

## EASEMENT AGREEMENT

DOCUMENT NO.

This Easement Agreement (“Easement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between Milwaukee County, a municipal corporation (“County”), and the City of Milwaukee, a municipal corporation, (“City”).

### RECITALS:

A. The County is the owner of approximately 2.635 acres of real property located in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described on **Exhibit A** attached hereto (“County Property”).

B. The County Property includes North Harbor Drive and East Clybourn Street and is former lakebed of Lake Michigan and is subject to the requirements and use restrictions of Lakebed Grants from the Wisconsin Legislature (Ch. 151 Laws of 1929, as amended by Ch. 516, Laws of 1929 and Ch. 76, Laws of 1973).

C. The City has historically maintained responsibility and control over the County Property, including, but not limited to, all costs and expenses related to the construction and maintenance of North Harbor Drive and East Clybourn Street.

D. The parties desire to establish this Easement to grant to City the rights that have historically been exercised and enjoyed by the City over the County Property, and to further accommodate the City in making roadway, recreational trail, landscape and public plaza improvements, among other things.

E. The parties hereto duly approved this Easement and entry into it by their respective authorized signatories.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

1. **Recitals.** The County and City acknowledge and agree that all of the Recitals are true and correct, and are hereby incorporated by this reference.

2. **Grant of Easement.** The County hereby grants to the City for its benefit and the benefit of the public, and the City hereby accepts, subject to federal, state, and local law, and the terms and conditions of this document, a permanent non-exclusive easement over and across the County Property as shown and legally described on **Exhibit A** so that the City can undertake

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Mary L. Schanning  
Milwaukee City Attorney’s Office  
200 E. Wells Street, Suite 800  
Milwaukee, WI 53202

Parcel Identification Number

roadway improvements and such other improvements as the City deems necessary to advance the Milwaukee Lakefront Gateway Project; the purpose of which is to improve public spaces at the downtown lakefront, and improve connections between the lakefront, downtown Milwaukee, and the Historic Third Ward. This Easement shall be recorded in the Milwaukee County Register of Deeds by the City at City's expense.

3. Construction, Repair, Maintenance.

(a) The City, in consideration of this Easement over and across the County Property, covenants and agrees with the County that City will construct and maintain the improvements in good order and condition.

(b) All construction, maintenance, repair and replacement of the improvements, roadway or otherwise, installed within the easement area shall be completed at no expense to the County.

(c) The City shall not suffer or permit any construction or mechanics' liens to be filed, or if filed, to remain uncontested, against the fee of the County Property, or against the City's interest in the County Property. If any such lien is filed, the City shall immediately cause the same to be discharged or released, or shall, upon request, provide adequate and acceptable security or bond to protect the County's interest.

(d) It is an express condition of the granting of this Easement that as much of the surface and subsurface of the soil and as much of the improvements as may be disturbed or damaged in the construction, maintenance, repair and replacement, use and operation of the purposes for which this Easement is granted will, at the expense of the City, be repaired or replaced to essentially the same condition or better as existed immediately prior to the occurrence of such damage.

4. Assignment. The City, at the discretion of its Commissioner of Public Works, may assign any or all of the County Property as deemed necessary or appropriate for public purposes. The City shall not assign this Easement nor sublet the County Property or any portion thereof, to any person, business entity, organization or municipality, without the County's prior written approval. As used in this paragraph, "prior written approval" shall be deemed satisfied by the written approval of the Director of Parks, Recreation and Culture or said Director's designee. Before an assignment or sublet shall become effective, the assignee or sublessee shall assume in writing all obligations of the City under the terms and conditions of this document.

5. Notices. Any notice required or desired to be given under this Easement shall be in writing, and personally delivered, sent by nationally recognized commercial overnight delivery service or through the United State Postal Service, or electronically transmitted via e-mail. Notices shall be sent as follows:

To the County:	John Dargle, Jr., Director Department of Parks, Recreation and Culture 9480 West Watertown Plank Road Milwaukee, WI 53226 <a href="mailto:john.dargle@milwaukeecountywi.gov">john.dargle@milwaukeecountywi.gov</a>
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With copy to: Paul Kuglitsch, Attorney  
Milwaukee County Office of Corporation Counsel  
901 North 9th Street, Room 303  
Milwaukee, WI 53233  
[paul.kuglitsch@milwaukeecountywi.gov](mailto:paul.kuglitsch@milwaukeecountywi.gov)

To City: Ghassan Korban, Commissioner  
City of Milwaukee Department of Public Works  
841 North Broadway, Room 501  
Milwaukee, WI 53202  
[gkorba@milwaukee.gov](mailto:gkorba@milwaukee.gov)

With a copy to: Mary L. Schanning, Attorney  
Milwaukee City Attorney's Office  
200 East Wells Street, Suite 800  
Milwaukee, WI 53202  
[mschan@milwaukee.gov](mailto:mschan@milwaukee.gov)

6. Indemnification. The Parties agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses (including reasonable attorney's fees) to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representatives of the indemnifying party which may arise out of or are connected with the activities under this Easement. Nothing in this Easement shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.

7. Use and Enjoyment of the County Property. Except as expressly provided herein, County shall continue to have full use and enjoyment of and access to the County Property and have the right to any use thereof which is not inconsistent with this Easement and the rights provided for herein.

8. Miscellaneous.

(a) No Joint Venture. Nothing in this Easement shall be construed to make the parties hereto partners or joint venturers, or to render any of said parties liable for the debts or obligations of the other.

(b) Headings. Section headings herein are for convenience and reference only and in no way define or limit the scope or content of this Easement or in any way affect its provisions.

(c) Waiver. No delay or omission by any party hereto to exercise any right or power occurring upon any non-compliance or failed performance by the other under the

provisions of this Easement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party of any of the covenants, conditions or agreements hereof to be performed by another, shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement contained herein.

(d) Governing Law and Interpretation. This Easement shall be governed and construed in accordance with the laws of the State of Wisconsin.

(e) Amendments to be in Writing. No amendment to this Easement shall be effective to add to, change, modify, waive or discharge this Easement in whole or in part, unless such amendment is in writing and signed by all parties bound hereby.

(f) Covenants Running With the Land. All of the easements, covenants and agreements set forth in this Easement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective successors and assigns.

(g) Partial Invalidity. If any provisions, or portions thereof, of this Easement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Easement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Easement shall be valid and enforceable to the fullest extent permitted by law.

(h) Conveyance. Upon the conveyance by any party of all or a portion of its interest in its respective parcel, the transferring party shall be relieved of any further liability under this Easement arising on and after the date of transfer and such transferee shall be deemed to have assumed all obligations of the transferor hereunder arising on and after the date of transfer.

(i) Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original.

[Signatures Begin on the Following Pages]

IN WITNESS WHEREOF, Milwaukee County, has signed and sealed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

MILWAUKEE COUNTY

By: \_\_\_\_\_  
Chris Abele, County Executive

Date: \_\_\_\_\_

By: \_\_\_\_\_  
George Christenson, County Clerk

Date: \_\_\_\_\_

County Corporation Counsel Approval and Authentication

Paul D. Kuglitsch, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee County representatives, and also authenticates the signatures of those County Representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05(2)(b).

By: \_\_\_\_\_  
Name: Paul D. Kuglitsch  
Title: Deputy Corporation Counsel  
State Bar No.: 1052345  
Date: \_\_\_\_\_

Approved for Execution by Milwaukee County Corporation Counsel

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

IN WITNESS WHEREOF, the City of Milwaukee has signed and sealed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF MILWAUKEE

\_\_\_\_\_  
Tom Barrett, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
James R. Owczarski, City Clerk

Date: \_\_\_\_\_

COUNTERSIGNED:

\_\_\_\_\_  
Martin Matson, Comptroller

Date: \_\_\_\_\_

Approved as to form and execution. Signatures of Tom Barrett, Mayor and James R. Owczarski, City Clerk and Martin Matson, Comptroller authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mary L. Schanning, Deputy City Attorney  
State Bar No. 1029016

1089-2013-782:236783

**Exhibit A**  
County Property Legal Description

THAT PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 28, TOWNSHIP 8 NORTH, RANGE 22 EAST, CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID SECTION; THENCE N01°02'02"W ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 2035.31 FEET TO THE POINT OF BEGINNING, SAID POINT BEING S01°02'02"E 601.56 FEET FROM THE CENTER OF SAID SECTION; THENCE N84°23'00"E 40.00 FEET; THENCE S23°36'31"W 271.79 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG THE ARC OF A CURVE, WHOSE CENTER LIES TO THE EAST, WHOSE RADIUS IS 1407.39 FEET, WHOSE CHORD BEARS S16°16'00"W 282.77 FEET, A DISTANCE OF 283.25 FEET TO A POINT OF TANGENCY; THENCE S10°30'04"W 598.07 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG THE ARC OF A CURVE, WHOSE CENTER LIES TO THE EAST, WHOSE RADIUS IS 2827.79 FEET, WHOSE CHORD BEARS S08°58'59.5"W 149.81 FEET, A DISTANCE OF 149.83 FEET TO A POINT OF TANGENCY; THENCE S07°27'55"W 182.61 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE, WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 286.11 FEET, WHOSE CHORD BEARS S20°54'59"W 131.28 FEET, A DISTANCE OF 132.46 FEET; THENCE N01°11'18"W 129.32 FEET; THENCE N07°27'55"E 182.45 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG THE ARC OF A CURVE, WHOSE CENTER LIES TO THE EAST, WHOSE RADIUS IS 2877.79 FEET, WHOSE CHORD BEARS N08°58'59.5"E 152.46 FEET, A DISTANCE OF 152.48 FEET TO A POINT OF TANGENCY; THENCE N10°30'04"E 550.89 FEET; THENCE N02°08'48"E 535.93 FEET; THENCE N84°23'00"E 186.82 FEET TO THE POINT OF BEGINNING.

CONTAINING 114,766 SQUARE FEET / 2.635 ACRES