditions of this Easement.

13. Use of the Easement Area. The County shall have the right to review and approve plans for any material improvement, modification, alterations or changes, which review and approval shall not be unreasonably withheld or delayed. Any change in the use of the easement, however, is strictly subject to the review and written approval of the County, at its sole discretion.

14. County's Rights on the Easement Area. Right to Enter. County shall have the right at any time to enter the easement area for any purpose that the county may deem necessary or desirable. In addition, County may engage in any activities in, on or around the Easement Area so long as such activities do not interfere with or disrupt the operation and maintenance of the Facilities. In addition, non-fenced areas of the Easement Area on County land shall be open to the general public unless agreed to otherwise in writing by the County and then, only to extent of the specific written agreement, if any.

15. Additional rights of the County. County and District mutually agree that the County shall not be liable for any interruption, lack of use of the Easement Area, inconvenience or acts that the County must take as a result of lawful orders or compliance with Federal, State or local laws. District agrees that County may enter easement area for purposes of inspection, testing, remediation, or such maintenance or repair that County may determine is in the public interest, provided such entry upon the easement area does not interfere with or disrupt the operation and maintenance of the Facilities.

16. Acts beyond the Landowner's Control. The District may not bring any action against the County for any injury beyond the County'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 County under emergency conditions to prevent or mitigate damage

from these causes, provided that the County notifies the District of any occurrence that has adversely impacted or interfered with the purpose of this easement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF Grantor has set its hand on the day and year first above written.

GRANT OF INTEREST TO EASEMENT HOLDER

By: _____
(Signature)

(Date)

(Print Name and Title)
)

State of Wisconsin

_____) ss.
County
)

On the above date, this instrument was acknowledged before me by the above-named _____, known to me to be such officer, and who acknowledged that the forgoing instrument was executed on behalf of the County for the purpose aforesaid and by his authority as such officer.

Approved as to form – County

(Signature, Notary Public, State of Wisconsin)

Wisconsin)

(Print or Type Name, Notary Public, State of

(Date Commission is Permanent/Expires)

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Permanent Flood Easement is accepted by the Milwaukee Metropolitan Sewerage District.

By: _____
(Signature)

(Date)

Kevin L. Shafer, P.E., Executive Director
(Print Name and Title)

State of Wisconsin)
) ss.
Milwaukee County)

On the above date, this instrument was acknowledged before me by the above named Executive Director of the Milwaukee Metropolitan Sewerage District, known to me to be such officer, and who acknowledged that he executed the forgoing instrument on its behalf for the purpose aforesaid and by his authority as such officer.

Approved as to form - MMSD Legal Dept

Wisconsin)

This document was drafted by MMSD

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of

(Date Commission Expires)

EXHIBIT A

LEGAL DESCRIPTIONS

Address: 4724 W Wells St

Tax ID: 3861101100

Legal description: MONARCH PARK IN NE 1/4 SEC 26-7-21 BLOCK 4 LOTS (3 TO 24 & 26 TO 31 INCL) & LOTS 1-2 BLK 4 EXC COM SW COR LOT 1-TH NELY 62.96'-TH E 45.88'-TH S 62.65'-TH W 52.20' TO BEG & LOTS 18 TO 32 INCL BLK 3 AND VAC W JAMES N 48TH ST & W KILBOURN AV ADJ PER CC RESOL #120134 ADOPTED 9-25-2012

Address: 4900 W James St

Tax ID: 3860227120

Legal description: ASSESSOR'S PLAT NO 125 IN NE 1/4 SEC 26 & NW 1/4 SEC 25-7-21 BLOCK 4 PART LOT 1 LYING SLY OF MENOMONEE RIVER & NLY OF W JAMES ST

Address: 900 N 51st St

Tax ID: 3860228112

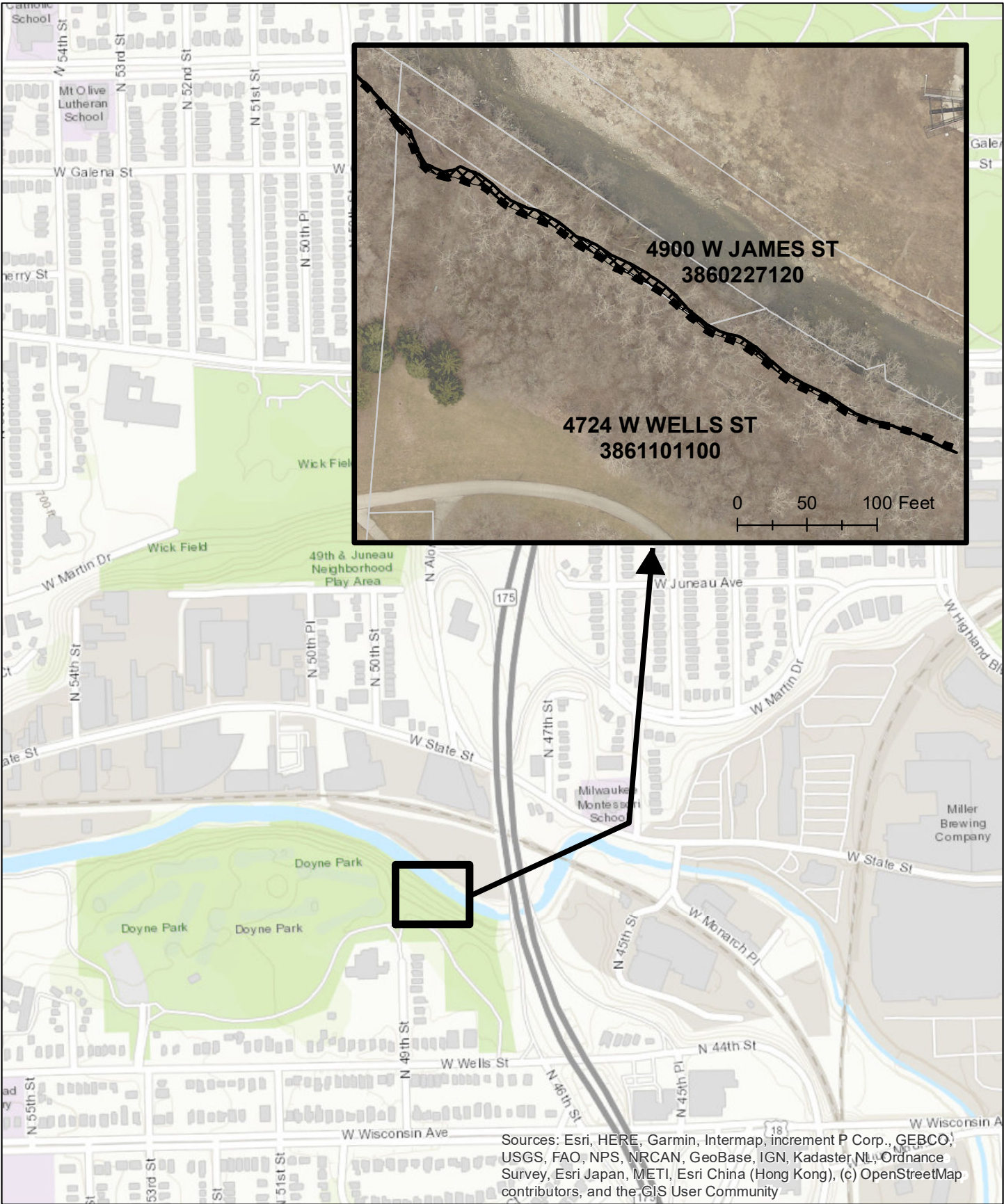
Legal description: ASSESSOR'S PLAT NO 125 IN NE 1/4 SEC 26 & NW 1/4 SEC 25-7-21 BLOCK 4 PART LOT 2 LYING S OF MENOMONEE RIVER EXC PART COM NW COR LOT 15 BLK 6 MURRAY HILL SUBD-TH NELY 96.77'-TH NELY 228.30'-TH NELY 190'-TH SWLY 168.08'-TH SWLY 341.65' TO BEG

Address: Honey Creek Parkway

Tax ID: 3830254004

Legal description: PT OF ASSESSORS PLAT NO 18, ASSESSORS PLAT NO 32 & WELLAUERS SUBD LYG BTWN CENTER THREAD MENOMONEE RIVER AND THE FOLLOWING DESC LINE COM IN S LI LOT 8 ASSESSORS PLAT NO 18 IN SE 21-7-21, TH ELY TO POB TH SELY TO E SEC LI, SWLY 58.70 FT, SWLY 77.57 FT, SELY 102.24 FT, SELY 152.03 FT, SELY 169.11 FT, SELY 311.28 FT, SELY 131.57 FT, SWLY 83.63 FT, SELY 141.26 FT, SELY 65.65 FT, SWLY 13.954 FT, SELY ALG CUR 458.72 FT, SELY 50 FT, SELY ALG CUR 121.57 FT, NELY 34 FT, NWLY 145.18 FT TH NELY TO CENTER THREAD SD RIVER, SE 21-7-21, SW 22-7-21 & NW 27-7-21 2017

EXHIBIT B



Estimated MMSD Easement Area



2020 FEMA CLOMR Application Proposed
1%-Annual-Chance Floodplain



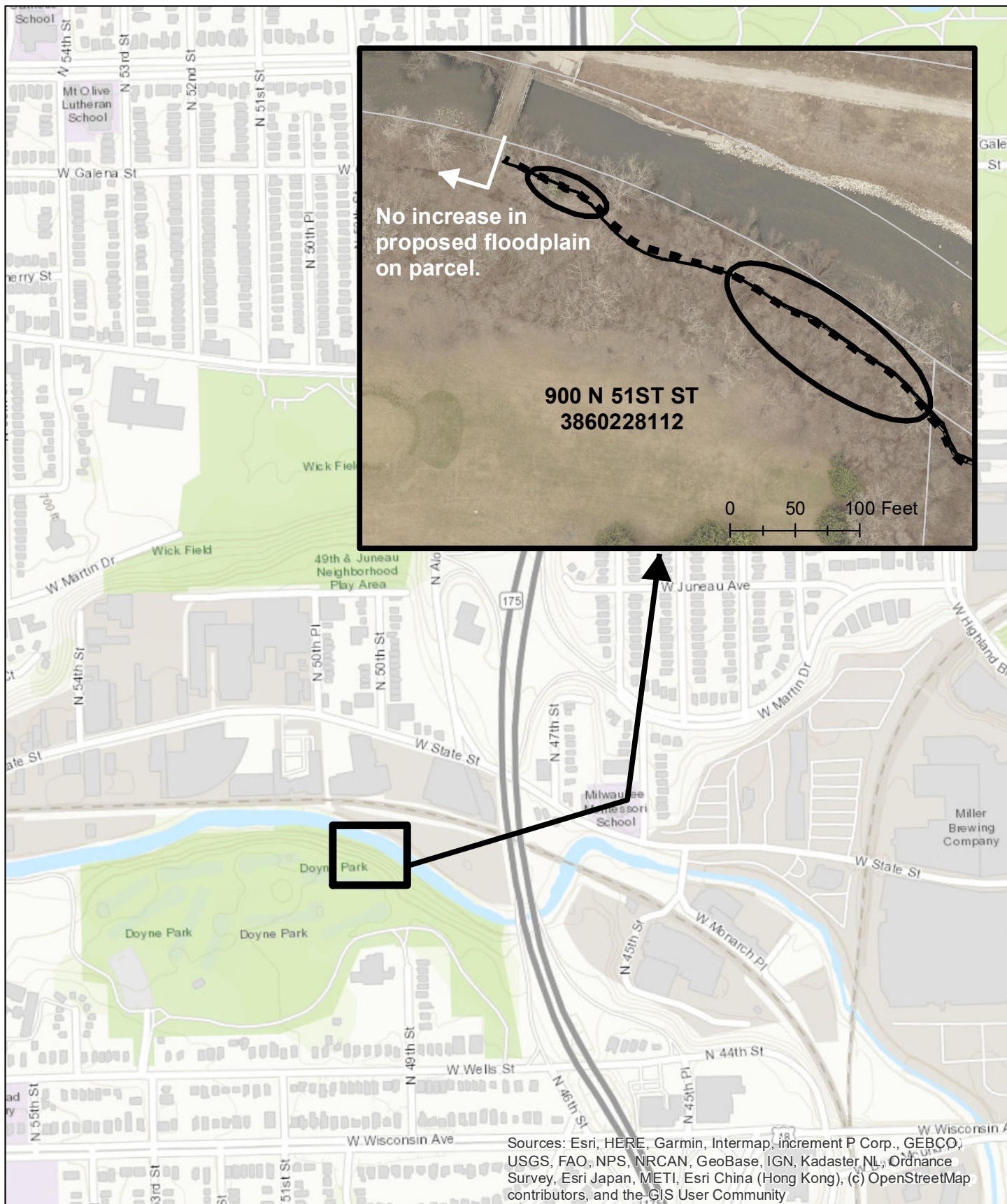
Corrected Effective (Existing) Floodplain



Parcel Boundary 8



EXHIBIT B



Estimated MMSD Easement Area
(if not visible, area is within black oval)



2020 FEMA CLOMR Application Proposed
1%-Annual-Chance Floodplain



Corrected Effective (Existing) Floodplain



Parcel Boundary



EXHIBIT B



Estimated MMSD Easement Area
(runs the length of area shown between white arrows)



2020 FEMA CLOMR Application Proposed
1%-Annual-Chance Floodplain



Corrected Effective (Existing) Floodplain



Parcel Boundary

