

TEMPORARY CUL DE SAC EASEMENT AGREEMENT

THIS TEMPORARY CUL-DE-SAC EASEMENT AGREEMENT (the "Agreement") is made as of this _____ day of _____, 2016, by and between by **MANITOWOC COUNTY**, (the "County"), a body corporate pursuant to Wis. Stat. § 59.01, whose address is Courthouse, 1010 South Eighth Street, Manitowoc, Wisconsin 54220, and the **CITY OF MANITOWOC, WISCONSIN** (the "City"), a municipal corporation pursuant to Wis. Stat. ch. 62, whose address is 900 Quay Street, Manitowoc, Wisconsin 54220. The City and County are together hereinafter referred to as the "Parties."

RECITALS

WHEREAS the County owns the real property described on the attached *Exhibit A* (the "County Parcel"); and

WHEREAS the County intends to sell that certain real property described on attached *Exhibit B* (the "Meijer Parcel") to Meijer Stores Limited Partnership ("Meijer") so that Meijer may develop the property for commercial use as a supercenter, gas station/convenience store and commercial outlots; and

WHEREAS as part of developing the Meijer Parcel, certain improvements must be completed, including extending "Dewey Street" and creating "Meijer Drive"; and

WHEREAS as part of extending Dewey Street and creating Meijer Drive, Meijer has requested the County to allow the City to utilize a portion of the County Parcel for a temporary turnaround for City snowplow trucks at the terminus of both Dewey Street and Meijer Drive.

NOW, THEREFORE, in consideration of the foregoing Recitals, the execution of this Agreement by the Parties hereto, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is agreed as follows:

1. **Grant of Easement.** The County hereby grants a nonexclusive temporary easement and right-of-way in gross to the City for use as a turnaround area for the City's snowplow trucks located at the terminus of Meijer Drive as identified and described in *Exhibit C* as Easement Area "A" (the "Meijer Drive Easement") and further grants a temporary nonexclusive easement in gross and right-of-way to the City for use as a turnaround area for the City's snowplow trucks at the terminus of Dewey Street as identified and described in *Exhibit C* as Easement Area "B" (the "Dewey Street Easement"). The Meijer Drive Easement and the Dewey Street Easement shall collectively be referred to as the "Temporary Easements."

2. **Use and Maintenance.** The Temporary Easements shall be used by the City as a turnaround area for the City's snowplow trucks only. The City may maintain the Temporary Easements as it deems necessary. The County has no duty to construct, improve, or maintain the Temporary Easements or any improvement placed thereon. Under no circumstances shall the

County be required to expend any funds regarding the Temporary Easements for any reason whatsoever.

3. **Term and Termination.** The County and City acknowledge and agree that the Temporary Easements are temporary and shall terminate upon completion of future roadway improvements to extend Meijer Drive and/or Dewey Street. More particularly, the Meijer Drive Easement shall terminate upon completion of the extension of Meijer Drive and the Dewey Street Easement shall terminate upon completion of the extension of Dewey Street. Upon termination of either or both Temporary Easements granted under this Agreement, the City shall cause the surface of the lands lying within the particular easement to be restored to substantially the same physical condition that existed at the time the City entered upon the particular easement.

4. **Indemnity.** The City agrees to defend, indemnify and hold the County harmless from any claim against the County, its agents, employees, officials, and officers for personal bodily injury, death or personal property damage, to the extent caused by the act or omission of an agent, employee, official, officer, or contractor of the City related to the Temporary Easements. The foregoing indemnity shall not extend to liability resulting from the negligence of the County.

5. **Encumbrances.** The City acknowledges that the Temporary Easements granted herein are subject to all existing easements, restrictions and other matters of public record as of the date hereof. Notwithstanding the foregoing, the County represents and warrants to the City that neither the execution of this Agreement nor the consummation of the terms and conditions contemplated herein will constitute a breach under any contract or agreement to which the County is a party or by which the County is bound or affected or which affects the Temporary Easements.

6. **Construction Liens.** The City shall not permit any liens to be placed against the Temporary Easements, the County, or any of the County's property. In the event any lien is filed against the Temporary Easements, the County, or any of the County's property in connection with any work performed on, in or to the Temporary Easements, the City agrees to save the County harmless from any and all such liens and shall promptly take such action as is necessary to have the lien discharged of record.

7. **Notice.** Any notice given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered in person or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County:

Public Works Director
Manitowoc County Public Works Department
Manitowoc County Public Health Building
1028 South 9th Street, 3rd Floor West
Manitowoc, WI 54220

If to the City:

8. **Governing Law.** This Agreement is governed by the laws of the State of Wisconsin.

9. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and supersedes any and all other agreements, oral or written, between the parties with respect to its subject matter. Each party acknowledges that no agreement, inducement, promise, or representation has been made by or on behalf of any party except as specifically set forth herein. Each party agrees that no agreement, promise, or statement that is not contained in this Agreement shall be binding on any party. Each party acknowledges and agrees it has relied on its own judgment in entering into this Agreement.

10. **Severability.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, is found to be invalid, unenforceable, or void, the remainder of the Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid, unenforceable, or void, will not be affected impaired, or invalidated unless the effect of holding the provision invalid, unenforceable, or void, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

11. **Signature Authority.** The persons signing this Agreement warrant that they have been authorized to enter into this Agreement by and on behalf of their respective parties and that they have full and complete authority to bind their respective parties by executing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signature Pages Follow]

MANITOWOC COUNTY

By: _____

Its: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me on _____, 2016, the above-named _____, the _____ of Manitowoc County, a body corporate pursuant to Wis. Stat. § 59.01, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of _____, County of: _____
My commission expires: _____
Acting in the County of: _____

**EXHIBIT A
TO
EASEMENT AGREEMENT
(Description of the County Parcel)**

EXHIBIT B
TO
EASEMENT AGREEMENT
(Description of the Meijer Parcel)

EXHIBIT C
TO
EASEMENT AGREEMENT
(Description of the “Temporary Cul-De-Sac Easements” shown as
Easement Area “A” and Easement Area “B”)

REQUEST FOR LEGAL SERVICE

TO: City Attorney's Office
FROM: Engineering Dept. - Greg Minikel
SUBJECT: Temporary Cul-De-Sac Easement Agreement (Dewey + Meijer Ln.)

If you have previously submitted a request for legal service, please call Jane Rhode at 686-6997 for an update rather than submitting an additional request. Requests without supporting information or fiscal impact, where appropriate, will be returned for further information.

PLEASE REVIEW:

Resolution – MUST INCLUDE FISCAL IMPACT

Please attach any relevant background information, including committee directives, previous related resolutions, or proposed wording.

Fiscal Impact:

Budget Line:

Ordinance – MUST INCLUDE FISCAL IMPACT

Please attach any relevant background information, including committee directives and a marked up copy of the current ordinance showing the changes you would like.

Fiscal Impact:

Budget Line:

Contract/Agreement

Please attach any relevant background information, including committee directives, proposed terms, and the name and phone number of the negotiator for other parties.

Approve as to Form

Legal Opinion

Please attach a memo explaining the question you need answered.

Review and Comment/Advice or Direction

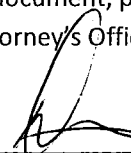
Please attach a memo explaining the advice you need.

Other - Describe in attached memo.

I have attached a memorandum and all appropriate background information prior to submitting this request. I request a response by A.S.A.P.. If this is a Council document, please submit your request two Wednesdays before the scheduled meeting to allow the Attorney's Office one week to prepare your document.



Signature of Requestor



Department Head Approval

Date: 10/11/16

Date: 10-11-16

Greg Minikel

From: Greg Minikel
Sent: Tuesday, October 11, 2016 4:07 PM
To: Kathleen McDaniel
Cc: Jane Rhode; Dan Koski; Paul Braun
Subject: FW: Meijer - Easements
Attachments: 2015-CX-3R Temporary Cul de Sac Easement (10-5-2016 PJC Draft).pdf; Green Sheet for Review of Temporary Cul-de-sac Easement Agreement for Dewey St. and Meijer Lane.pdf

Kathleen,

Here is a Request for Legal Service and Green Sheet for you to review the County's Temporary Cul-de-Sac Easement agreement for the end of Dewey St. and Meijer Lane.

Please review and comment. Also, please read the e-mail string below.

Let me know if you have any questions. Thanks.

From: Gerry Neuser [<mailto:GerryNeuser@co.manitowoc.wi.us>]
Sent: Tuesday, October 11, 2016 12:09 PM
To: Greg Minikel; Paul Braun; Dan Koski
Subject: RE: Meijer - Easements

Greg, Paul, and Dan,

Including the descriptions isn't a problem; Meijer did them for us and they'll be included in the final version. The turnaround language including all public uses is a problem, especially for Meijer Lane's cul-de-sac which will be exclusively on County property.
(Dewey Street's turnaround is mostly part of Dewey Street and not County property, so that may not be a problem.)

But bottom line, our Corp Counsel is going to hold on this until he hears from the City Attorney. Please feel free to forward this to her if you're so inclined.

Thanks,

Gerry

Gerard J. Neuser, CDT, CCCA
Director, Manitowoc County DPW
1028 S. 9th Street
Manitowoc, WI 54220
920.683.4307 phone
920.683.4475 fax
gerryneuser@co.manitowoc.wi.us

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From: Greg Minikel [<mailto:gminikel@manitowoc.org>]
Sent: Tuesday, October 11, 2016 10:20 AM
To: Paul Braun <PBraun@manitowoc.org>; Dan Koski <dkoski@manitowoc.org>
Cc: Gerry Neuser <GerryNeuser@co.manitowoc.wi.us>
Subject: RE: Meijer - Easements

I would like to see all of the exhibits that are going to be used.

I believe our attorney will require a legal description for each of the easements. If these are already on the exhibits then all is probably fine. If not, someone is going to need to draft a legal description.

My other concern is that the agreement specifically states "City's snowplow trucks only". I do not think that very many people will use the turnaround other than City maintenance vehicles, but any and everyone should be allowed to use it or at least this is how other temporary easements have been. However, the majority of the temp. easements we have done are for subdivision streets with temp. turnarounds.

From: Paul Braun
Sent: Tuesday, October 11, 2016 8:11 AM
To: Greg Minikel; Dan Koski
Cc: Gerry Neuser
Subject: RE: Meijer - Easements

I read through it and the only changes I would have is to change Meijer Drive to Lane.

Paul

From: Paul Braun
Sent: Tuesday, October 11, 2016 7:53 AM
To: Greg Minikel; Dan Koski
Cc: Gerry Neuser
Subject: FW: Meijer - Easements

Greg/Dan,

Take a look at the temporary easement and let Gerry know if there are any issues.

Thanks
Paul

From: Gerry Neuser [<mailto:GerryNeuser@co.manitowoc.wi.us>]
Sent: Monday, October 10, 2016 11:37 AM
To: Paul Braun
Cc: Peter Conrad
Subject: FW: Meijer - Easements

Hello Paul,

Attached is the DRAFT turnaround easement between the County & City.
Meijer does not want to get involved in this easement, so we need to come to terms with it between ourselves.
Please review and comment.

Thanks,

Gerry

Gerard J. Neuser, CDT, CCCA
Director, Manitowoc County DPW
1028 S. 9th Street
Manitowoc, WI 54220
920.683.4307 phone
920.683.4475 fax
gerryneuser@co.manitowoc.wi.us

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WHEREAS as part of developing the Meijer Parcel, certain improvements must be completed, including extending "Dewey Street" and creating "~~Meijer Drive~~"; and
Lane

WHEREAS as part of extending Dewey Street and creating ~~Meijer Drive~~, Meijer has requested the County to allow the City to utilize a portion of the County Parcel for a temporary turnaround for City snowplow trucks at the terminus of both Dewey Street and ~~Meijer Drive~~.
Lane

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Public Works Director
Manitowoc County Public Works Department
Manitowoc County Public Health Building
1028 South 9th Street, 3rd Floor West
Manitowoc, WI 54220

If to the City:

City Clerk
900 Quay St.

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11. **Signature Authority.** The persons signing this Agreement warrant that they have been authorized to enter into this Agreement by and on behalf of their respective parties and that they have full and complete authority to bind their respective parties by executing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signature Pages Follow]

MANITOWOC COUNTY

By: _____

Its: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me on _____, 2016, the above-named _____, the _____ of Manitowoc County, a body corporate pursuant to Wis. Stat. § 59.01, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of _____, County of: _____
My commission expires: _____
Acting in the County of: _____

MANITOWOC COUNTY

By: _____

Its: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me on _____, 2016, the above-named _____, the _____ of the City of Manitowoc, a municipal corporation pursuant to Wis. Stat. ch. 62, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public
State of Michigan, County of _____
My Commission expires: _____
Acting in the County of Kent

DRAFTED BY AND WHEN RECORDED RETURN TO:
Peter J. Conrad, Esq.
Corporation Counsel
Manitowoc County
1010 South Eighth Street
Manitowoc, WI 54220

EXHIBIT A
TO
EASEMENT AGREEMENT
(Description of the County Parcel)

EXHIBIT B
TO
EASEMENT AGREEMENT
(Description of the Meijer Parcel)

EXHIBIT C
TO
EASEMENT AGREEMENT
(Description of the "Temporary Cul-De-Sac Easements" shown as
Easement Area "A" and Easement Area "B")