



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0152

Final Action: 10/20/2009

Sponsor(s): Public Works Committee

Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trail.

WHEREAS, West Allis is currently developing a bike trail named West Allis Cross Town Connector; and,

WHEREAS, the City needs to use a portion of WE Energies right-of-way for the Bike Trail; and,

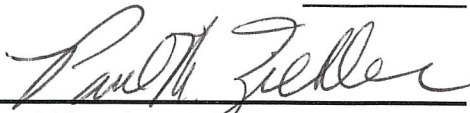
WHEREAS, WE Energies has submitted to the City a License Agreement for use of their right-of-way for the Bike Trail; and,

NOW, THEREFORE, BE IT RESOLVED By the Common Council of the City of West Allis that the Mayor, along with other appropriate City Officials, be and is hereby authorized and directed to sign the License Agreement on behalf of the City of West Allis

NOW, THEREFORE, FUTHER BE IT RESOLVED that for purposes of legal construction, it further being the intent of the Common Council of the City of West Allis for the right-of-way designated as the bike trail stated herein to be deemed a "highway" for use by the public as the term "highway" is defined by the laws of the State of Wisconsin.

NOW, THEREFORE, FUTHER BE IT RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the License Agreement, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, including but not limited to, any and all changes necessary to preserve the intent of the Common Council of the City of West Allis for the dedication of the right-of-way stated herein as a "highway" for use by the public as the term "highway" is defined by the laws of the State of Wisconsin.

ADOPTED AS AMENDED 10/20/2009



Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED AS AMENDED 10/23/09



Dan Devine, Mayor

LICENSE AGREEMENT

-DRAFT- 15 yr. License due to railroad crossing

THIS LICENSE, Made and entered into this ____ day of _____, 2009, by and between **Wisconsin Electric Power Company, a Wisconsin corporation, doing business as We Energies**, hereinafter referred to as "Licensor", and _____, a **municipal corporation**, hereinafter referred to as "Licensee"; (Individually sometimes referred to as "Party", collectively as "Parties").

WITNESSETH:

Licensor, for and in consideration of the covenants, conditions, and agreements hereinafter contained, hereby grants license and permission unto Licensee, to develop and use a part of Licensor's right of way lands (hereinafter "Lands") as a recreation trail (hereinafter "Premises") and to place thereon a trail for hiking, biking, and cross-country skiing and other similar non-motorized recreational uses (hereinafter "Trail") for use by the general public and for no other purpose or purposes whatsoever (except those purposes as may be determined by Licensor for its own use), which Premises is located _____, being a part of the _____ ¼ of Section _____, Township _____ North, Range _____ East, _____ of _____ in _____ County, Wisconsin., The general location of said Lands and Premises is shown highlighted on the maps marked Exhibit "A", attached hereto and made a part hereof.

The License and permission herein granted is subject to the following conditions:

1. **Term:** The term of this License Agreement (hereinafter "License") shall be for a period of fifteen (15) years (hereinafter "Initial Term") and continue thereafter on a year to year basis subject to termination as hereinafter provided. This License shall commence on the above date which is the date the last of the Parties hereto executed this License (hereinafter "Commencement Date")
2. **Termination:** Upon expiration of the Initial Term, this License may be terminated at any time by either Party hereto by providing at least 180 days prior written notice to the other Party of such termination. Notwithstanding any of the terms and conditions contained herein, should Licensor require exclusive use of any part of its Lands, including the Premises, for its purposes, then Licensor may, at any time, including during the Initial Term, terminate the License in whole or in part on such part or parts of the Lands or Premises it requires, and Licensee shall, not later than **90** days after receiving notice of such termination, at its sole cost and expense, relocate, remove or re-route the Trail from such part or parts of the Lands. **Termination or relocation to another location on said Lands due to the Licensor's agreement with a third party not existing at the execution hereof shall obligate said third party for damages and or relocation and or relocation expenses incurred by Licensee.**
3. **Non Use:** Licensee shall have **two (2)** full years, beginning at the Commencement Date of this License, to begin construction of the Trail and one (1) full year after the start of construction to complete construction, as permitted herein. If Licensee fails to begin construction of the Trail within **two (2)** years of the Commencement Date or complete construction of the Trail within one (1) year, this License shall terminate immediately without notice from Licensor.
4. **Base Rent:** During the Initial Term and extensions thereto, no Base Rent shall be due.
5. **Assignment:** Licensee shall not assign this License nor permit any transfer by operation of law or otherwise of the interest in the herein-described Premises acquired through this License unless otherwise approved by Licensor in writing.
6. **Acceptance of Premises:** Licensor offers and Licensee agrees to take the Premises in an "as is" condition and Licensor makes no warranty or representation of any kind as to the condition, quality or suitability of the soil, subsoil or surfacing of the Premises and Lands or anything thereon or therein, unless the same is specifically set forth in this License, for the purposes to which Licensee will utilize the Premises. Licensee has examined the Premises described hereinabove and knows the condition

thereof and no representations as to the condition and repair thereof and no agreements to make any alterations, repairs or improvements in or about the licensed Lands and Trail have been made by Licensor. Licensee's taking possession of the Premises shall be conclusive evidence as against Licensee that the Premises were in good order and satisfactory condition for use as a Trail and other permitted ancillary uses. Licensor shall not be liable for any damages arising from acts or neglect of Licensee or its invitees or users of the Premises, whether authorized to use the Lands and Premises or not.

7. **Permitted and Prohibited Uses:** The Premises shall be used for the purpose of constructing, installing, operating, maintaining, using, repairing, and removing a recreation trail and permitted appurtenances thereto for hiking, biking, and cross-country skiing and other similar non-motorized recreational uses and for no other reason whatsoever. No vehicles, trucks, cars or equipment are to be parked or materials stored on said Lands or Premises at any time without specific written approval of Licensor. Furthermore, the Licensee agrees that no motorized vehicles, including but not limited to cars, trucks, snowmobiles, motor bikes, mini-bikes, motorcycles, mopeds, go-carts and all-terrain vehicles will be used, operated or permitted on the Lands or Premises. However, Licensee shall be permitted to use motorized vehicles for the patrol, maintenance and other permitted uses of the Lands and Premises. The Licensee also agrees that no horses will be used or permitted on the Lands and Premises. Licensee agrees that no kites, model airplanes or similar or dissimilar objects that may come in contact with or in close proximity to the facilities of Licensor or the American Transmission Company LLC (hereinafter "ATC") and its successors and assigns, will be used, operated or permitted on the Lands and Premises.
8. **Signage:** Licensee shall not place or maintain or allow to be placed or maintained by any person or persons, any signs or advertising billboards upon the Lands or Premises at any time, except as required or permitted by this Section. Licensee shall install and maintain signs that are necessary to identify Licensee's Trail and occupancy of the Lands and Premises at every road crossing and at least every 2,600 feet along the Trail or more frequently as desired by Licensor. Such identification signs shall include the We Energies approved corporate logo and shall state "In cooperation with We Energies" or such other signs as Licensor may reasonably require. Licensee further agrees to post, maintain at all times, and if necessary, replace signs that expressly state the uses that are permitted and prohibited under Section hereof. In addition, Licensee hereby agrees to post safety and traffic signs along the Trail and at road crossings, railroad crossings, driveways, farm crossings and any other vehicular crossings along the Trail. All signs must be approved by Licensor prior to erection or installation on the Lands or Premises.
9. **Zoning and Permits:** Licensee hereby agrees that Licensor has made no representations that the Premises are properly zoned for the proposed use by Licensee, and it is expressly understood that Licensee hereby assumes any and all obligations and responsibilities with respect to compliance with all applicable zoning laws and ordinances of any regulatory bodies which may have jurisdiction. Any change in zoning must be approved by Licensor. This License is conditioned on Licensee's obtaining all necessary permits and authority for the proposed use. All permits required hereunder shall be acquired by Licensee at its sole cost and expense. If permits are required, a copy of the final permits must be provided to the Licensor prior to the commencement of any work on the Lands or Premises by Licensee and upon reasonable time for Licensor to review the permits.
10. **Governmental Jurisdiction:** Licensee shall, in the use and occupancy of the Premises, comply with all laws, ordinances, rules and regulations of _____, _____ County, State of Wisconsin and all other governmental bodies having jurisdiction, over the operation of Licensee's or Licensor's business or occupation of the Lands and Premises.
11. **Construction and Other Liens:** Licensee shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Licensor in the Premises or Lands or to charge the Base Rent payable hereunder, if any, for any claim in favor of any person dealing with Licensee, including those who may furnish materials or

perform labor for any construction or repairs. Licensee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed, materials, services or supplies furnished in connection with any work performed on the Premises and Lands by or at Licensee's direction on which any lien is or can be validly and legally asserted against its interest in the Premises or the improvements thereon and that it will save and hold Licensor harmless from any and all loss, liability, cost or expense, including costs of suit and reasonable attorney's fees, based on or arising out of asserted claims or liens against the Leasehold estate or against the right, title and interest of the Licensor in the Premises and Lands or under the terms of this License. Licensee will not permit any construction lien or any other liens which may be imposed by law affecting Licensor's or its mortgagees' interest in the Premises and Lands to be placed upon the Premises or Lands arising out of any action or claimed action by Licensee, and in case of the filing of any such lien Licensee will promptly pay same. Licensee shall provide Licensor with Lien Waivers from all contractors and subcontractors for all work performed and material and services supplied by or on its behalf at the Premises or Lands. If any such lien shall remain in force and effect for ten (10) days after written notice thereof from Licensor to Licensee and Licensee has not posted with Licensor a bond in the amount of at least 125% thereof, Licensor shall have the right and privilege of paying and discharging the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much Additional Rent hereunder due from Licensee to Licensor and shall be paid to Licensor immediately on presentation of a bill therefor. Notwithstanding the foregoing, Licensee shall have the right to contest any such lien in good faith and with all due diligence so long as any such contest, or action taken in connection therewith, protects the interest of Licensor and Licensor's mortgagee in the Lands, and Licensor and any such mortgagee are, by the expiration of said ten (10) day period, furnished such protection, and indemnification against any loss, liability, cost or expense related to any such lien and the contest thereof as are satisfactory to Licensor and any such mortgagee. If Licensee has posted a bond with Licensor in the amount of 125% of the liens, such liens can and will be cleared within 180 days of filing. However, Licensor reserves the right at any time prior to the expiration of said 180 day period to make a demand on said bond to clear its title in the event such liens would prevent Licensor's lawful use or transfer of its property in any way or to prevent any loss of Licensor's fee simple ownership rights. Licensor reserves the right to make demand on any such bond immediately upon expiration of said 180 day period. Licensor agrees to notify Licensee of its intent to secure the release of any such liens from the posted bond. No temporary or permanent construction may occur in wetlands. If any work is proposed within wetlands, the Licensee must obtain the appropriate permits from the Wisconsin Department of Natural Resources ("WDNR") and the Army Corps of Engineers ("ACOE"). The Licensee must provide a copy of the application and final permits to Licensor prior to working within the wetland and provided Licensor has reasonable time to review said permits.

12. **Diggers Hotline:** Licensee shall contact Diggers Hotline at (800) 242-8511 to locate any underground facilities at least five (5) days prior to any work, excavation or construction on the Lands and Premises in order to determine the location of electric, telephone, water, communication and natural gas facilities within the Lands, Premises and surrounding lands in the vicinity of the contemplated work and the applicable clearance requirements for work performed in the proximity of such facilities.
13. **Plan Review and Approval:** Licensee shall submit to Licensor **and to ATC** for its review and written approval, detailed site plans and construction drawings (hereinafter "Plans") showing the proposed location of the Trail with respect to the Lands **and Utility Facilities**, which Plans shall also include proposed grade changes, Trail cross sections, signs and other improvements to the Premises which Licensee desires to construct or install. If Licensee intends to use any fill on Licensor's Lands, Licensee shall include the type and source of any fill material on the Plans and any fill material used shall be subject to inspection and analysis by Licensor for the presence of Hazardous Material as defined in Section ___ hereinafter. Licensee will not install or construct or permit to be installed or constructed, any improvements upon, or make any alterations or substantive changes to the approved plans for the Premises without first submitting plans and specifications to Licensor and receiving Licensor's approval thereof.

14. **Height Restrictions:** Licensee hereby agrees that no vehicles or equipment will be used, stored operated or permitted on the Lands or Premises having a height in excess of 12 feet above original ground grade level, unless otherwise approved in writing by Licensor and/or ATC as their respective interests lie.
15. **Runoff Control:** Licensee and its contractors shall follow those best management practices to prevent or control site runoff and erosion in accordance with the Wisconsin Department of Natural Resources (hereinafter "WDNR") publication "Wisconsin Construction Site Best Management Practice Handbook." It shall also be the responsibility of the contractor to determine if and when a permit to discharge storm water associated with a construction activity as per Wisconsin NR 216, or subsequent statute, law, ordinance, act, rule or regulation, is required. Following the completion of Licensee's work, all adjoining areas shall be restored.
16. **Drainage and Grade Changes:** Licensee shall be permitted, at its sole cost and expense, to grade, level, and apply crushed stone and/or asphalt paving and plant grass on the Trail and Premises as may be permitted by Licensor except that the Licensee shall not in any manner alter or change the original ground grade level of the Premises, or alter in any manner the drainage on the Lands or Premises without obtaining written permission from Licensor. Licensor, at its sole discretion, may require Licensee to install such drainage facilities as Licensor may deem necessary to adequately drain the Lands and Premises, which facilities are made necessary due to or arising out of any filling, grading, leveling, paving or use by the Licensee hereunder. All such drainage facilities (including culverts, storm sewers, ditches, etc.) shall be installed by and at the expense of the Licensee and to the complete satisfaction of Licensor. Any existing culverts that run beneath Licensor's lands must be maintained or enhanced; they can not be removed, filled or otherwise blocked.
17. **Maintenance and Landscaping:** Licensee shall, at its sole cost and expense, keep the Licensed Lands and Premises routinely mowed and free of weeds to the satisfaction of the local Weed Commissioner and Licensor. Licensor reserves the right to trim and/or cut down any trees and shrubs on the Lands and Premises. Licensee further agrees that it shall maintain the entire Premises as a Trail as described hereinabove, and perform such other landscaping maintenance necessary to maintain an appearance suitable to such use as a Trail for biking, hiking and cross-country skiing and other similar non-motorized recreational uses. Licensee shall not plant any trees or shrubs on the Lands or Premises without the express written permission of the Licensor. Licensee agrees to keep the Lands and Premises clean and free from all debris, rubbish, litter and trash. Licensee shall be permitted or upon request of Licensor, to place trash containers at convenient locations on the Premises. Such containers shall be emptied on a regular basis, prior to overflowing or creating a nuisance, by Licensee. **(WE ENERGIES WILL GRASS /WEED CUT THROUGH 2009.)**
18. **Work Standards:** During construction, use of and repairs or maintenance to the Lands or Premises pursuant to this License, while in proximity to electrical conductors or gas facilities presently existing or to be installed at some future date, Licensee hereby agrees to conform to all laws, rules, ordinances, acts and regulations such as O.S.H.A. Safety and Health Regulations for Construction dealing with safe work practices and the operation of equipment near electrical lines and equipment and the provisions and requirements of the Wisconsin Administrative Code, Rules of the Department of Commerce and any amendments thereto. Licensee shall, at all times, comply with the provisions of the Wisconsin State Electric Code, compiled by the Department of Commerce and the Public Service Commission of Wisconsin, and all amendments thereto. Any work done by Licensee on the Lands or Premises shall be performed in such a manner as not to interfere with the use of Licensor's Lands for electric lines, gas lines, communication lines and related or unrelated facilities, both overhead and underground, which presently exist or might be installed at a later date.
19. **Damage to Facilities:** Licensee hereby agrees to effectively prevent damage to electrical facilities, communication facilities or related facilities due to or arising out of the construction, installation, operation, maintenance, repairs, removals and use of the Lands and Premises by Licensee, its employees, agents and contractors. In the event the Lands, Premises or adjoining lands or existing electrical and communication facilities or related or unrelated facilities thereon are damaged as a

result of activities conducted on or in any way connected with Licensee's construction, installation, operation, maintenance, repairs, removals or use of the Lands or Premises by Licensee, its employees, agents, or contractors, repairs shall be completed by or at the direction of Licensor and paid for by Licensee upon presentation of a bill therefor.

20. **Movement of Licensor Facilities:** In the event it is necessary for Licensor, ATC or existing tenants, permittees or licensees to reconstruct, protect, modify, adjust, replace or relocate its facilities due to the aforementioned use of Licensor's Lands and/or the construction, operation, maintenance or existence of Licensee's facilities, Licensee agrees to promptly reimburse Licensor, ATC or such affected tenants, permittees or licensees upon presentation of a bill for the costs and expenses incurred by Licensor as a result thereof but Licensee shall be given the option of moving or relocating its material and equipment to reduce or eliminate costs associated herewith.
21. **Proximity to Gas Lines/Facilities:** During construction, installation, operation, maintenance, repairs, removals and use of the Lands and Premises pursuant to this License, while in proximity to gas lines and gas facilities presently existing or to be installed at some future date, Licensee hereby agrees to exercise due caution, comply with all applicable safety laws and regulations and take or suffer no action which results in the gas lines or gas facilities being placed in violation of any applicable law or regulation. In the event the Lands, Premises, adjoining lands or existing gas facilities or related facilities thereon are damaged as a result of activities conducted on or in any way connected with Licensee's construction, installation, operation, maintenance, repairs, removals or use of the Lands or Premises by Licensee, its employees, agents, contractors, customers or invitees, repairs shall be completed by or at the direction of Licensor and paid for by Licensee upon presentation of a bill therefor.
22. **Solid Waste:** Licensee shall not cause or permit any solid wastes to accumulate or be stored in or about the Lands or Premises. All solid wastes shall be properly stored, handled and routinely disposed of off the Lands and Premises in a manner that complies with applicable federal, state and local laws, codes and/or regulations. Licensee shall not store, handle or dispose of solid wastes in a manner that will pollute or contaminate the atmosphere, ground or water or which may adversely affect the health, welfare or safety of persons whether located on the Lands, Premises or elsewhere.
23. **Hazardous Materials:** Licensee its agents, employees, and contractors, shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Lands or Premises or Licensor's adjoining lands .The use and/or storage of Hazardous Material by or for any assignee is prohibited. Licensee shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, storm water or sanitary sewer system, or any body of water, if such material (as determined by the Licensor or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Lands, Premises or elsewhere; or (b) the condition, use, or enjoyment of any other real or personal property.

As used herein, the term "Hazardous Material" means:

- a. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
- b. Any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
- c. Any oil, petroleum products, and their byproducts; and

- d. Any substance which is or becomes regulated by any federal, state, or local governmental authority.

Licensee agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Premises or Lands by the Licensee and the Licensee shall give immediate notice to the Licensor of any violation or potential violation of the provisions of this Section . Licensee shall not be liable for any discharge, leak, release, emission or damages, fines, costs or expenses associated with any existing pollution or contamination of the Premises, whether presently known or unknown, originating prior to its occupation of the Premises. Licensee shall defend, indemnify, and hold harmless Licensor and its agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultant fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to:

- aa. The presence, disposal, release, or threatened release of any such Hazardous Material which is on, from, or affects soil, water, vegetation, buildings, personal property, persons, animals, or otherwise;
- bb. Any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material;
- cc. Any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; or
- dd. Any violation of any laws applicable thereto. The provisions of this Section shall be in addition to any other obligations and liabilities Licensee may have to Licensor at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this License.

Provided Licensee is not in violation of any federal, state or local laws, rules, ordinances or orders existing at the signing hereof or at some future date pertaining to vehicular discharge, leak, release or emission of any antifreeze, oil, petroleum products and their byproducts from Licensee's vehicles or those of its employees, contractors, visitors and invitees affecting the Premises and Lands and provided any such discharge, release or emission is in the typically small amounts associated with parking lot and driveway usage, Licensee shall not be considered to be in violation of this Section. Any larger discharge, leak, release or emission of antifreeze, oil, petroleum products and their byproducts resulting in pooling or runoff of the products must be quickly and thoroughly cleaned up by Licensee and properly disposed of off Licensor's lands or Licensee will be considered in violation of this Section.

Licensee shall not be considered in violation of this Section due to the presence of fuel in the fuel tanks of its vehicles or the vehicles of its employees, agents, contractors and invitees.

Nothing contained herein shall be construed to preclude Licensee from using Hazardous Materials in the routine maintenance of the Lands or Premises without the prior consent of Licensor so long as such materials are readily available to the general public or are applied by a contractor licensed for such application and are used in compliance with federal, state or local laws and regulations for its intended purpose and is applied in the manner and quantities recommended by the product manufacturer and the Wisconsin Department of Agriculture, Trade and Consumer Protection.

24. **Job Inspector Notification:** Licensee agrees to contact Rollie Simatic 414-944-5955 or such other person or phone number as Licensor may from time to time designate, within the specified time limits to inform him about the following occurrences:

- a) At least seven (7) days prior to the commencement of the project herein permitted.

- b) Within seven (7) calendar days after the termination of the License herein permitted with a plan for restoration.
- c) Within seven (7) calendar days after the restoration has been completed.
- d) Within seven (7) calendar days after a lapse of six (6) months since Licensee accepted this License if the project herein permitted has not been undertaken by such date; within seven (7) calendar days after each six (6) month interval thereafter until the project herein permitted is undertaken.

It is not Licensor's intent to serve as or in lieu of a building inspector, but to serve and protect Licensor's interest in the Lands and Premises and other improvements and its communication, electrical, gas and other facilities. In the event Licensor's inspector(s) reasonably determines that communication, electric, gas or other facilities of Licensor are in danger of being damaged or certain construction activity poses a threat to human life, Licensee hereby agrees that Licensor's inspector(s) is empowered to immediately shut down and stop all threatening activity and the work shall not restart until Licensor's inspector is satisfied that the dangerous situation has been resolved to his or her satisfaction. The cost of Licensor's reasonable supervision shall be itemized and billed separately to Licensee and Licensee agrees to promptly reimburse Licensor for its reasonable cost.

- 25. **Indemnification/Insurance:** Licensee hereby agrees to indemnify, save and hold harmless Licensor, its affiliated corporations and their respective directors, officers and employees against any and all loss, cost, liability, damage and expense, including attorney's fees incurred by Licensor on account of any injury to or death of any person or persons whomsoever or on account of damage to property sustained by any person or persons whomsoever caused by, connected with or arising directly or indirectly, wholly or in part, from any use, permitted or not, or operation of the Lands and Premises resulting in any manner from the privileges herein given and whether authorized for such use or not, or the failure of Licensee to observe the covenants of this License; excepting, however, any claims or actions arising out of the sole negligence or willful acts of Licensor. Licensee agrees to deliver to the Licensor a certificate to the effect that it has in full force and effect a comprehensive general liability insurance policy, which may be supplemented by an umbrella policy, issued by a reputable insurance company and Bodily Injury Liability coverage in the amount of \$1,000,000 each person, \$2,000,000 each accident, and Property Damage Liability coverage in the amount of \$250,000 each accident, and further providing that Licensor will receive at least ten (10) days notice in writing of any cancellation thereof and naming Licensor as an additional insured. Licensee agrees to continue such insurance in force during the entire term of this License, and shall furnish like certificates for any renewal thereof.
- 26. **Safety and Protection:** The Licensee hereby agrees, at its sole cost and expense, to erect and maintain any barricades, guard rails, fencing, and/or safety devices for protection as they relate to the protection of the Licensor's and ATC's electric facilities, gas facilities and related construction and operational procedures. The Licensee agrees to maintain the same in good condition, repair and appearance at all times. Licensee will submit to Licensor any and all plans and specifications for the installation of barricades, guard rails, fencing and/or safety devices or protection which may be installed on the Lands and Premises and such installations shall not be made without the consent and prior written approval of Licensor. No fencing, barricades or other improvements shall be installed or erected for any purpose which will obstruct, interfere with or impede the free access of Licensor or ATC to the Lands, Premises or facilities.
- 27. **Galvanic/Stray Current:** Licensee agrees to release Licensor from any responsibility for damage or personal injury resulting from electromagnetic fields electrolysis due to local galvanic or stray current conditions on or along said Lands. Further, Licensee agrees to assume all costs for electrolysis protection **of its facilities.**
- 28. **Removal of Improvements:** Licensee hereby agrees, upon the expiration or early termination of this License by forfeiture, lapse of time or otherwise, if so requested in writing by Licensor, to remove

promptly, at its sole cost and expense, all or part of its improvements including Trail surfaces and drainage structures from the Lands or Premises. In the event Licensee cannot or is unable or unwilling to remove said improvements and related facilities as directed by Licensor, Licensee hereby authorizes Licensor to do so, and Licensee hereby agrees to reimburse Licensor for any and all expenses incurred in connection therewith, including restoration as hereinafter required, upon presentation of a bill therefor, and Licensee hereby agrees to indemnify and save harmless Licensor from all liability of any kind whatsoever that Licensor may have incurred by such removal.

29. **Restoration:** Licensee agrees to restore or cause to restore the Lands and Premises of Licensor to the condition existing prior to any disturbance to such Lands and Premises. Licensee further agrees that upon the earlier termination or expiration of this License by either Party, the Lands, including the Premises shall be restored to the condition existing prior to any disturbance or improvement from the aforementioned use of Lands and Premises. Included, but not limited to, in such restoration, after construction and subsequent to termination of this License, shall be the spreading of topsoil and sowing perennial type grass seed on any disturbed areas, replacement of crushed stone and/or paved surfacing, replanting of shrubs and other ground cover and repair of fences and gates or other damages incurred due to or arising out of the permission herein given.
30. **Snow Plowing:** Licensee shall be permitted to plow, but not pile, the snow on the Premises in the event it desires to do so.
31. **Taxes:** During the License Term, Licensee shall be responsible for all taxes on the Licensed Space, such taxes being defined as any and all federal, state and local governmental, quasi-governmental or public authority taxes, assessments and charges of any kind or nature, whether general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by Licensor's income or profits, except as provided below), or payments to governmental authorities in lieu thereof, whether or not in contemplation of the parties to this License, which Licensor shall pay or become obligated to pay because of or in connection with the ownership, renting, or operation of the Licensed Space (including but not limited to charges for the installation, maintenance, repair and replacement of sewer/water, curb, gutter and roadway) and of the personal property, fixtures, machinery, equipment, systems and apparatus located thereon or used in connection therewith. Taxes shall include, without limitation, all real and personal property taxes (attributable to the year in which paid), sales taxes, assessments (special or otherwise), fire inspections, transit taxes and ad valorem taxes but shall not include penalties or late fees thereon unless the penalty and/or late fees are directly attributable to Licensee. Taxes shall also include all fees, costs and expenses (including, legal fees and court costs) paid by Licensor in connection with protesting or contesting or seeking a refund or reduction of and/or negotiating with public authorities with respect to any of the aforesaid taxes, regardless of whether Licensor is ultimately successful. If at any time during the term hereof, a tax or excise on rents or other tax however described, other than an income tax, is levied or assessed by the United States or the State of Wisconsin, or any political subdivision thereof, on account of the rents hereunder or the interest of Licensor under this License, such tax shall constitute and be included in taxes. Any taxes paid by Licensor hereunder shall be reimbursable to Licensor by Licensee as Additional Rent
32. **Breach of License:** In the event Licensee shall breach or violate any of the terms, conditions or provisions of this License, or if any governmental agency having jurisdiction shall serve any demand, order or notice, including violations relating to zoning or municipal ordinances, upon Licensor or Licensee, the Licensee shall, at its sole cost and expense, correct said breach or violation and comply with said demand, order or notice within 30 days of its receipt of such written notice or as stated within said demand, order or notice. In the further event that Licensee does not correct said breach or violation or comply with said demand, order or notice within the required time period, it shall be lawful for Licensor, without liability to Licensee, without notice or demand, to declare said License terminated and to re-enter the Premises either with or without process of law and to expel, remove and put out Licensee or any person or persons occupying the Premises, using such force as may be necessary so to do and to repossess and enjoy the Lands and Premises again as before this grant of

License without prejudice to any remedies which might otherwise be used for the preceding breach of covenants; Licensee hereby expressly waiving all right to any notice or demand under any statute relating to forcible entry and detainer. The decision of Licensor shall be final and binding upon Licensee concerning any breach or default in the covenants and agreements contained in this License. Licensee shall be liable to Licensor for any and all costs incurred, including reasonable attorneys' fees owing to or arising out of any action taken pursuant to this provision in which Licensor prevails.

33. **Licensor Right to Enter:** The Licensor reserves unto itself and ATC and for their employees, agents and contractors the right, at any time, to enter upon the Lands and Premises by any means necessary i) for performing studies, gathering of air, water, soil and other material samples, ii) for inspection of the Premises in order verify Licensee's compliance with the Lease terms, iii) for access to Licensor's Lands including the Premises, iv) to inspect, patrol, construct, install, operate, maintain, replace and repair electric lines, gas lines, communication equipment and related and unrelated facilities and equipment, both overhead and underground, upon, over, across, in and beneath the Premises and the Lands without liability to Licensee, the same as though this License had not been entered into. Licensor or ATC through Licensor may, without liability to Licensee, require Licensee to immediately vacate all or part of the Premises upon notice to do so in the event Licensor deems it necessary to make emergency repairs to its facilities. In the event it becomes necessary for Licensor or ATC to install or erect additional electric lines, natural gas lines, communication lines and/or related facilities at some future date, Licensee hereby agrees to vacate as much of the Premises as Licensor and/or ATC deems necessary and for such periods of times as may be necessary to install, modify, reconstruct or erect such facilities upon receipt of notice from Licensor to do so. Licensor and/or ATC shall perform and complete all work under this Section as quickly as is reasonable possible to minimize the inconvenience to Licensee.

Licensee further agrees that it shall immediately vacate the Premises and close down the Trail upon notification by Licensor that weather conditions exist or may develop which could cause dangerous conditions such as icing on trees and wires.

34. **Paramount Rights:** The rights of the Licensor and ATC to utilize the Lands and Premises in their utility business will at all times be and remain paramount to the rights herein granted to Licensee and nothing stated herein is to be construed as restricting Licensor from granting rights to other Parties or persons in, upon or under the Lands and/or Premises for but not limited to driveways, streets, sidewalks, sewers, water pipes and mains, drainage tiles and pipes, gas mains and pipelines, communication circuits and other allied uses. It is understood and agreed that this License is subject to all existing easements, grants and licenses.
35. **Fees and Charges:** As a condition of the agreement, Licensee shall not charge at any time fee for the use of the Trail except that Licensee may be permitted to charge a fee for group activities or special events upon written consent of Licensor, which consent shall not be unreasonably withheld.
36. **Alcoholic Beverages Prohibited:** Licensee covenants and agrees that alcoholic liquors or beverages are not permitted on the Lands and Premises.
37. **Police Protection:** Licensee shall be permitted to provide or arrange for the provision of all law enforcement and shall be permitted to reasonably require such law enforcement personnel to patrol the Premises as it deems reasonable under this License.
38. **Notices:** All notices to Licensor shall be sent by a reputable overnight delivery service, registered or certified mail, addressed to Wisconsin Electric Power Company, Property Management, Room A252, 231 West Michigan Street, Milwaukee, Wisconsin 53201, or at such other address or place as Licensor may from time to time designate in writing. Personal delivery with a signature acknowledgement of receipt by Licensor is always an acceptable means of delivery.

All notices to Licensee shall be sent by a reputable overnight delivery service, registered or certified mail addressed to City of Greenfield, Attn. Paul Ziehler, City Administrative Officer, Clerk/Treasurer, 7525 W. Greenfield Avenue, West Allis, WI 53214 or at such other place as Licensee may from time to time designate in writing. Personal delivery with a signature acknowledgement of receipt by Licensee is always an acceptable means of delivery.

39. **Waiver of Terms and Conditions:** Failure of Licensor or Licensee to enforce or insist upon compliance with any of the terms or conditions of this License shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
40. **Costs and Attorney Fees:** Licensee shall pay and discharge all reasonable costs, expenses and attorney fees that may be incurred or paid by Licensor in enforcing the covenants and agreements of this License where litigation is not commenced. In the event litigation is commenced by Licensor or Licensee to enforce any provision of this License, the prevailing Party (as determined by a judgment in favor of one Party or the other) shall be entitled to recover from the other, as additional costs, its reasonable attorney fees and costs incurred in connection with such action.
41. **No Joint Venture:** The agreements contained herein are not intended, nor shall the same be deemed or construed, to create a partnership between Licensor and Licensee, to make them joint ventures, nor to make Licensor in any way responsible for the debts or losses of Licensee.
42. **Obligations Survive:** All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the term of this License shall survive the expiration or earlier termination of the term hereof, including without limitation, all payment obligations with respect to taxes and all obligations concerning the condition of the Lands.
43. **Binding Effect:** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, except as otherwise provided in Section hereof.
44. **Captions:** The captions in this License are inserted only as a matter of convenience and for reference and in no way define, limit, construe or describe the scope or intent of such sections or paragraphs of this License nor in any way affect this License.
45. **Severability of Provisions:** If any term, covenant or condition of the License or the application thereof to any person or Party or circumstance shall, to any extent, be invalid or unenforceable at any time, the remainder of the License, or the application of such term, covenant or condition to persons, Parties, or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this License shall be valid and be enforced to the fullest extent permitted by law.
46. **Interpretation:** The laws of the State of Wisconsin shall govern the validity, performance and enforcement of this License. Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.
47. **Acceptance:** Licensee hereby accepts this License upon the terms, conditions, restrictions hereinbefore set forth, and do covenant to keep and perform each and every one of said terms conditions and restrictions.

The covenants herein contained shall bind the Parties mutually and their respective successors and assigns.

IN WITNESS WHEREOF, the said **WISCONSIN ELECTRIC POWER COMPANY** has caused these presents to be signed by James T. Raabe, its Manager of Property Management on the _____ day of _____, 2009, and the said _____, has caused these presents to be signed by its _____ and its _____ and its corporate seal to be hereunto affixed this _____ day of _____, 2009.

DRAFT

In Presence Of:

WISCONSIN ELECTRIC POWER COMPANY
(Licensor)

By _____
James T. Raabe, Manager of Property Management

CITY OF WEST ALLIS
(Licensee)

By: _____
Daniel Devine, Mayor

ATTEST:

By _____
Paul Ziehler, City Clerk/Treasurer

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This document was drafted by Julie Simmons on behalf of We Energies, P. O. Box 2046, Milwaukee, Wisconsin 53201.



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0152

Final Action:

Sponsor(s): Public Works Committee

Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trail.

WHEREAS, West Allis is currently developing a bike trail named West Allis Cross Town Connector; and,

WHEREAS, the City needs to use a portion of WE Energies right-of-way for the Bike Trail; and,

WHEREAS, WE Energies has submitted to the City a License Agreement for use of their right-of-way for the Bike Trail; and,

NOW, THEREFORE, BE IT RESOLVED By the Common Council of the City of West Allis that the Mayor, along with other appropriate City Officials, be and is hereby authorized and directed to sign the License Agreement on behalf of the City of West Allis; For purposes of legal construction, it further being the intent of the Common Council of the City of West Allis for the right-of-way designated as the bike trail stated herein to be deemed a "highway" for use by the public as the term "highway" is defined by the laws of the State of Wisconsin.

NOW, THEREFORE, FUTHER BE IT RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the License Agreement, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, including but not limited to, any and all changes necessary to preserve the intent of the Common Council of the City of West Allis for the dedication of the right-of-way stated herein as a "highway" for use by the public as the term "highway" is defined by the laws of the State of Wisconsin.

ADOPTED _____

APPROVED _____

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

Dan Devine, Mayor



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0152

Final Action:

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OCT 20 2009

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ADOPTED OCT 20 2009

APPROVED _____

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

Dan Devine, Mayor

Janel Lemanske

From: Peter Daniels
Sent: Thursday, June 24, 2010 1:20 PM
To: Janel Lemanske
Subject: RE: R-2009-0152 License Agreement with WE Energies

The first resolution is still in limbo and probably is still 6 months away from being signed.

The second resolution is being handled by Joe but should be signed soon. I'll ask Joe.

From: Janel Lemanske
Sent: Thursday, June 24, 2010 11:40 AM
To: Peter Daniels
Subject: R-2009-0152 License Agreement with WE Energies

Hi Pete,

I'm following-up on two resolutions:

R-2009-0152, Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trailed, Adopted as Amended on October 20, 2009. Any obstacles?

R-2010-0120, Resolution authorizing the Director of Public Works/City Engineer to accept the proposal of AECOM Technical Services (AECOM) to provide consulting services relative to the NR216 Permit compliance requirements for 2010 for a sum not to exceed \$25,000, adopted 5-18-2010.

Thanks,
Janel

Janel Lemanske

From: Peter Daniels
Sent: Monday, March 15, 2010 11:26 AM
To: Janel Lemanske
Subject: RE: License Agreement

No we're still negotiating with We Energies on the details of the bike trail. They won't sign it until they are satisfied with the design of the trail. It could be a few more months.

From: Janel Lemanske
Sent: Monday, March 15, 2010 11:18 AM
To: Peter Daniels
Subject: License Agreement

Hi Peter,

Just checking on the License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trail whether it has been signed. If so please forward the original agreement to me for the resolution jacket.

Thank you,
Janel

R-2009-0152 Adopted as Amended on October 20, 2009.

Janel Lemanske

From: Peter Daniels
Sent: Wednesday, January 20, 2010 4:09 PM
To: Janel Lemanske
Subject: RE: R-2009-0152 License Agreement with WE Energies

We have not signed the agreement with We Energies yet. There were unexpected obstacles but we're getting closer to signing.

From: Janel Lemanske
Sent: Wednesday, January 20, 2010 4:08 PM
To: Peter Daniels
Subject: R-2009-0152 License Agreement with WE Energies

Pete,

I am now looking for R2009-0152, Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trail, Adopted as Amended on October 20, 2009.

If you have the original I'll need it for the Council jacket.

Thank you,
Janel

(This should be it for Engineering :-)

Janel Lemanske

From: Peter Daniels
Sent: Wednesday, November 16, 2011 3:18 PM
To: Janel Lemanske
Subject: RE: R-2009-0152 License Agreement with WE Energies

Actually there was no change in the license agreement or the resolution between 2009 and 2011. Mike just wanted to ask them again because so much time had passed. So you could put the License Agreement in both places or you could void the 2009 version too I guess????

Peter C. Daniels, P.E.
Principal Engineer
City of West Allis Engineering Department
7525 W. Greenfield Avenue
West Allis, WI 53214
Phone: (414) 302-8374
Fax: (414) 302-8366
email: pdaniels@westalliswi.gov

From: Janel Lemanske
Sent: Wednesday, November 16, 2011 1:58 PM
To: Peter Daniels
Subject: R-2009-0152 License Agreement with WE Energies

Hi Peter,

Is R-2009-0152 (see below) void because of the new resolution adopted on 11-1-11 (R-2011-0225)?

R-2009-0152, Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the WA Cross Town Connector Bike Trail, Adopted as Amended on October 20, 2009.

Thanks,
Janel



CITY CLERK/TREASURER'S OFFICE
414/302-8200 or 414/302-8207 (Fax)
www.westalliswi.gov
Paul M. Ziehler
City Admin. Officer, Clerk/Treasurer
Monica Schultz
Assistant City Clerk
Rosemary West
Treasurer's Office Supervisor

OFFICE OF CITY CLERK/TREASURER
CITY OF WEST ALLIS, WISCONSIN

CERTIFICATION

April 19, 2012

I hereby certify that the attached is a true and correct copy of Resolution No. R-2009-0152, which was adopted on October 20, 2009, Resolution Authorizing and Directing the Mayor to Sign a License Agreement with WE Energies for Use of Their Right-of-Way for the West Allis Cross Town Connector Bike Trail.

Paul M. Ziehler
City Administrative Officer
Clerk/Treasurer