

Encroachment Agreement

Recording Area
Name and Return Address
City Attorney's Office
PO Box 1130
Oshkosh, WI 54903-1130

91529500000
Parcel Identification Number

CITY OF OSHKOSH

AND

PROPERTY OWNER

This document drafted by:
David J. Praska, Deputy City Attorney
City of Oshkosh, Wisconsin

September 12, 2019

ENCROACHMENT AGREEMENT

This Agreement is between the City of Oshkosh ("City") and Winnebago County ("County"). The parties enter into this agreement for \$1.00 and other good and valuable consideration as described in this Agreement, the receipt of which is acknowledged.

- A. The County is the fee owner of Tax Parcel Number 91529500000 ("Property"), which is a large, 121.88 acre parcel within the City with the following boundaries: East County Highway Y on the north, County Park on the west and south, and County Highway A on the east. A private street, Butler Avenue, traverses through the property and intersects with County Highway Y on the north, and County Highway A on the southeast. The size of the parcel has allowed the County to develop multiple buildings in varying locations throughout the property for the purposes of furthering the provision of its public services. The County wishes to further develop the property by constructing a facility that will provide additional public services.
- B. The design and site plan for the County's new facility, which is located at what will be known as 684 Butler Avenue, impacts the City's municipal utilities located within an Easement on the Property, which has resulted in the need for this Agreement.
- C. The County previously granted to the City three (3) easements through the Property which allowed the installation and operation of the City's sanitary sewer and water distribution system. The three (3) easements are in the same general area, and are in widths of thirty (30) feet, forty (40) feet, and twenty (20) feet. The three (3) easements are identified in one Easement agreement that is dated October 23, 1995, and recorded with the Winnebago County Register of Deeds on August 29, 1996, as Document Number 947157. A Copy of this Easement is attached hereto as Exhibit A and its terms incorporated into this Agreement.
- D. The County's private street, Butler Avenue, shares some of the City's Easement areas but the actual utilities installed in the Easement area subject to this Encroachment agreement are not underneath the street. In certain Easement areas not relevant to this Encroachment, primarily to the south and southeast, the City's utilities are located underneath parts of Butler Avenue.
- E. Out of the City's three (3) water and sanitary sewer easement areas identified in Exhibit A, one (1) will be affected by the construction of the County's new facility. Specifically, the thirty (30) foot easement, as described below, will be impacted.

Parcel 2 (Part of Tax Parcel 15-2950)

A 30 foot strip of land in the W 1/2 of the NE 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the N 1/4 corner of said Section 36; thence N.89°44'53"E., 988.0 feet along the north line of the NE 1/4 of said Section 36; thence S.01°22'53.4"E., 26.48 feet more or less to a point on the south line of County Road "Y" also being the true point of beginning; thence S.01°22'53.4"E., 1826.62 feet.

- F. The County's development of its new facility will require the construction of two (2) driveway aprons ("Encroachment") over part of the City's thirty (30) foot easement. Generally, the construction or installation of a structure or permanent feature within an Easement requires that the holder of that Easement grant permission before the encroachment may be constructed. The driveway apron Encroachments are described as follows:

A 30 foot strip of land in the West 1/2 of the Northeast 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the North 1/4 corner of said Section 36; thence N89°44'53"E, 988.0 feet along the north line of the Northeast 1/4 of said Section 36; thence S01°22'53.4"E, 26.48 feet more or less to a point on the south line of County Road "Y" and the centerline of a 30 foot sanitary sewer and water main easement as described in Document No. 947157; thence S01°22'53.4"E, 1341.63 feet along said centerline to the point of beginning of Encroachment Area A; thence continuing S01°22'53.4"E, 60.00 feet along said centerline to the termination point of said Encroachment Area A.

Also,

A 30 foot strip of land in the West 1/2 of the Northeast 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the North 1/4 corner of said Section 36; thence N89°44'53"E, 988.0 feet along the north line of the Northeast 1/4 of said Section 36; thence S01°22'53.4"E, 26.48 feet more or less to a point on the south line of County Road "Y" and the centerline of a 30 foot sanitary sewer and water main easement as described in Document No. 947157; thence S01°22'53.4"E, 1478.85 feet along said centerline to the point of beginning of Encroachment Area B; thence continuing S01°22'53.4"E, 85.00 feet along said centerline to the termination point of said Encroachment Area B.

- G. The Encroachment Areas and their locations are identified on Exhibit B, which is incorporated into this Agreement.
- H. The City grants permission to the County for the requested Encroachments into the City's sanitary sewer and water main Easement provided: 1) the Encroachment constructed is materially the same as the Encroachment requested; 2) it is clear that the City's easement rights supersede the County's Encroachment rights; and, 3) this Encroachment is subject to the terms and conditions identified or referenced in this Agreement.
- I. The City's permission for the Encroachment is contingent upon the initial, and continuing, compliance with all applicable local, state, and federal statutes, codes, ordinances, and rules.

- J. The County is solely responsible for constructing, maintaining, repairing, and replacing the Encroachment. The City's permission and approval of this Encroachment is not meant to state or imply that the City guarantees, warranties, or acquires any responsibility for the short and/or long-term stability and safety of the Encroachment. The Encroachment is and always remains the sole responsibility and liability of the County.
- K. The County acknowledges and agrees that City's public utilities and public facilities within the Easement are subject to ongoing operation, maintenance, repair, and replacement, as well as the potential installation of new or additional facilities that are allowed by the terms of the Easement. To that end,
1. The City understands that the Encroachment is part of the driveway allowing access to a County facility. Therefore, the City will provide the County with reasonable advance notice of any City repairs or activities that affect the Encroachment Areas. In the case of an emergency affecting the Encroachment Areas, the City may proceed to alleviate the emergency situation without notice, but shall notify the County as soon as practicable.
 2. The City will cooperate and help coordinate any disruptions of access into the County facility through the Encroachment Areas. However, the County is responsible for costs and logistics related to removing or otherwise protecting the Encroachment, or rerouting access as affected by any public maintenance, repair, or replacement projects or activities within the Encroachment Areas. The City will not be responsible for any costs related to the disruption, removal, or repair of the Encroachment.
 3. The parties agree to work together and coordinate actions necessary to facilitate and/or accommodate any planned construction, maintenance, repair, or replacement of public utilities or Encroachment within the timeframe of the anticipated work.
 4. The City will grade, re-seed, and install any erosion mats as required or necessary for those areas disturbed by the City related to its use of the Easement. The City shall be responsible for repairing and/or replacing the improvements within the Encroachment Areas that are disrupted by the City related to the City's use of the Easement.
- L. Due to the nature of this Agreement, the County is not eligible for, and specifically disavows, any right to receive compensation of any kind for the removal, alteration, or limited accessibility, in whole or in part, whether temporary or permanent, of the Encroachments.
- M. The City acknowledges the County's investment in improving the surface of the Easement property through its improvements within the Encroachment Areas. The City also acknowledges the fact that some or all of the surface improvements may be the result of City zoning requirements for the County Property. Despite being a remote possibility, both parties acknowledge that at some point in the future, the City's Easement for public utility uses may conflict with the County's use of the Encroachment Areas as allowed in this

Agreement. Such conflicts or anticipated conflicts will likely have a significant lead time to allow a negotiated resolution to accommodate each party's interests. The City agrees to consult with the County and in good faith assist with any approvals or changes necessary to ensure the continued access and functioning of the County facility on its Property. Both parties agree to act in good faith to resolve any issue that is required to allow the City to properly operate and maintain its public utilities and facilities. To that end, the following issues may in the future adversely affect, or limit, the County's use of the Encroachment Areas:

1. The City determines that the Encroachment adversely affects the functioning of the public utilities in the Easement;
 2. Additional encroachments are added, or the existing Encroachment is materially expanded, without permission from the City;
 3. Local, state, or federal rules, laws, or guidelines relating to any public facility located in the easement, or any other local, state, or federal law prohibit the continued location of the encroachments;
 4. The County fails to properly maintain, repair, or replace the Encroachment; or,
 5. Any other lawful reason or circumstance.
- N. The County releases the City of Oshkosh, its employees, agents, elected officials, and authorized volunteers from all debt, claims, demands, damages, actions and causes of action whatsoever which may result from the Encroachment. The County shall protect and hold the City of Oshkosh harmless against all actions, claims and demands of any kind or character whatsoever which are related to the Encroachment.
- O. The County's responsibilities and liabilities pursuant to this Agreement extend to other persons, contractors, and agents performing work on the County's behalf that are related to the Encroachment.
- P. This Agreement is solely for the benefit of the City and the County, and it is not intended to benefit any third party.
- Q. The decision to enforce or not enforce, as well as the timing of enforcement, shall be at the discretion of each party and such decision shall not act as a waiver of any rights to exercise any right relating to the Encroachment in the future.
- R. Both the City and the County benefit from certain immunities and limitations of liability. This Agreement shall incorporate and adopt all immunities and limitations on liability provided to counties and municipalities within the Wisconsin Statutes, regardless of whether a claim is based upon contract, tort, or other theory.
- S. This Encroachment Agreement shall inure to the benefit of, and be binding upon, these two parties. To the extent that the County rents or leases the Property, the County shall remain responsible for its obligations described in this Agreement even though the actions are taken by tenants or are related to any tenancy.

- T. This Agreement may be recorded with the Winnebago County land records for notice purposes only. The action of recording this Agreement shall not imply the conveyance of any interest in land. This Agreement shall expire upon the conveyance of any interest in that part of the Property that benefits from the Encroachment Areas. In the event that part of the Property benefitting from the Encroachment Areas is divided and conveyed to others, then any future owner of that new parcel shall be required to obtain their own Encroachment Agreement with the City. The City's potential encroachment agreements with future owners of the Property or new parcel shall not be unreasonably denied, provided the Encroachment remains substantially the same as described in this Agreement, and other conflicts described or inferred in this Agreement are not present.

[SIGNATURE PAGE FOLLOWS]

Dated this _____ day of _____, 2019.

WINNEBAGO COUNTY

By: _____

(Print Name) (Print Title)

STATE OF WISCONSIN)
) ss.
WINNEBAGO COUNTY)

Personally came before me this _____ day of _____, 2019, the above-named _____, to me known to be the person who executed the foregoing document and acknowledged the same.

Notary Public, State of Wisconsin
My Commission expires: _____

CITY OF OSHKOSH

By: _____ And: _____
Mark A. Rohloff, City Manager Pamela R. Ubrig, City Clerk

STATE OF WISCONSIN)
) ss.
WINNEBAGO COUNTY)

Personally came before me this _____ day of _____, 2019, the above-named Mark A. Rohloff, City Manager, and Pamela R. Ubrig, City Clerk, of the City of Oshkosh, a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such officers of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

Notary Public, State of Wisconsin
My Commission expires: _____

EASEMENT

THIS INDENTURE, MADE THIS 23rd day of October, 1995, by WINNEBAGO COUNTY, GRANTOR, and the CITY OF OSHKOSH, a municipal corporation, located in Winnebago County, Wisconsin, GRANTEE,

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby give and grant unto the Grantee, its successors and assigns, an easement in, under and over the land hereinafter described, including the right to enter upon said land for the purpose of construction, maintaining, repairing and operating thereon a sanitary sewer, and water main, over and through and upon that certain tract of land situated in the City of Oshkosh, Winnebago County, Wisconsin, and described as follows:

Parcel 1 (Part of Tax Parcel 15-2950)

A 40 foot strip of land in the NE 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the N 1/4 corner of said Section 36; thence N. 89° 44' 53" E., 896.23 feet along the north line of the NE 1/4 of said Section 36; thence S. 01° 16' 43.3" E., 26.63 feet more or less to a point on the south line of County Road "Y" also being the true point of beginning; thence continuing S. 01° 16' 43.3" E., 1179.70 feet; thence S. 51° 14' 59.2" E., 58.37 feet; thence S. 01° 28' 23" E., 592.16 feet; thence S. 64° 58' 04.6" E., 443.30 feet; thence S. 72° 19' 54" E., 385.43 feet; thence S. 76° 54' 44.6" E., 331.85 feet more or less to the westerly right-of-way line of the Fox River Valley Railroad.

Parcel 2 (Part of Tax Parcel 15-2950)

A 30 foot strip of land in the W 1/2 of the NE 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the N 1/4 corner of said Section 36; thence N. 89° 44' 53" E., 988.0 feet along the north line of the NE 1/4 of said Section 36; thence S. 01° 22' 53.4" E., 26.48 feet more or less to a point on the south line of County Road "Y" also being the true point of beginning; thence S. 01° 22' 53.4" E., 1826.62 feet.

Parcel 3 (Part of Tax Parcel 15-2950)

A 20 foot strip of land in the SW 1/4 of the NE 1/4 of Section 36, Township 19 North, Range 16 East, Fifteenth Ward, City of Oshkosh, Winnebago County, Wisconsin whose centerline is described as follows:

Commencing at the N 1/4 corner of said Section 36; thence N. 89° 44' 53" E., 896.23 feet along the north line of the NE 1/4 of said Section 36; thence S. 01° 16' 43.3" E., 1206.33 feet, thence S. 51° 14' 59.2" E., 58.37 feet; thence S. 01° 28' 23" E., 592.16

Exhibit

A 1003

feet to the true point of beginning; thence S. 76° 45' 52.1" W., 369.28 feet more or less to the east property line of the Winnebago County Community Park.

Upon exercising any of the rights herein granted, Grantee shall cause the property, soil and grass to be repaired and replaced in a condition similar to its condition immediately prior thereto and Grantee obligates itself to pay to Grantor, its successors and assigns, all actual damages caused by reason of the installation, operation, repair, or removal of said sanitary sewer, water main and laterals through said property.

IT IS FURTHER MUTUALLY AGREED that no building, tree or other substantial or permanent structure shall be placed upon said property by the Grantor.

The Grantee hereby releases the Grantor from all debts, claims, demands, damages, actions and causes of action whatsoever which may result from said easement heretofore granted by Grantor, and further agrees to hold the Grantor free and harmless from any claim for damages which may be made by reason of damages or injury to persons or property connected therewith.

IN WITNESS WHEREOF, said Grantor has hereunto set its hand and seal the day and year first above written.

WINNEBAGO COUNTY

By: Jack D. Steinhilber
County Executive

And: Linda Wayne

STATE OF WISCONSIN)

) ss.

WINNEBAGO COUNTY)

Personally came before me this 23rd day of October, 1995, Jack D. Steinhilber and Linda Wayne, of WINNEBAGO COUNTY, to me known to be such persons and officers, who executed the foregoing instrument and acknowledged that they executed the same as such officers by its authority for the purpose therein contained.

Virginia S. Chalow
Notary Public, Winnebago County, WI
My Commission: 9-5-99

This instrument drafted by:
Attorney Warren P. Kraft
Oshkosh, WI 54902-1130

Exhibit A 2 of 3

✓ 1 ✓ 347157

Register's Office
Winnebago County, Wis.
Received for record
this 22nd Day of
August
A.D. 1996 at
9:28 o'clock A.M.
James Chausky
REGISTER OF DEEDS

CPJ
14:00

Return to:
City Attorney
P.O. Box 1130
Oshkosh, WI
34902-1130

Exhibit A 3 of 3

EXHIBIT

NORTH 1/4 CORNER
SECTION 36-19-16

COUNTY ROAD 'Y'

N89°44'53"E 988.00' NORTH LINE OF THE NE 1/4 OF SECTION 36-19-16
S01°22'53.4"E 26.48'

TAX PARCEL
91529500000

BUTLER AVENUE
(PRIVATE)

30' WIDE SANITARY SEWER & WATER MAIN EASEMENT
DOCUMENT NO. 947157

POINT OF BEGINNING
ENCROACHMENT AREA A

ENCROACHMENT
AREA A

POINT OF BEGINNING
ENCROACHMENT AREA B

ENCROACHMENT
AREA B

TAX PARCEL
91529500000



100 50 0 100
SCALE - FEET

McMAHON
ENGINEERS ARCHITECTS
McMAHON ASSOCIATES, INC.

Project No. B1115 91800327 Date MARCH, 2019 Scale 1"=100'

Drawn By MPK/DEW Field Book Page

1445 McMAHON DRIVE NEENAH, WI 54956
Mailing: P.O. BOX 1025 NEENAH, WI 54957-1025
Tel: (920) 751-4200 Fax: (920) 751-4284

File No.

Exhibit B 1 of 2

