

## **ACCESS AGREEMENT**

This ACCESS AGREEMENT ("Agreement") made this \_\_ day of May, 2020 ("Effective Date"), by and between WISCONSIN PUBLIC SERVICE CORPORATION ("WPSC") and CITY OF MANITOWOC ("City") (collectively, the "Parties").

### **RECITALS**

WHEREAS, WPSC owns property located at 402 North 10th Street, Manitowoc, Wisconsin along the Manitowoc River (the "WPSC Property"); and

WHEREAS, the City owns certain real property (Tax Parcel Nos. 052-000-120-040.00 and 052-000-120-030.00) located at 422 and 426 North 10th Street, Manitowoc, Wisconsin, as depicted in **Exhibit A** (the "City Property"); and

WHEREAS, the City has razed the buildings on the City Property and WPSC now requests access to City property and the public right-of-way in order to complete environmental remediation design and work (the "Work"); and

WHEREAS, to the extent necessary to perform the Work, WPSC requests, and City agrees to provide access to the WPSC Property adjacent to City Property and public right-of-way, as depicted on Exhibit A, for purposes of WPSC performing the Work.

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

### **AGREEMENT**

1. **Grant of Access to the Property.** City grants to WPSC and its representatives, agents and contractors access only to the WPSC Property, as depicted on Exhibit A, for the purpose of conducting the Work, limited to completion a pre-design investigation, including soil borings in both Chicago and 11<sup>th</sup> Streets, remedial design and subsequent construction of the remedy, in connection with the Work.
2. **Notice and Timing.** WPSC will provide the City with reasonable notice prior to initiating Work on the City property and public right-of-way.
3. **Cooperation.** The Parties agree to cooperate in good faith.
  - a. **WPSC Responsibilities.** All activities associated with the Work performed on City Property and the public right-of-way will be performed in a good and workmanlike manner. WPSC will take all reasonable measures to minimize any disturbances on City Property and not unreasonably interfere with the City's activities, tenants or guests.
  - b. **The City's Responsibilities.** The City will not unreasonably interfere with WPSC's performance of the Work on City's Property and public right-of-way.
4. **Insurance.** The WPSC will provide to the City a copy or copies of insurance certificates evidencing that WPSC and its contractors and subcontractors maintain, at a minimum, the following coverages:
  - a. Workers Compensation (statutory amount) and Employer's Liability (\$1,000,000).

- b. Commercial General Liability insurance of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extensions of coverage to include Products/Completed Operations.
- c. Commercial Automobile Liability insurance with minimum limits of \$1,000,000 per occurrence combined single limit of Bodily Injury and Property Damage coverage. Coverage shall extend to all owned, hired, or non-owned vehicles. In addition, coverage shall not contain an exclusion for pollution.
- d. Contractor's Pollution Liability with minimum limits of \$1,000,000.

5. Indemnification – Relating to Work. WPSC agrees to indemnify and hold harmless and the City and its employees or agents, clients or guests from and against any and all loss or liability, and all claims, damages, fees, costs and expenses caused by the negligent actions or omissions of WPSC, its representatives, agents or contractors arising out of or relating to the performance of the Work. However, this indemnity shall not apply to any loss or liability, or claims, damages, fees, costs and expenses to the extent caused by, resulting from, or arising out of the negligent acts or omissions of the City, its employees or agents.

6. Termination. This Agreement is effective from \_\_\_\_\_ until \_\_\_\_\_. Once the Work on City Property and the public right-of-way is complete, WPSC will notify the City that the Work was fully performed.

7. Notices. Notices related to this Agreement shall be sent to the following:

**To the City:** City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220  
Attn: Engineering Office

**To WPSC:** WEC Business Services  
700 North Adams Street  
Green Bay, WI 54307-9001  
Attn: Kim M. Michiels

12. Compliance with Laws. WPSC and its representatives, agents and contractors will comply with all applicable federal, state or local laws, ordinances, rules, orders or regulations that apply to the Work being conducted on the City Property and public right-of-way. WPSC shall be responsible for proper handling, disposal and documentation concerning all materials brought on to the City Property and public right-of-way. WPSC shall be the generator with respect to any hazardous or waste material associated with the Work. In the event that any hazardous or waste material is deposited, spilled or otherwise placed on City Property and public right-of-way, except into a properly designed and maintained dumpster and in compliance with this Agreement, WPSC shall immediately notify the City and be responsible for any resulting clean-up, remediation, fine and penalty.

13. Modification. This Agreement constitutes the entire agreement between the

Parties regarding these matters. This Agreement may only be changed by a written agreement signed by all Parties.

- 14. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- 15. Title to Property. The City represents and warrants that it has the authority to grant access to the Property and public right-of-way.
- 16. Authority to Enter into Agreement. Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement on behalf of the Party that he or she represents.

**CITY OF MANITOWOC**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**WISCONSIN PUBLIC SERVICE CORPORATION**

By: WEC Business Services LLC, its affiliate and agent

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

Name: Kim M. Michiels

Its: Real Estate Agent

Drafted by Kathleen M. McDaniel, City Attorney