

## **AGREEMENT**

This AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”), by and between the City of Manitowoc, a municipal corporation with principal offices located at 900 Quay Street, Manitowoc, Wisconsin 54220 (“City”) and Todd L. Wallen, owner of property known as 405 North 40<sup>th</sup> Street, Manitowoc, Wisconsin 54220, parcel ID 450-025-070 (“the property”).

## **RECITALS**

**WHEREAS**, Todd Wallen is owner of the property which consists of 0.72 acres upon which sits one residential structure with an attached garage and two accessory buildings as depicted in the attached Exhibit A and described as MTWC. Rapids Lot 6 and 7 & E. ½ VAC. N. 40<sup>th</sup> St. Abutting BLK. 25 and VAC. N. 40<sup>th</sup> ST. Abutting BLK. 24; and,

**WHEREAS**, the northernmost accessory building was constructed without a permit over an existing sanitary sewer and the southernmost accessory building was constructed with a permit but within the area of North 40<sup>th</sup> Street vacated in 1985 under which a sanitary sewer utility lies (“easement area”). This vacation was published and certified in April, 1985 per the attached document, incorporated herein as if fully set forth as Exhibit A; and,

**WHEREAS**, in lieu of relocating the structures, the parties desire to enter into an agreement identifying the responsibilities of each should maintenance, repair or reconstruction of the sanitary sewer be necessary.

**NOW THEREFORE**, in consideration of the foregoing and intending to be legally bound hereby, the parties agree as follows:

## **AGREEMENT**

1. The above recitals are true and correct.
2. City Responsibilities: If the City determines that access to the portion of the sanitary sewer beneath Owner’s property is necessary for inspection, relining,

repair or other work that does not require excavation, the City will provide Owner at least 24 hours notice unless less time is necessary due to an emergency or imminent threat of emergency that requires immediate access. City will notify Owner whether and to what extent access is needed and whether such access will require access within an accessory structure. City will endeavor to minimize any impact this access will have on the property.

If the City determines that repairs, maintenance, reconstruction, or any other work which requires excavation to and around the sanitary sewer pipe is planned or required, the City will provide Owner at least 90 calendar days notice of the proposed project start date and scope of same unless less time is necessary due to an emergency or imminent threat of emergency that requires more immediate excavation. City shall provide Owner the estimated costs to be borne by Owner should Owner desire relocation of the sanitary sewer in lieu of excavation beneath the accessory structure.

3. Owner Responsibilities: Owner agrees to not unreasonably withhold consent to enter an accessory building if such access is necessary for any repair, maintenance, or other work to the sanitary sewer beneath such accessory building. Should excavation to and around the sanitary sewer be necessary, Owner agrees to demolish or relocate any accessory building lying over the portion of sanitary sewer to be excavated no later than 48 hours prior to the proposed project start date and at Owner's expense.

If Owner is not able to secure timely completion of such work, Owner will notify City of the cause for delay as soon as the delay is identified and the expected completion date. Any costs incurred by the City arising from this delay shall be paid in full by Owner.

Owner shall have the option of paying all costs associated with relocating the sanitary sewer in lieu of demolishing or relocating the affected accessory structure(s). If the sanitary sewer is relocated, Owner agrees to grant the City a utility easement of standard dimensions with standard conditions over the new

sanitary sewer location and to pay all costs associated with said easement including the costs of survey and recording.

Owner further agrees to immediately authorize the temporary placement of necessary equipment on Owner's property to bypass the sanitary sewer line should the line fail and shall allow such equipment to remain until corrective measures are undertaken.

Owner agrees to not further encroach within the easement area, defined as, thirty feet on either side of the sanitary sewer line the full length of the sanitary sewer line. Owner agrees to be bound by the standard utility easement conditions per the attached document, incorporated herein as if fully set forth as Exhibit B.

4. Covenant Running With Land: The covenants, rights and obligation created by this Agreement shall run with the land and be binding upon, inure to the benefit of and be enforceable by the parties, their heirs, successors and assigns. This Agreement or any portion thereof may not be transferred, assigned or sublet separately from ownership of the property.
  
5. Indemnification and Insurance. The Owner shall defend, indemnify and hold the City harmless from and against any and all claims, liens, losses, liabilities, costs and expenses of any type and kind incurred in connection with any negligent act of the Owner or any of Owner's agents, employees and invitees expressly related to Owner's use of the property within the existing utility easement.

Owner shall maintain in effect at all times during the term of this Agreement a policy or policies of comprehensive general liability insurance naming the City as an additional insured and insuring against injury to property, person or loss of life arising out of the use, occupancy or maintenance over the Easement Area by the Owner. All insurance policies required under this Section shall be purchased and maintained with insurance companies authorized to do business in the State of Wisconsin. Each such policy of insurance shall contain a provision that the insurance company shall give the City at least 10 consecutive calendar days prior

written notice of amendment, extension, alteration, cancellation, non-renewal or material change during the term of this Easement. In the event of a proposed cancellation or non-renewal of any such policy by an insurance company, Owner shall secure adequate replacement insurance policies prior to the effective date of such cancellation or non-renewal. For the duration of this Agreement, Owner's insurance carrier shall provide the Grantor with a certificate of insurance evidencing that the Grantee's policy is in full force and effect.

6. Termination. This Agreement shall remain in full force and effect until the first occurrence of one of the following events and without necessity for further documentation: (a) effective an agreed upon date of termination in writing signed by both undersigned parties; or (b) effective the date Owner notifies the City in writing that it no longer maintains accessory structures within the utility easement area.
7. Recordation. This Agreement, and any subsequent modifications or additions shall be, upon being duly executed, recorded by the Owner at the Owner's sole expense, at the Register of Deeds for Manitowoc County, Wisconsin.
8. Entire Agreement. This Agreement represents the entire agreement of the parties and can only be modified or changed in writing executed by the undersigned parties.
9. Notice and Demand. A notice, demand or other communication shall be deemed to have been sufficiently given by any party to another party under this Agreement when personally delivered; or mailed by first class, registered or certified mail, postage prepaid, addressed to the City or Owner as the case may be, and:

In the case of the City, addressed or personally delivered to:

City of Manitowoc  
ATTN: City Clerk  
900 Quay Street

Manitowoc, Wisconsin 54220

With a copy to: City of Manitowoc- City Engineer

In the case of the Owner, addressed or personally delivered to:

Todd Wallen  
405 N. 40<sup>th</sup> Street  
Manitowoc, Wisconsin 54220

---

(telephone number to be used for emergency contact)

The above addresses may be changed at any time by the parties by notice given in the manner provided above. The parties agree that electronically reproduced signatures are valid for execution or amendment of this Agreement.

10. Invalidity. If any term or condition of this Agreement or application of this Agreement to any person or circumstance is 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 and such term and condition shall be valid and enforceable to the fullest extent permitted by law.
11. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the property or utility easement to the general public or for any public purpose whatsoever.
12. Other Agreements. If the provisions of the Agreement conflict with the provisions of any other agreement related to the property, the provisions of this Agreement shall control.
13. Default. Any default or material breach under this Easement shall entitle the non-defaulting party to any rights or remedies at law or at equity. In the event that either party shall default in the performance of any of its obligations under

the terms of the Easement, the non-defaulting party shall forward written notice to the defaulting party outlining such default or material breach. The defaulting party shall cure such default within 30 calendar days after the giving of such notice, except that the cure period shall be extended to a reasonable time to cure any default or material breach that cannot be cured within the 30-day period, provided the defaulting party has commenced to cure within the 30-day period and diligently pursues a cure at all times until the default or material breach is cured. In the event of any litigation between the parties regarding the Easement, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.

14. Third-Party Beneficiary. Nothing in this Agreement nor any act of the undersigned parties shall be deemed or construed to create any relationship of third-party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties.
15. Construction. The undersigned parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any party by virtue of that party having drafted this Agreement or any portion thereof.
16. Severability. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.
17. Venue. This Agreement shall be construed and enforced in accordance with the laws of Manitowoc County and the State of Wisconsin. Any litigation regarding this Agreement shall occur in Manitowoc County Circuit Court.

18. Date. This Agreement shall be dated, effective and binding as of the date of the last execution.

OWNER

By: \_\_\_\_\_

Date: \_\_\_\_\_

Todd Wallen

STATE OF WISCONSIN )

)ss.

MANITOWOC COUNTY)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, the above named Todd Wallen to me known as and acknowledged that he executed the foregoing instrument as such Member of said entity, by its authority. ,

\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires)(is): \_\_\_\_\_

CITY OF MANITOWOC

By: \_\_\_\_\_

Date: \_\_\_\_\_

Justin M. Nickels, Mayor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mackenzie Reed-Kadow, City Clerk

STATE OF WISCONSIN )

)ss.

MANITOWOC COUNTY)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, the above named Justin M. Nickels and Mackenzie Reed-Kadow ,to me known as Mayor and City Clerk for the City of Manitowoc WI, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires)(is): \_\_\_\_\_

This instrument was drafted by:  
Liz Majerus, Assistant City Attorney