

## EXHIBIT - EASEMENT

This Ingress and Egress Easement Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Madison Metropolitan Sewerage District**, a Wisconsin sewerage district (“Grantor”), and the **City of Madison**, a Wisconsin municipal corporation (“City”, and together with Grantor, the “Parties”).

### WITNESSETH:

WHEREAS, the Grantor is the owner of the real property, located in the City of Madison, Dane County, Wisconsin, legally described on attached Exhibit A (“Grantor’s Property”); and

WHEREAS, the City is the owner of the real property legally described on attached Exhibit B (“City’s Property”), which is the anticipated future site of the Madison Public Market (“Market”); and

WHEREAS, the City’s Property and Grantor’s Property are contiguous parcels, and due to design constraints on the City’s Property, the City desires to use a portion of the Grantor’s Property for ingress and egress drive purposes, as legally described on attached Exhibit C and depicted on attached Exhibit D (“Easement Area”).

NOW, THEREFORE, the Grantor hereby grants, by virtue of this Agreement, to and for the benefit of the City, an ingress and egress easement pursuant to and in accordance with the following terms and conditions:

1. Grant of Ingress and Egress Easement. The Grantor hereby grants to the City, and the City hereby accepts from the Grantor, a permanent easement for ingress and egress purposes upon, over, and across the Easement Area as provided for in this Agreement.
2. Use of Easement Area.
  - a. The City, its employees, agents, tenants, subtenants, guests, contractors, and the general public shall have the right to use the Easement Area for the ingress and egress of motor vehicles, pedestrians, bicycles, delivery vehicles, and construction equipment between N. First Street and the City’s Property.
  - b. The City, its employees, agents, and contractors, shall have the right to use the Easement Area for the purpose of the installation, construction, operation, repair and maintenance and/or modification of a driveway for ingress and egress purposes (“Access Drive”) within the Easement Area.

Return To: City of Madison  
Economic Development Division  
Office of Real Estate Services  
P.O. Box 2983  
Madison, WI 53701-2983

Tax Parcel Nos.: 251/0710-063-1508-2  
251/0710-063-1507-4

- c. In addition to the right of ingress and egress as stated in Subsection 2.a., the City shall have the right to use the Easement Area for the short-term parking of construction vehicles during the initial construction of, or during performance of repairs to or maintenance of, the Market and/or the Access Drive. However, the City's use of the Easement Area as allowed by this Subsection 2.c. shall not unreasonably interfere with Grantor's use of Grantor's Property.

### 3. Reservation of Use by Grantor.

- a. The Grantor reserves the right of reasonable use and occupation of the Easement Area, including vehicular travel within and across the Easement Area, provided that such use and occupancy shall not unnecessarily interfere with or unreasonably disturb the installation, operation, maintenance, repair, replacement and/or modification of the Access Drive, or the City's rights granted by this Agreement. The City grants to the Grantor the right of vehicular travel: over Parcel B of the City's Property and across the Access Drive when installed and constructed by the City; and over and across the portion of the City's Property improved with surface parking, lanes, and driveway facilities.
- b. The Grantor reserves the right to add, relocate, access, maintain, repair, replace remove and/or reinstall sanitary sewer facilities in, under, on and through the Easement Area.
- c. The Grantor shall use its reasonable efforts to see that any work performed by the Grantor within the Easement Area is done in a manner that does not unreasonably interfere with the Access Drive and the City's rights under this Agreement.
- d. The City waives any claim due to loss of access. The City shall waive damages resulting from loss of access, which may occur during periods of construction or maintenance in the Easement Area by the City or the Grantor.

### 4. Limitations of Easement.

- a. The Grantor shall not erect or permit to be erected any sign, fence, wall, pole, post, structure, or other above-ground facility so as to prevent the City's use of the Easement Area.
- b. The City's use of the Easement Area shall not unreasonably interfere with the use of the Grantor's Property or Easement Area by the Grantor, including, but not limited to, the driving of vehicles.
- c. The Grantor's use of the Easement Area shall not unreasonably interfere with the use of the Easement Area by the City for the purposes set forth in this Agreement.
- d. The Parties shall not use the Easement Area for open storage or permanent parking of vehicles or equipment of any kind, except the short-term parking of construction

vehicles and equipment shall be permitted for the purposes expressly allowed in this Agreement.

- e. All work of construction, repair and maintenance within the Easement Area by either of the Parties shall be done and completed in a good and professional manner. In all cases, the Parties shall each be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.
  - f. The Grantor may temporarily suspend the City's ingress and egress rights granted in this Agreement and close the Access Drive for a reasonable amount of time as may be required for the purpose of performing the activities permitted in Subsection 3.b. of this Agreement within the Easement Area or adjacent areas of the Grantor's Property. The Grantor shall provide written notice to the City, as provided in Section 10, a minimum of sixty (60) days in advance of such a planned closure of the Access Drive.
  - g. In the event the Grantor requires use of the Easement Area for emergency use or repairs to any of the Grantor's facilities within the Easement Area or adjacent portions of the Grantor's Property, the Grantor may temporarily suspend the City's ingress and egress rights granted in this Agreement and close the Access Drive without advanced notice to the City, provided the Grantor gives notice of such closure to the City as soon as is reasonably possible. As used herein, the term "Emergency" shall mean a condition which requires immediate access to the Grantor's sanitary sewer or other facilities in order to prevent imminent loss of life or damage to persons or property. The Grantor shall reopen the Easement Area and Access Drive as soon as is reasonably possible after the emergency condition has been cured or resolved.
5. Initial Construction in Easement Area. The City shall be responsible for constructing (or shall be responsible for causing the construction of) the Access Drive located within the Easement Area, including all required paving, curb and gutter, striping and other pavement marking, landscaping and all directional signage. The City shall not disturb or damage the Grantor's sanitary sewer facilities or infrastructure located fully or partially within the Easement Area.

The City shall be responsible for grading and repaving portions of the Grantor's parking lot as needed for proper drainage, and for the replacement of the storm drain and storm sewer draining the parking lot on Grantor's Property. The City shall allow discharge of stormwater from the Grantor's Property into the private storm sewer on the City's Property.

6. Maintenance, Repairs and Restoration.

- a. The City shall be responsible at all times to maintain the Access Drive and any related improvements constructed within the Easement Area in good condition and repair (including snow and ice removal on both the Access Drive and the adjacent sidewalks), except the Grantor shall repair and restore any areas within the Easement Area impacted by the Grantor's work described in Subsections 4.f. and 4.g., to the conditions that were present prior to any such work by the Grantor. The City shall be

responsible for maintenance of grass and landscaping (mowing, trimming, etc.) in all areas between the Access Drive and the perimeter fencing on Grantor's property.

- b. Following any work by the Grantor, the Grantor shall be responsible for the prompt restoration of the Easement Area including but not limited to the repair and/or replacement of any pavement, concrete, landscaping, site improvements or turf located within the Easement Area.
7. Fence on Grantor's Property. In consideration of the easement and rights granted herein by the Grantor, the City shall construct, at the City's sole cost, a fence on the Grantor's Property according to the plans and specifications agreed upon by the Parties. Following initial construction of the fence by the City, all maintenance and repairs to the fence shall be the responsibility of the Grantor, at the Grantor's sole expense.
8. Indemnification. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This section shall survive the termination or expiration of this Agreement.
9. Acceptance by City. By its acceptance of the access easement described in this Agreement, which acceptance shall be evidenced by the filing of this Agreement for record, the City acknowledges and agrees to the terms hereof.
10. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Agreement.

For the Grantor:        Madison Metropolitan Sewerage District  
                                 Attn: Lisa Coleman  
                                 1610 Moorland Road  
                                 Madison, WI 53713  
                                 Email: lisac@madsewer.org

For the City:            City of Madison Economic Development Division  
                                 Attention: Director  
                                 P.O. Box 2983  
                                 Madison, WI 53701  
                                 Email: acmiller@cityofmadison.com and

ores@cityofmadison.com

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

11. Amendment. This Agreement may not be amended, modified, terminated, or released without the written consent of the Parties, or their respective successors-in-interest.
12. Binding Effect. The rights and easement granted herein shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, the City, its successors and assigns, and shall inure to the benefit of, and be binding upon, the Grantor, its respective successors and assigns.
13. Counterparts, Electronic Signature and Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
14. Compliance. The Parties agree for themselves and their employees and agents to use the Easement Area in a manner fully complying with all laws and other legal requirements.
15. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.
16. Severability. If any term or provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Agreement and the same shall continue to be effective to the fullest extent permitted by law.
17. Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
18. Public Record. This Agreement will be recorded at the office of the Dane County Register of Deeds.
19. Termination. Grantor shall have the right to terminate this Agreement by providing at least thirty (30) days written notice to the City in the event: (a) the City's Property is not developed as the Market by January 1, 2026; or (b) if the City's Property is developed as the Market, the use of the City Parcel is changed to a use other than the Market.

20. No Public Dedication. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be, and is not intended to be, a dedication of any portion of Grantor's Property to the City or the public for any purpose whatsoever.

IN WITNESS WHEREOF, the Parties agrees to the terms and conditions of this Agreement effective as of the date first set forth above.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**MADISON METROPOLITAN  
SEWERAGE DISTRICT,**  
a Wisconsin sewerage district

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print or type name and title)

State of Wisconsin     )  
                                      ) ss.  
County of Dane         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above-named \_\_\_\_\_ (name), \_\_\_\_\_ (title), of Madison Metropolitan Sewerage District, acting in said capacity and known to me to be the person who executed the above and foregoing instrument and acknowledged that they executed the same, by their authority.

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

(print or type name)  
Commission expires: \_\_\_\_\_

*Signatures continue on next page.*

**CITY OF MADISON**, a Wisconsin municipal corporation

By: \_\_\_\_\_  
Satya Rhodes-Conway, Mayor

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

By: \_\_\_\_\_  
Maribeth L. Witzel-Behl, City Clerk

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

**AUTHENTICATION**

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, on behalf of the City of Madison, are authenticated on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Matthew Robles, Assistant City Attorney  
Member of the Wisconsin Bar

Acceptance of this Easement by the City of Madison is authorized by Resolution Enactment No. RES-\_\_-00\_\_\_\_, File ID No. \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_\_\_, by the Common Council of the City of Madison.

Drafted by the City of Madison Office of Real Estate Services.      Real Estate Project No. 12844

## **EXHIBIT A**

### Legal Description of Grantor's Property

A parcel of land located in part of Block Three Hundred Ten (310), Madison Square Riley Plat, and part of the Southwest  $\frac{1}{4}$  of Section 6, Township 7 North, Range 10 East, in the City of Madison, Dane County, Wisconsin, more particularly described as follows: Commencing at the intersection of the Southwest line of North First Street and the Northwest line of East Mifflin Street extended, thence Southwesterly 270 feet along the Northwesterly side of East Mifflin Street extended, thence Northwesterly 175 feet parallel to North First Street, thence Northeasterly 270 feet parallel to East Mifflin Street extended, thence Southeasterly 175 feet along the Southwest line of North First Street to the point of beginning, EXCEPT that part conveyed in the Quit Claim Deed recorded in Vol. 817 of Deeds, Page 262 as Document No. 1159479 and furthering EXCEPTING that part conveyed in the Quit Claim Deed recorded as Document No. 4125778. EXCEPT that part conveyed in Warranty Deed recorded as Document No. 5434181. EXCEPT that part conveyed in Warranty Deed recorded as Document No. 5528397.



**EXHIBIT B (page 1 of 2)**

Legal Description of City's Property

PARCEL A:

A parcel of land located in part of Lots Two (2), Three (3), Five (5), Six (6), Seven (7), Eight (8) and Nine (9), Block Three Hundred Ten (310), Madison Square Riley Plat, and part of the Southwest ¼ of Section 6, Township 7 North, Range 10 East, all in the City of Madison, Dane County, Wisconsin, more particularly described as follows: Commencing at the intersection of the Southwesterly right of way line of North First Street with the Southwesterly prolongation of the Northwesterly right of way line of East Mifflin Street; thence Southwesterly along said prolongation a distance of 246 feet, more or less, to the point of beginning; thence continuing Southwesterly along said prolongation to the intersection with the Northeasterly right of way line of the Chicago & Northwestern Railroad (now owned by the Union Pacific Railroad Company); thence Northwesterly along said railroad right of way line to the intersection with the Southeasterly right of way line of the Chicago, Milwaukee, St. Paul & Pacific Railroad right of way (now owned by the City of Madison); thence Northeasterly along said right of way line to the intersection with the Southeasterly right of way line of East Johnson Street; thence Northeasterly along said Southeasterly right of way line of East Johnson Street to the intersection with the Southwesterly right of way line of North First Street; thence Southeasterly along said Southwesterly right of way line of North First Street to a point that is 175 feet, more or less, distant Northwesterly from the intersection of said right of way line with the Southwesterly prolongation of the Northwesterly right of way line of East Mifflin Street; thence Southwesterly along a line that is parallel to and 175 feet, more or less, distant from the Southwesterly prolongation of the Northwesterly right of way line of East Mifflin Street a distance of 246 feet, more or less, thence Southeasterly along a line parallel to the Southwesterly right of way line of North First Street a distance of 175 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM the following described parcel: Part of the Southwest ¼ of the Southwest ¼ of Section 6, Township 7 North, Range 10 East, including Lot Four (4) and part of Lots Three (3) and Five (5), Block Three Hundred Ten (310), Madison Square Riley Plat, in the City of Madison, Dane County, Wisconsin, being more fully described as follows: Commencing at the most Northerly corner of Block 310, Madison Square Riley Plat; thence Southeasterly 117 feet along the Southwest line of North First Street as platted in said plat to the point of beginning of this description; thence Southwesterly at right angles to North First Street 90 feet; thence Southeasterly parallel to North First Street 90 feet; thence Northeasterly at right angles to last mentioned line 90 feet to the Southwest line of North First Street; thence Northwesterly along the Southwest line of North First Street 90 feet to the point of beginning, EXCEPT that part conveyed in the Quit Claim Deed recorded in Vol. 817 of Deeds, Page 456 as Document No. 1159979 and furthering EXCEPTING those lands contained in the Declaration of Public Street Right of Way recorded as Document No. 5432509 and corrected by the Affidavit of Correction recorded as Document No. 5445050.

**EXHIBIT B (page 2 of 2)**

**PARCEL B:**

(Legal Description from Knight Barry Title File No. 820574L / Former Tax Key No. 251-0710-063-1509-0)

Part of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 6, Township 7 North, Range 10 East, including Lot Four (4) and part of Lots Three (3) and Five (5), Block Three Hundred Ten (310), Madison Square Riley Plat, in the City of Madison, Dane County, Wisconsin, being more fully described as follows: Commencing at the most Northerly corner of Block 310, Madison Square Riley Plat; thence Southeasterly 117 feet along the Southwest line of North First Street as platted in said plat to the point of beginning of this description; thence Southwesterly at right angles to North First Street 90 feet; thence Southeasterly parallel to North First Street 90 feet; thence Northeasterly at right angles to last mentioned line 90 feet to the Southwest line of North First Street; thence Northwesterly along the Southwest line of North First Street 90 feet to the point of beginning, EXCEPT that part conveyed in the Quit Claim Deed recorded in Vol. 817 of Deeds, Page 456 as Document No. 1159979 and furthering EXCEPTING those lands contained in the Declaration of Public Street Right of Way recorded as Document No. 5425437.

**PARCEL C:**

(Lands Described in Quit Claim Deed recorded as Document No. 3259920)

A parcel of land in the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 6, Township 7 North, Range 10 East, in the City of Madison, Dane County, Wisconsin, more particularly described as follows: Commencing at the Southwest corner of said Section 6; thence along the West line of said Southwest  $\frac{1}{4}$ , North  $00^{\circ}31'35''$  East, 895.02 feet; thence South  $89^{\circ}28'25''$  East, 354.34 feet to a point on the Southeasterly right-of-way line of East Johnson Street and on the Northeasterly right-of-way line of the Union Pacific Railroad, said point being the point of beginning; thence along said right-of-way line of East Johnson Street, North  $50^{\circ}07'42''$  East, 156.20 feet to the Easterly right-of-way line of the former Soo Line Railroad parcel; thence along said Easterly right-of-way line, South  $10^{\circ}19'18''$  West, 255.71 feet to a point on said Northeasterly right-of-way line of the Union Pacific Railroad; thence North  $24^{\circ}05'28''$  West, 109.58 feet; thence North  $07^{\circ}38'20''$  West, 68.88 feet to the point of beginning, EXCEPTING those lands contained in the Declaration of Public Street Right of Way recorded as Document No. 5432509 and corrected by the Affidavit of Correction recorded as Document No. 5445050.

## **EXHIBIT C**

### **INGRESS AND EGRESS EASEMENT AREA LEGAL DESCRIPTION**

Located in the Southwest Quarter of the Southwest Quarter of Section 06, Township 07 North, Range 10 East, City of Madison, Dane County, Wisconsin, more fully described as follows:

Beginning at the Southwest Corner of Section 06, Township 07 North, Range 10 East; thence N00°47'18"E, along the west line of the Southwest Quarter of said Section 06, a distance of 385.64 feet; thence S89°12'42"E, 637.93 feet; thence N44°11'11"E, 191.91 feet to the southerly corner of MMSD lands per Document Number 777778; thence N45°38'27"W, 175.00 feet along the southwesterly line of said MMSD lands; thence N44°11'31"E, 13.00 feet along the northwest line of said MMSD lands to the Point of Beginning of this description;

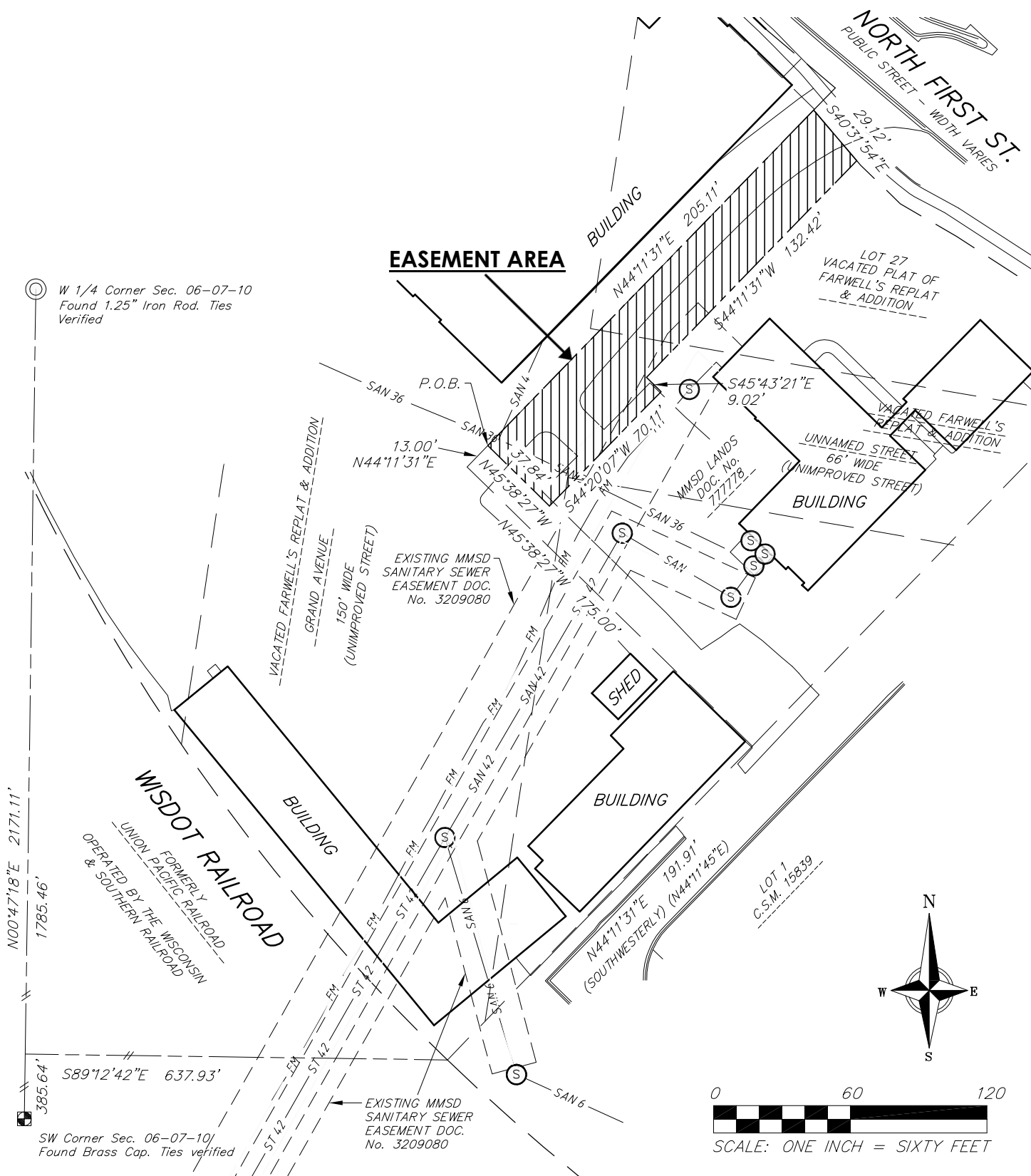
thence continuing N44°11'31"E, 205.11 feet along said northwest line of MMSD lands to the southwesterly right of way line of North First Street; thence S40°31'54"E, along said southwesterly right of way line of North First Street, 29.12 feet; thence S44°11'31"W, 132.42 feet; thence S45°43'21"E, 9.02 feet; thence S44°20'07"W, 70.11 feet; thence N45°38'27"W, 37.84 feet to the point of beginning.

Said description 6,536 square feet or 0.1500 Acres, more or less.

# EXHIBIT D

## INGRESS AND EGRESS EASEMENT AREA

24 Aug 2023 - 1:52p M:\MSR (Meyer, Scherer & Rockcastle Ltd)\180275\_Madison Market\CADD\180275--Land Swap and Access Ease Exhibit'Wbul.dwg by: mzie



**vierbicher**

planners | engineers | advisors

Phone: (800) 261-3898



EXISTING CONDITIONS

SCALE	1"=60'	SHEET
CHECKED	MZIE	1 OF 2
DRAFTER	WBUL/MZIE	
DATE	08/24/2023	
JOB NO.	180275	

## INGRESS AND EGRESS EASEMENT AREA

