

CONDITIONAL LIMITED EASEMENT - UTILITY

Wisconsin Department of Transportation - Aeronautics
Exempt from fee: s.77.25(12) Wis. Stats.
BOA 6/27/2013 Ch. 114 Wis. Stats

THIS EASEMENT, made by Winnebago County, Wisconsin, a municipal corporation on behalf of its Wittman Regional Airport, GRANTOR, conveys a conditional limited easement as described below to the City of Oshkosh, Wisconsin, a municipal corporation, GRANTEE, for the sum of Fifty Thousand and no/100 dollars (\$50,000) and other good and valuable consideration for the purpose of installation of a storm sewer pipeline as part of its municipal storm water system. Specifically, Grantee will be installing an underground storm sewer main along with ancillary facilities and equipment, including manholes, surface grates, inlets or similar features on the surface and above ground.

Legal Description:

A strip of land, 30 feet in width, being a part of the NE 1/4 of the NE 1/4 of Section 34 and part of the NW 1/4 of the NE 1/4, the NE 1/4 of the NW 1/4, and the NW 1/4 of the NW 1/4 of Section 35, Township 18 North, Range 16 East, City of Oshkosh, Winnebago County, Wisconsin, the centerline of said 30-foot wide strip being described as:

Commencing at the Northeast corner of said Section 34; thence S00° 23' 03"W, along the east line of the NE 1/4 of said Section 34, 640.59 feet; thence N89° 24' 50"W, 18.20 feet to the Point of Beginning of said easement centerline; thence S00° 42' 56"W, 579.53 feet; thence S89° 24' 25"E, 3016.66 feet; thence N49° 51' 50"E, 625.02 feet; thence S71° 45' 04"E, 537.27 feet to the east line of the NW 1/4 of the NE 1/4 of said Section 35, said point also being on the west line of vacated Iowa Street, as shown on the South Side Auto Plat, said point also being the end of this easement centerline.

THE CONDITIONS OF SAID EASEMENT OVER THE ABOVE DESCRIBED PARCEL ARE AS STIPULATED IN THE ATTACHED "ADDENDUM A". ADDENDUM A AND UTILITY EASEMENT MAP ARE ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS EASEMENT SHALL TERMINATE IF NO INTERGOVERNMENTAL AGREEMENT BETWEEN WINNEBAGO COUNTY FOR WITTMAN REGIONAL AIRPORT AND THE CITY OF OSHKOSH IS IN PLACE WHICH ALLOWS FOR THE INSTALLATION AND MAINTENANCE OF THE STORM SEWER. IF SAID EASMENT IS TERMINATED OR ABANDONED, THE STORM WATER INFRASTRUCTURE WILL BE REMOVED OR ABANDONED IN PLACE AND THE SITE RESTORED TO ITS PRE-EASEMENT CONDITION WITH THE CITY OF OSHKOSH RESPONSIBLE FOR THE ASSOCIATED COSTS AND WORK.

SIGNATURE PAGE FOLLOWS

This space is reserved for recording data

City Attorney's Office
City of Oshkosh
215 Church Avenue
P.O. Box 1130
Oshkosh, WI 54903-1130

Parcel Identification Number/Tax Key Number
91323010000 & 91413530000

ADDENDUM A UTILITY EASEMENT CONDITIONS

GRANTOR is the owner and operator of the Wittman Regional Airport, situated in the County of Winnebago, State of Wisconsin, and is obligated to meet standards established by the Federal Aviation Administration relating to airport safety and the protection of aircraft landing and taking off from said airport. In order to meet those standards, **GRANTEE** agrees to limit its easement rights on the easement areas hereinbefore referred to in the manner described below:

1. **USE FOR STORM WATER DISTRIBUTION SYSTEM:** Grantee intends to construct an underground storm sewer main along with above and below ground ancillary facilities as part of its storm water distribution system within the easement. Grantee shall have the right to access, survey, lay, construct, use, operate, maintain, repair, replace, relocate, and/or remove the storm sewer main and ancillary facilities. When such facilities are no longer necessary or operational as a part of Grantee's storm water system, the facilities may be removed or may be abandoned in place by appropriate methods at that time. Grantee shall consult with Grantor regarding the methods and timing of removal or abandonment of the facilities.
2. **MAINTENANCE:**
 - a. Grantee shall be responsible for maintaining its facilities, including the maintenance, repair, and replacement of such facilities, except where such maintenance, repair or replacement may be caused by Grantor, its agents, contractors or assigns. Initial construction of Grantee's facilities is being coordinated with the reconstruction of certain of Grantor's facilities and therefore restoration shall be completed by the contractor in conjunction with Grantor's overall project. After the initial construction and restoration, Grantee shall be responsible for repairing the surface of the easement property which is damaged by Grantee's use of the property, or by Grantee's repair and/or maintenance of its facilities within the easement Property.
 - b. Grantor shall be responsible for all ongoing maintenance and repairs of the property which are not caused by Grantee's storm water distribution facilities including, but not limited to, grading, reseeding, and vegetation maintenance. Grantor shall be responsible for keeping the surface of the property clear of debris. Grantor shall notify Grantee and receive Grantee's approval prior to removing more than twelve (12) inches of any top soil or subsoil on the property.
 - c. Grantee agrees not to bring any vehicle or other equipment into, nor conduct repairs, maintenance or other operations within the boundaries of the airport property, except at such times as may be designated for such purposes by the Grantor. The Grantor shall not unreasonably refuse to designate such times, and such times so designated shall be those reasonably related to the unobstructed taking off, landing and flight of the aircraft. Notwithstanding any other provision in this paragraph, however, the Grantee may upon notification to the Grantor, enter, bring any vehicle and equipment into and conduct repair, maintenance, and other operations within said easement area in the event of a break, leak or any other emergency situation arising with respect to said facility.
3. **Airport Operations:** Grantee expressly agrees for itself, its successors and assigns, to prevent any use of said easement lands which will interfere with or adversely affect the operation or maintenance of the airport.

4. **Aircraft Interference:** Grantee will not permit or suffer the use of said easement lands as to create any electrical or electronic interference with radio communications between any air navigational or aviation communications installation upon or in the vicinity of the airport property and aircraft, or as to make it difficult for an aircraft pilot to distinguish between airport lights and others, or as to otherwise impair an aircraft pilot's visual perception in the vicinity of the airport or as otherwise to endanger the landing, taking off, or maneuvering of aircraft in the vicinity of said airport property.
4. **Above Surface Objects:** Except for those surface structures installed as part of the initial construction of the storm water main project, Grantee agrees that so long as the underlying airport property is used for airport purposes, no poles, surface markers or surface structures of any kind shall be placed upon airport property, and the Grantee agrees to not replace or relocate any existing facilities within the easement area without the prior written approval of the Grantor, it being understood and agreed, however, that such approval shall not be unreasonably withheld. Equipment may not encroach into protected airspace except in emergencies.
5. **Relocation of Utilities:** Any improvements on said easement lands shall be constructed and maintained at no cost to the Grantor or the Federal Aviation Administration. Should the facility in said easement area require relocation or encasement, the same shall be done with no cost to the Grantor or the Federal Aviation Administration. New or replacement facilities shall not exceed the height of existing structures.
6. **Hold Harmless:** Grantee agrees to provide liability protection for its officers, employees and agents while acting within the scope of their employment. Subject to any limitations contained in Sec. 893.80 and any similar statute, of the Wisconsin Statutes, Grantee further agrees to hold Grantor harmless from any and all liability, including claims, demands, losses, costs, damages, and expenses of every kind and description (including death), or damages to person or property arising out of or in connection with or occurring during the course of this agreement where such liability is founded upon or grows out of the acts or omission of any of the officers, employees or agents of Grantor while acting within the scope of their employment.

Municipal liability: Nothing in this Agreement is intended as a waiver of either parties' right or opportunity to rely upon the governmental limitations and immunities contained within Wisconsin law. Immunities and limitations include, but are not limited to, Sections 345.05, 893.80, and 893.83, Wisconsin Statutes. Such damage limits, caps and immunities are intended to be preserved and are incorporated into this agreement and shall govern all disputes, contractual or otherwise, as they apply to the governmental entities and its agents, officers, and employees.

6. **Agents or Grantee:** Grantor agrees that the Grantee may temporarily assign the construction and maintenance rights identified herein to any contractor, third party, or other person. Assignees must demonstrate to the Grantee that they have sufficient competence and must give adequate assurances that any work to be performed in or around the easement property shall be conducted in a skillful manner. Assignees must also protect the Grantor's interest in the easement property to the same extent as if the Grantee was itself performing the construction or maintenance.
7. **Authority:** Grantor affirms that all necessary boards and elected officials have approved the acceptance of this Easement, and that the undersigned have the authority to sign this easement on behalf of the Grantor. The Grantee affirms that all necessary boards and elected officials

have approved the acceptance of this easement, and that the undersigned have the authority to sign this easement on behalf of the Grantee. Grantee's written consent will be required before any additional easement or use of this easement property by third parties is granted.

8. It is understood and agreed that these covenants and agreements shall be binding upon the heirs, administrators, executors and assigns of the parties, that these covenants and agreements shall run with the land, and that for the purposes of this instrument, the real estate described in this easement and owned by the Grantor shall be the servient tenement, and the Grantee shall be dominant tenement.