

Document Number

**We Energies
DISTRIBUTION EASEMENT
AGREEMENT**
GAS WE AREA

WR NO.

The **CITY OF MILWAUKEE, A MUNICIPAL CORPORATION** ("City") and **WISCONSIN ELECTRIC POWER COMPANY, a Wisconsin corporation doing business as We Energies** ("WE") enter into this Distribution Easement Agreement ("Agreement") as of this _____ day of _____, 2004.

RECITALS

- A. City owns certain property in Cudahy, Wisconsin located at 4701-5001 South Pennsylvania Avenue (tax identification number 629-9995), more particularly described in **Exhibit A** attached hereto (the "Property").
- B. WE wants an easement in and over that certain 20-foot wide portion of the Property described in **Exhibit B** and depicted in the map attached hereto as **Exhibit C** (the "Easement Area") so that WE may install an 8" gas main in the Easement Area.
- C. City is willing to grant the easement on the terms and conditions contained herein, and WE is willing to accept the easement on such terms and conditions.
- D. The City has approved this Agreement and the City's entry into it pursuant to Common Council Resolution File Number _____.
- E. WE has duly approved this Agreement and WE entry into it.

RETURN TO:
We Energies
PROPERTY RIGHTS &
INFORMATION GROUP
231 W. MICHIGAN STREET, ROOM
1000

629-9995
(Parcel Identification Number)

NOW THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

AGREEMENT

- Grant of Easement.** City hereby conveys to WE a permanent, nonexclusive easement upon, within and beneath the Easement Area on the terms and conditions contained herein.
- Purpose.**
The purpose of this easement is to allow WE, at its expense, to install, operate, maintain repair, replace and extend underground utility facilities, to wit: underground pipeline or pipelines with valves, tieovers, main laterals and service laterals, together with all necessary and appurtenant equipment underground, as deemed necessary by WE, for the transmission and distribution of natural gas and all by-products thereof, or any liquids, gases, or substances that can or may be transported or distributed through an underground pipeline (herein called the "Facilities").
- Trimming.** We may trim or remove trees, bushes, branches and roots that may interfere with the Easement Area or the Facilities or with WE's rights hereunder.
- Access by WE.**
WE has the right of ingress and egress to, over and across the Easement Area as well as so much of City's adjacent lands as shall reasonably be necessary so as to enable WE to access the Easement Area, and to install, operate, maintain, repair, replace and extend its Facilities within the Easement Area.

5. **Buildings or Other Structures.** City covenants and agrees that no buildings or structures will be constructed, placed, or allowed within the Easement Area. City (or any successor in interest to the City) may, however, after installation of the Facilities by WE, construct or cause to be constructed over the Easement Area: roadways and sidewalks that traverse the Easement Area so as to allow vehicular and pedestrian access to the Property from public rights-of-way that abut or adjoin the Property; landscape plantings; irrigation systems; lighting; paving; fencing; and signage (herein the foregoing are called "Owner Improvements"). If such Owner Improvements are built, and if WE needs to remove all or a part of the same in order to access the Facilities for any purpose pertaining to the Facilities permitted hereunder, or if WE causes damage to any Owner Improvements, then WE shall be responsible, at its expense, for replacing and/or repairing any Owner Improvements removed or damaged.
6. **Elevation.** City agrees that the elevation of the ground surface of the Easement Area existing as of the date of the initial installation of WE's Facilities will not be altered by more than 12 inches without the written consent of WE, which shall not be unreasonably withheld, conditioned, or delayed.
7. **Prior Landfill; DNR Approval; Indemnity.** WE is aware that the Property is a former landfill that has been capped and closed with the approval of the Wisconsin Department of Natural Resources ("DNR"). WE understands that, prior to constructing or installing its Facilities in the Easement Area, or disturbing or digging in, the Easement Area, WE must submit to the DNR and obtain DNR's approval of, a plan detailing WE's proposed excavation route, depth of excavation, and closure methods. WE shall install its Facilities in the Easement Area in strict accordance with all federal, state, and local laws, regulations, and orders, and in a good and workman like manner. WE covenants and agrees that, in the event WE disturbs or damages the landfill cap, or if WE violates any federal, state, or local law, regulation, or order regarding the Property, the environment, solid waste, or the prior landfill, or regarding the installation and maintenance of the Facilities, WE shall be solely responsible, at its expense, for repairing and replacing any such disturbance or damage, and for remedying any such violation, in accordance with all applicable laws, regulations, and orders (including DNR requirements), and WE shall defend, indemnify and hold City harmless with respect to any and all loss, cost, liability, claim, or expense (including reasonable attorney fees, court costs, and expert and consulting fees) that relates, directly or indirectly, to the disturbance, damage, or violation (as the case may be) and that may be asserted against City. At the time of this Agreement, the DNR contact person for the Property is Bizhan Sheikholeslami, phone number 262-574-2143.
8. **Entry At WE's Own Risk.** WE understands and agrees, on behalf of itself, its agents, contractors, subcontractors, and employees that any entry or activity upon the Property is at WE's own and sole risk. WE agrees to maintain insurance – including coverages against injuries to persons and property in such amounts as WE deems reasonable, with WE being cognizant of its acceptance of risk hereunder.
9. **Restoration.** WE agrees to restore or cause to have restored the Property (including the Owner Improvements), as nearly as is reasonably possible, and at WE's expense, to the condition existing prior to any entry or activity upon the Property by WE or anyone claiming by, through, or under WE. This duty of restoration, however, does not apply to any trees, bushes, branches or roots that may interfere with WE's use of the Easement Area.
10. **Exercise of Rights.** The parties hereto acknowledge that the complete exercise of WE's rights herein granted may be gradual and not fully exercised until some time in the future, and that none of the rights herein granted shall be lost by non-use.
11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the the heirs, successors and assigns of all parties hereto.

Dated as of the date and year first written above.

CITY:
CITY OF MILWAUKEE

WE:
WISCONSIN ELECTRIC POWER COMPANY

By: _____
Mayor Tom Barrett

By: _____
Name Printed: _____
Title: _____

City Clerk Ron Leonhardt

Attest: _____
Name Printed: _____
Title: _____

COUNTERSIGNED:

City Comptroller
Name Printed: _____

Approved by the City Attorney's Office
as per Milwaukee Code of Ordinances
§304-21 this ____ day of _____, 2004

GREGG C. HAGOPIAN
Assistant City Attorney

DRAFTED BY: Assistant City Attorney Gregg Hagopian.
Doc No 82573

WE NOTARY

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2004, _____ and _____, to me known to be the _____ and _____, respectively, of Wisconsin Electric Power Company, who by said company's authority executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of _____
My Commission Expires: _____

CITY NOTARY

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Tom Barrett, the Mayor of the City of Milwaukee who executed the foregoing instrument on behalf of the City and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Ronald D. Leonhardt, the City Clerk of the City of Milwaukee who executed the foregoing instrument on behalf of the City and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
LEGAL DESCRIPTION OF THE EASEMENT AREA

EXHIBIT C
MAP OF EASEMENT AREA

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