

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: 052-000-222-011.00

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, 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.
 - 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 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: _____

THE AUTHORITY:
CENTRAL BROWN COUNTY WATER AUTHORITY

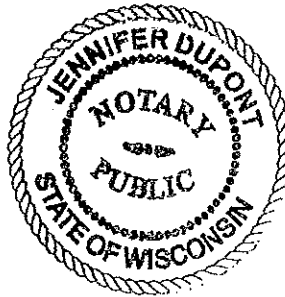
By: Sarah Burdette
Sarah Burdette, President

By: Randy Tremi
Randy Tremi, Secretary

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Personally came before me this 20th day of August, 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.

Jennifer Dupont
Notary Public, State of Wisconsin. Jennifer Dupont
My commission: 5/15/16



This document drafted by Lawrie Kobza, Boardman & Clark LLP

EXHIBIT A

*Public Properties
and Streets Law*
11/15/04

980641 732
WARRANTY DEED



VOL 2046 PG 729

Document No.

By this Deed, The C. Reiss Coal Company, a Wisconsin corporation, Grantor, for good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the City of Manitowoc, Wisconsin, a municipal corporation, Grantee, all rights, title and interest in the following described real estate in Manitowoc County, State of Wisconsin:

This space reserved for recording data

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
12/29/2004 9:58:00 AM

A tract of land located in Government Lot Numbered One (1) of Section Numbered Twenty-nine (29), Township Numbered Nineteen (19) North, Range Numbered Twenty-four (24) East, also being part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$, NW $\frac{1}{4}$) of said Section 29, in the City of Manitowoc, Manitowoc County, Wisconsin, and being accretions to and lying easterly of Blocks 223, 234 and 235 of the Original Plat of said City of Manitowoc, and more particularly described as follows:

Return to: Jennifer Hudon, City Clerk/Deputy Treasurer
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220-4543

000-235-010
Parcel Identification Number (PIN) *23 dca*

Commencing at the Southwest corner of Block 222 of the Original Plat of the City of Manitowoc as described in Volume 16, Page 133 of Certified Survey Maps, recorded at the Manitowoc County Register of Deeds Office; thence S. 00° 12' 12" W. (recorded as S. 01° 12' 35" E.) a distance of 24.55 feet; thence N. 84° 58' 15" E. (recorded as N. 83° 35' 02" E.) a distance of 108.60 feet, thence S. 82° 02' 32" E. (recorded as S. 83° 25' 58" E.) a distance of 345.17 feet to the Manitowoc River and the true point of real beginning; thence S. 80° 59' 45" E. a distance of 65.00 feet; thence S. 13° 56' 15" W a distance of 450.50 feet; thence S. 76° 03' 45" E. a distance of 10.00 feet; thence S. 13° 56' 15" W. a distance of 410.65 feet; thence S. 29° 47' 15" W. a distance of 39.52 feet; thence N. 76° 10' 45" W. a distance of 63.58 feet; thence N. 13° 56' 15" E. a distance of 895.04 feet to the true point of real beginning.

Said tract contains 1.43 acres of land more or less, and is shown on the attached map.

Together with all appurtenant rights, title and interests.

This is not homestead property.

Exempt from Transfer Fee and Return, Wis. Stats. §77.25 (2r).

Energy Exclusion Code W-7.

Grantors warrant that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances.

Said parcel is subject to the covenants and restrictions as attached in Exhibit 1 and are incorporated by reference.

William Reiss Jr.

William Reiss, Jr., President

AUTHENTICATION

Signature(s) authenticated this *gkk* day of *November*, 2004.

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, authorized by '706.06, Wis. Stats.)

This instrument was drafted by *Juliana M. Buenzel*
Assistant City Attorney
900 Quay Street
Manitowoc, WI 54220-4543

(Signatures may be authenticated or acknowledged. Both are not necessary.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
MANITOWOC COUNTY)
Personally came before me, this *gkk* day of *November*, 2004, the above named *William Reiss Jr*

to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Kim M. Blanchard
Kim M. Blanchard
Notary Public, *Manitowoc* County, Wis.

My Commission is permanent. (If not, State expiration dated: *2/25*, 2007.)



DATE 11/15/04

JOINT RECOMMENDATION OF COMMITTEES ON
STREETS & SANITATION AND
PUBLIC PROPERTY & SAFETY

COMMITTEES JOINTLY RECOMMEND referral to Plan
Commission referral to Plan
Commission

11-15-04

Kevin Crawford

Streets & Sanitation

Public Property & Safety

T. Frieder T. Frieder

T. Frieder T. Frieder

Gordon Kopetsky Gordon Kopetsky

Paul R. Tittel Paul R. Tittel

Paul R. Tittel Paul R. Tittel

J. N. Brey J. N. Brey

Dean W. Graunke Dean W. Graunke

Raymond T. Geigel Raymond T. Geigel

12/20/04

12/21/04

Committee recommends acceptance
& place on file.

Streets & Sanitation

Public Property

J. N. Brey

Larry Bergner

Paul Tittl

Larry Bergner

Gordon Kopetsky

Paul R. Tittl

Dean Graunke
T. Frieder



VOL 2046 PG 731



CL CURVE
I=105°52'01"
R=114.25
L=211.18
CHD=538'69'45.8"E,
182.33'

BLOCK 223

NEW QUAY STREET

BLOCK 222

REC. AS 68°12'35"E
S 28°12'12"W
24.55'

108.50'
N 84°58'16"E
REC. AS 483°25'02"E10'

S 82°02'32"E
REC. AS 583°25'58"E

345.17'

S 80°59'45"E
65.00'

P.O.B.

895.04'
S 13°36'15"W
450.50'

S 76°03'45"E
10.00'

N 13°56'15"E

410.65'

S 13°56'15"W

63.58'
N 76°10'45"W

S 29°47'15"W



STEINBRECHER & MENEAU, INC.
ENGINEERS & SURVEYORS
102 REVERE DRIVE
MANITOWOC, WISCONSIN 54220-3147
PHONE 920-5583 FAX 920-5584



EXHIBIT "1"

RESTRICTIVE COVENANTS

As a material part of the consideration received by Grantor for the grant, bargain, sale and conveyance of the Property to Grantee pursuant to this Limited Warranty Deed, it is understood and agreed that all future development, use, possession and ownership of the Property shall at all times be subject to the following limitations and restrictions, which shall attach to and run with the land until released or discharged in writing by Grantor, its successors or assigns and thereafter filed of record in the land records office of Manitowoc County, Wisconsin, to-wit:

COVENANT #1:

A. No temporary or permanent water or other well shall be constructed, drilled, dug, bored or otherwise placed upon the Property or any part thereof (except for any groundwater monitoring well(s) that may be installed and maintained in accordance with applicable laws and regulations), nor shall any owner or occupant of all or any portion of the Property or any invitee thereof draw, contact or otherwise use groundwater located below the surface of the Property, it being the intention of Grantor and Grantee, their successors and assigns, that the groundwater below the Property shall never be used for drinking, bathing, irrigation or any other domestic, residential, recreational, industrial, commercial or agricultural use, and it being the further intention of Grantor and Grantee that no person shall ever come into physical contact with the groundwater lying beneath the surface of the Property.

B. Grantor, its successors or assigns, including their designated representatives, shall have a continuing right of reasonable access to the Property in areas reasonably designated by the Grantee from time to time for the purpose of conducting sampling, testing, monitoring, analyzing and/or remediating of the groundwater and/or soil and in order to determine the status of any environmental condition existing on the Property from and after the date of this Limited Warranty Deed. Without limitation of any other covenants and agreements set forth in this Limited Warranty Deed, Grantor, its successors and assigns, shall have a continuing right, but not the obligation, to participate in any future environmental investigation, monitoring, evaluation, analysis, planning and/or remediation affecting the Property or any part thereof.

C. The benefits and burdens of this Covenant #1 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, including any person or entity claiming any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any



part thereof, or any person who may otherwise trespass over, under, across, through or upon the Property.

D. Grantor, including its successors or assigns, the City of Manitowoc, Wisconsin, and the Wisconsin Department of Natural Resources, including their respective successors and assigns, shall each have a non-exclusive and continuing right to enforce the limitations and restrictions in Paragraph A. of this Covenant #1. Grantee, its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #1.

COVENANT #2:

A. Grantee, on behalf of itself, its successors and assigns, hereby covenants and agrees that the Property shall not be used for any purpose in the future other than underground utilities, a road, a pedestrian walkway (with benches), public fishing, a bicycle path, or for a dry bulk material handling dock property. Without limiting the foregoing in any manner, Grantee hereby expressly covenants and agrees, on behalf of itself, its successors and assigns, that at no time shall a park or any playground be permitted on the Property. Grantee shall take all necessary or appropriate measures to prevent fugitive dust from occurring as a result of the use of the Property by Grantee, its licensees and invitees, including but not limited to such measures as may be necessary or appropriate to ensure that fugitive dust problems from the use of the Property.

B. Grantee, on behalf of itself, its successors and assigns, hereby covenants and agrees that no residential use whatsoever shall be permitted with respect to the Property.

C. The benefits and burdens of this Covenant #2 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any person who at any time may claim the right to own, lease, rent, use, occupy, access or improve the Property, or any part or parcel thereof, or who may trespass over, under, across, through or upon the Property.

D. Grantor, its successors and assigns, the City of Manitowoc, Wisconsin, and the Wisconsin Department of Natural Resources, including their respective successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #2. Grantee, its successors and assigns, shall have a non-exclusive and continuing obligation to enforce the limitations and restrictions in Paragraphs A. and B. of this Covenant #2.



COVENANT #3:

A. Neither Grantee, nor its successors or assigns, shall use the Property for a purpose or purposes which shall compete with Grantor's business as it is currently constituted or as it may be constituted at the time Grantee's use of the Property may be called into question at a future date.

B. The benefits and burdens of this Covenant shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any other person or entity who at the time may claim any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any part thereof, or any person who may trespass over, under, across, through or upon the Property.

C. Grantor, its successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #3. Grantee, and its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #3.

COVENANT #4:

A. Any person or entity subject to the restrictions and limitations set forth in Covenants #1, #2, and #3 hereof, who directly or indirectly violates or fails to perform any of such restrictions and limitations, shall indemnify, defend and hold Grantor, its successors and assigns, harmless from and against all claims, causes of action, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or in any way connected with any such failure to comply with the restrictions and limitations set forth in Covenants #1, #2 #3 and #4 hereof.

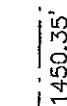
B. The benefits and burdens of this Covenant #4 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any other person or entity who at any time may claim any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any part thereof, or any person who may trespass over, under, across, through or upon the Property.

C. Grantor, and its successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #5. Grantee, and its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #4.

EXHIBIT B

MANITOWOC RIVER

NW CORNER
SEC. 29, T.19N.,
R.24E.



1450.35'

N00°16'03"E 2634.74'
W. LINE OF GOV'T LOT 1, SEC. 29

1184.39'

WEST 1/4 CORNER
SEC. 29, T.19N.,
R.24E.



QUAY STREET

108.63'
N85°11'31"E
24.09' 84.54'

16 CSM 113

S89°43'57"E
1899.35'

(55.5)
56.05'

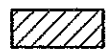
VACATED
QUAY ST.

S81°52'29"E

345.17'

44.93'
S80°30'34"E

LEGEND



-EASEMENT LOCATION

PARCEL ID.
052-000-235-010
V. 2953
P. 321

PARCEL ID.
052-000-222-011
V. 2046
P. 729

ALTA/ACSM LAND
TITLE SURVEY BY
CORNER POINT, LLC
DATED 11/21/14

SOUTH LAKEVIEW DRIVE

LAKE MICHIGAN

S. 5TH ST.

JAY ST.

S. LAKE ST.

N14°07'53"E

S14°07'53"W

895.04'

897.88'

N76°53'21"W
44.79'

C:\projects\00027\240102\00\MANITOWOC COUNTY EXHIBITS\CITY OF MANITOWOC EASEMENT EXHIBITS\CITY OF MANITOWOC-FORMER REISS COAL COMPANY-EXHIBIT B & C.dwg, model, Plot Date: 8/14/2015 2:03 PM, xref: none

McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date AUG, 2015 Scale 1"=150'
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 Government Lot 1 of Section 29 of Township 19 North, Range 24 East, City of Manitowoc, Manitowoc County, Wisconsin more fully described as follows;

Commencing at the West 1/4 corner of said Section 29;

thence N 00° 16' 03" E a distance of 1,184.39 feet along the West line of said Government Lot 1 of Section 29;

thence S 89° 43' 57" E a distance of 1,899.35 feet to the East right-of-way line of South 5th Street, 56.06 feet North of the South right-of-way line of vacated Quay Street (recorded as 55.5 feet), being the Northwest corner of Lands described in Volume 202, Page 371;

thence N 85° 11' 31" E a distance of 108.63 feet along the North line of said Lands;

thence S 81° 52' 29" E a distance of 345.17 feet along the South line of a Certified Survey Map recorded in Volume 16, Page 113 to the Northwest corner of Lands described in Volume 2046, Page 729 and the Point of Beginning;

thence S 80° 30' 34" E a distance of 44.93 feet along the North line of said Lands;

thence S 14° 07' 53" W a distance of 897.88 feet to the South line of said Lands;

thence N 76° 53' 21" W a distance of 44.79 feet along said South line to the Southwest corner thereof;

thence N 14° 07' 53" E a distance of 895.04 feet along the West line of said Lands to the Point of Beginning.

containing 40,146 square feet (0.922 acres), more or less.