

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: 052-820-103-090.00

GRANT OF ACCESS AND EASEMENT ("Easement") made by City of Manitowoc ("Owner") 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"). Owner is 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 hereby grants 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 hereby grants 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.
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.

- 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, its successors and assigns, agrees 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.
 - e. This Easement or any rights under this Easement shall not be assignable without prior written approval of the Owner.
 - f. Notwithstanding any other provision of this agreement, no default under this agreement shall entitle Owner 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 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 this ____ day of _____, 2015, the above-named Justin Nickels and Jennifer Hudon known to me to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin.
My commission: _____

THE AUTHORITY:
CENTRAL BROWN COUNTY WATER AUTHORITY

By: Sarah Burdette
Sarah Burdette, President

By: Randy Tremi
Randy Tremi, Secretary

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Personally came before this 29th day of April, 2015, the above-named Sarah Burdette and Randy Tremi, to me known to be the persons who executed the foregoing instrument in the capacities indicated and acknowledged the same.

Charlotte K. Nelson
Notary Public, State of Wisconsin.
My commission: 10-18-15

This document drafted by Lawrie Kobza, Boardman & Clark LLP

EXHIBIT A

Description per Volume 147 on Page 155 as Document No. 174860:

All of lot Number Six (6) of the subdivision of government lots one (1) and two (2), Section number twenty (20) of township number nineteen (19) north of range number twenty-four (24) east, excepting therefrom the following described parcel: Beginning at the northwest corner of said lot number six (6); thence northeasterly along the southeasterly line of Cleveland Avenue a distance of three hundred nineteen (319) feet; thence southeasterly and parallel to the southwesterly line of lot number six (6) one hundred (100) feet; thence southwesterly and parallel to Cleveland Avenue three hundred nineteen (319) feet to the southwesterly line of lot number six (6); thence northwesterly along the southwesterly line of said lot number six (6) one hundred (100) feet to the point of beginning, and excepting said Cleveland Avenue, in City of Manitowoc, in Manitowoc County, Wisconsin.

Description per Volume 200 on Page 534 as Document No. 255851:

Lot Four (4), Block Three (3) of the City of Manitowoc, Wisconsin, according to the recorded plat thereof.

Lot Five (5), Block Three (3) of the City of Manitowoc, Wisconsin, according to the recorded plat thereof.

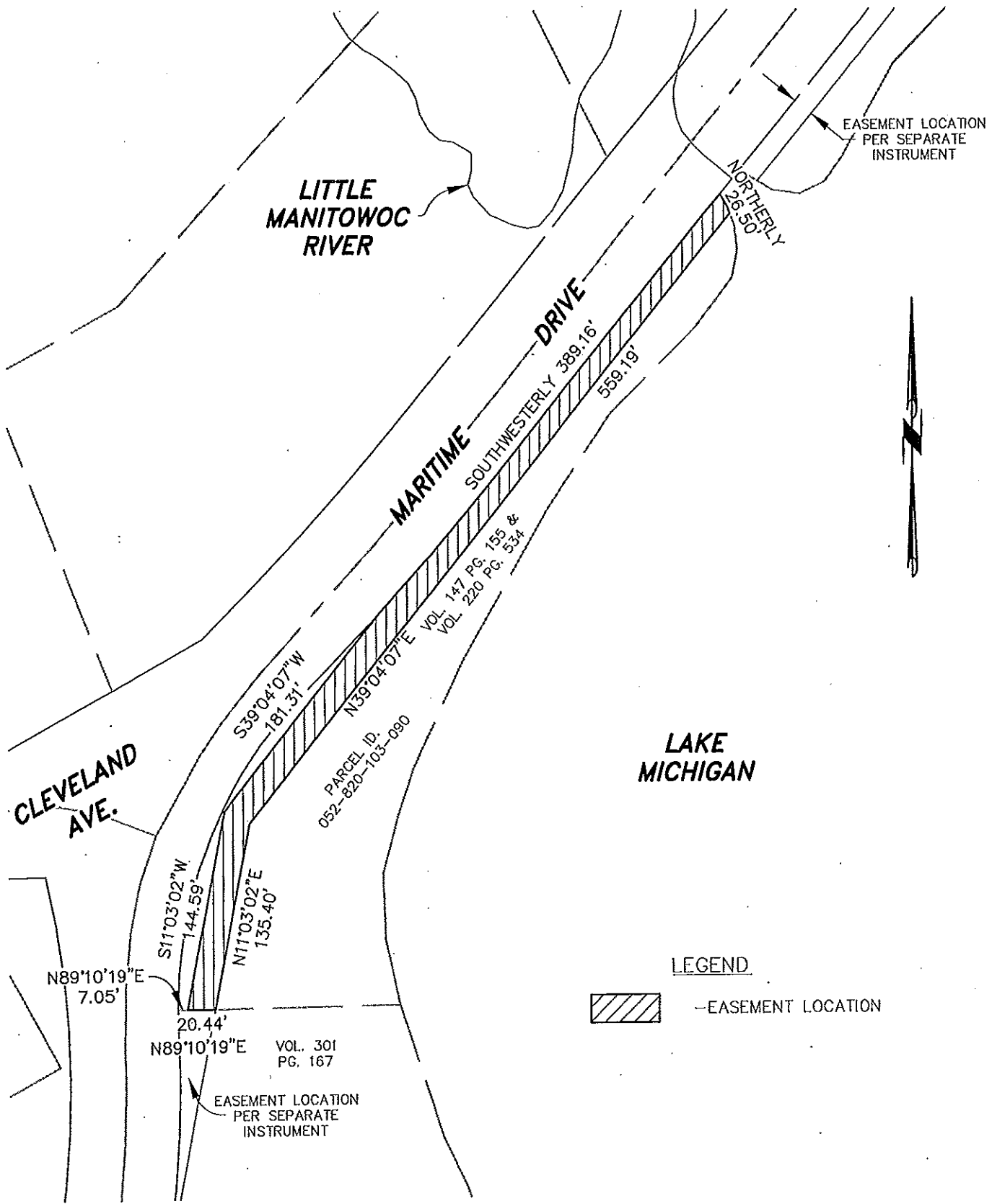
That part of Lot Seven (7) of the Subdivision of Government Lot Two (2), of Section Twenty (20), Township Nineteen (19) North, Range Twenty-four (24) East, lying southerly of a line which is 150 feet southeasterly of, and parallel to, the southeasterly line of Cleveland Avenue, and which lies between the east line and the west line of Lot Four (4), in Block Three (3), of the original plat of the City of Manitowoc, extended northerly and lying just north of the said Lot Four (4), Block Three (3), in the City of Manitowoc, Wis.

That part of Lot Seven (7) of the Subdivision of Government Lot Two (2), of Section Twenty (20), Township Nineteen (19) North, Range Twenty-four (24) East, lying southerly of a line which is 150 feet southeasterly of, and parallel to, the southeasterly line of Cleveland Avenue, and which lies between the east line and the west line of Lot Five (5), in Block Three (3), of the original plat of the City of Manitowoc, extended northerly and being just north of the said Lot Five (5), Block Three (3), in the City of Manitowoc, Wis.

Parcel No.: 052-820-103-090.00

EXHIBIT B

c:\kalkofen, w:\PROJECTS\C0027\240102\00\MANITOWOC COUNTY EXHIBITS\CITY OF MANITOWOC-820103090-EXHIBIT B & C.dwg, model, Plot Date: 6/11/2015 3:10 PM, wrefr: none



McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date JUNE, 2015 Scale 1"=100'
 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 Lots 6 & 7 in the subdivision of Government Lots One and Two and a part of Lots 4 & 5, Block 3 of the City of Manitowoc, Wisconsin, according to the recorded plat thereof, all in Section 20, Township 19 North, Range 24 East, City of Manitowoc, Manitowoc County, Wisconsin more fully described as follows;

Commencing at the Northwest corner of Lands described in Volume 301 on Page 167, on the Easterly right-of-way line of Maritime Drive;

thence N 89° 10' 19" E a distance of 7.05 feet along the North line of said Lands to the point of beginning;

thence N 89° 10' 19" E for a distance of 20.44 feet along said North line;

thence N 11° 03' 02" E for a distance of 135.40 feet;

thence N 39° 04' 07" E for a distance of 559.19 feet to the Southerly bank of the Little Manitowoc River;

thence Northerly for a distance of 26.50 feet along the Southerly bank of the Little Manitowoc River to the Southeasterly right-of-way line of Maritime Drive;

thence Southwesterly for a distance of 389.16 feet along said Southeasterly right-of-way line;

thence S 39° 04' 07" W for a distance of 181.31 feet;

thence S 11° 03' 02" W for a distance of 144.59 feet to the point of beginning.

containing 12,448 square feet, more or less.