



Waukesha Water Utility

SERVING WAUKESHA SINCE 1886

115 DELAFIELD STREET
WAUKESHA, WI 53188-3615

Telephone: (262) 521-5272 • Fax: (262) 521-5265 • E-mail: contactus@waukesha-water.com

MEMORANDUM

DATE: July 11, 2019
TO: Dan Duchniak, P.E.
FROM: Chris Walter, P.E.
RE: Great Water Alliance Easement Documents

As part of the Great Water Alliance program, the Utility is working to acquire certain easements for the pipeline. This is in effort to minimize cost and disturbance impacts while streamlining the construction process. The Utility's existing easement documents were reviewed by the program's real estate acquisition firms and by Stafford & Rosenbaum and is in the process of being revised by the City Attorney's office. The easement agreement language, for both permanent and temporary easements, are attached to this memo, as well as a comparison of the revisions made. I am requesting approval from the Water Commission to concur with the new language in these easement documents for use in both the Great Water Alliance program and future general water main easements henceforth

Recommended Motion: Move to approve the revised easement agreement templates for use on the Great Water Alliance and future general water main easements.

UTILITY EASEMENT AGREEMENT

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THIS UTILITY EASEMENT AGREEMENT is granted by _____
(Grantor) to the Waukesha Water Utility, City of Waukesha, Wisconsin (Grantee).

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A. The Grantor is the fee holder of certain real property located in the City of Waukesha, _____, Wisconsin, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference.

B. The Grantee has requested that Grantor grant a permanent, exclusive ~~easement and a temporary construction~~ easement over certain portions of the property owned by Grantor, and such portions are more particularly described in **Exhibit B** (the Utility "Permanent Limited Easement Area") attached hereto and incorporated herein by reference.

AGREEMENT

For \$ _____ and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Grantor grants, conveys, transfers and assigns to Grantee a ~~perpetual~~ permanent, exclusive easement and right of way (the "Utility Easement") over, under, in, upon and across the Permanent Limited Easement to construct, reconstruct, maintain, operate, supplement ~~and/or, replace,~~ remove ~~a water and use force~~ main infrastructure, facilities and other related fixtures, equipment, accessories and appurtenances that may from time-to-time be required; ~~with the right of~~ in Grantee's sole judgment (the "Improvements") and for ingress and egress ~~for the purpose of this~~

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grant over the Utility Easement Area.

2. During the period of construction or installation of improvements within the Utility Easement Area, the Grantee shall also have a temporary construction easement over those portions of the property located within 15 feet of the Utility Easement Area for the purpose of transporting equipment and materials in connection with the construction or installation of improvements within the property. The temporary construction easement shall expire upon the completion of installation as contemplated in paragraph 1, above. During any period of construction or maintenance, the Grantee shall keep the area neat and orderly. Upon completion of construction or maintenance, Grantee shall remove all materials and equipment.

3. The Grantee shall indemnify the Grantor from and against all loss, costs, injury, death, or damage to persons or property that purposes 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 water main, except to the extent caused by the negligence or misconduct of the Grantor or its agents or employees order to exercise the rights and privileges granted herein.

4. The Grantor reserves the right to use the easement and the temporary construction easement Utility Easement for purposes that will not interfere with the Grantee's full enjoyment of the easement rights granted in this agreement. Grantor Agreement, provided, however, that in no event shall not Grantor make grade changes exceeding one foot (1 foot) in the Utility Permanent Limited Easement Area without prior written approval of Grantee. Grantee's activities During the term of the Utility Easement, Grantee shall not interfere with ingress or egress to Grantor's property unless required by public health and safety. During the term of the Utility Easement, Grantor shall not place any buildings, fences or structures which require footings in the

~~easement area. No trees~~Permanent Limited Easement. During the term of the Utility Easement, Grantor shall not plant or bushes which would grow to more than maintain any tree or bush in excess of four (4) feet in height shall be planted within said easement without approval of Grantee, Waukesha Water Utility.

~~5. The~~3. Upon the completion of the initial construction of Improvements in the Permanent Limited Easement, the Grantee shall restore the surface of the ~~premises of the Grantor~~Permanent Limited Easement disturbed by the initial construction, as nearly as is reasonably possible, to the condition existing prior to disturbance by any construction or installation of the ~~improvements~~Improvements, except that Grantee shall not be required to replace ~~pavement~~, trees, shrubbery or other above-grade items existing on or within the ~~Utility~~Permanent Limited Easement Area.

~~64.~~ All of the terms and conditions in this ~~agreement~~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 owner 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.~~

~~75.~~ Non-use or limited use of the ~~easement or temporary construction easement~~ rights granted in this Agreement shall not prevent the ~~benefiting party~~Grantee from later use of the ~~easement or temporary construction easement~~ rights to the fullest extent authorized in this Agreement.

~~86.~~ The Agreement shall be construed and enforced in accordance with the ~~internal~~ laws of the State of Wisconsin. ~~Grantee shall operate and maintain the water main in accordance with all applicable laws and industry standards.~~

~~97.~~ 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 (replace Waukesha with Milwaukee when document is used in Franklin or New Berlin) County, Wisconsin.

~~408.~~ 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 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.;~~

GRANTOR: _____ GRANTEE:
Waukesha Water Utility
115 Delafield Street
11 Waukesha, WI 53188

Either party may change its address for notice by providing written notice to the other party.

~~9.~~ 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.

~~4210.~~ 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 or~~ breach of any other terms or conditions of this Agreement.

~~13. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting to threaten to violate any term~~

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~~or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. 11. 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 nonprevailing 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 reasonable action to discharge the lien.~~~~

~~_____ 14. 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.~~

_____ 12. Any person named in this conveyance may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in s. 32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

IN WITNESS WHEREOF, the parties have hereunto executed this Utility Easement

Agreement this _____ day of _____, 2019.

_____ This instrument was drafted by:
Chris Walter
Waukesha Water Utility
145 Delafield Street
Waukesha, WI 53188

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Company Name here, Grantor

Name of person signing here, Position of person signing here

STATE OF WISCONSIN

COUNTY OF _____

Personally came before me this _____ day of
_____, 2019, the above named

to me known to be the person who executed
the foregoing instrument and acknowledged
the same.

Notary Public, _____ County, WI
My commission _____

Waukesha Water Utility, Grantee

Shawn Reilly, Mayor

Gina Kozlik, City Clerk/Treasurer

STATE OF WISCONSIN

COUNTY OF WAUKESHA

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Personally came before me this ____ day of _____, 2019, the above named

_____ to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Notary Public, _____ County, WI
My commission _____

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Waukesha Water Utility
115 Delafield Street
Waukesha, WI 53188

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