



## **LEGAL SERVICES DEPARTMENT**

### **Office of the City Attorney**

100 North Appleton Street

Appleton, WI 54911

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**TO:** Alderperson Brad Firkus, Chair  
Members of the Finance Committee

**FROM:** Christopher R. Behrens, City Attorney

**DATE:** August 1, 2022

**RE:** Sanitary Sewer Easement and Agreement

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Earlier this year an intergovernmental agreement was entered for the installation of a sanitary sewer extending from the existing City sewer in Zuelke Drive, eastward beneath Wisconsin 441 and eventually extending to serve the new County northwest landfill. The County is the lead agency on that project and I have been working with Corporation Counsel on terms of a permanent sanitary sewer easement through a portion of property owned by the Chris J. Hartwig Revocable Trust.

While most of the easement terms are standard, one of the points negotiated with the Trust was an agreement that neither the City nor the County would take the land by eminent domain or condemnation for a period of 25 years from the date of this agreement. Earlier this year, and prior to agreeing to this term in concept, I spoke with former Public Works Director Vandehey about this specific term and any concerns. In short, she advised that there were no concerns with this time period. It was explained that the long-term stormwater plan filed with the DNR shows a potential future stormwater pond on the property but would not require construction prior to 2049 (in other words after this condition has expired). Based on this timing, City staff is comfortable with the terms and conditions in the easement. These terms have been approved by the County Board as well as representatives of the Trust.

Accordingly, I respectfully recommend **APPROVAL** of the Permanent Sanitary Sewer Easement and Temporary Construction Easement Agreement with the Chris J. Hartwig Revocable Trust as owner of the subject property.

CRB;jlg  
CL A22-0115

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Christopher R. Behrens  
*City Attorney*

Amanda K. Abshire  
*Deputy City Attorney*

Darrin M. Glad  
*Assistant City Attorney*

Nicholas J. Vande Castle  
*Assistant City Attorney*

**PERMANENT SANITARY SEWER EASEMENT  
AND TEMPORARY CONSTRUCTION EASEMENT  
AGREEMENT (“AGREEMENT”)**

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**The Chris J. Hartwig Revocable Trust**, an owner of property in Outagamie County, Wisconsin (hereinafter “Grantor”), hereby conveys unto **Outagamie County** and the **City of Appleton** (hereinafter “Grantees”) and their successors and assigns, both a Temporary Construction Easement, and a Permanent Sanitary Sewer Easement as hereinafter set forth, under, over, and across the property described below located in the City of Appleton, Outagamie County, Wisconsin and as further depicted in Exhibit A:

**Permanent Sanitary Sewer Easement (the “Easement Area”)**

*Part of Lot 1 of Certified Survey Map No. 2358 and lands being part of the Southeast 1/4 of the Southeast 1/4 of Section 18, Township 21 North, Range 18 East, in the City of Appleton, County of Outagamie, State of Wisconsin described as follows:*

*Commencing at the Northeast corner of Lot 3, Block 12 of the Northeast Industrial Park Plat No. 3; thence North 00°01’10” East along the East right-of-way line of “Zuehlke Drive” 46.01 feet to the point of beginning of lands being described.*

*Thence continuing North 00°01’10” East along said East line 20.00 feet to the South line of Lot 1, Block 4 of Northeast Industrial Park Plat No. 4; thence South 89°06’53” East along said South line 375.47 feet to the West right-of-way line of “S.T.H. 441”; thence South 04°23’32” West along said West line 20.04 feet to a point being 20 feet south of and parallel to said Lot 1, Block 4; thence North 89°06’53” West along said parallel line a distance of 373.94 feet to the point of beginning of lands being described.*

*Containing 7,494 Square feet (0.17 Ac.) of land more or less.*

**Temporary Construction Easement**

*Part of Lot 1 of Certified Survey Map No. 2358 and lands being part of the Southeast 1/4 of the Southeast 1/4 of Section 18, Township 21 North, Range 18 East, in the City of Appleton, County of Outagamie, State of Wisconsin described as follows:*

*Said temporary construction easement is 30 feet South of and parallel to the South line of the 20 foot permanent sanitary sewer easement described above.*

*Containing 11,184 Square feet (0.26 Ac.) of land more or less.*

Outagamie County Corporation Counsel  
320 South Walnut Street  
Appleton, WI 54911

Parcel ID: 311 535200

1. **Purpose:** The purpose of the easements granted pursuant to this Agreement is for Grantees to access, install, regrade, replace, relocate, operate, maintain, resize and repair a sanitary sewer and associated appurtenances. Trees, bushes, branches and roots located within the Easement Area may be trimmed or removed so as not to interfere with Grantees' use of the Easement Area. In consideration for the easement granted herein, Outagamie County agrees to pay for and cause to be installed two 6" sanitary laterals on the land described below (the "Land") at the places on the Land directed by Grantor or its successors, beneficiaries or assigns and Grantees agree they shall not take the Land by eminent domain or condemnation for a period of 25 years from the date of this Agreement. For purposes of this Agreement, the "Land" is identified by the legal description attached hereto as Exhibit B.
2. **Access:** Grantees or their agents shall have the right to enter the Land for the purpose of exercising Grantees' rights in the Easement Area and to operate any equipment deemed appropriate by Grantees thereon.
3. **Sizing:** Grantees' permanent right-of-way and easement (hereinafter the "Permanent Easement") shall vary in total width, and shall be of equal width on each side of the center of the sanitary sewer actually laid on the Land under this agreement, the proposed widths and approximate locations of which are depicted on the map attached hereto as Exhibit A, for the purposes of constructing, operating, maintaining, altering, changing the size of, reconstructing, replacing, relocating, removing and abandoning the sanitary sewer and all related equipment and appurtenances thereto (including, but not limited to, meters, fittings, tie-overs, valves, lateral supports, and other necessary components for the transportation of landfill leachate and its constituent parts.
4. **Buildings or Other Structures:** Grantor agrees that no buildings or permanent structures will be erected in the Easement Area without the written consent of Grantees.
5. **Elevation:** Grantor and Grantees agree that the elevation of the final graded ground surface, after the initial installation of Grantees' facilities, within the Easement Area will not be altered without the mutual written agreement by Grantor and Grantees.
6. **Restoration:** Grantees agree that after installing, maintaining, resizing, repairing, replacing, or relocating said sanitary sewer and associated appurtenances, all improvements or improved surfaces such as, but not limited to, curb and gutter, hard pavements, trees, shrubs and landscaping and unimproved surfaces such as grass, gravel and dirt on said property, shall be restored as closely as possible, to the condition previously existing. Grantees do hereby agree to compensate Grantor fully for any damage to the Land caused directly or indirectly from said installation, maintenance, repair, replacement or relocation of said sanitary sewer and associated appurtenances outside of the above-described Easement Area.
7. **Ingress/Egress:** Grantees shall have all rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including but without limiting the same to, the free rights of ingress and egress at convenient points over and across the Land, adjacent

properties, existing roadways if applicable, and the right to all subsurface lateral support on other adjoining lands of Grantor necessary to maintain the sanitary sewer.

8. **Maintenance:** Grantor, for itself, and for its successors, beneficiaries or assigns, reserves the right to fully use and enjoy said premises herein granted and conveyed, provided, however, that Grantor shall not plant, or permit to be planted, any trees, including trees considered as a growing crop, on the Permanent Easement, and provided further, that Grantees shall have the right, from time to time, at no cost to Grantor, to cut and remove all trees, including trees considered as a growing crop, all undergrowth and any other obstructions that may injure, endanger or interfere with the construction and use of said sanitary sewer, and such fittings and appliances appurtenant to said sanitary sewer. No excavation, change of grade, construction, nor water impoundment may be made on and no structure shall be erected on the Permanent Easement herein granted without written notice to Grantees, who shall have the opportunity to participate in the planning of said acts to preserve the sanitary sewer and its necessary components.
9. **Temporary Construction Easement:** Grantees shall also have a temporary right-of-way and easement (hereinafter the "Temporary Construction Easement") for the purpose of constructing the sanitary sewer and all related equipment and appurtenances thereto, as described above, and exercising its related rights hereunder. The proposed location of the Temporary Construction Easement is approximately depicted on the maps attached hereto as Exhibit A and described therein as Temporary Construction Easement. The Temporary Construction Easement shall expire upon completion of the sanitary sewer installation.
10. **Assignment:** Grantees, their successors and assigns, are hereby expressly given and granted, without any requirement for the consent of Grantor, the right to assign the Temporary Construction Easement and the Permanent Easement herein granted and conveyed, or any part thereof, or interest therein, and the same shall be divisible among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or in severalty.
11. **Notification:** Grantees shall provide a minimum of seven (7) days advance notice to Grantor (except in emergency situations, in which event notice shall be provided as soon as practical) of installation and of any other activity with a reasonable likelihood of interfering or disrupting Grantor's normal activities.
12. **Covenants Run with the Land; Non-Use:** All terms and conditions in this Agreement, 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 parties and their respective successors and assigns. Non-use or limited use of the rights granted in this document shall not prevent Grantees from later use of the rights granted herein, and the rights granted in this document may only be abandoned by Grantees through the use of a written statement indicating Grantees' clear intention to abandon certain rights, and only such rights clearly indicated as being abandoned in such written statement shall be abandoned, with all other rights granted herein reserved to Grantees, their successors and assigns.

13. **Indemnification:** Grantees shall indemnify and hold Grantor harmless from all liability, suits, actions, claims, costs, damages and expenses of every kind and description, including court costs and reasonable attorneys' fees, and for claims of any character, including liability and expenses in connection with the loss of life, personal injury or damage to property, brought because of or related to any injuries or damages received or sustained by any person, persons or property on account of or arising out of the use of the Permanent Easement or Temporary Construction Easement by Grantees or their agents, contractors, subcontractors, customers, invitees, employees or tenants.
14. **Entire Agreement:** It is mutually understood and agreed that this Agreement as written covers all the agreements and stipulations between the parties and that no representations or statements, verbal or written, have been made modifying, adding to, or changing the terms hereof. It is further understood that the persons securing this grant on behalf of Grantees are without authority to make any agreement in respect of the subject matter hereof not otherwise expressed herein.
15. **Authority:** Each of the undersigned individuals represents and warrants that he or she has been duly authorized to enter into this Agreement on behalf of Outagamie County and/or the City of Appleton, and that the property is not subject to the rights of others which may affect the validity of this grant.
16. **Invalidity:** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, 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.
17. **Waiver:** 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 Agreement 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 Agreement.
18. **Enforcement:** Notwithstanding anything contained herein to the contrary, enforcement of this Agreement 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 Agreement, either to restrain or prevent the violation or to obtain any other relief. The sole and exclusive venue for any suit brought to enforce or interpret this Agreement shall be the Circuit Court of Outagamie County, Wisconsin. If a suit is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, from the nonprevailing party.
19. **No Public Dedication:** Nothing in this Agreement shall be deemed a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

20. **Counterparts:** This Agreement may be executed in counterparts, all of which shall constitute the same agreement. Signatures of the parties transmitted by facsimile transmission or electronic pdf. format (via email) shall be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF, the GRANTOR herein has duly executed this Agreement this 25th day of May, 2022.

**CHRIS J. HARTWIG REVOCABLE TRUST**

By: Evelyn A. Hartwig  
Evelyn A. Hartwig, Trustee


By: Gary N. Wynveen  
Gary N. Wynveen, Trustee

By: Dennis G. Wojahn  
Dennis G. Wojahn, Trustee

STATE OF WISCONSIN    )  
  : ss.  
OUTAGAMIE COUNTY    )

The foregoing Agreement was acknowledged before me this 25th day of May, 2022 by Evelyn A. Hartwig, Gary N. Wynveen, and Dennis G. Wojahn, Trustees of the Chris J. Hartwig Revocable Trust.

Matthew C. Zengler  
Printed Name: Matthew C. Zengler  
Notary Public, State of Wisconsin  
My commission is/expires 12/31/2024



IN WITNESS WHEREOF, the GRANTEE, CITY OF APPLETON herein has duly executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jake Woodford  
Mayor, City of Appleton

\_\_\_\_\_  
Kami Lynch  
City Clerk, City of Appleton

STATE OF WISCONSIN    )  
                                  : ss.  
OUTAGAMIE COUNTY    )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Mayor Jake Woodford and City Clerk Kami Lynch.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires \_\_\_\_\_

IN WITNESS WHEREOF, the GRANTEE, OUTAGAMIE COUNTY herein has duly executed this Agreement this \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Thomas Nelson  
County Executive, Outagamie County

\_\_\_\_\_  
Jeff Nooyen,  
Outagamie County Board Chair

\_\_\_\_\_  
Jeff King  
Outagamie County Clerk

STATE OF WISCONSIN    )  
  : ss.  
OUTAGAMIE COUNTY    )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by County Executive Thomas Nelson, Board Chair Jeff Nooyen, and County Clerk Jeff King.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires \_\_\_\_\_

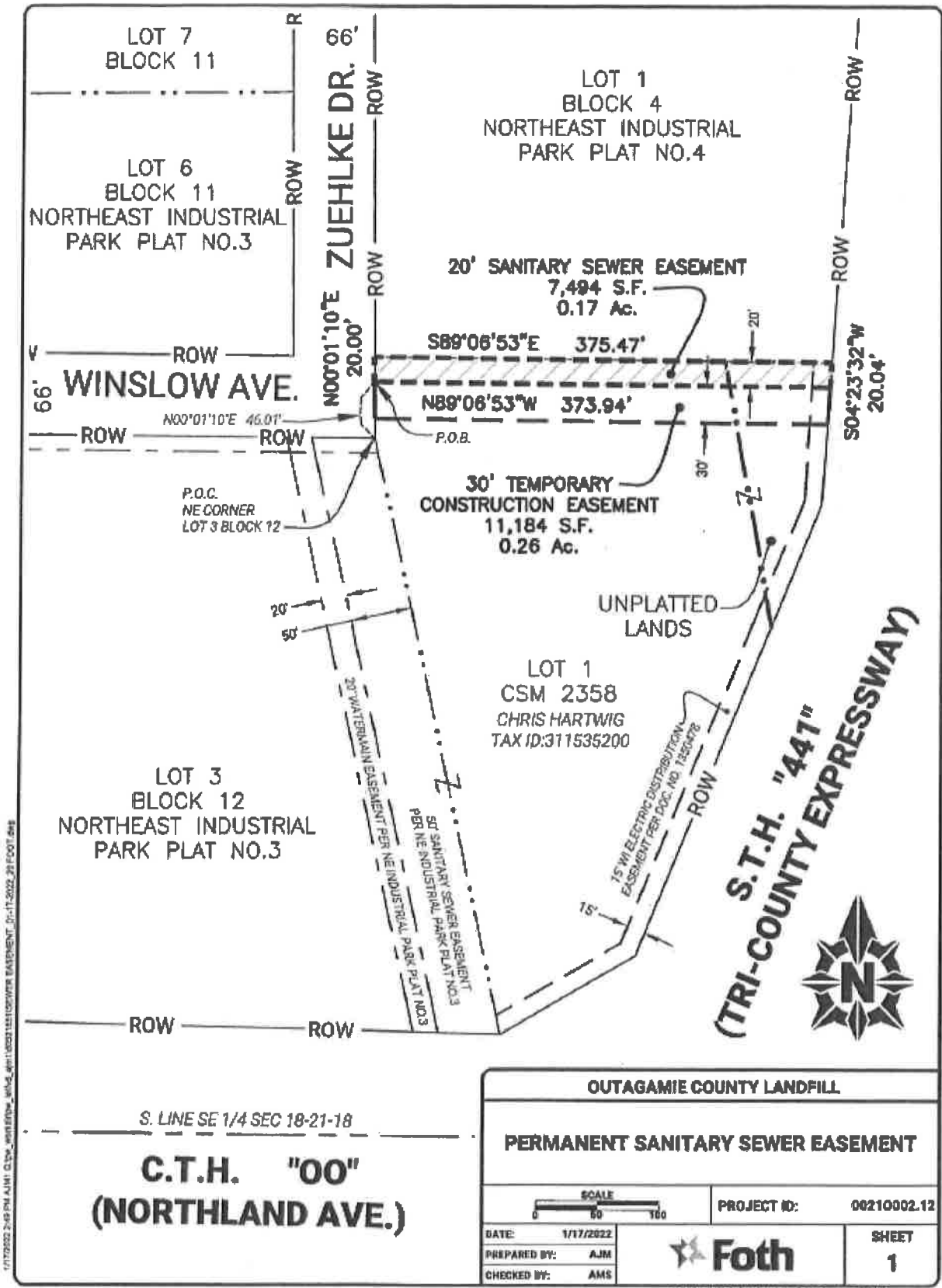
Approved as to Form:

  
\_\_\_\_\_  
Kyle J. Sargent, Outagamie County Corporation Counsel

\_\_\_\_\_  
Chris Behrens  
City of Appleton, City Attorney



EXHIBIT A



## EXHIBIT B

### Legal Description

All of Lots Two (2) and Three (3), in Block Twelve (12), according to the recorded Northeast Industrial Park Plat No. 3, in the City of Appleton, Outagamie County, Wisconsin.

AND

A tract of land being part of the Southeast Quarter of the Southeast Quarter (SE1/4 of the SE1/4) of Section Eighteen (18), Township Twenty-one (21) North, Range Eighteen (18) East, in the City of Appleton, Outagamie County, Wisconsin, bounded and described as follows:

Beginning at the Northeast corner of Block 12, Northeast Industrial Park Plat No. 3; thence North 0 deg. 01 min. 10 sec. East, along the East line of Zuehlke Drive, 66.01 feet to the Easterly extension of the North line of Winslow Avenue; thence South 89 deg. 06 min. 53 sec. East, along said extension 287.63 feet to the West line of lands described in Jacket 1915 Records, Image 3-4 of County Records; thence South 9 deg. 49 min. 48 sec. East, along said West line, 218.33 feet to its intersection with the West line of S.T.H. "441" off ramp right-of-way; thence South 22 deg. 54 min. 54 sec. West, along said West line, 288.42 feet to an angle point in same West line; thence South 60 deg. 10 min. 59 sec. West, continuing along said West line, 126.61 feet to the Southeast corner of aforementioned Block 12; thence North 12 deg. 01 min. 49 sec. West, along the East line of said Block 12, a distance of 493.00 feet to the point of beginning a/k/a Lot One (1) of Certified Survey Map No. 2358, recorded October 13, 1995 in the office of the Outagamie County Register of Deeds as Doc. No. 1168912.

AND

A parcel of land located in the Southeast Quarter of the Southeast Quarter (SE1/4 of the SE1/4) of Section Eighteen (18), Township Twenty-one (21) North, Range Eighteen (18) East, in the City of Appleton, Outagamie County, Wisconsin, which is more fully described as follows:

Commencing at the Northeast corner of Lot Three (3), Northeast Industrial Park Plat No. 3, said Section 18; thence North 00 deg. 01 min. 10 sec. East, 66.01 feet along the East right-of-way line of Zuehlke Drive; thence South 89 deg. 06 min. 53 sec. East, 287.64 feet along the North line of Zuehlke Drive extended to the East to the point of beginning; thence continuing South 89 deg. 06 min. 53 sec. East, 87.83 feet to a point on the Westerly right-of-way line of S.T.H. "441"; thence South 04 deg, 23 min. 32 sec. West, 115.44 feet along said Westerly line; thence South 22 deg. 54 min. 54 sec. West, 107.12 feet along said Westerly line; thence North 09 deg. 49 min. 49 sec. West, 218.33 feet to the point of beginning.

Subject to deed restrictions attached to deed from City of Appleton to Grantor dated November 17, 1995, and recorded November 20, 1995 as Doc. No. 1172453 in the Office of the Outagamie County Register of Deeds.