

WDNR/CITY OF WAUKESHA SITE ACCESS AGREEMENT

Wisconsin DNR Monitoring Station

THIS ACCESS AGREEMENT (“AGREEMENT”) is made in duplicate and entered into as of October 20, 2023, by and between the STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES, a Wisconsin state agency, hereinafter “WDNR,” and Department of Public Works for City of Waukesha, hereinafter “City of Waukesha.” WDNR and City of Waukesha are collectively referred to in this AGREEMENT as the parties.

RECITALS

WHEREAS, City of Waukesha owns a parcel of land located in Waukesha, Wisconsin with a street address of 1310 Cleveland Avenue, Waukesha, Wisconsin 53186, on which WDNR has maintained and operated an air monitoring station (AQS site ID: 55-133-0027) since 1989. The portion of that parcel on which the air monitoring station is located is referred to in this AGREEMENT as the Site, and is further described on the attached Exhibits A and B;

WHEREAS, WDNR is seeking continued access to the Site to continue to maintain and operate the air monitoring station; and

WHEREAS, City of Waukesha is willing to allow continued WDNR access to the Site for the purpose of operating its monitoring station.

NOW, THEREFORE, in consideration of the mutual promises and benefits of the parties, the sufficiency of which is hereby acknowledged, WDNR and City of Waukesha agree as follows:

1. City of Waukesha grants to WDNR the right to install, construct, maintain, operate, replace, repair or remove equipment, appurtenant appliances, its wooden platform, fencing and utilities necessary to operate an air monitoring station on the Site (“Monitoring Station”).
2. This right will commence upon the effective date of this AGREEMENT and any renewal thereof. This AGREEMENT shall be for 5 years from the effective date hereof. This AGREEMENT may be renewed for additional 5-year terms upon written consent of both parties. WDNR shall provide 90 days advance written notice of its intent to renew.
3. The WDNR will make any necessary improvements to the Site, at its sole expense, to better meet the operational needs of the Monitoring Station. Any such improvements shall be pre-approved by City of Waukesha, and such approval shall not be unreasonably denied or delayed.
4. City of Waukesha will provide WDNR and its employees and contractors access rights to the Site to make the necessary improvements and to continue operations of the Monitoring Station. Access shall be limited to normal business hours, unless emergency circumstances dictate additional access.
5. WDNR will pay all costs and be responsible for the installation, operation, maintenance,

replacement, repair and removal of the Monitoring Station and any other related equipment and utilities.

6. The Site will be secured from access by the public by WDNR utilizing the most appropriate method for the location. City of Waukesha shall not be responsible for ensuring the security or safety of the Monitoring Station.
7. WDNR will utilize electrical contractors for any necessary electrical work at the Monitoring Station. All contractors will provide WDNR and City of Waukesha with a Certificate of Insurance listing the necessary liability insurance requirements specified by the WDNR and City of Waukesha and naming both WDNR and City of Waukesha as additional insureds.
8. All attachments to the Monitoring Station will be in accordance with plans and specifications provided by WDNR, and approved by City of Waukesha, and will be maintained in good order and in a proper, safe, and skillful manner so as not to interfere with the physical space or operational performance of the Monitoring Station and so as not to endanger life and property.
9. City of Waukesha shall be responsible for providing WDNR and its employees and contractors access to the Site and the Monitoring Station.
10. WDNR will maintain the Monitoring Station in a safe and environmentally sound condition at all times.
11. WDNR or City of Waukesha will not allow access to the Site or Monitoring Station by anyone other than authorized employees or contractors; nor shall WDNR or City of Waukesha allow a third-party use of the Site without consent of the other party.
12. WDNR agrees, at WDNR's expense, to apply for and pursue all necessary permits required for operation of the Monitoring Station. WDNR will abide by all state and federal regulations that may apply to locating and operating the Monitoring Station on the Site.
13. The parties in this AGREEMENT will direct any notices, documents, or other correspondence required by or related to this AGREEMENT to the following:

To WDNR:

Katie Praedel (Monitoring Section Chief)
Wisconsin Department of Natural Resources
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921
608-266-1058
Katie.Praedel@wisconsin.gov

To City of Waukesha:

Alex Damien (Director of Public Works)
City of Waukesha
201 Delafield Street
Waukesha, WI 53188
262-524-3600
adamien@waukesha-wi.gov

or to such other person or address as a party in this AGREEMENT may, upon similar notice, notify the other party. Such notification will not constitute a modification of this AGREEMENT.

14. This AGREEMENT grants only license for the activities described in this AGREEMENT. This AGREEMENT does not grant any right, title, or interest in the Site to WDNR, including any easement rights. The Monitoring Station shall at all times remain the sole property of WDNR, and no right, title, or interest in the Monitoring Station is conveyed to any party by this AGREEMENT.
15. Nothing contained in this AGREEMENT will be deemed or construed by the parties or by any third party as creating the relationship of principal and agent or other partnership between the parties. WDNR will be free to determine the mode, method, manner, time and place of its performance, free of any constraints imposed upon it by City of Waukesha. In addition, nothing in this AGREEMENT shall be construed as obligating any party to this AGREEMENT to the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.
16. As it pertains to this AGREEMENT, WDNR and City of Waukesha shall each be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing for its own defense. In situations involving joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes. This clause shall not constitute a waiver by any party to any rights to indemnification, contribution, subrogation, or other statutory protection which such party may have by operation of law. This clause applies only to actions of each party pursuant to this AGREEMENT, and does not apply to actions of employees, directors, independent contractors or agents that are performed outside the scope of this AGREEMENT.
17. In the event that due to an act of God, war, civil insurrection or unforeseen circumstances outside of the control of WDNR, the Monitoring Station shall be damaged to the extent of an amount in excess of 50% of its depreciated value at the time of such destruction or in the event that it is wholly destroyed, WDNR reserves the right to either repair and restore or

replace the Monitoring Station or to discontinue its use. In the event that WDNR determines not to restore and repair or replace the Monitoring Station and gives City of Waukesha 30 days written notice, this AGREEMENT shall be terminated.

18. If any term or condition of this AGREEMENT, or the application of this AGREEMENT to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this AGREEMENT will not be affected, and each term and condition will be valid and enforceable to the fullest extent permitted by law. Revisions of this AGREEMENT under Paragraph 2 will strike any terms deemed invalid or unenforceable.
19. At the termination of this AGREEMENT, except as may be agreed to by City of Waukesha, WDNR shall, at its sole expense, remove all equipment and will restore the Site impacted by the Monitoring Station to the condition it was in prior to the installation of the Monitoring Station.
20. WDNR may not transfer this AGREEMENT to a third party without the written consent of City of Waukesha.
21. City of Waukesha may terminate this AGREEMENT, at its discretion, for any violation of the terms of the AGREEMENT by WDNR. City of Waukesha will give WDNR at least 60 days written notice of its intent to terminate the AGREEMENT. WDNR shall have 30 days from receipt of said notice to cure the violation to the satisfaction of City of Waukesha. If WDNR is unable to cure the violation, City of Waukesha shall give WDNR two years to locate a new site approvable by the United States Environmental Protection Agency (USEPA). Upon approval of a new site by USEPA, WDNR will, at its sole expense, have an additional 30 days to remove all equipment and restore the portion of the Site impacted by the Monitoring Station to the condition it was in prior to the installation of the Monitoring Station.
22. There will be no modifications to this AGREEMENT except those which are reduced to writing and mutually agreed upon by and between the parties to this AGREEMENT with the same formality as this AGREEMENT.
23. The signatories to this AGREEMENT warrant that they have the full authority to enter into this AGREEMENT and make it binding on the parties to the AGREEMENT without further action or approval.
24. The laws of Wisconsin shall govern the validity of this AGREEMENT, the construction of its terms and the interpretation of the rights and duties of the parties.

IN WITNESS WHEREOF, the parties hereto, by their authorized officers or representatives, have caused this AGREEMENT to be executed as of the date first written above.

STATE OF WISCONSIN

Department of Natural Resources


Dated: 10/20/2023

By 

Katie Praedel
Section Chief, Air Monitoring
Wisconsin Dept. of Natural Resources

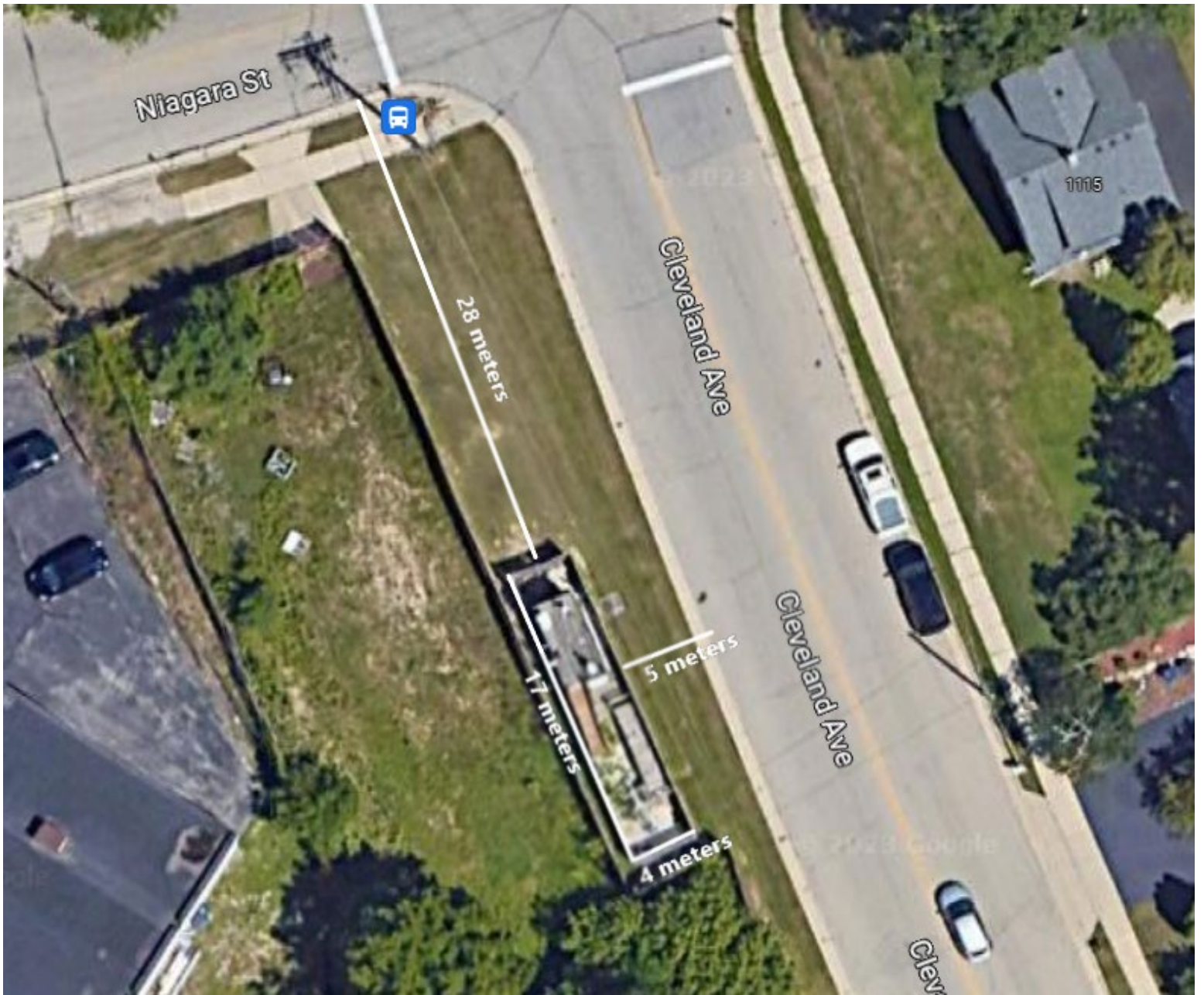
CITY OF WAUKESHA

Dated: 10/19/23

By 

Alex Damien
Director of Public Work
City of Waukesha

EXHIBIT A
Aerial views of Site



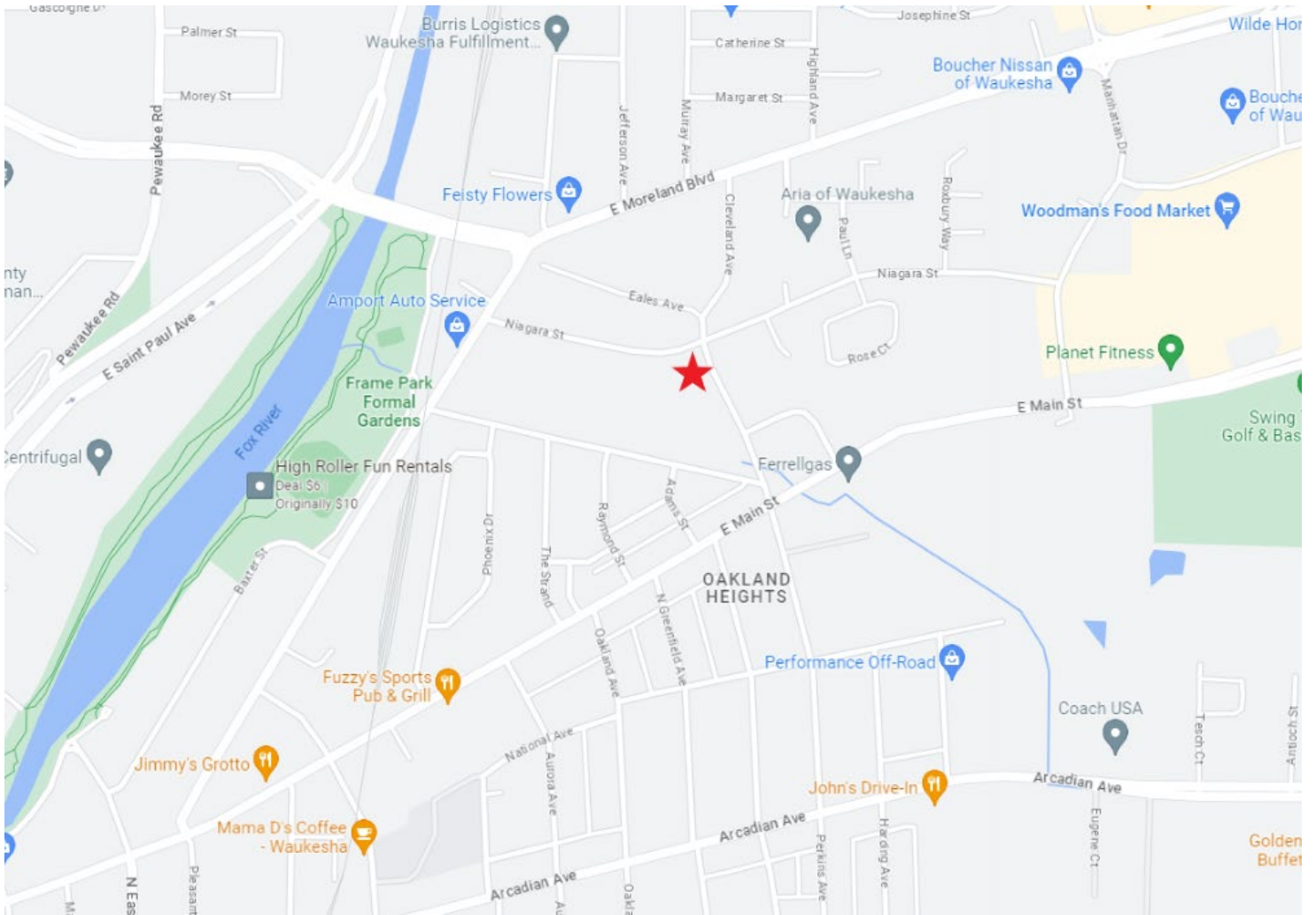


EXHIBIT B
Street view of Site

