

Enrolled Ordinance 171-073

APPROVE UTILITY EASEMENT TO WAUKESHA WATER UTILITY, CITY OF WAUKESHA, TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, REPLACE AND EXTEND UNDERGROUND UTILITY FACILITIES ON WAUKESHA COUNTY PROPERTY KNOWN AS THE WAUKESHA COUNTY EXPO CENTER

WHEREAS, Waukesha Water Utility, City of Waukesha has requested permission to construct, operate, maintain, repair, replace and extend underground utility facilities within Waukesha County properly, known as the Waukesha County Expo Center ("Expo"), located in the West 1/2 of the Southwest 1/4, of Section 27, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, and

WHEREAS, it is deemed desirable to allow Waukesha Water Utility, City of Waukesha to construct, install, operate, maintain, repair, replace and extend underground utility facilities on Waukesha County's land for the purpose of maintaining, relocating, and upgrading a failing meter pit on the Expo grounds, and

WHEREAS, it is necessary to provide an easement from Waukesha County to Waukesha Water Utility, City of Waukesha for the purpose of constructing, installing, operating, maintaining, repairing, replacing and extending underground water utility facilities at the Expo.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Waukesha County's grant of a Utility Easement to Waukesha Water Utility, City of Waukesha that will be recorded in the Office of the Register of Deeds, is hereby approved.

BE IT FURTHER ORDAINED that the Director of the Department of Parks and Land Use may execute said Easement on behalf of Waukesha County.

## EXHIBIT "A"

### Expo Center Property Legal Description

The West ½ of the Southwest ¼ of Section 27, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin.

## EXHIBIT "B"

### Utility Easement Area Description

Being a part of the West ½ of the Southwest ¼ of Section 27, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, being more particularly described as follows:

Commencing at the Southeast Corner of the Southwest ¼ of said Section 27; thence South 88°23'10" West, along the South line of said ¼ section, 172.46 feet; thence North 01°36'50" West, 50.00 feet to a point on the northerly right of way line of C.T.H. "FT" and the point of beginning.

Thence continuing along said northerly right of way line South 88°23'10" West, 20.00 feet; thence North 01°36'50" West, 423.00 feet; thence North 88°23'10" East, 40.00 feet; thence South 01°36'50" East, 20.00 feet; thence South 88°23'10" West, 20.00 feet, thence South 01°36'50" East, 281.00 feet; thence North 88°23'10" East, 20.00 feet; thence South 01°36'50" East, 20.00 feet; thence South 88°23'10" West, 20.00 feet; thence South 01°36'50" East, 102.00 feet to the point of beginning.

Said Easement contains 0.2126 acres (9,260 square feet) of land more or less.

UTILITY EASEMENT AGREEMENT

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

Recitals:

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 20-foot wide non-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 Easement Area) attached hereto and incorporated herein by reference. It is understood that the permanent easement will contain existing underground utilities and above grade curb/gutter/driveway/landscaping.

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Waukesha Water Utility  
Attn: Kelly Zyistra  
115 Delafield Street  
Waukesha, WI 53188

AGREEMENT

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

1. The Grantor grants to Grantee a perpetual easement and right of way to construct, reconstruct, maintain, operate, supplement and/or remove a water main and other related fixtures, equipment, 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.
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 fifteen (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 the water main 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, defend and hold the Grantor, and all of its departments, agencies, boards, officers, employees and agents, harmless 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 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 water main, except to the extent caused by the negligence or misconduct of the Grantor or its agents or employees.

4. The Grantee shall furnish the Grantor with a certificate of liability insurance.

5. The Grantor reserves the right to use the easement and the temporary construction easement for purposes that will not interfere with the Grantee's full enjoyment of the easement rights granted in this agreement. Grantor reserves the right to grant easement rights to other persons or entities as the Grantor deems appropriate, provided the easement rights are not inconsistent with the purpose of this easement nor interfere with the Grantee's full enjoyment of the easement rights granted herein. Grantor, however, shall not make grade changes exceeding one foot (1 foot) in the Utility Easement Area without prior written approval of Grantee. Grantor shall not place any buildings, fences or structures that require footings in the easement area. No trees or bushes that would grow to more than four (4) feet in height shall be planted within said easement without approval of Grantee.

6. Grantee shall coordinate any work within the Utility Easement Area and temporary construction easement area with the Expo Center Manager at least seven (7) days in advance of the commencement of any work to ensure that the use of the Expo Center shall not be disrupted. Grantee's activities shall not interfere with ingress or egress to Grantor's property unless required by public health and safety.

7. The Grantee shall restore the surface of the premises of the Grantor, as nearly as is reasonably possible, to the condition existing prior to disturbance by any construction or installation of the improvements except that Grantee shall not be required to replace pavement, trees, shrubbery or other above-grade items existing on or within the Utility Easement Area. Grantee shall be liable to make prompt payment for any damage caused by it or its agents to any of Grantor's roadways and curbs, fences, parking lots, signs, entrance gates, or any other fixtures or facilities of the Grantor.

8. 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 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.

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

10. 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.

11. This Agreement shall be duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin by Waukesha County. 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.

12. 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. Notice to Grantor shall be sent to the Manager of the Waukesha County Department of Parks and Land Use, Parks System Division, 515 W. Moreland Blvd., Room AC-230, Waukesha, Wisconsin 53188. Either party may change its address for notice by providing written notice to the other party.

13. 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.

14. 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.

15. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating, 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. 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.

16. 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.

This instrument was drafted by:  
Kelly Zylstra  
Waukesha Water Utility  
115 Delafield Street  
Waukesha, WI 53188

Waukesha County, Grantor

\_\_\_\_\_  
Dale R. Shaver,  
Director Department of Parks and Land Use

STATE OF WISCONSIN

COUNTY OF WAUKESHA

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2017, the above named Dale R. Shaver, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, Waukesha County, WI  
My commission \_\_\_\_\_

Waukesha Water Utility, Grantee

\_\_\_\_\_  
Shawn Reilly, Mayor

\_\_\_\_\_  
Gina Kozlik, City Clerk/Treasurer

STATE OF WISCONSIN

COUNTY OF WAUKESHA

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2017, 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 \_\_\_\_\_



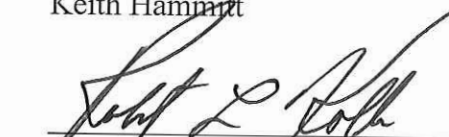
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Presented by:  
Land Use, Parks, and Environment Committee

  
David D. Zimmermann, Chair

  
Kathleen M. Cummings

ABSENT  
Keith Hammitt

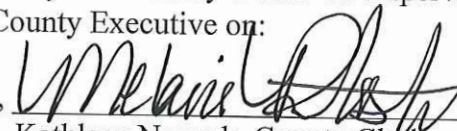
  
Robert L. Kolb

  
William Mitchell

ABSENT  
Thomas J. Schellinger

ABSENT  
Ted Wysocki

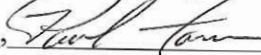
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 3/7/17,   
Kathleen Novack, County Clerk - Acting

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

Approved: X

Vetoed: \_\_\_\_\_

Date: 3/8/17,   
Paul Farrow, County Executive

<b>D1 - Kolb</b>	<b>AYE</b>	<b>D14 - Wood</b>	<b>AYE</b>
<b>D2 - Zimmermann</b>	<b>(M) AYE</b>	<b>D15 - Mitchell</b>	<b>AYE</b>
<b>D3 - Morris</b>	<b>AYE</b>	<b>D16 - Crowley</b>	<b>AYE</b>
<b>D4 - Batzko</b>	<b>AYE</b>	<b>D17 - Paulson</b>	<b>AYE</b>
<b>D5 - Dondlinger</b>	<b>Notified</b>	<b>D18 - Nelson</b>	<b>AYE</b>
<b>D6 - Walz</b>	<b>AYE</b>	<b>D19 - Cummings</b>	<b>AYE</b>
<b>D7 - Grant</b>	<b>AYE</b>	<b>D20 - Schellinger</b>	<b>AYE</b>
<b>D8 - Michalski</b>	<b>AYE</b>	<b>D21 - Zaborowski</b>	<b>AYE</b>
<b>D9 - Heinrich</b>	<b>AYE</b>	<b>D22 - Wysocki</b>	<b>AYE</b>
<b>D10 - Swan</b>	<b>AYE</b>	<b>D23 - Hammitt</b>	<b>AYE</b>
<b>D11 - Howard</b>	<b>(2) AYE</b>	<b>D24 - Whittow</b>	<b>AYE</b>
<b>D12 - Wolff</b>	<b>AYE</b>	<b>D25 - Johnson</b>	<b>Notified</b>
<b>D13 - Decker</b>	<b>AYE</b>		

171-O-074

Passed (23 Y - 0 N - 2 Absent)

Majority Vote

