

Easement

Document Number

Document Title

THIS INDENTURE, made this ____ day of January, 2015, by WINNEBAGO COUNTY, WISCONSIN, 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 the Grantee, the receipt of which is hereby acknowledged, the Grantor, its successors and assigns, does hereby give and grant unto the Grantee, its successors and assigns, and Grantee accepts, an easement over, under, and through the land hereinafter described.

Recording Area

Name and Return Address

City Attorney's Office
Oshkosh, WI 54903-1130

- 1. PURPOSE: The purpose and use by Grantee of the Easement Property described in this document shall be used by Grantee for a water main as part of its water distribution system. Specifically, Grantee will be installing an underground water main along with ancillary facilities and equipment, including water main valves and fire hydrants on the surface and above ground.

0120201000

0120201010

0120203000

Parcel Identification Number (PIN)

- 2. PROPERTY: The property subject to this easement granted herein shall be over, under, and through certain tracts of land situated in the Town of Nekimi, Winnebago County, Wisconsin, ("Easement Property") and described as follows:

Part of the Southeast 1/4 of the Northwest 1/4 and part of the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 17 North, Range 16 East, Town of Nekimi, Winnebago County, Wisconsin more fully described as follows:

Commencing at the West 1/4 corner of said section 11;
Thence South 89° 22' 54" East, 145.79 feet along the south line of the Southwest 1/4 of the Northwest 1/4 to the easterly line of the existing Michigan Wisconsin Pipe Line gas line easement also being the point of beginning;

Thence North 11° 37' 21" West, 50.03 feet along the easterly line of said gas line easement;
Thence North 45° 12' 21" West, 143.95 feet along the northeasterly line of said gas line easement to the easterly existing right of way line of Knapp Street;
Thence North 0° 12' 39" East, 30.38 feet along said easterly right of way line to the southerly line of lands owned by Gerald and Mary Glatz as described in Quit Claim Deed document number 1166901 recorded at the Winnebago County register of deeds;
Thence South 88° 40' 21" East, 12.15 feet along said southerly line;
Thence South 45° 12' 21" East, 214.45 feet;
Thence South 89° 22' 54" East, 2,423.54 feet to the east line of the Southeast 1/4 of the Northwest 1/4 of said Section 11;
Thence South 0° 19' 42" West, 30.00 feet along said east line to the Center 1/4 corner of said section 11;
Thence North 89° 22' 54" West, 2,475.58 feet along the south lines of the Southeast 1/4 of the Northwest 1/4 and the Southwest 1/4 of the Northwest 1/4 to the point of beginning.

Containing 1.847 acres (80,475 square feet), more or less.

3. MAP: A map reflecting the location of the Easement Property is attached as Exhibit A and fully incorporated in this document.
4. ACCESS RIGHTS: Grantee shall have the complete right to access and use the Easement Property for all purposes related to Grantee's water main and water distribution system. Both parties understand the importance and sensitive nature of the other parties' facilities, namely the Grantor's operation of the Airport, and the Grantee's operation of its municipal water distribution system. Grantee shall provide the Airport Director, or their designee, 24 hour notice prior to entering any fenced area for scheduled maintenance or repair. In the event of an emergency, Grantee will provide Grantor as much notice as is practical under the particular circumstances. Grantor agrees to provide Grantee with access to the Easement Property through adjacent or nearby property, including gates otherwise restricting access to the Easement Property, and including temporary, limited access over and across adjoining and nearby property for the purpose of accessing the Easement Property.
5. USE FOR WATER DISTRIBUTION SYSTEM: Grantee intends to construct an underground water main along with above and below ground ancillary facilities within the Easement Property, and Grantee shall further have the right to fully use the Easement Property as part of its water distribution system. The Grantee shall have the right to access, survey, lay, construct, use, operate, maintain, repair, replace, relocate, and/or remove the water main, water main valves, and fire hydrants.
6. MAINTENANCE:
 - a. Grantee shall be responsible for maintaining its facilities incorporated into the Easement Property, including the maintenance, repair, and replacement of such facilities. Except as otherwise noted, the Grantee shall grade, seed, and mat the Easement Property after the initial construction of the water main and ancillary water distribution facilities and equipment. The driveway located over a portion of the Easement Property shall be restored to its original condition. Any drainage ditches located along the Easement Property shall be restored to their original condition. 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 Easement 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 Easement Property which are not caused by Grantee's water distribution facilities including, but not limited to, grading, reseeding, and vegetation maintenance. Grantor shall be responsible for keeping the surface of the Easement 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 Easement Property.
7. INTERFERENCE WITH EASEMENT: Agricultural or farming uses will no longer be allowed on and within the Easement Property. Except as otherwise noted, the entire width of the Easement Property shall be exclusively maintained as turf. No construction or installation of new structures or improvements shall be allowed in the Easement Property, including temporary or permanent building structures, driveway expansions, parking areas, trees, substantial landscaping, or fences. Grantor may perform all routine maintenance of any part of the Easement Property without contacting the Grantee or receiving its approval. However, any material change or work performed within the Easement Property may only be undertaken upon written permission from the City Board of Public Works, and such permission shall not be unreasonably withheld. "Material change or work" includes dredging, changing any elevation, or reconfiguring any drainage ditch, or changing the surface of any driveway. Grantor shall be responsible for the costs of removing and/or replacing anything that interferes with the Grantee's maintenance, repair, replacement, or use of the Easement Property. Grantor shall also be responsible the actions of any tenant, lessee, or agent related to the unauthorized interference with the Grantee's use of Easement Property.
8. USE OF EASEMENT BY OTHERS: The 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 shall be conducted in a skillful manner. Assignees must also protect the Grantor's interest in the easement premises to the same extent as if the Grantee was itself performing the construction or maintenance.

9. **DEFAULT:** If either Grantor or Grantee reasonably believes that the terms of this Easement have been breached, then written notification of the alleged breach shall be delivered to the other party. Any party in breach shall have sixty (60) days to cure any actual breach. However, Grantee may immediately remove any object or material which it believes materially interferes with the design of the water distribution facilities within the Easement Property.
10. **TERM:** This easement is being granted in perpetuity for public purposes and uses. All rights, title and privileges herein granted, including benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the Grantor and Grantee, their respective heirs, executors, administrators, successors, assigns, and legal representatives.
11. **EXISTING EASEMENTS:** One or more recorded easements may exist which relate to or affect the Easement Property. This easement is subject to all existing easements and restrictions of record up to and including the date any such easements are released through a document recorded with the Winnebago County Register of Deeds.
12. **WAIVER:** No delay or omission by any party to this agreement in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed as 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.
13. **INVALIDITY:** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be 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 THIRD PARTY BENEFICIARY:** The terms of this Agreement are for the benefit of the two parties identified, and it is not the intention of either the Grantor or Grantee that other parties shall acquire any rights to enforce or benefit from through this Agreement.
15. **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.
16. **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue for any action regarding this Agreement shall be the Winnebago County, Wisconsin, Circuit Court or, if a federal court action, then the appropriate district and/or branch within which Winnebago County is located.
17. **NOTICES:** Any notices required by this Easement shall be in writing and delivered via certified mail, return receipt requested, as follows. Changes to these addresses shall be in writing. In addition to formal notification, both parties agree to take reasonable measures to keep the other party informed of issues or questions regarding the Easement Property.

FOR THE GRANTOR:

Winnebago County
c/o County Executive
P.O. Box 2808
Oshkosh, WI 54901-2808

FOR THE GRANTEE:

City of Oshkosh
c/o Director of Public Works
P.O. Box 1130
Oshkosh, WI 54903-1130

18. **AUTHORITY:** 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 agreement on behalf of the Grantee. Grantor affirms that it has the authority without limitation to enter into this easement agreement. The undersigned assert and affirm that they have they have the authority without limitation to enter into this easement agreement on behalf of the Grantor. Grantee's written consent will be required before any additional easement or use of this easement property by third parties is granted.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, said Grantor and Grantee have hereunto set their hand and seal the day and year first above written.

WINNEBAGO COUNTY

By: _____
Mark L. Harris, County Executive

By: _____
Susan T. Ertmer, County Clerk

STATE OF WISCONSIN)
) ss.
WINNEBAGO COUNTY)

Personally came before me and acknowledged this _____ day of January, 2015, the above named Mark L. Harris and Susan T. Ertmer, as representatives of Winnebago County, Wisconsin, to me known to be such persons who executed the foregoing instrument and acknowledged the same, for the purpose herein contained.

Notary Public, State of Wisconsin
My Commission expires: _____

CITY OF OSHKOSH

By: _____
Mark A. Rohloff, City Manager

By: _____
Pamela R. Ubrig, City Clerk

STATE OF WISCONSIN)
) ss.
WINNEBAGO COUNTY)

Personally came before me and acknowledged this _____ day of January, 2015, the above named Mark A. Rohloff and Pamela R. Ubrig as representatives of the City of Oshkosh, to me known to be such persons who executed the foregoing instrument and acknowledged the same, for the purpose herein contained.

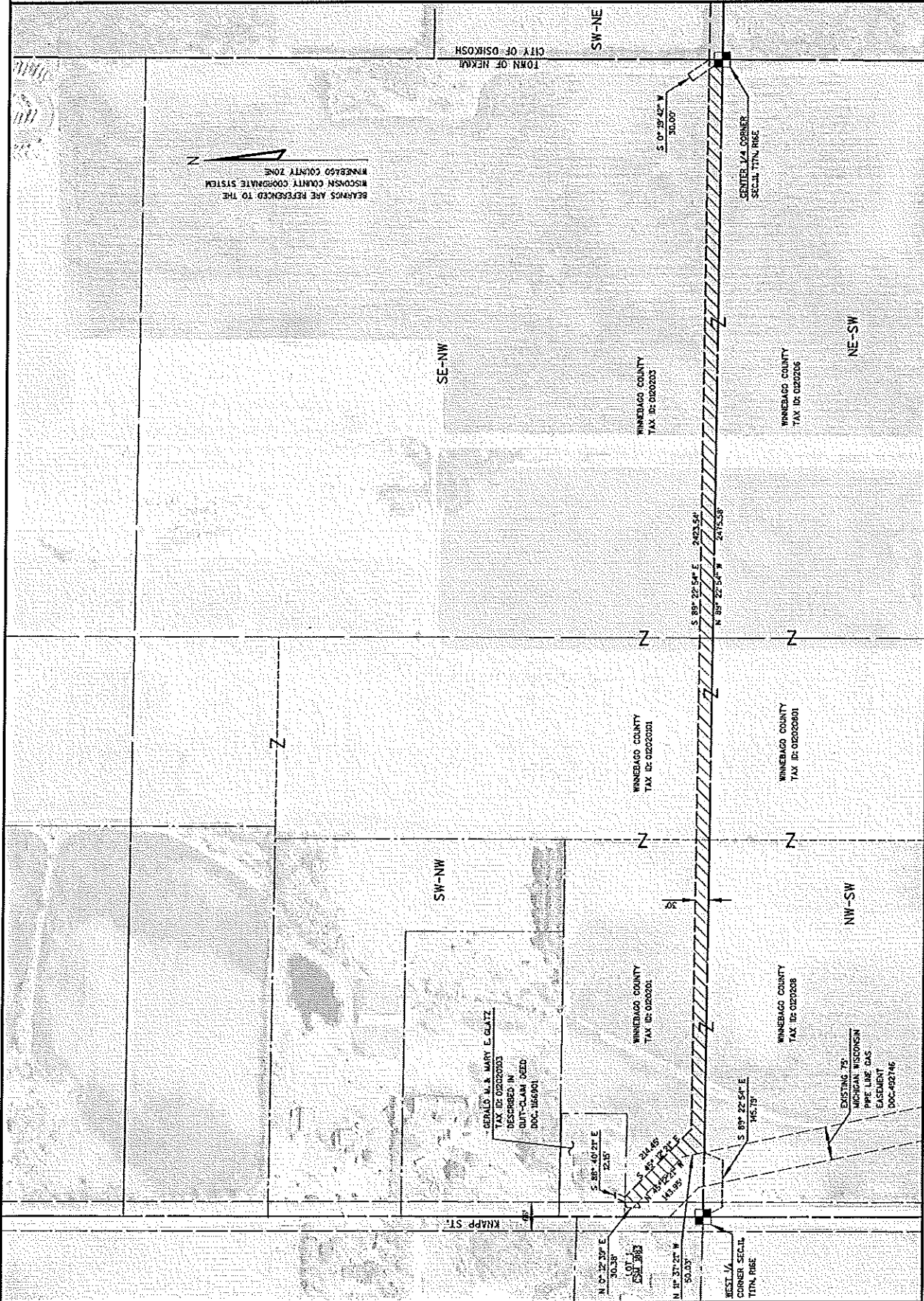
Notary Public, Winnebago County, Wisconsin
My Commission expires: _____

This instrument drafted by:
Attorney David J. Praska
Oshkosh, WI 54901-1130

WINNEBAGO COUNTY
CITY OF OSHKOSH
WINNEBAGO COUNTY, WISCONSIN



FIGURE 1
JOB NO. 1082-007



BEARINGS ARE REFERENCED TO THE
WISCONSIN COUNTY COORDINATE SYSTEM
WINNEBAGO COUNTY ZONE

Exhibit A

12/17/2014 10:42:33 AM