



Legislation Details (With Text)

**File #:** 43350      **Version:** 1      **Name:** 10989 E Main ROW Garden Maintenance Agreement  
**Type:** Resolution      **Status:** Passed  
**File created:** 6/13/2016      **In control:** PLAN COMMISSION  
**On agenda:** 7/19/2016      **Final action:** 7/19/2016  
**Enactment date:** 7/22/2016      **Enactment #:** RES-16-00540

**Title:** Authorizing the execution of a Garden Maintenance Agreement with the Irwin A. and Robert D. Goodman Community Center, Inc. for maintenance of gardens located in East Main Street public right -of-way between Second Street and Fourth Street.

**Sponsors:** Marsha A. Rummel

**Indexes:**

**Code sections:**

**Attachments:** 1. 10989 - Maintenance Agmt - Exhibit A v.2.pdf

| Date      | Ver. | Action By                     | Action  | Result |
|-----------|------|-------------------------------|---|--------|
| 7/19/2016 | 1    | COMMON COUNCIL                | Adopt   | Pass   |
| 7/6/2016  | 1    | BOARD OF PUBLIC WORKS         | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER   |        |
| 6/27/2016 | 1    | PLAN COMMISSION               | Return to Lead with the Recommendation for Approval | Pass   |
| 6/21/2016 | 1    | BOARD OF PUBLIC WORKS         | Refer   |        |
| 6/21/2016 | 1    | COMMON COUNCIL                | Referred  |        |
| 6/13/2016 | 1    | Economic Development Division | Referred for Introduction                           |        |

**Fiscal Note**

No fiscal impact.

**Title**

Authorizing the execution of a Garden Maintenance Agreement with the Irwin A. and Robert D. Goodman Community Center, Inc. for maintenance of gardens located in East Main Street public right-of-way between Second Street and Fourth Street.

**Body**

WHEREAS, for several years City of Madison residents living in the vicinity of the terrace of East Main Street right-of-way between Second Street and Fourth Street have installed and maintained community gardens within such area; and

WHEREAS, it was recently discovered that there is no written agreement pertaining to the installation and maintenance of the community gardens; and

WHEREAS, the residents desire to continue operating the community gardens, and the City has agreed to permit the continued operation of the community gardens, subject to certain conditions; and

WHEREAS, the Irwin A. and Robert D. Goodman Community Center, Inc. has agreed to enter into a written agreement with the City on behalf of the residents to facilitate the management of the community gardens; and

WHEREAS, the Office of Real Estate Services has prepared such agreement and it has been reviewed and approved by the City Engineering Division and the Community Center.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Garden Maintenance Agreement (“Agreement”) with the Irwin A. and Robert D. Goodman Community Center, Inc. (“Goodman”) for maintenance of community gardens (“Community Gardens”) in the terrace of East Main Street right-of-way between Second Street and Fourth Street (“Maintenance Area”), as legally described below and depicted on the attached Exhibit A, on the following terms and conditions:

1. The Maintenance Area shall be used solely for the purpose of community gardening and for no other purpose whatsoever without the City’s prior written consent, which consent the City may withhold in its sole discretion. Notwithstanding the foregoing, there shall be no community gardening activities within the “No Planting Zones” in the Maintenance Area, as depicted on Exhibit A. Goodman shall be responsible for the maintenance of the No Planting Zones, including mowing, as provided in the below Paragraph 2.
2. Goodman shall be responsible for all costs of repair and on-going maintenance of the Maintenance Area, including but not limited to: a) maintaining the curb area to ensure there is no overgrowth into the improved area of the East Main Street right-of-way, and ensuring the Maintenance Area is in compliance with Madison General Ordinance 10.25 at all times the Agreement is in effect; weeding and eradication of invasive species; spring and fall clean-up of the Maintenance Area or as needed; pruning of shrubs; mowing; and removal of litter and debris from the Maintenance Area.
3. Goodman agrees that the City, at the City’s expense, may remove the Community Gardens in whole or in part upon thirty (30) days written notice by the City if the Maintenance Area, or any portion thereof, is needed for public purposes. Public purposes include but are not limited to, and without limitation because of enumeration, public alleys, streets, highways, bike paths, sidewalks, parks, and facilities for the development, improvement and use of public lands. Additionally, Goodman, its successors and assigns shall be entitled to no damages for removal of the Community Gardens from the Maintenance Area.
4. The City agrees that Goodman may terminate the Agreement at any time upon written notice to the City, following removal of the Community Gardens and reasonable restoration of the Maintenance Area as approved by the City of Madison Engineering Division.
5. Any chemical agent, insecticide, fertilizer, or other additive proposed to be used by Goodman or its volunteers or contractors must meet or exceed all federal, State, and local laws, regulations guidelines, and limitations (including prohibitions) for its use. The City reserves the right to restrict or ban the use of any chemical agent, insecticide, fertilizer or additive on or within the Maintenance Area.
6. Goodman agrees that the City shall not be held responsible for any damage to the Community Gardens that may be caused by the City, its employees, contractors, or others.
7. Goodman shall carry commercial general liability insurance covering as insured Goodman and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City’s Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, Goodman shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Goodman shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Agreement is in effect, Goodman shall provide a renewal certificate to the City for approval.
8. Goodman shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney’s fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time

resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Goodman or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

9. Goodman shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Maintenance Area, or any portion thereof.
10. Goodman shall be solely responsible for all water, sewer, storm water and any other utility charges billed to the Maintenance Area.
11. The Agreement shall be binding upon Goodman, its successors and assigns, and shall be recorded in the office of the Dane County Register of Deeds.
12. Legal description of the Maintenance Area:

That part of East Main Street right-of-way, being located in the Southeast  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of Section 6, Town 7 North, Range 10 East in the City of Madison, Dane County, Wisconsin, as depicted on Exhibit A.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be authorized to execute the Agreement and any and all other documents necessary to complete this transaction.