

Document No.

Utility Easement Agreement

THIS UTILITY EASEMENT AGREEMENT ("Agreement") is granted by the Robert F. and Carol O. Smart Family Trust and the Carol O. Smart Survivor's Trust (the "Grantor") to the City of Waukesha (the "Grantee").

R E C I T A L S :

A. The Grantor is the fee holder of certain real property in the City of Waukesha, Waukesha County, State of Wisconsin, more particularly described on the attached and incorporated Exhibit A (the "Property").

B. The Grantee has requested that the Grantor grant a permanent easement (the "Easement") over certain portions of the Property as such portions are described and depicted on the attached and incorporated Exhibit B (the "Utility Easement Area").

Upon Recording Return to:
Engineering Department
City of Waukesha
130 Delafield Street
Waukesha, WI 53188

Parcel Identification Number

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Grant of Easement. The Grantor grants to the Grantee, and its licensees, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, supplement, and/or remove sanitary sewer facilities, and other related and appurtenances that may from time to time be required, with the right of ingress and egress for the purpose of this grant, over the Utility Easement Area. All improvements shall be located below grade. During any period of construction, reconstruction or maintenance, the Grantee shall keep the area safe, neat and orderly. Upon completion of construction, reconstruction or maintenance, the Grantee shall remove all materials and equipment from the Property.

2. Indemnification. The Grantee shall indemnify the Grantor from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Grantee's activities conducted on the Property, including the operation of the sanitary sewer facilities, except to the extent caused by the negligence, recklessness or misconduct of the Grantor or its agents or employees.

3. Consistent Uses Allowed. The Grantor reserves the right to use the Utility Easement Area for purposes that will not interfere with the Grantee's full enjoyment of the Easement rights granted in this Agreement. Grantee's activities shall not interfere with Grantor's use of or ingress or egress to the Property. No trees or bushes which would grow to more than four (4) feet in height shall be planted within said Utility Easement Area without approval of the Grantee. Grantor shall not make grade changes exceeding one (1) foot in the Utility Easement Area without prior written approval of the Grantee. Grantor shall not place any buildings, fences or structures in the Utility Easement Area.

4. Restoration of Surface/Maintenance. The Grantee shall restore the surface of the Property disturbed by any construction, reconstruction or maintenance as nearly as is reasonably possible to the condition existing prior to disturbance by any construction, reconstruction or maintenance activities. The Grantee shall not be required to replace pavement, trees, bushes or other items existing on or within the Utility Easement Area. Grantee shall maintain, repair and replace all sanitary sewer facilities in the Utility Easement Area. The Grantee shall keep the sanitary sewer facilities in the Utility Easement Area in good condition and repair at its sole cost and expense. Except in the event of an emergency, Grantee shall give Grantor at least ten days' notice before beginning any work in the Utility Easement Area which notice shall specify the work to be performed and the anticipated date when work will be complete.

5. Covenants Run with Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Grantor and the Grantee and their respective successors and assigns. The party named as Grantor in this Agreement and any successor or assign to the Grantor as fee simple Grantor of the Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property.

6. Non-Use. Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.

7. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

8. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.

9. Notices. All notices to either party to this Agreement shall be delivered in person or sent by Certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

10. Invalidity. 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, or the application of the

term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

12. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party. The Grantee shall take all reasonable action to prevent the attachment of any construction liens on the Property as a result of its construction activities. In the event such a lien attaches, the Grantee shall take all necessary action to discharge the lien.

13. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Easements granted under this Agreement to the general public or for any public purpose whatsoever.

(Signatures appear on the following pages)

EXECUTED BY Grantor on _____, 2015

By: Robert F. and Carol O. Smart Family Trust

By: _____
Name: _____
Its: Trustee

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2015, the above named
_____, _____ of _____, to me known to be the
person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(Print Name): _____

My commission expires: _____

EXECUTED BY Grantor on _____, 2015

By: Carol O. Smart Survivor's Trust

By: _____
Name: _____
Its: Trustee

STATE OF _____)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2015, the above named
_____, _____ of _____, to me known to be the
person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(Print Name): _____

My commission expires: _____

EXECUTED BY the City of Waukesha on _____, 2015

Shawn N. Reilly, Mayor

Gina Kozlik, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2015 the above named Shawn N. Reilly, Mayor, and Gina Kozlik, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(Print Name) _____

My commission expires: _____

This document was drafted by
Atty. Julie M. Gay
SBN 1006564

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B - PAGE 1

LEGAL DESCRIPTION AND DEPICTION OF UTILITY EASEMENT AREA

