

Item #'s: 15-996, 997, 998, 999, 1000, 1001

**Report to the
Manitowoc Plan Commission**

Date: September 23, 2015

Request: The grant of access and easement request is from NSIGHT a fiber optic and telecommunications company, who purchased the rights to the fiber optics utility line from Central Brown County Water Authority (CBCWA). During the fiber optic acquisition process it was discovered that there were various locations that the fiber optic utility was not covered by an easement. The documents attached will grant the necessary easement for the fiber optic utility.

All the fiber is currently in place no site excavation or disturbance will be needed.

The easement documents have been reviewed and approved by the City Engineering Department.

Recommendation: Staff recommends to the Plan Commission to approve the easement documents. Plan Commission recommends to the Council to instruct the Mayor and City Clerk to sign said easement documents.

GRANT OF ACCESS AND EASEMENT

Name & Return Address:
Central Brown County Water Authority
Attn: David Vaclavik, Authority Manager
3100 Eaton Road
Bellevue, WI 54311

Parcel Id. No: 052-820-401-011.00

GRANT OF ACCESS AND EASEMENT ("Easement") made by City of Manitowoc ("Owner") and Manitowoc Marina, LLC ("Lessee") to the Central Brown County Water Authority, a Wisconsin joint local water authority and separate municipal corporation located in Brown County, Wisconsin (the "Authority").

Owner is the fee simple owner of the real property described in the attached Exhibit A (the "Property") and Lessee is the current lessee of said property. Owner and Lessee are willing to grant to the Authority a permanent easement, shown in the attached Exhibit B and described in the attached Exhibit C (the "Permanent Easement Area"), over a portion of the Property for the purposes of allowing the placement of certain facilities upon and access to the Permanent Easement Area.

AGREEMENT

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

1. Grant of Easement. Owner and Lessee hereby grant to the Authority, and the Authority's successors and assigns, a perpetual, non-exclusive easement in, on, under and over the Permanent Easement Area for the construction, installation, reconstruction, replacement, supplementation, operation, repair, maintenance and safeguarding of:

- (a) a subterranean water pipeline and related water supply facilities, and
- (b) a subterranean fiber optic cable.

All of the property described in this paragraph 1 will be called the "Facilities".

2. Right of Access. Owner and Lessee hereby grant to the Authority this Easement with full rights of ingress and egress on and over the Property for the purpose of obtaining access to the Permanent Easement Area. The Authority shall exercise its right of access with the least inconvenience practical to Owner and Lessee.
3. Terms and Conditions. This Easement is made upon the conditions and limitations set forth below:
 - a. The Authority and its contractors, invitees, and agents shall have the right to enter upon that part of the Property located outside and adjacent to the Permanent Easement Area, as necessary for

- the purpose of exercising its rights under this Easement, after prior notification of the Owner and Lessee.
- b. The Authority agrees to use the Permanent Easement Area in accordance with all applicable laws, ordinances, rules, regulations, and requirements of all federal, state, and municipal governments. The Authority also agrees to have appropriate traffic control in accordance with the manual on uniform traffic control devices.
 - c. Owner and Lessee, their successors and assigns, agree that any placement of improvements of any kind; planting of trees or other vegetation or storage of goods or products shall be done in a way that (i) protects the Facilities from physical damage; (ii) does not restrict access to the Facilities; and (iii) minimizes the impact to the Authority in their use of the Permanent Easement Area.
 - d. No markings or signage shall be placed on any of the Owner's property before first obtaining approval of the City of Manitowoc Department of Public Works. No markings or signage shall be placed on any of Lessee's property before first obtaining approval of Lessee.
 - e. This Easement or any rights under this Easement shall not be assignable without prior written approval of the Owner and Lessee.
 - f. Notwithstanding any other provision of this agreement, no default under this agreement shall entitle Owner or Lessee to terminate this Easement.
4. Restoration/Repair. The Authority agrees to restore or cause to have restored the Permanent Easement Area and disturbed sections of Owner's land adjacent to the Permanent Easement Area, as nearly as is reasonably possible, to the conditions existing prior to entry by the Authority or its agents.
 5. No Merger of Title. The doctrine of merger of title shall not cause termination of this Easement.
 6. Covenants Run with Land. All of the terms and conditions in this Easement, 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 Owner, Lessee and the Authority and their respective successors and assigns. The grantee of all or any part of the Property, by acceptance of a deed, easement or other conveyance, whether from an original party to this Easement or from a subsequent owner or lessee, shall be conclusively deemed to have assumed and agreed to this Easement.
 7. Governing Law. This Easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
 8. Entire Agreement. This Easement 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 Easement and duly recorded in the office of the Register of Deeds of Manitowoc County.
 9. Notices. All notices to either party to this Easement 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. Either party may change its address for notice by providing written notice to the other party.
 10. Invalidity. If any term or condition of this Easement, or the application of this Easement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Easement, 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.
 11. Waiver. It is agreed that the complete exercise of the rights under this Easement may be gradual and not fully exercised until some time in the future. None of the rights granted under this Easement shall be lost by non-use or limited use. 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 Easement 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 Easement.

12. Enforcement. Enforcement of this Easement 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 Easement, either to restrain or prevent the violation or to obtain any other relief. Either Party shall be entitled to collect from any person that violates or attempts or threatens or intends to violate this Easement its reasonable attorney fees incurred in enforcing or protecting its rights under this Easement.

OWNER:
CITY OF MANITOWOC, WISCONSIN

By: _____
Justin Nickels, Mayor

By: _____
Jennifer Hudon, City Clerk

STATE OF WISCONSIN)
) ss
MANITOWOC COUNTY)

Personally came before me this ____ day of _____, 2015, the above-named Justin Nickels and Jennifer Hudon known to me to be the persons who executed the foregoing instrument in the capacities indicated and acknowledged the same.

Notary Public, State of Wisconsin.
My commission: _____

LESSEE:
MANITOWOC MARINA, LLC

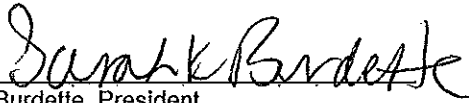
By: _____
Richard M. Larsen, Manage

STATE OF WISCONSIN)
) ss
MANITOWOC COUNTY)

Personally came before me this _____ day of _____, 2015, the above-named Richard M. Larsen known to me to be the person who executed the foregoing instrument in the capacity indicated and acknowledged the same.

Notary Public, State of Wisconsin.
My commission: _____

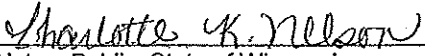
THE AUTHORITY:
CENTRAL BROWN COUNTY WATER AUTHORITY

By: 
Sarah Burdette, President

By: 
Randy Tremel, Secretary

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Personally came before me this 30th day of July, 2015, the above-named Sarah Burdette and Randy Tremel, to me known to be the persons who executed the foregoing instrument in the capacities indicated and acknowledged the same.


Notary Public, State of Wisconsin.
My commission: 10-18-2015

This document drafted by Lawrie Kobza, Boardman & Clark LLP

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EXHIBIT A

Parcel No.: 052-820-401-011.00 description:

All of Blocks 53, 54, 112 and 113 of the original plat of the City of Manitowoc, lying East of Maritime Drive, located in the City of Manitowoc, Manitowoc County, Wisconsin.

Description per Volume 107 on Page 459 as Document No. 133833:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), and Ten (10) in Block No. One Hundred Twelve (112), also Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), in Block No. One Hundred Thirteen (113), all in the City of Manitowoc, Wisconsin.

Description per Volume 135 on Page 434 as Document No. 159562:

situated in the County of Manitowoc and State of Wisconsin, to wit: an undivided one-sixth (1/6) of the following described lots, pieces or parcels of land to wit: Block Forty-nine (49), Block Fifty (50), Block Fifty-one (51), Block Fifty-two (52), Block Fifty-three (53) and Block Fifty-four, and Lots One, Two, Three, Seven, Eight, Ten, Eleven, Twelve, and Fifteen (1, 2, 3, 7, 8, 10, 11, 12 & 15) in Block Fifty-five (55), in the City of Manitowoc, in said County and State.

Description per Volume 136 on Page 12 as Document No. 159563:

situated, lying and being in the County of Manitowoc and State of Wisconsin, to wit: an undivided five-sixth (5/6) of the following described lots, pieces or parcels of land to wit: Block Forty-nine (49), Block Fifty (50), Block Fifty-one (51), Block Fifty-two (52), Block Fifty-three (53) and Block Fifty-four, and Lots One, Two, Three, Seven, Eight, Ten, Eleven, Twelve, and Fifteen (1, 2, 3, 7, 8, 10, 11, 12 & 15) in Block Fifty-five (55), in the City of Manitowoc, in said County and State.

Description per Volume 136 on Page 163 as Document No. 161856:

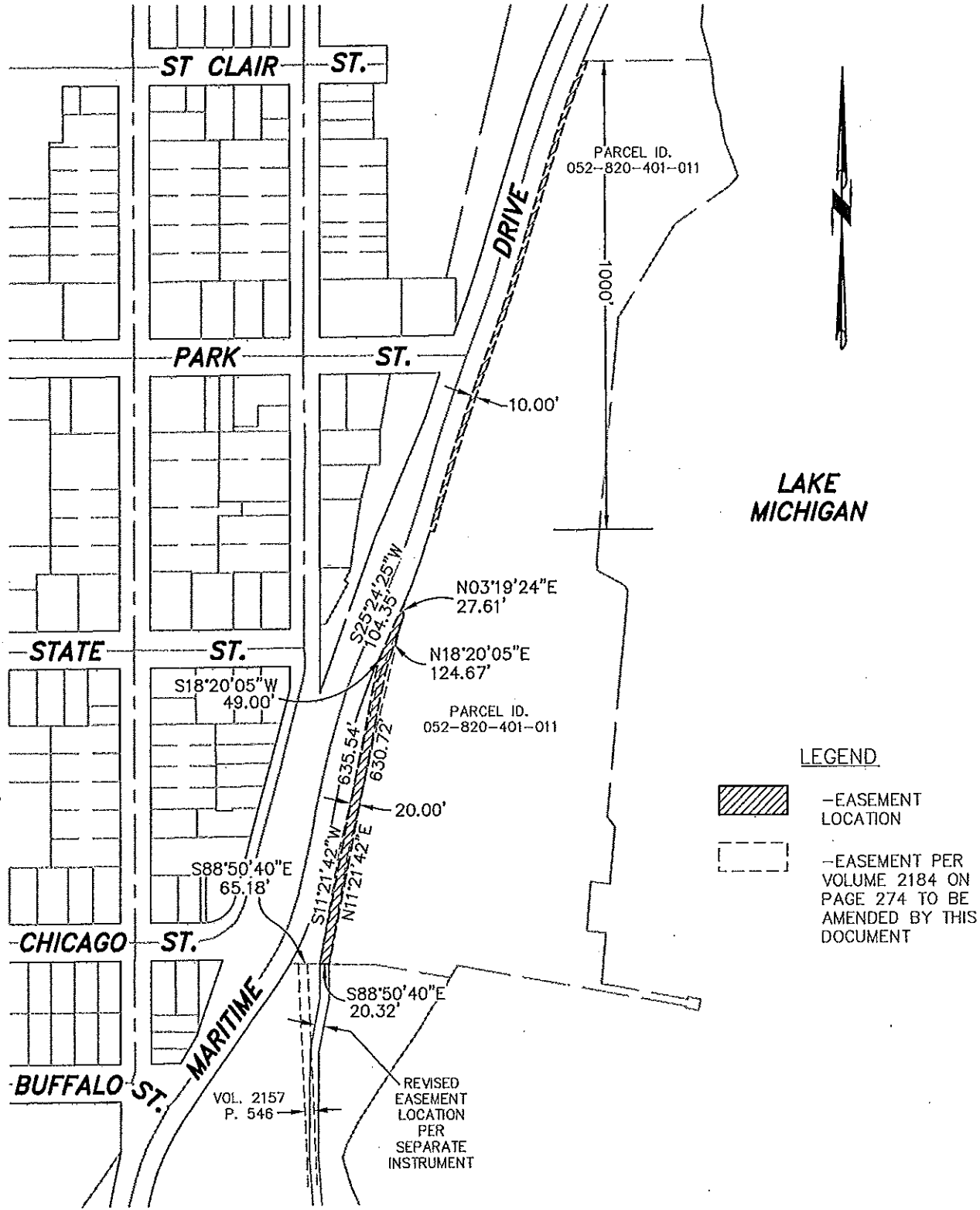
situated in the County of Manitowoc and State of Wisconsin to wit: Lots Seven (7), Eight (8), Nine (9), and Ten (10) in Block One hundred Thirteen (113) in the original plat of the City of Manitowoc, according to record thereof on file in the office of the Register of Deeds in and for said County.

McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 24102.00 Date MARCH, 2015 Scale _____
Drawn By CVK 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



c:\kafka\w:\PROJECTS\00027\240102\00\MANITOWOC COUNTY EXHIBITS\CITY OF MANITOWOC-82040101-EXHIBIT B & C.dwg, model, Plot Date: 6/11/2015 3:11 PM, xref:none

McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date JUNE, 2015 Scale 1"=300'
 Drawn By CWK 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 C

DESCRIPTION OF PERMANENT EASEMENT AREA

A part of Blocks 53, 54, 112 and 113 of the Original Plat of the City of Manitowoc, lying East of Maritime Drive, and parts of the vacated portions of Chicago Street, State Street, Lake Street, Park Street and St. Clair Street, located in Government Lots 3 & 4 of Section 20 and the Northeast 1/4 of the Northwest 1/4 of Section 29, all in Township 19 North, Range 24 East, City of Manitowoc, Manitowoc County, Wisconsin more fully described as follows;

Commencing at the Northwest corner of Block 160 of the Original Plat of the City of Manitowoc;

thence S 88° 50' 40" E a distance of 65.18 feet to the point of beginning;
thence S 88° 50' 40" E for a distance of 20.32 feet;
thence N 11° 21' 42" E for a distance of 630.72 feet;
thence N 18° 20' 05" E for a distance of 124.67 feet;
thence N 03° 19' 24" E for a distance of 27.61 feet to the Easterly right-of-way line of Maritime Drive;
thence S 25° 24' 25" W for a distance of 104.35 feet along said Easterly right-of-way line;
thence S 11° 21' 42" W for a distance of 635.54 feet to the point of beginning.

containing 14,941 square feet, more or less.

AND

The Westerly 10.00 feet of the North 1,000 feet, lying adjacent to the Easterly right-of-way line of Maritime Drive.

containing 10,550 square feet, more or less.

McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date JUNE, 2015 Scale 1"=300'
Drawn By CWK 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.