

**AGREEMENT FOR  
ACCESS AND IMPROVEMENT OF ORCHARD LANE**

This Agreement is entered into as of the \_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”), by and between the City of Manitowoc, Manitowoc County, Wisconsin (“**City**”) and the Township of Newton, Manitowoc County, Wisconsin (“**Township**”) for the purpose of outlining access, improvement, and maintenance of portion of Orchard Lane. The City and the Township, and any additional members are each sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

WHEREAS, the Parties wish to cooperate in the improvement and maintenance of two contiguous segments of Orchard Lane, as represented on Attachment A, attached hereto and incorporated herein, in order to provide access to City property by heavy vehicles and to fairly distribute necessary improvement and maintenance costs; and

WHEREAS, the Parties wish to outline a timeline and the responsibilities for both Parties.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

1.1 Project Background and Scope. The City desires to relocate its street stockpile and composting operations from 3130 Hecker Road to 2909 Orchard Lane. Access to the new location requires the City to traverse segments of Orchard Lane that are located within the Township and have not been designed for the increase in the number and weight of vehicles. As such, there is a need to reconstruct the easterly 1,350 feet +/- of Orchard Lane from its intersection with South 26<sup>th</sup> Street to the west property line of parcel 052-801-102-051 (as configured on the date of this Agreement) to meet the increased use and size of vehicular traffic.

1.2 City Responsibilities. The City agrees to undertake and commit to the following:

- A. Complete a reconstruction of Segment #1 of Orchard Lane to account for the increased use and size of vehicular traffic (6" of crushed rock, 6" of gravel, 3" blacktop) in 2024. This segment is depicted on Attachment A and approximates Orchard Lane’s intersection with South 26th Street to the East side of the railroad tracks.
- B. Complete a reconstruction of Segment #2 of Orchard Lane to account for the increased use and size of vehicular traffic (6" of crushed rock, 6" of gravel, 3" blacktop) when funding becomes available, but in any event not later than 2027. This segment is depicted on Attachment A and approximates the area of the road on west side of the railroad tracks to the west property line of parcel 052-801-102-051.
- C. Maintain the road surface from South 26th Street to the West property line of 052-801-102-051.

1.3 Township Responsibilities. The Township agrees to undertake and commit to the following:

- A. Allow the City access to parcel 052-801-102-051 after an accepted contract is in place for reconstruction of Segment #1 and remove all weight restrictions on Segment #1 and Segment #2.
- B. Retain ownership of Orchard Lane where located in the Township.
- C. Move the current weight limit restriction on Orchard Lane to the west property line of parcel 052-801-102-051 heading west.
- D. Continue to maintain the Orchard Lane west of the west property line of parcel 052-801-102-051.
- E. Conduct snow plowing and removal on the entirety of Orchard Lane.

1.4 Indemnification. Subject to Wisconsin's comparative negligence law and the laws of contribution and indemnification, City agrees to indemnify and hold harmless the Township, and all of its officers, employees, agents, and attorneys from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, including without limitation actual attorneys' fees and costs, which arise out of, relate to, or result from the reconstructions of Segment #1 and/or Segment #2 of Orchard Lane. This agreement of indemnification shall survive termination of this Agreement. This agreement of indemnity does not waive or forfeit any governmental or sovereign immunity of the Township with respect to City or any third parties. The Township retains all applicable governmental immunities, defenses, and statutory limitations available, including but not limited to, Wis. Stat. §§ 893.80, 895.52, and 345.05.

1.5 Insurance Required. City shall maintain, or require its contractors that work on the project to maintain, during the course of the project, for the protection of the City and Township, at least the following insurance coverages:

- A. Workers compensation as required by Wisconsin law;
- B. Commercial general liability; \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate; and
- C. Commercial automobile liability; \$1,000,000.00 per accident.

1.6 Termination and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within 60 days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or in breach of its obligation.

1.7 Amendments to Agreement. This Agreement may not be changed orally. It may only be changed by agreement in writing and signed by the Parties hereto.

1.8 Notices and Demands. A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To City: City of Manitowoc  
Attention: City Clerk  
900 Quay Street  
Manitowoc, WI 54220

To Township: Town of Newton  
Attention: Town Clerk  
6532 Carstens Lake Road  
Manitowoc, WI 54220

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

**IN WITNESS WHEREOF**, the PARTIES have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make these commitments, and intend them to be binding upon their respective entities and to execute this Agreement on their behalf.

**CITY:**  
City of Manitowoc

By: \_\_\_\_\_  
Justin M. Nickels, Mayor

STATE OF WISCONSIN    )  
  ) ss.  
MANITOWOC COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above-named Justin M. Nickels to me known to be the person who executed the foregoing instrument as the Authorized Agent of the City of Manitowoc.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

**TOWNSHIP**  
Town of Newton

By: \_\_\_\_\_  
Denise Thomas, Chairman

STATE OF WISCONSIN    )  
  ) ss.  
MANITOWOC COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above-named Denise Thomas to me known to be the person who executed the foregoing instrument as the Authorized Agent of the Township of Newton.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

# ORCHARD LANE AGREEMENT - ATTACHMENT A



8/1/2023, 2:35:33 PM  
Parcels

