

RESOLUTION NO. 2013-50

RESOLUTION BY THE PUBLIC WORKS, PARKS AND FACILITIES COMMITTEE AUTHORIZING GRANT OF UTILITY EASEMENT AGREEMENT TO RACINE WATER UTILITY OVER PORTIONS OF PROPERTY AT 3501 NORTHWESTERN AVENUE AND 3540 NORTHWESTERN AVENUE IN THE CITY OF RACINE,

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED by the Racine County Board of Supervisors, that the grant of a utility easement agreement, designated in Exhibit 1 attached, to Racine Water Utility, over portions of property at 3501 Northwestern Avenue and 3540 Northwestern Avenue in the City of Racine, for the purpose of constructing, reconstructing, maintaining, operating, supplementing, and/or removing sanitary sewer, and other related fixtures, equipment, and appurtenances that may from time to time be required, including the right to preserve, protect, remove or plant thereon vegetation deemed necessary or desirable, is authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that for good and valuable consideration, the grant of easements are authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors, that any administrative or incidental costs associated with the purchase of the property, are authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors, that additional terms and conditions may be applicable as the Corporation Counsel, the Finance Director, and the Department of Public Works, deem necessary and appropriate;

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Executive, the County Clerk and/or the County Board Chairman are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

1st Reading _____

PUBLIC WORKS, PARKS AND FACILITIES COMMITTEE

2nd Reading _____

BOARD ACTION

Katherine Buske, Chair

Adopted _____

For _____

Against _____

Absent _____

Robert D. Grove, Vice-Chairman

1 Resolution No. 2013-50
2 Page Two

3
4 VOTE REQUIRED: Majority

Mike Dawson, Secretary

5
6 Prepared by:
7 Corporation Counsel

Monte G. Osterman

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9

Jeff Halbach

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11

Daniel F. Sharkozy

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13

Kiana K. Johnson

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18 The foregoing legislation adopted by the County Board of Supervisors of
19 Racine County, Wisconsin, is hereby:

20 Approved: _____

21 Vetoed: _____

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24 Date: _____,

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James A. Ladwig, County Executive

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29 INFORMATION ONLY

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31

32 **WHEREAS**, on or about October 6, 2009, the City of Racine vacated Northwestern Court
33 in Fox Estate Subdivision No. 2, under Resolution 09-1602 (see parcels designated in
34 Exhibits "A" and "B" attached). The street vacation did not address the utilities buried in
35 the right-of-way, and the sanitary sewer and water main facilities referenced in the utility
36 easement agreement cannot be abandoned. As a result, the City of Racine seeks
37 easements for the purpose of constructing, reconstructing, maintaining, operating,
38 supplementing, and/or removing sanitary sewer, and other related fixtures, equipment, and
39 appurtenances that may from time to time be required.
40

Return to:
Racine City Attorney
730 Washington Av
Racine, WI 53403

UTILITY EASEMENT AGREEMENT

276 00 00 21118 005
Parcel Numbers

THIS UTILITY EASEMENT AGREEMENT (*Agreement*) is granted by Racine County, a Quasi-Municipal Corporation (the *Owner*) to Racine Water Utility, a municipal public utility of the City of Racine, State of Wisconsin (the *Utility*).

RECITALS:

A. The Owner is the fee holder of certain real property in the City of Racine, Racine County, State of Wisconsin, commonly known as 3501 Northwestern Avenue and 3540 Northwestern Avenue, respectively (hereinafter combined as the *Property*).

B. The Utility has requested that the Owner grant two permanent easements (hereinafter referred to as *Easement One* and *Easement Two* respectively) over certain portions of the Property as such portions are described as:

Permanent Limited Easement One: (Exhibit A)

That part of vacated Northwestern Court in Fox Estate Subdivision No. 2, a recorded plat in the City of Racine, Racine County, Wisconsin that is part of the Northeast 1/4 of Section 6, Township 3 North, Range 23 East described as follows: A 55 foot wide sanitary sewer and water main easement within that part of vacated Northwestern Court, lying West of Blocks 5 and 6 of Fox Estate Subdivision No. 2, and East of the City of Racine limits; 120 feet North of the North line of vacated Fox Drive to 571.68 feet South of the South line of vacated Fox Drive.

Part of 3540 Northwestern Avenue

Also, **Permanent Limited Easement Two: (Exhibit B)**

That part of vacated Fox Drive in Fox Estate Subdivision No. 2, a recorded plat in the City of Racine, Racine County, Wisconsin that is part of the Northeast 1/4 of Section 6, Township 3 North, Range 23 East described as follows: A 60 foot wide sanitary sewer and water main easement within that part of vacated Fox Drive from the East line of vacated Northwestern Court to the West line of relocated Northwestern Avenue; lying between Blocks 5 and 6 of Fox Estate Subdivision No. 2.

Part of 3540 Northwestern Avenue

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Grant of Easement. The Owner grants to the Utility, and its licensees, two perpetual easements and right-of-way to construct, reconstruct, maintain, operate, supplement, and/or remove sanitary sewer, and other related fixtures, equipment, and appurtenances that may from time to time be required, including the right to preserve, protect, remove or plant thereon any vegetation that the Utility may deem necessary or desirable, with the right of ingress and egress for the purpose of this grant, over the Utility Easement Area. All improvements shall be located below grade.

2. Indemnification. The Utility shall indemnify the Owner from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Utility's activities conducted on the Property, subject to the limitations of §893.80, Wis. Stats., regardless of the cause of the injury, except to the extent caused by the negligence or misconduct of the Owner or its agents or employees.

3. Consistent Uses Allowed. The Owner reserves the right to make or construct improvements on said lands or to flatten slopes, and to otherwise use the Easement for purposes that will not impair or interfere with the Utility's full enjoyment of the Easement rights granted in this Agreement.

4. Restoration of Surface. The Utility shall restore the surface disturbed by any construction or maintenance of any equipment located within the Easements to its condition before the disturbance.

5. Covenants Run with Land. All of the 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 Owner and the Utility and their respective successors and assigns. The party named as Owner in this Agreement and any successor or assign to the Owner as fee simple owner of the Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property.

6. Non-Use. Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.

7. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

8. Entire Agreement. This Agreement 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 Agreement and duly recorded in the office of the Register of Deeds of Racine County, Wisconsin.

9. Notices. All notices to either party to this Agreement 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. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. 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 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.

11. 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.

12. Enforcement. 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. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

13. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

Dated: _____

RACINE COUNTY (Owner)

By: _____
James A. Ladwig, County Executive

Approved as to form:

Jon Lehman, Corporation Counsel

Wendy Christensen, County Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
COUNTY OF RACINE)ss

This instrument was acknowledged before me on _____, 2012,
by James A. Ladwig, as County Executive, and Wendy Christensen, as County Clerk for
Racine County.

X _____

Notary Public, State of Wisconsin

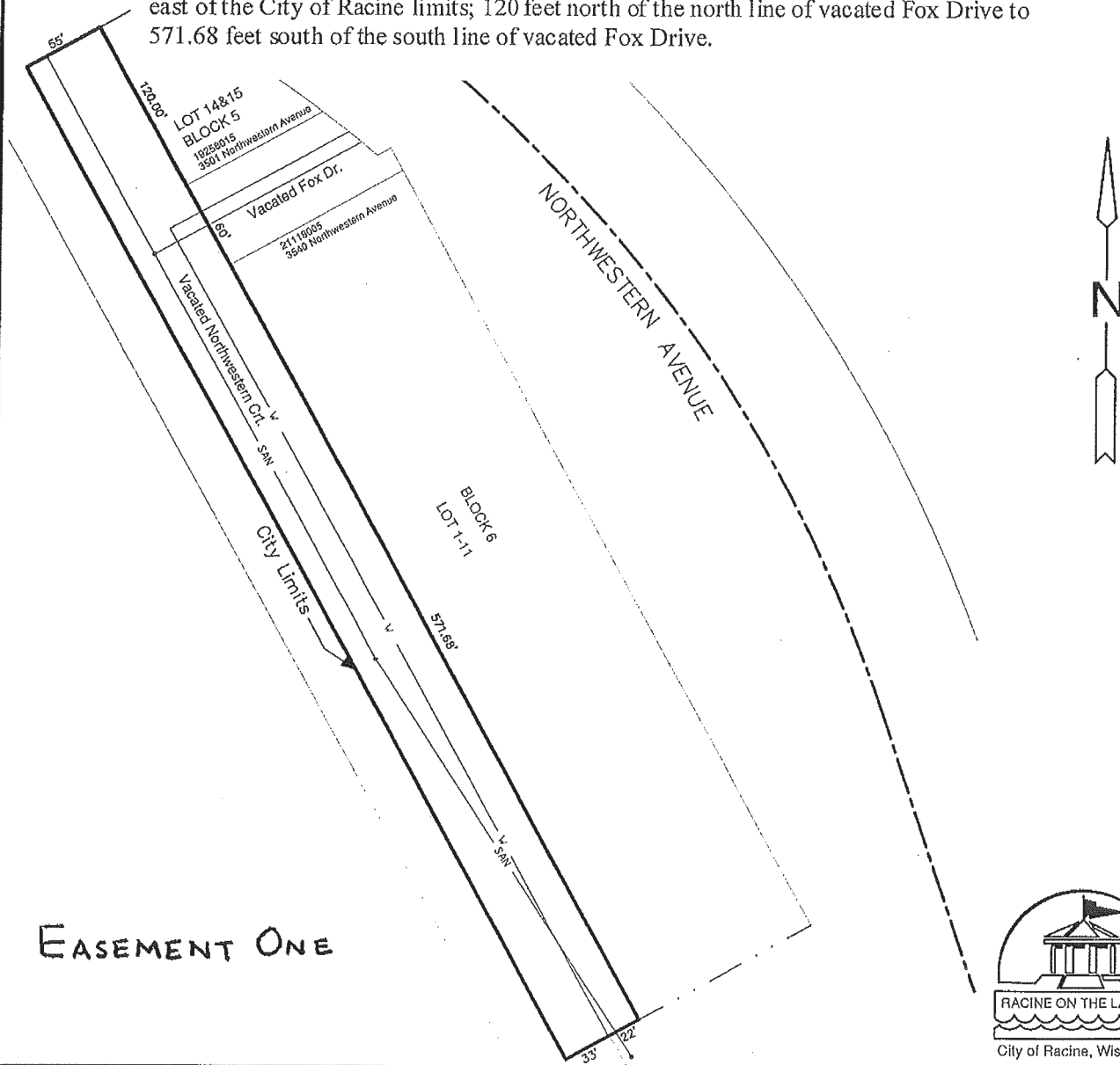
My commission expires: _____

This document was drafted by:
Racine City Attorney

SEWER AND WATER EASEMENT

That part of vacated Northwestern Court in Fox Estate Subdivision NO.2, a recorded plat in the City of Racine, Racine County, Wisconsin that is part of the Northeast 1/4 of Section 6 Township 3 North, Range 23 East described as follows:

A 55 foot wide sanitary sewer and water main easement within that part of vacated Northwestern Court, lying west of Blocks 5 and 6 of Fox Estate Subdivision No. 2. and east of the City of Racine limits; 120 feet north of the north line of vacated Fox Drive to 571.68 feet south of the south line of vacated Fox Drive.



EASEMENT ONE



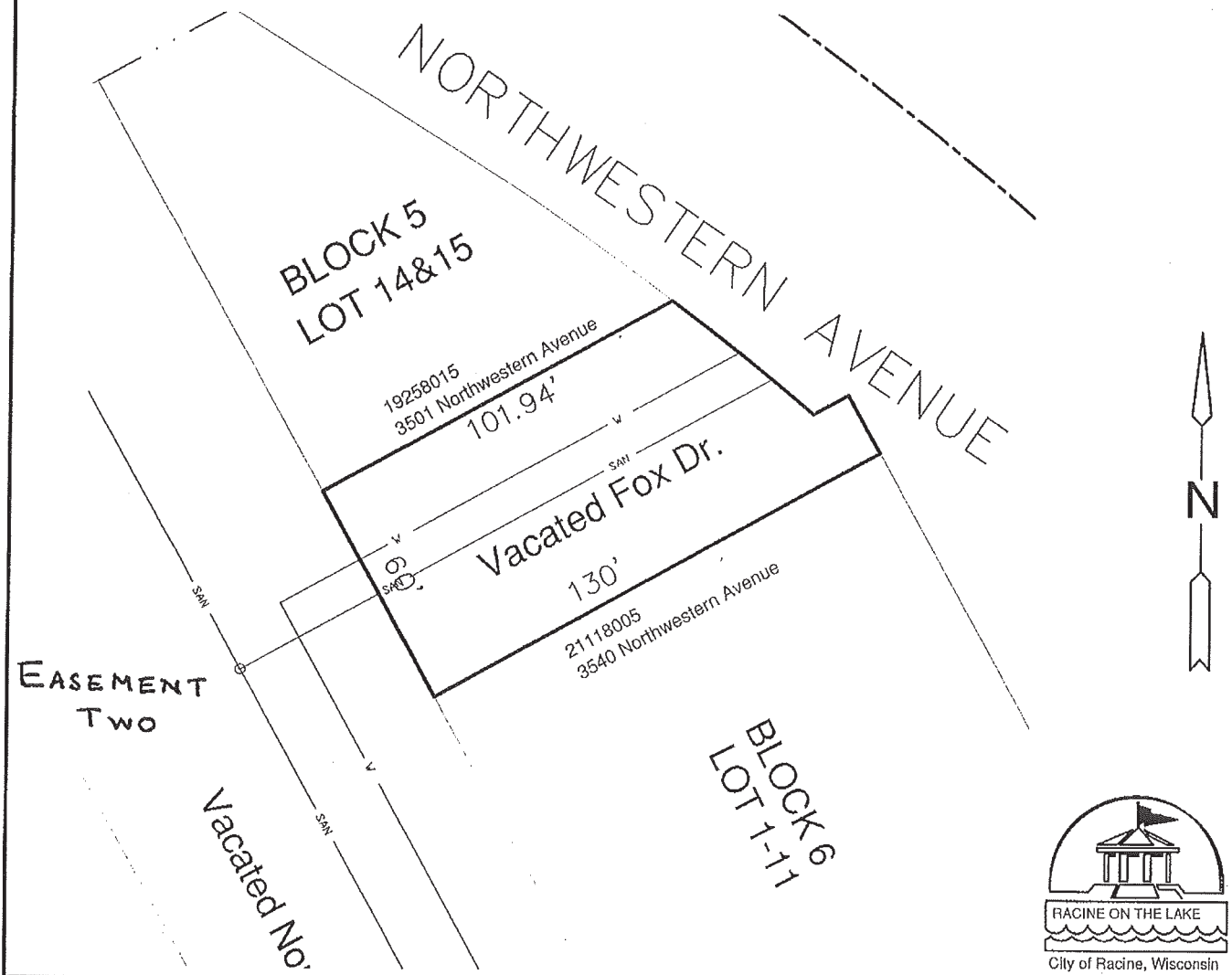
CITY ENGINEER'S OFFICE RACINE, WISCONSIN

DOCUMENT NUMBER : X	REVISIONS : X	REVISIONS : X
APPROVED : J.C.R. DATE : X	DRAWN : T.J.J. DATE : 04/05/2011	Scale : 1"=100'
RESOLUTION NO : X	(NE 1/4 SEC 6 T3N R23E) N-07	
Parcel Identification Number : 19258015 & 21118005	CODE : X	FILE NUMBER : EP-388

SEWER & WATER EASEMENT

That part of vacated Fox Dr. in Fox Estate Subdivision NO.2, a recorded plat in the City of Racine, Racine County, Wisconsin that is part of the Northeast ¼ of Section 6 Township 3 North, Range 23 East described as follows:

A 60 foot wide sanitary sewer and water main easement within that part of Vacated Fox Drive from the east line of vacated Northwestern Court to the west line of relocated Northwestern Avenue; lying between Blocks 5 and 6 of Fox Estate Subdivision No. 2.



CITY ENGINEER'S OFFICE RACINE, WISCONSIN

DOCUMENT NUMBER : X	REVISIONS : X	REVISIONS : X
APPROVED : J.C.R. DATE : X	DRAWN : T.J.J. DATE : 04/05/2011	Scale : 1"=40'
RESOLUTION NO : X	(NE 1/4 SEC 6 T3N R23E) N-07	
Parcel Identification Number : 19258015 & 21118005	CODE : X	FILE NUMBER : EP-387