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## LIMITED TERM CONSERVATION EASEMENT

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This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the first day of January 2022 to the Milwaukee Metropolitan Sewerage District (District) by Milwaukee County (County), the landowner, and Milwaukee County War Memorial Inc. (War Memorial), the owner of WMC Unit 3 within the Lakefront Cultural Center Condominium, as recorded December 21, 2017.

### RECITALS

**A. Property.** The property is in Milwaukee County at 700 North Art Museum Drive and 750 North Lincoln Memorial Drive, Milwaukee, Wisconsin 53202 (the Property). Exhibit A describes the Property. Exhibit B shows the location of the Property.

This Limited Term Conservation Easement applies only to the area of the Property that has conservation value. This area contains infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff. Exhibit C shows the areas within the Property that are subject to this Limited Term Conservation Easement (Easement Areas).

**B. Conservation Values.** In its present state, the Easement Areas have conservation value because they have 11,696 square feet of bioswale, 133,300 square feet of native landscaping, and 21,554 square feet of permeable pavers (the Green Infrastructure). This Green Infrastructure provides a total design detention capacity of 205,702 gallons.

**C. Baseline Documentation.** The condition of the Easement Areas 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 District 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 Easement Areas 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: Michael Hirsch  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204

Tax Key Number:

3940001000, 3940003000, 3949999111

**D. Public Policies.** The preservation of the Conservation Values of the Easement Areas 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 District 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 County, War Memorial, and District share the common purpose of preserving the Conservation Values for a period of twenty years. The County and War Memorial intend to place restrictions on the use of the Easement Areas to protect those Conservation Values. In addition, the County and War Memorial intend to convey to the District and the District agrees to accept the right to monitor and enforce these restrictions.

**G. Funding Provided by District.** The District has provided funding to War Memorial for the installation of the Green Infrastructure. The War Memorial 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 District, and the provisions of Section 700.40 of the Wisconsin Statutes, the County and War Memorial voluntarily convey to the District a Conservation Easement (the Easement) for a period of twenty years on the Property. This Easement consists of the following terms, rights, and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the preservation and maintenance of the Green Infrastructure installed on the Easement Areas.
- 2. Effective Dates.** This Easement becomes effective January 1, 2022 and terminates on December 31, 2041.
- 3. Recording of Easement.** The District will record this Easement at the District's expense.
- 4. Operation and Maintenance.** The War Memorial will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. The War Memorial is solely responsible for operation, maintenance, and evaluating performance.
- 5. Additional Reserved Rights.** The County and War Memorial retain all rights associated with their ownership of the Property, including the right to use the Easement Areas and invite others to use the Easement Areas in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the purpose of the Easement. However, the County and

War Memorial may not exercise these rights in a manner that would adversely impact the Conservation Values of the Easement Areas. The County and War Memorial 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 County and War Memorial incorporate the terms of this Easement by reference in any subsequent deed or other legal instrument that transfers any interest in all or part of the Property.
- 5.3 The County or War Memorial notify the District of any conveyance in writing within fifteen days after the conveyance and provides the District with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 5.4 Failure 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. Districts Rights and Remedies.** To accomplish the purpose of this Easement, the County and War Memorial expressly convey to the District the following rights and remedies.

- 6.1 Preserve Conservation Values. The District has the right to preserve and protect the Conservation Values of the Easement Areas.
- 6.2 Prevent Inconsistent Uses. The District has the right to prevent any activity or use of the Easement Areas that is inconsistent with the purpose of this Easement and to require the restoration of areas or features of the Easement Areas that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 6.3 Enter the Property. The District has the right to enter the Easement Areas to inspect them 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 District will provide prior notice before entering the Property, comply with the safety rules, and avoid unreasonable disruption of the use of the Property.

**7. Remedies for Violations.** The District, County, and War Memorial have 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 District identifies problems with the Green Infrastructure, then the District will initially attempt to resolve the problems collaboratively. The District will notify the War Memorial of the problems and request remedial action within a reasonable time.

- 7.2 Notice of Violation and Corrective Action. If the District determines that a violation of the terms of this Easement has occurred or is threatened, the District will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the War Memorial fails to respond, then the District may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the War Memorial was unsuccessful.
- 7.3 Remedies. When enforcing this Easement, the Remedies available to the District 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 Enforcement Delays. A delay or prior failure of the District 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 County and War Memorial hereby waive any defense of laches, such as failure by the District to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the District.
- 7.6 Acts Beyond the Control of the County and War Memorial. The District may not bring any action for any injury or change in the Property resulting from causes beyond the control of the County or War Memorial, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the County or War Memorial under emergency conditions to prevent or mitigate damage from these causes, provided that the District receives notice any occurrence that has adversely impacted or interfered with the purpose of this Easement.

## **8. General Provisions.**

- 8.1 Amendment. The County, War Memorial, and District may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for Milwaukee County, provided that no amendment will be allowed if, in the judgment of the District, 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 District 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 District will notify the County and War Memorial 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 will be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Easement Areas.
- 8.5 Counterparts. The County, War Memorial, and District may execute this Easement in two or more counterparts, which will, in the aggregate, be signed by both parties. Each counterpart will 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 will be controlling.
- 8.6 Entire Agreement. This instrument sets forth the entire agreement of the County, War Memorial, and District 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 Easement Areas or (b) the County, War Memorial and District agree that a subsequent, unexpected change in conditions makes accomplishing the purpose of the Easement impossible.
- 8.8 Ownership Responsibilities, Costs and Liabilities. The County and War Memorial retain 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 County and War Memorial are 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 District to:
  - (i) exercise physical or managerial control over the routine operation of the Easement Areas;
  - (ii) become involved in management decisions regarding the generation, handling, or disposal of hazardous substances; or
  - (iii) otherwise become an operator of the Easement Areas 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 County and War Memorial remain 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 will be undertaken in accordance with applicable federal, state, and local laws, regulations, and requirements.
- d. *Indemnification.* (1) Except as provided in par. (2), the County and War Memorial release and will hold harmless, indemnify, and defend the District and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) 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 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.

(2) Nothing herein shall be construed to constitute a waiver by the County of any otherwise applicable immunity, limited immunity, or limitation on liability under Wisconsin law.

e. *Taxes.* Before delinquency, the County or War Memorial will 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 will furnish the District with satisfactory evidence of payment upon request.

8.9 Recording. The District will 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.

8.10 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 will remain valid and binding.

8.11 Successors. This Easement is binding upon and inures to the benefit of the County, War Memorial, and District and their respective personal representatives, heirs, successors, and assigns, and will continue as a servitude running with the Property for the term of the Easement.

8.12 Terms. The terms "County," "War Memorial," "District," and any pronouns used in their place mean either masculine or feminine, singular or plural, and their personal representatives, heirs, successors, and assigns.

8.13 Warranties and Representations. The County and War Memorial warrant and represent that:

- a. The County, War Memorial, and the Property will 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 might reasonably 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 District.

GRANT OF INTEREST TO DISTRICT

As County Executive of Milwaukee County, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this 10 day of NOVEMBER, 2021.

By: [Signature]  
David Crowley  
County Executive

By: [Signature]  
George L. Christenson  
County Clerk

11/10/21  
Date

County Corporation Counsel Approval and Authentication

David Farwell, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the County Executive and County Clerk and authenticates the signatures according to Wis. Stat. sec. 706.06 so this document may be recorded per Wis. Stat. sec. 706.05(2)(b).

Signature: [Signature]

Printed Name: David Farwell

Title: Assistant Corporation Counsel

State Bar Number: 1059474

Date: 11/12/2021

APPROVED AS TO FORM  
[Signature]  
CORPORATION COUNSEL.



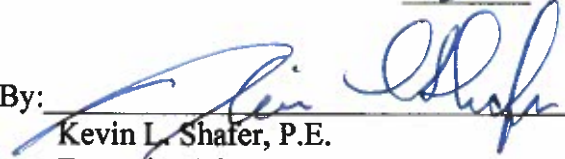
GRANT OF INTEREST TO DISTRICT

As President of Milwaukee County War Memorial Inc., I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this 17 day of November, 2021.

By:   
Dan Buttery  
President

ACCEPTANCE OF DISTRICT'S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term Conservation Easement on this 2nd day of December, 2021.

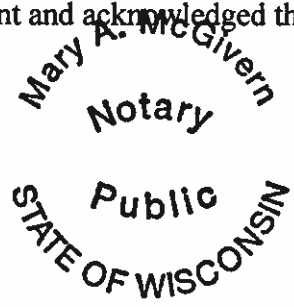
By:   
Kevin L. Shafer, P.E.  
Executive Director

STATE OF WISCONSIN

MILWAUKEE COUNTY

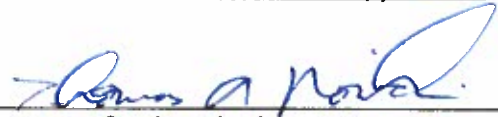
On this 2nd day of December, 2021, the person known as Kevin L. Shafer came before me and executed the foregoing instrument and acknowledged the same.

  
Signature of Notary Public



Notary Public, State of Wisconsin

My Commission expires 09-19-2022.

Approved as to Form:   
Attorney for the District

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

- ATTACHMENTS
- EXHIBIT A Description of the Property
  - EXHIBIT B Maps Showing the Location of the Property
  - EXHIBIT C Map Showing the Green Infrastructure Subject to this Easement

EXHIBIT A

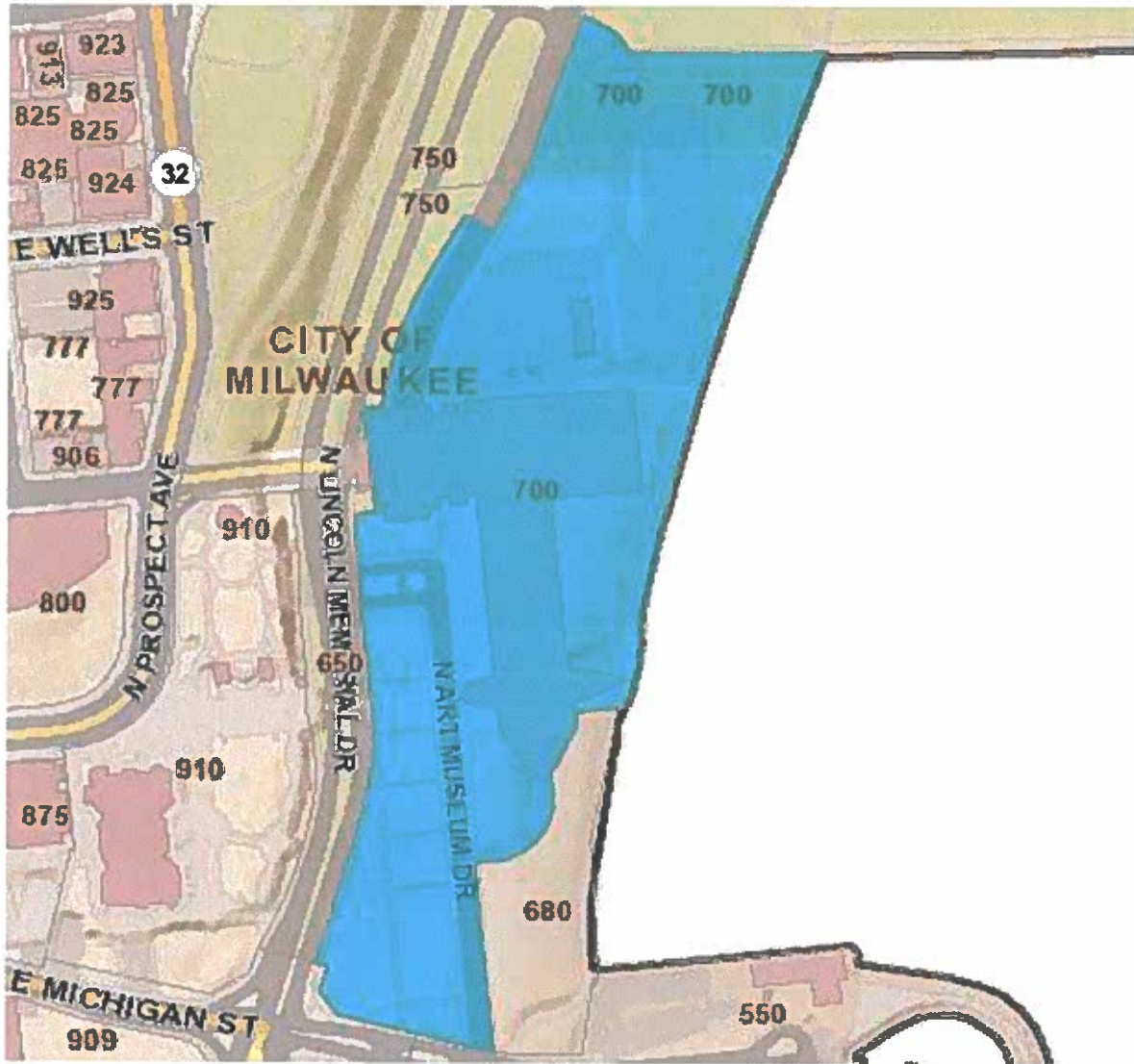
**DESCRIPTION OF THE PROPERTY**

**Address:** 700 North Art Museum Drive, Milwaukee, Wisconsin 53202  
**Tax Key:** 3940001000  
**Legal Description:** LAKEFRONT CULTURAL CENTER CONDOMINIUM IN E 1/2 & SW 1/4 SEC 28-7-22 UNIT 1 & UNDIV 33-1/3% INT IN COMMON ELEMENTS & FAC

**Address:** 700 North Art Museum Drive, Milwaukee, Wisconsin 53202  
**Tax Key:** 3940003000  
**Legal Description:** LAKEFRONT CULTURAL CENTER CONDOMINIUM IN E 1/2 & SW 1/4 SEC 28-7-22 UNIT 3 & UNDIV 33-1/3% INT IN COMMON ELEMENTS & FAC

**Address:** 750 North Lincoln Memorial Drive, Milwaukee, Wisconsin 53202  
**Tax Key:** 3949999111  
**Legal Description:** LANDS IN NE & NW 1/4 SEC 28-7-22 THAT PART (LANDS & BLKS 107-108, 143 IN PLAT OF LOT 1 & BLK 106 IN SUBD OF BLOCK 106 & LOT 5 BLK 108 IN PLAT OF MILW) IN SD 1/4 SECS & FILLED LANDS ADJ ON E IN SW 1/4 SEC 22 & NW 1/4 SEC 27 ALL LYING BETW S LI E MASON ST & EXT'D E LI N PROSPECT AV - (S LI E JUNEAU AV & N LI NE 1/4 SEC 28 & DOCK WALL MCKINLEY MARINA)-LAKE MICHIGAN-N LI E WELLS ST EXT'D W LI N LINCOLN MEMORIAL DR EXC THAT PART WHICH IS PART OF LAKEFRONT CULTURAL CENTER CONDOMINIUM

EXHIBIT B  
MAPS SHOWING THE LOCATION OF THE PROPERTY



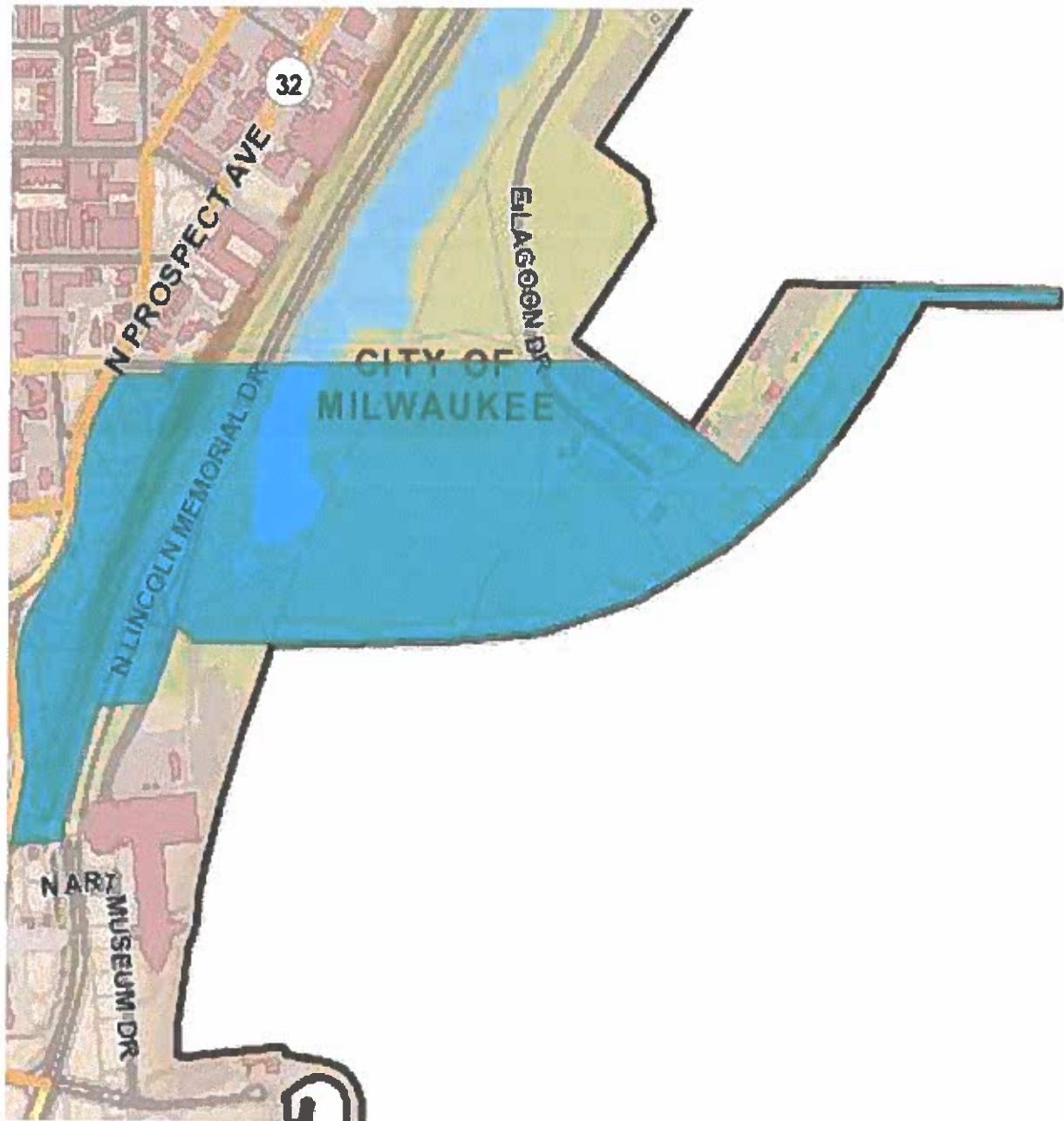


EXHIBIT C

MAP SHOWING THE GREEN INFRASTRUCTURE SUBJECT TO THIS EASEMENT

