

ENROLLED ORDINANCE 164-76

APPROVE UTILITY EASEMENT TO WISCONSIN ELECTRIC POWER COMPANY, WISCONSIN BELL INC., AT&T WISCONSIN, TIME WARNER ENTERTAINMENT COMPANY, AND THE CITY OF WAUKESHA FOR RELOCATION, CONSTRUCTION, OPERATION, AND MAINTENANCE OF ABOVEGROUND LINES

WHEREAS because of planned reconstruction of CTH X, it is necessary to allow the Wisconsin Electric Power Company, Wisconsin Bell Inc., AT&T Wisconsin, Time Warner Entertainment Company, and the City of Waukesha to relocate, construct, erect, operate, maintain and replace overhead utility facilities, including a line of poles, together with the necessary conductors, overhead lines, fiber cables, anchors, guy wires, underground cables, pedestals riser equipment and all other appurtenant equipment above ground which they deem necessary to transmit elective energy signals, television and telecommunication services, located in the Fox River Greenway and more specifically described as Section 17, Township 6 North, Range 19 East, Town of Waukesha, Waukesha County, Wisconsin.

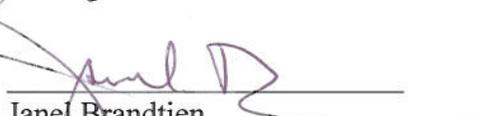
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the utility easement between Wisconsin Electric Power Company, Wisconsin Bell Inc., AT&T Wisconsin, Time Warner Entertainment Company, the City of Waukesha and Waukesha County, on file in the Department of Parks and Land Use, is hereby approved.

BE IT FURTHER ORDAINED that the County Executive and County Clerk may execute said utility easement on behalf of Waukesha County.

APPROVE UTILITY EASEMENT TO WISCONSIN ELECTRIC POWER COMPANY,  
WISCONSIN BELL INC., AT&T WISCONSIN, TIME WARNER ENTERTAINMENT  
COMPANY, AND THE CITY OF WAUKESHA FOR RELOCATION, CONSTRUCTION,  
OPERATION, AND MAINTENANCE OF ABOVEGROUND LINES

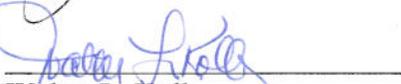
Presented by:  
Land Use, Parks, and Environment Committee

  
Fritz Ruf, Chair

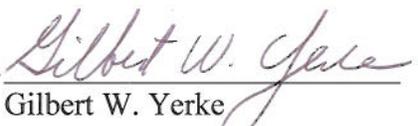
  
Janel Brandtjen

(ABSENT)  
Robert Hutton

  
James Jeskewitz

  
Walter L. Kolb

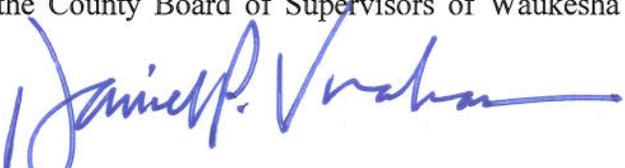
(ABSENT)  
Ted Rolfs

  
Gilbert W. Yerke

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 2-25-2010   
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: \_\_\_\_\_  
Vetoed: \_\_\_\_\_  
Date: 2/25/10   
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-02/23/10

(ORD) NUMBER-1640092

1 D. FALSTAD.....AYE  
 3 R. HUTTON.....AYE  
 5 J. JESKEWITZ.....AYE  
 7 P. HAUKOHL.....AYE  
 9 J. HEINRICH.....AYE  
 11 F. RUF.....AYE  
 13 P. DECKER.....AYE  
 15 P. MEYERS.....AYE  
 17 J. TORTOMASI.....AYE  
 19 S. WIMMER.....AYE  
 21 W. ZABOROWSKI.....AYE  
 23 J. PLEDL.....  
 25 G. YERKE.....AYE

2 T. ROLFS.....  
 4 J. DWYER.....AYE  
 6 J. BRANDTJEN.....AYE  
 8 T. SCHELLINGER....AYE  
 10 D. SWAN.....AYE  
 12 P. WOLFF.....AYE  
 14 B. MORRIS.....AYE  
 16 D. PAULSON.....AYE  
 18 K. CUMMINGS.....AYE  
 20 P. JASKE.....AYE  
 22 P. GUNDRUM.....AYE  
 24 W. KOLB.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS   X  

TOTAL VOTES-23

Document No.

**UTILITY EASEMENT  
AGREEMENT**

Return to:

Waukesha County  
Department of Parks and Land Use, Parks Division  
515 West Moreland Blvd., Room AC-230  
Waukesha, WI 53188

WAKT 1361.999

Parcel Number

This Utility Easement Agreement (*Agreement*) is granted by WAUKESHA COUNTY, a municipal corporation, hereinafter referred to as "Grantor", owner of land, to WISCONSIN ELECTRIC POWER COMPANY, a Wisconsin Corporation doing business as We Energies; WISCONSIN BELL INC., doing business as AT&T Wisconsin, a Wisconsin Corporation; TIME WARNER ENTERTAINMENT COMPANY, LP; and the CITY OF WAUKESHA, collectively referred to hereinafter as "Grantees."

**RECITALS:**

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

B. The utilities have requested that the Owner grant a permanent utility easement (the *Easement*) over a certain portion of the Property (the *Utility Easement Area*) on such portions as are described in the attached and incorporated Exhibit B.

**AGREEMENT**

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

1. **Purpose:** Due to Waukesha County Public Works Project 2370-08-70 a/k/a Plan of Proposed Improvement CTH X (Genesse Road), the Owner does hereby give Grantees the right, permission and authority to relocate and construct, erect, operate, maintain and replace overhead utility facilities, including a line of poles, together with the necessary conductors, and overhead lines, fiber cables, guy wires, riser equipment and all other appurtenant above-ground equipment necessary to transmit electrical energy, signals, television and telecommunication services upon, along, within those lands known as the Fox River Greenway located Northeast ¼ of Section 17, Township 6 North, Range 19 East, Town of Waukesha, Waukesha County, Wisconsin, and hereinafter called "The Property." The location of the Utility Easement Area is more specifically described as an area of a maximum of one thousand nine hundred twenty six (1926) linear feet long by twenty to twenty five (20-25) feet wide, as shown on the attached Exhibit B.
2. **Consistent Uses Allowed:** The Owner reserves the right to use the Utility Easement Area for purposes that will not interfere with the Grantees' full enjoyment of the easement rights granted herein and to grant easement rights to other persons or entities as the Owner deems appropriate.
3. **Removal of Trees and Brush:** Grantees are given the right to trim, cut down and remove trees and brush within fifteen (15) feet of the utility's lines where, in the opinion of Grantees, the trees and brush will interfere with the relocation, construction, operation and maintenance of the Grantee's facilities. Grantees may not trim, cut down or remove trees and brush outside of the fifteen (15) foot area unless it submits a cutting plan to the Owner and obtains prior written approval of the Director of the Waukesha County Department of Parks and Land Use.
4. **Utility Work Permit:** County Trunk Highway X shall at all times remain open for public use. If the Grantees must perform work in the right-of-way area of County Trunk Highway X or in any way interfere with or detour the travelling public on the highway, Grantees must seek prior approval of the Owner through a Utility Work Permit from the Waukesha County Department of Public Works.
5. **Indemnification:** Grantees shall defend, indemnify and hold harmless the Owner and all of its departments, agencies, boards, officers, employees and agents from any and all liability, loss, damages, expenses and costs (including attorneys fees and expenses) that it may suffer or incur as the result of any injury to or death of any person or damage to property which results from any action or omission, in whole or in part, negligent or otherwise, of Grantees or its agents in connection with any use of the Owner's land under this Agreement regardless of the cause of the injury, except to the extent caused by the gross negligence or willful acts on the part of the Owner and all of its departments, agencies, boards, officers, employees and agents.
6. **Insurance:** Each of the Grantees shall furnish the Owner with a Certificate or Letter of Self-Insurance.
7. **Restoration:** Grantees and its agents shall have the right of access upon the premises for the purposes of exercising the rights herein acquired, and Grantees shall promptly restore the premises to the condition existing prior to the entry by Grantees or its agents. The restoration shall not apply to any trees or brush which may be permitted to be removed pursuant to the rights granted herein. Grantees shall be liable to make prompt payment for any damage caused by it or its agents to any of the Owner's roadways and curbs, highway facilities, fences, parking lots, trail improvements, signs, entrance gates, park improvements, or any other fixtures or facilities of the Owner and for the unauthorized removal

of trees.

8. **Notices:** All notices to the Owner shall be sent to the Director of the Waukesha County Department of Parks and Land Use, Park System Division, 515 Moreland Blvd, Room AC-230, Waukesha, Wisconsin 53188.
9. **Recording:** This Agreement shall be duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin by Waukesha County.
10. **Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
11. **Restriction of Scope:** The installation of any other equipment or expansion beyond the Utility Easement Area requires a written amendment to this Agreement.
12. **Restriction on Assignability:** This Agreement shall be binding upon and inure to the benefit of the heirs and successors thereto. The right to assign this Agreement is restricted and it shall not be assigned to parties not listed in this Agreement.
13. **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.
14. **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.
15. **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.
16. **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.

IN WITNESS WHEREOF, the Owner has caused this Utility Easement to be approved by the Waukesha County Board of Supervisors and signed by its County Executive and its County Clerk as evidenced below.

**SIGNATURES OF OWNER**

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

COUNTY OF WAUKESHA

By \_\_\_\_\_  
Daniel P. Vrakas  
Waukesha County Executive

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

By \_\_\_\_\_  
Kathy Nickolaus  
Waukesha County Clerk

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by Daniel P. Vrakas, County Executive, on behalf of Waukesha County.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by Kathy Nickolaus on behalf of Waukesha County.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

**SIGNATURES OF GRANTEEES**

WISCONSIN ELECTRIC POWER COMPANY

By: \_\_\_\_\_  
Print Name: James Raabe \_\_\_\_\_  
Title: Manager of Property Management \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, on behalf of WISCONSIN ELECTRIC POWER COMPANY.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

WISCONSIN BELL INC. , d/b/a AT&T

By: \_\_\_\_\_  
Print Name: Elizabeth Strege \_\_\_\_\_  
Title: Right of Way Manager \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, on behalf of WISCONSIN BELL INC.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

TIME WARNER ENTERTAINMENT COMPANY, LP

By: \_\_\_\_\_  
Print Name: Steven Cramer  
Title: Utility Coordinator

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, on behalf of TIME WARNER ENTERTAINMENT COMPANY, LP.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

CITY OF WAUKESHA

By: \_\_\_\_\_  
Print Name: Fred V. Abadi  
Title: Director of Public Works

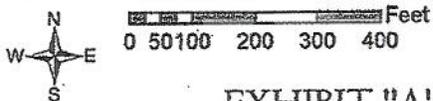
**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

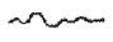
This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, on behalf of CITY OF WAUKESHA.

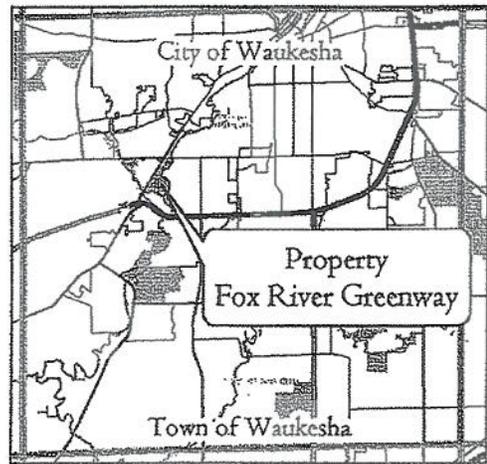
\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This document was drafted by  
Attorney Deborah B. Price  
Waukesha County Corporation Counsel Office  
515 W. Moreland Blvd., Room AC-330



**EXHIBIT "A"**  
To Utility Easement Agreement

-  Easement to We Energies
-  Waukesha County
-  Stream/Creek
-  Water Body



Prepared By: Waukesha County Department of Parks and Land Use February 2010

