



## COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

*Please complete a form for each new proposal review request.*

Work Proposal Name:

Date of Request:

Requesting Department:

Department Contact Name:

High Org:

Low Org:

Approval Signature of Department Head:

*Aaron Hertzberg*

### DESCRIPTION

Please provide a detailed description of the request:

How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?

How does this proposal align with the County's objectives on racial equity?

Please see the County's Vision/Mission/Values and strategic focus areas attached

Desired Timeline:

Begin Date:

End Date:

Duration:

Anticipated Funding Source (check all that apply and include amount allocated under each category):

Operating Budget:

Capital Budget:

Other (i.e. grants, donations, etc.; please describe):

Request Involves:

Parks Property

BHD Property

# The Basics



## Vision

By achieving  
racial equity, Milwaukee  
is the healthiest County  
in Wisconsin

## Mission

We enhance quality of life through great  
public service

## Values

Inclusion

Seek diverse  
perspectives

Influence

Use your power for  
good

Integrity

Do the right thing

# Strategic Focus Areas

## 1. Create Intentional Inclusion

1A: Reflect the full diversity of the County at every level of County government

1B: Create and nurture an inclusive culture across the County government

1C: Increase the number of County contracts awarded to minority and women-owned businesses

## 2. Bridge the Gap

2A: Determine what, where and how we deliver services based on the resolution of health disparities

2B: Break down silos across County government to maximize access to and quality of services offered

2C: Apply a racial equity lens to all decisions

## 3. Invest in Equity

3A: Invest “upstream” to address root causes of health disparities

3B: Enhance the County’s fiscal health and sustainability

3C: Dismantle barriers to diverse and inclusive communities





## COUNTY FACILITIES PLANNING WORK INITIATION REQUEST DETERMINATION

### CFPSC ACTION FOR CFPSC USE ONLY

CFPSC Project Tracking #:  
2021-016

**TYPE OF REQUEST** (Refer to paragraph 4.3 of the CFPSC charter for more details)

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> 1. Asset Management | <input type="checkbox"/> 2. Move Management         | <input type="checkbox"/> 3. Facility Improvements                                 |
| <input type="checkbox"/> 4. New Footprint               | <input type="checkbox"/> 5. Contractual Obligations | <input type="checkbox"/> 6. Centralized Facilities Management Process Improvement |

CFPSC Review Comments:

### FOR EASEMENTS ONLY

Reviewed & Recommended for Approval:

DAS — FM, AE&ES (Legal Description)

Director, DAS

Corporation Counsel

*Note:*

1. Easements affecting lands zoned "Parks" require County Board approval.
2. Forward a copy of the recorded easement to AE&ES.

### CFPSC RECOMMENDATION

The County Facilities Planning Steering Committee reviewed this proposal on . As evidenced by the authorized signature below, the County Facilities Planning Steering Committee approval of this proposal.

Chair or Vice-Chair:

Date:

*County Facilities Planning Steering Committee*

**AIR SPACE LEASE AGREEMENT**  
**FOR UNDER STRUCTURE LOCATED UNDER THE**  
**I-794 FREEWAY**  
**414 N BROADWAY ST (NORTH BROADWAY AND MILWAUKEE STREETS)**  
**BY AND AMONG THE WISCONSIN DEPARTMENT OF TRANSPORTATION,**  
**MILWAUKEE COUNTY AND**  
**(LEASEE) AFFILIATED ACQUISITIONS LLC**  
COMMENCING SEPTEMBER 1, 2021 AND ENDING AUGUST 31, 2026

This Air Space Lease Agreement provides for the use of certain highway rights-of-way under the I-794 freeway for public parking purposes in the area 414 N BROADWAY ST in the city of Milwaukee, Milwaukee County.

SECTION 1: Recitals

- 1.1 Purpose: Pursuant to this Air Space Lease Agreement, Affiliated Acquisitions, LLC., will be leasing 29 parking spaces under the elevated structure of I-794.
- 1.2 Activity: The proposed area for the parking lot is located between [STREET] MILWAUKEE and [STREET] N BROADWAY ST, encompassing Milwaukee County Tax Key #3920757-111.
- 1.3 Current Ownership: The subject portion of I-794 highway right-of-way is owned by the Wisconsin Department of Transportation ("WisDOT") by highway easement and is otherwise highway right-of-way under WisDOT's jurisdiction.
- 1.4 Pursuant to 23 USC s. 111, 23 USC s. 156, 23 CFR s. 710.405<sup>1</sup>, and Wis. Stat. s. 85.15, WisDOT, with approval of the Federal Highway Administration ("FHWA"), has the authority to make state trunk highway and Interstate rights-of-way available for non-highway uses by Air Space Lease Agreement.
- 1.5 The FHWA has reviewed this Agreement and the Federal Highway Administrator has indicated approval thereof indicating that the WisDOT and Milwaukee County are in compliance with the requirements of 23 U.S.C. 156, and 23 CFR 710.405.

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<sup>1</sup> SOURCE: 81 FR 57729, Aug. 23, 2016

- 1.6 The parties hereto agree that Sections 85.15 and 66.0301 of the Wisconsin Statutes, among others, authorizes this Agreement, along with the above mentioned federal statutes and regulations.

## SECTION 2: Basic Provisions

### 2.1 Lessee: **AFFILIATED ACQUISITIONS, LLC.**

**2.2 Lessor:** Milwaukee County and/or WisDOT [Depending on if the County owns the underlying fee and, if it is WisDOT, WisDOT still decides it still wants the County to participate]

2.2 Lessor hereby grants to the Lessee and the Lessee hereby receives from Lessor, for the term of this Air Space Lease Agreement described and expressly limited herein, in the area described in **Exhibit A – Legal Description** attached hereto, and incorporated herein by this reference, including all the lands and space extending downward from a line ten (10) feet below the underside of the freeway structures.

2.3 This Air Space Lease Agreement does not include subsurface land rights and WisDOT and the County reserve the right to use said land and the space above and below the area described in **Exhibit A – Legal Description** for any purpose not inconsistent with the Air Space Lease Agreement set forth herein. Moreover, it is expressly agreed by the parties hereto that WisDOT retains the right to perform construction, maintenance or repair of the Freeway as it deems necessary or appropriate in its sole discretion notwithstanding the entry into this Air Space Lease Agreement.

2.4 **Premises:** Means those certain lands within highway right-of-way under the I-794 freeway in the City of Milwaukee, Milwaukee County, as described and shown in the attached **Exhibit A – Legal Description** of Premises, which is made a part hereof by reference, as further described and limited by Sections 2.2 and 2.3 above.

2.5 **Term:** The term of this Air Space Lease Agreement shall be for a period of five (5) years commencing on the date agreed upon in section 2.6 hereof. If the Lessee holds over, the holdover shall be regarded as creating a month-to-month permissive use. However, Lessor reserves the right at that time to renegotiate the terms, covenants and conditions contained in this Air Space Lease Agreement. If Lessor initiates renegotiation of the terms, covenants and conditions hereof, the present terms shall continue for no more than twelve (9) additional months before Lessee will be required to vacate the premises if no new lease is agreed to. It is expressly understood that no property right of any kind shall accrue to the Lessee under this Air Space Lease Agreement.

2.6 **Commencement Date: SEPTEMBER 1, 2021**

2.7 Rental Fee: \$3,161.00 monthly rental fee. The amount of rent due from Lessee is subject to audit as set forth in Paragraphs 6.13 and 6.14.1 through 6.14.3.

Rent payments shall be mailed to County's lockbox at U.S. Bank:

Milwaukee County  
Department of Administrative Services  
Economic Development Division  
PO Box 78122  
Milwaukee, WI 53278-0122

2.8 Notices:

2.8.1 For emergency contacts and for notices regarding maintenance activities and other day-to-day operations, Lessee shall provide to the County and WisDOT current contact information for responsible individuals to receive notices from the County and/or WisDOT should any of the individuals listed for the Lessee in paragraph 2.8.2 change.

2.8.2 Notices regarding this Air Space Lease Agreement shall be addressed to:

WisDOT/Highway Real Estate Manager  
WisDOT Real Estate Specialist Sr  
P.O. Box 798, 141 NW Barstow St.  
Waukesha, WI 53187-0798

Phone: 262-548-6729

Milwaukee County Associate  
Project Manager / Lease Manager  
633 West Wisconsin Ave. Suite 903  
Milwaukee, Wisconsin, 53203  
Phone: 414-278-4876

Affiliated Acquisitions, LLC  
Dave Schwonek  
400 North Broadway Street, Suite 400  
Milwaukee, WI 53202  
414-279-4471 Ext 14

The parties hereto agree that each will inform the other two parties hereto in writing within fifteen (15) business days of any changes in the name, address or phone number of their respective departments to receive notices under this Air Space Lease Agreement. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

## **2.9 Definitions:**

The following terms have the meanings indicated as used in this Air Space Lease Agreement:

- 2.9.1 "Agencies" mean WisDOT and FHWA, individually or collectively as context demands.
- 2.9.2 "Agreement" means this Air Space Lease Agreement.
- 2.9.3 "Commencement Date" means the date identified in Subsection 2.6, above.
- 2.9.4 "County" means Milwaukee County.
- 2.9.5 "Hazardous Material" means any material, substance, odor, heat, sound, vibration, or radiation, or any combination of any of them, that is regulated by environmental laws or that is described under any environmental law as "deleterious," "toxic," "hazardous," or as a "pollutant," and any analogous substance (including anything that is subsequently found to have adverse effects on the environment or the health and safety of individuals).
- 2.9.6 "FHWA" means the Federal Highway Administration of the United States Department of Transportation, or its successor.
- 2.9.7 "Freeway" means the elevated roadway structures, and all related appurtenances, as they exist today or as may be installed or modified, currently designated Interstate Highway 794 ("I-794"), spanning between 414 NORTH BROADWAY.
- 2.9.8 "Lessee" means the entity identified in Subsection 2.1, above.
- 2.9.9 "Property" means the lands and air space described throughout this document, subject to the limitations contained therein.
- 2.9.10 "Premises" means the site described in Subsection 2.4, above.
- 2.9.11 "Premises Contractors" means Lessee's agents, contractors, subcontractors and any other entity or individual working on behalf of or upon the invitation of the Lessee on the Premises.
- 2.9.12 "Improvements" means any above ground conduit, water lines, paving, wheel stops, protection devices, landscaping, fencing, walks, gates, and such other facilities and components as may be required to control, supervise, operate or enhance the Premises pursuant to this Agreement.
- 2.9.13 "WisDOT" means the State of Wisconsin Department of Transportation.



## SECTION 3: Terms of Use

### 3.1 Restrictions and Controls on Use

- 3.1.1 The Lessee shall not, during the term of this Agreement, lease, sublease, assign, transfer, convey, or encumber in any manner any of the permissive use granted herein from WisDOT in the Premises.
- 3.1.2 The Lessee shall not, in any manner during the term of this Agreement construct any improvements within the Premises without written approval of the County which shall occur only after approval of WisDOT subject to the concurrence by the FHWA. Any improvements constructed within the Premises by the Lessee shall be considered personal property.
- 3.1.3 The Lessee shall not store materials or supplies of any nature (other than concrete barriers), on the Premises or underneath the I-794 freeway structure or on the subject Property, which are deemed by WisDOT and/or the County to be a potential fire or other hazard to the Freeway, nor will the use of such substances be permitted.
- 3.1.4 The operation and maintenance of the Premises will be subject to reasonable regulation by WisDOT and the County to protect against fire or other hazards of any nature impairing the use, safety, or appearance of the Freeway.
- 3.1.5 The Lessee shall not allow any smoke, fumes, steam, vapors, or odors to rise above the grade line of the freeway.
- 3.1.6 No use will be made of the space within ten (10) feet of any pier or column, and said items will be protected by Lessee, at no expense to the County or WisDOT, with protective devices suitable to and approved by WisDOT and County.
- 3.1.7 Except for short term parking as contemplated by this Agreement, no vehicles other than those actively engaged in the improvement, maintenance, inspection and repair of the Premises will be allowed on the Premises or any property adjacent thereto which is part of the I-794 Freeway system.
- 3.1.8 Advertising signs, displays, lighting, control and directional lights or devices will be subject to approval of WisDOT and the County, and shall in all respects conform to Federal, State, and local requirements. Further, WisDOT and the County reserve the right to restrict the number, size, location and design of such items. No signs, posters, electrical wiring, conduit, lights or controls, or any devices or structures whatsoever will be affixed or attached to the columns or underside of the freeway structure, unless approved in writing by WisDOT.

- 3.1.9 The property shall be used exclusively for the parking of operable passenger vehicles (including vans, and light trucks). At no time shall semi-trucks or trailers be parked thereon. Any change in the authorized use of the Premises shall require prior written approval by the County and WisDOT, as well as concurrence from FHWA. Except for proprietary parking operations, commercial and retail uses of any kind, and servicing of motor vehicles, is prohibited.
- 3.1.10 In the event that the NTAS shall rise to the imminent level the Lessee shall place substantial physical barriers to close all entrances and exits to the property. Barricading shall be in place within two hours of notification. Absolutely no vehicles shall be allowed to park on the property during this level.
- 3.1.11 At no time shall any vehicle be used as living and/or sleeping quarters while parked on the Premises.
- 3.1.12 No improvements shall be permitted under the freeway structure unless the vertical clearance between the improvements and the bottom of the bridge structure is 15 feet or more.
- 3.1.13 Lessee will preserve access for disabled veterans and/or other disabled persons as required by Wisconsin Statutes, and the Americans with Disabilities Act of 1990, as applicable.
- 3.2 WisDOT, FHWA, and County shall have the right to enter the premises during the term of this Agreement for purposes of inspection, construction, maintenance or repair, including, without limitation, inspection, construction, maintenance or repair of any portion of the I-794 freeway, and all other matters reasonably related to the terms of this Agreement.
- 3.3 Except as expressly authorized in writing by WisDOT, the Lessee shall at no time encroach within ten (10) feet of any structural elements of the Freeway, including, without limitation, bridge foundations, piers, girders and/or decking.
- 3.4 The Lessee shall be responsible for protecting the Premises during all Freeway construction projects, during maintenance or repair of any part of the Freeway, and during snow removal activities.
- 3.5 The Lessee shall be responsible for the security of the Premises for the purposes of protecting its own property and compliance with all applicable WisDOT and federal requirements.
- 3.6 Maintenance:
- 3.6.1 Except for State of Wisconsin Freeway improvements, the Lessee shall at all times keep or cause to be kept in good repair any improvements constructed

on the property, including removal of graffiti. Whenever, in the judgement of the County or WisDOT, such repairs have not been made and it is necessary to effect the same, the County shall notify the Lessee in writing, setting forth the nature of the repairs that are required. If the repairs so set forth are of an emergency nature, the Lessee shall immediately undertake to make such repairs and complete the same in a time and manner satisfactory to the County and WisDOT. In non-emergency cases, the Lessee shall, within thirty (30) days of receipt of the notice from the County, take the remedial action required. If a condition potentially threatening damage to the Premises, the Freeway or surrounding property, and/or to the health or safety of anyone arises which, in the sole judgment of the County or WisDOT is unreasonable or dangerous to the Premises or the public, then the County or WisDOT shall, without the consent of the Lessee, have the right to enter in and upon the Premises and, at the Lessee's expense, make such repairs or take such actions as it deems necessary. All expenses and costs of making such repairs/actions shall constitute charges due to the County or WisDOT from the Lessee which shall be paid by Lessee immediately upon demand.

3.6.2 The Lessee shall at no expense to the County or WisDOT keep and maintain the property free from rubbish, paper, cans, trash and debris, and hazardous and/or flammable materials of every description and at all times in an orderly, clean, safe and sanitary condition. A high standard of cleanliness, aesthetic and pleasing appearance consistent with the location, and as an adjunct of the Freeway System, is required. The Lessee shall, at its own expense, mow and maintain grassed and landscaped areas, including in and outside the fence abutting street right-of-way and during the winter months the Lessee shall at its own expense remove the snow and ice from property walkways and abutting sidewalks.

### 3.7 Changes:

It is expressly provided and agreed by the parties hereto that should WisDOT determine it is necessary to construct additional Freeway improvements, remove any existing Freeway improvements, reconstruct or extensively modify existing Freeway improvements, or require any portion of the Premises for transportation and/or public use, WisDOT may partially, or if necessary, completely terminate this Agreement, without recourse to WisDOT or the County upon 90 days' written notice to the Lessee. In the event of such modification or termination, the provisions of Section 3.8 herein shall apply, unless otherwise modified in writing by the parties.

3.8 Upon expiration of the term of this Agreement, or prior termination either by mutual agreement or pursuant to the provisions hereof, all improvements on the Premises made by the Lessee will become the property of WisDOT, subject to the right of

WisDOT to require the Lessee to remove part or all such physical improvements at no cost to WisDOT or the County.

3.9 The Lessee shall not, and none of its agents, suppliers, shippers, customers, and invitees shall bring any Hazardous Material on to the Premises, nor permit any Hazardous Material to exist or remain at or upon, or stored, or disposed of, or used, at the Premises in breach of any applicable laws or in a manner that would result in any liability under applicable laws. The Lessee shall be the responsible party and be solely liable and responsible for all costs for the cleanup and/or removal of contamination that results from the use or spillage of a Hazardous Material on the Premises by the Lessee, its agents, suppliers, shippers, customers and invitees.

3.10 Agency Entry:

3.10.1 Emergency entry. In an emergency that threatens or appears to threaten substantial and immediate damage to persons or property, including, without limitation, the Freeway or any part of the Premises, as reasonably determined by the County or WisDOT, all authorized government officials, including without limitation the County and WisDOT by their officers, employees, agents and contractors, shall have the right to access the Premises. No notice of entry in such circumstance shall be required.

3.10.2 Entry for maintenance and inspection purposes:

3.10.2.1 The County and the Agencies by their officers, employees, agents, and/or contractors shall have the right to access the Premises to perform inspections to evaluate the Lessee's compliance with the Air Space Lease Agreement. Further, the Agencies by their officers, employees, agents, and/or contractors shall have the right to access the Premises to perform routine highway maintenance and inspection activities on all parts of the Freeway above, adjacent to, or that may be considered a part of, the Premises, including, without limitation, below the surface of the Premises.

3.10.2.2 The Lessee shall conduct its operations as necessary to accommodate the maintenance and inspection of the Freeway. Inspection and maintenance personnel shall take reasonable actions to minimize disruptions to the Lessee and the Premises where feasible. Without limiting the Agencies' ability to require the Lessee to temporarily suspend certain operations as may be necessary for maintenance or inspection activities, maintenance and inspection personnel shall make reasonable efforts to provide

the Lessee advanced written notice and to cooperatively schedule maintenance and inspection activities.

#### 3.10.3 Entry for highway improvement projects.

The Agencies by their officers, employees, agents, and contractors shall have the right to enter the Premises with reasonable advanced written notice for the purpose of planning, designing, and/or constructing highway improvement projects. Highway improvement projects may require periods of extended shutdown of the Premises provided however that except in the case of an emergency, WisDOT shall provide the Lessee at least ninety (90) days prior written notice thereof. Alternatively, WisDOT at its sole discretion may terminate this Air Space Lease Agreement under Section 5, below.

### SECTION 4: Insurance and Liability.

4.1 The Lessee shall be solely responsible for all costs actually incurred by WisDOT, its agents, consultants, and contractors to repair any damage or detrimental impact to the Freeway, including, without limitation, overhead bridges and all related structures, caused by the Lessee or by any activities or events reasonably within the Lessee's control.

#### 4.2 Indemnification:

4.2.1 The Lessee shall pay, indemnify, and save harmless, WisDOT, the FHWA and the County, and their respective agents and employees, from all actions, claims, demands, damages, losses, and other reasonable expenses and costs of every kind and description by reason of injury (including death) to persons or damage to property resulting from or growing out of any act of commission or omission by the Lessee, its agents, its employees or its contractors or subcontractors in connection with (1) any building, construction, reconstruction, installation, development or removal work, service or operation being undertaken or performed by or for the Lessee in, on, or over the Premises, or (2) any use, occupancy or operation of the Premises; whether such suits, actions, claims, demands, damage, losses, expenses and costs be against, suffered or sustained by WisDOT, the FHWA, the County, or any of their respective agents or employees.

4.2.2 Except to the extent due to the negligence of WisDOT or the County, the Lessee assumes liability for bodily injury and property damage resulting from falling objects, snow, ice, or salt from elevated Freeway structures, which may or may not result from snow removal or ice control activities.

4.3 Any and all property of the Lessee which at any time may be located on the Premises shall be so located at the risk of the Lessee.

4.4 Mandatory Minimum Insurance Requirements:

4.4.1 The Lessee shall at its sole expense maintain the following minimum insurance requirements. Insurance may be obtained through any combination of primary and excess or umbrella liability insurance to meet these requirements. WisDOT and the Lessee may agree to reasonably adjust insurance coverage requirements from time to time during the Term of this Air Space Lease Agreement. Such adjustments shall be agreed to in writing by WisDOT, the County and the Lessee, with the approval of the FHWA. In no way do these minimum insurance requirements limit the Lessee's liability assumed elsewhere under this Air Space Lease Agreement.

4.4.2 The Lessee, its agents, or contractors shall maintain in full force and effect such commercial general liability, auto liability, employer's liability, workers' compensation, and a dishonesty bond covering its liability under Section 4.4 of this Agreement and protecting WisDOT, the County, and their agents, officers and employees, from any and all claims for personal injuries or death or property damage which may arise out of or in connection with the use and occupancy of the Premises, or of any improvements or installations, in or upon the same, or the performance of any work or operations by the Lessee or its contractors or subcontractors, or anyone directly or indirectly employed by any of them, or which may be occasioned by reason of use of the Premises and improvements during construction or thereafter. Further, the Lessee shall provide evidence of the following coverages and minimum amounts:

4.4.2.1 Commercial General Liability Insurance including contractual coverage.

The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$5,000,000
General Aggregate Limit	\$5,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000

#### 4.4.2.2 Business Automobile Liability Insurance.

Should the performance of this Agreement involve the use of automobiles, the Lessee shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. The Lessee shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

#### 4.4.2.3 Workers' Compensation Insurance.

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

#### 4.4.2.4 Employers Liability Insurance.

Such insurance shall provide limits of not less than \$500,000 policy limit.

#### 4.4.2.5 Excess/Umbrella Liability Insurance.

Such insurance shall provide additional limits of not less than \$5,000,000 per occurrence in excess of the limits stated in Paragraphs 4.4.2.1, 4.4.2.2, and 4.4.2.4 above.

#### 4.4.2.6 Dishonesty Bond to include third parties of \$100,000 per aggregate.

#### 4.4.2.7 Additional Requirements:

4.4.2.7.1 The Lessee shall require the same minimum insurance requirements, as listed above, be provided by all its contractors, and subcontractors, and those contractors, and subcontractors shall also comply with the additional requirements listed below.

4.4.2.7.2 The insurance specified in (4.4.2.1), (4.4.2.2), (4.4.2.5) and (4.4.2.6) above shall:

4.4.2.7.2.1 Name the County and WisDOT including their directors, officers, employees and agents as additional insureds by endorsement to the policies; and

4.4.2.7.2.2 Provide that such insurance is primary coverage with respect to all insureds and additional insureds.

4.4.2.8 The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. WisDOT and/or the County may require higher limits or other types of insurance coverage(s) as necessary and appropriate.

4.4.2.9 Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against WisDOT and the County, as well as their agents, servants, invitees, employees, contractors, subcontractors and their insurers.

4.4.2.10 The Lessee shall provide certificates and endorsements evidencing the coverages, limits and provisions specified above on or before the execution of this Agreement and thereafter upon the renewal of any of the policies. The Lessee shall require all insurers to provide the County and WisDOT with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. All required certificates, endorsements and notices shall be provided and addressed to WisDOT and the County at the respective addresses listed below. Coverage must be placed with carriers with an A. M. Best rating of A-10 or better. Any lapse in coverage shall constitute a material breach of this Air Space Lease Agreement.

4.4.3 Mail to the following parties:

Wisconsin Department of Transportation, Risk Management  
4822 Madison Yards Way, 8th Floor, South Tower  
Madison, WI 53705

Milwaukee County, Risk Management  
633 West Wisconsin Avenue, Suite 750  
Milwaukee, WI 53203



## SECTION 5: Renewal, Breach, and Termination:

5.1 Renewal. Unless otherwise terminated under the provisions of this Air Space Lease Agreement, it is the intent of the parties hereto that this Air Space Lease Agreement shall terminate at 11:59 PM on AUGUST 31, 2026.

### 5.2 Default in Rent

5.2.1 Subject to subsection 5.2.2 below, a failure of the Lessee to pay any monthly rental on or before the due date shall constitute a default.

5.2.2 Lessor shall give Lessee written notice of the failure to pay the monthly rental, and the Lessee shall have ten (10) days in which to pay the rent due. At any time after the lapse of the 10-day cure period, if Lessee has not cured its default, the County may at its option terminate this Agreement. In the event of termination, this Agreement shall expire as fully and completely as if that date were the date herein expressly fixed for the expiration of the term; and the Lessee shall thereupon quit and surrender to the County and WisDOT the property and any improvements.

5.3 Breach. Unless a breach creates an emergency situation that threatens or appears to threaten substantial and immediate damage or injury to persons or property, in which case such breach shall be cured immediately, the Lessee shall have thirty (30) days, subject to force majeure, to cure any breach of this Air Space Lease Agreement.

5.4 Termination. This Air Space Lease Agreement may be terminated according to the following provisions:

#### 5.4.1 No additional provisions included

This Air Space Lease Agreement may be terminated by Lessee upon written notice of not less than six (6) months due to the following occurrences that would prohibit the use of the Premises as a commercial public pay parking operation:

If any law, or amendment of an existing law, comes into force, whether federal, state or local; or

If any restrictive condition, such as gasoline shortages or rationing, parking reduction regulations, or the inability to obtain or renew necessary permits, occurs over which Lessee has no reasonable control.

5.4.2 The County or WisDOT may terminate this Air Space Lease Agreement for the Lessee's failure to cure a breach.

- 5.4.3 The County or WisDOT may terminate this Air Space Lease Agreement in the event the Lessee ceases to use or abandons the Premises for a continuous period of at least two (2) months.
- 5.4.4 The County or WisDOT may terminate this Air Space Lease Agreement if necessary to plan, design, or construct a highway improvement project, including, without limitation, the repair, reconfiguration and/or reconstruction of I-794; as required by any other applicable state or federal law; or for convenience upon finding such termination is in the public interest, (in all events in accordance with applicable law) upon sixty (60) days prior written notice to the Lessee.
- 5.5 Upon termination of this Air Space Lease Agreement, the Lessee shall at its own cost remove all of its property, real or personal, placed on the Premises within ninety (90) days and restore the Premises to its pre-existing condition. Any such property that is not timely removed or areas not timely restored by the Lessee may be addressed by the County. The Lessee expressly authorizes the County to recoup any costs incurred in removing the Lessee's property and restoring the Premises to pre-existing conditions through tax collections and/or to set off its costs against any amounts otherwise owing or payable, or that may become owing or payable to the Lessee by either the County, the State of Wisconsin, WisDOT, or any combination of those 3 entities.
- 5.6 The Lessee hereby acknowledges, understands and agrees that upon termination of this Air Space Lease Agreement for any reason, the Lessee shall not qualify for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, nor for any other similar benefits under state law, including without limitation benefits under Chapter 32, Wisconsin Statutes, and Ch. ADM 92, Wisconsin Administrative Code.

## SECTION 6: Miscellaneous Provisions

- 6.1 As a condition of this Air Space Lease Agreement, the Lessee shall comply with all applicable state and federal laws, rules, and guidance, and all conditions required by any state or federal agency for approval of the construction, maintenance, funding, or financing of any Permitted Improvements. Issuance of this Air Space Lease Agreement shall not be construed as a waiver of the Lessee's obligation to comply with all codes, ordinances, or regulations applicable to its use of the Premises. This Air Space Lease Agreement does not obviate any other government-required Right of Way Use Agreement, including any other Right of Way Use Agreement required or entered into by WisDOT.
- 6.2 Lessee shall pay all fees, taxes and charges under Federal, State and Local laws or ordinances in so far as they are applicable, including real estate taxes, if any.

6.3 This Air Space Lease Agreement does not convey or transfer any ownership or rights of ownership in highway rights-of-way to the Lessee. WisDOT retains its authority regarding the sale or disposal of highway rights-of-way or any portions thereof. WisDOT retains the authority for the issuance of subsequent permits to allow a public or privately-owned utility the right to construct, operate, and maintain a utility facility over, across, upon, and within the Premises. However, in issuing such subsequent permits, WisDOT shall first consult with the Lessee and exercise its best efforts to avoid interference with the Lessee's use of the Premises under this Air Space Lease Agreement. This Air Space Lease Agreement is subject to any existing utility, signage or other permits.

6.4 This Air Space Lease Agreement is personal to and binding on Lessee. It does not run with the land and cannot be transferred or assigned by Lessee.

#### 6.5 Nondiscrimination

6.5.1 The Lessee, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any way related to the Lessee's use of the Premises; (2) in the construction of any improvements on, or over the Premises, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) the Lessee will use the Premises in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, and their implementing regulations, as those Acts and regulations may from time to time be amended.

6.5.2 Regarding the uses contemplated by this Air Space Lease Agreement, the Lessee agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

6.6 This Air Space Lease Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Wisconsin.

- 6.7 This Air Space Lease Agreement and its attachments contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.
- 6.8 The invalidity or unenforceability of any provisions of this Air Space Lease Agreement shall not affect the validity or enforceability of any other provision of this Air Space Lease Agreement, which shall remain in full force and effect.
- 6.9 Any transfer by the Lessee of ownership or control of the property constructed, placed or operated by or on behalf of the Lessee under the terms of this Air Space Lease Agreement shall not release the Lessee from any of the indemnification or insurance requirements of this Air Space Lease Agreement. Since this lease is personal to Lessee, the right to transfer this Lease is subject to written approval by the County, WisDOT and FHWA. If approved by the County, WisDOT and FHWA, acceptance by any other person or entity of ownership or control of said property constructed, placed or operated by or on behalf of the Lessee shall include acceptance of all the indemnification and insurance requirements of this Air Space Lease Agreement by the other person or entity receiving ownership or control.
- 6.10 This Air Space Lease Agreement may be amended only in writing, as executed by the parties hereto, with approval of the FHWA.
- 6.11 No person may offer or give to any County elected official or employee, directly or indirectly, and no County elected official or employee may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This Section does not prohibit an elected official or employee from engaging in outside employment.
- 6.12 Each person signing this Air Space Lease Agreement warrants that he/she is duly authorized to execute this document and to bind their respective State Agency, business entity and County Government to the terms of this Air Space Lease Agreement.
- 6.13 Audit.
- 6.13.1 Pursuant to Milwaukee County ordinance section 56.30(6)(e), Lessee shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Lessee, including but not limited to, handwritten, typed or

printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to the County. The Lessee shall maintain and make available to the County the aforementioned audit information for no less than three (3) years after the conclusion of this Agreement.

6.13.2 LESSEE, its officers, directors, agents, partners and employees shall allow COUNTY's Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of LESSEE related to the terms and performance of this AGREEMENT for a period of up to three years following the date of last payment, the end date of this AGREEMENT, or activity under this AGREEMENT, whichever is later. Any subcontractors or other parties performing work on this AGREEMENT will be bound by the same terms and responsibilities as LESSEE. All subcontracts or other agreements for work performed on this AGREEMENT will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. LESSEE, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

#### 6.14 Delinquent Payments:

6.14.1 Interest. Unless waived by the County Board of Supervisors and WisDOT, Lessee shall be responsible for payment of interest on amounts not remitted in accordance with the terms of this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (presently 1% per month or fraction of a month) as described in Subsection 74.47(1). Wis. Stats. The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

6.14.2 Penalty. In addition to the interest described above, Lessee may be responsible for payment of penalty on amounts not remitted in accordance with the terms of this Agreement, as may be determined by the Lessor. Said penalty shall be the statutory rate in effect for delinquent County property taxes (presently .5% per month, or fraction of a month) as described in the County Ordinance Subsection 6.06(1) and Subsection 74.47(2). Wis. Stats. The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

6.14.3 Audit Results. If, as a result of any audit carried out by the County as permitted herein, additional amounts are disclosed to be due and owing to County, interest and penalty shall be calculated thereon in accordance with the above method. Lessee shall remit to County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by County.

6.14.4 Nonexclusivity. This provision permitting collection of interest and penalty by County on delinquent payments is not to be considered the County's and/or WisDOT's exclusive remedy for Lessee's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by County or WisDOT of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

6.15: Public Records. The parties understand that the STATE and COUNTY are bound by the public records law, and as such, all of the terms of this agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. LESSEE hereby agrees that it shall be obligated to assist the STATE and COUNTY, as applicable, in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the contractor shall then and in such event be obligated to indemnify, defend and hold the STATE and COUNTY, harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the STATE and COUNTY, as applicable, in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this AGREEMENT.

The said parties have hereunto set their hands and seals.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

State of Wisconsin

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by [NAME]  
\_\_\_\_\_ as a [TITLE] \_\_\_\_\_ of the Wisconsin Department of  
Transportation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[LESSEE] \_\_\_\_\_

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

[NAME] \_\_\_\_\_

[TITLE] \_\_\_\_\_

State of Wisconsin

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by [NAME]  
\_\_\_\_\_ as the [TITLE] \_\_\_\_\_ of [LESSEE] \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

MILWAUKEE COUNTY

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

[NAME] \_\_\_\_\_

[TITLE] \_\_\_\_\_

State of Wisconsin

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by [NAME]  
\_\_\_\_\_ as the [TITLE] \_\_\_\_\_ of Milwaukee County.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



Approved by FHWA by \_\_\_\_\_ Date: \_\_\_\_\_  
[NAME] \_\_\_\_\_  
[TITLE] \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by [NAME]  
\_\_\_\_\_ as the [TITLE] \_\_\_\_\_ of the Federal Highway  
Administration.

\_\_\_\_\_  
Notary Public

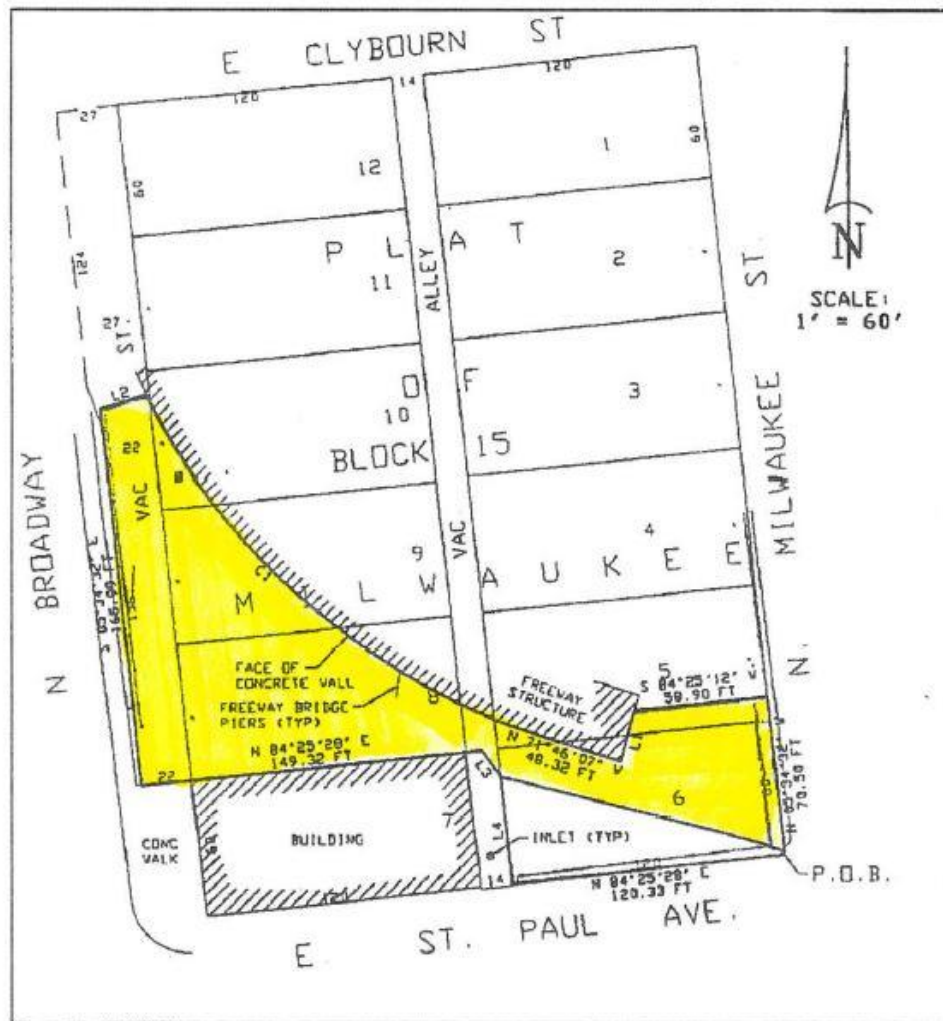
My commission expires: \_\_\_\_\_

Exhibit A  
**LEGAL DESCRIPTION**

# Exhibit A

## Legal Description of the Subject

A legal description of the subject was not available. The subject is a portion of tax key number 392-0757-111. The subject property is identified by the provided exhibit below that outlines the subject site. It is interpreted by the appraisers and should not to be used for legal purposes.



Other Exhibits:

# Milwaukee County Land Information Parcel Report

**TAXKEY: 3920757111**

Report generated 6/23/2021 8:22:20 AM



Parcel location within Milwaukee County



Selected parcel highlighted

## Parcel Information

**TAXKEY:** 3920757111

**Record Date:**

**Owner(s):** MILWAUKEE COUNTY ACTIVE  
FREWY/HWY LANDS

**Address:** 319 E CLYBOURN ST

**Municipality:** Milwaukee

**Acres:** 0.00

**Parcel Description:** COUNTY

**Zoning Description:** Mixed Use

**Legal Description:** PLAT OF MILWAUKEE IN SECS (28-29-33)-7-22 BLOCK 15 LOTS 1 THRU 5 & NELY PT OF LOT 6 & LOTS 8 THRU 12 & PART VAC ALLEY & N BROADWAY ADJ BID #02

**School District:** MILWAUKEE SCHOOL DISTRICT

**Assessed Value:** \$0

**Land Value:** \$0

**Improvement Value:** \$0