



## Legislation Text

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**File #:** 34816, **Version:** 2

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### **Fiscal Note**

Any costs associated with the temporary limited easement agreement are included in Water Utility Capital Budget Account EW01-58310-810458.

### **Title**

**SUBSTITUTE:** Authorizing the execution of a temporary limited easement agreement with the County of Dane for construction access and staging purposes during the City's Lakeview Water Tower demolition and reconstruction project.

### **Body**

WHEREAS, the City of Madison and the County of Dane are parties to an easement agreement dated November 18, 1997 (the "Easement") which provides the City with a perpetual, exclusive easement over a portion of the County-owned property located at 1202 Northport Drive (the "Tower Easement Area") for the operation of the City-owned Lakeview Water Tower (the "Existing Water Tower"); and

WHEREAS, the Easement also provides the City with a perpetual non-exclusive easement over a portion of the County-owned property for purposes of pedestrian and vehicular ingress and egress to and from the Tower Easement Area (the "Ingress/Egress Easement"); and

WHEREAS, the Tower Easement Area and the Ingress/Egress Easement Area are depicted on attached Exhibit A; and

WHEREAS, as allowed under the terms of the Easement, the City has licensed space on the Existing Water Tower and within the Tower Easement Area to three (3) telecommunication companies for the installation and operation of telecommunications equipment and improvements; and

WHEREAS, during 2014 and 2015 the City will be engaged in a project (the "Project") involving the demolition of the Existing Water Tower and the construction of a new tower in its place (the "New Water Tower"); and

WHEREAS, during such Project, the City is requiring that all telecommunication and radio equipment be removed from the Existing Water Tower and relocated onto a temporary monopole to be erected by the telecommunication companies within the Tower Easement Area (the "Temporary Monopole"); and

WHEREAS, the City, its authorized agents, contractors and licensees, will require the temporary use of a portion of the County's Property located adjacent to the Tower Easement Area throughout the period of the Project for construction access and staging purposes; and

WHEREAS, the County has agreed to enter into a temporary limited easement agreement with the City for such purposes; and

WHEREAS, the Office of Real Estate Services has drafted the agreement, and staff from the Water Utility and the County of Dane have reviewed the TLE and approve of its terms and conditions.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and the City Clerk are hereby authorized to enter into a Temporary Limited Easement Agreement (the "Agreement") with the County of Dane (the "County") on the following general terms and conditions:

1. The term of the Agreement shall commence on the date of full execution of the Agreement by the County and the City and shall automatically expire on December 31, 2015, unless mutually extended in writing by the parties.
2. The easement fee payable by the City to the County shall be \$1.00, together with other good and valuable consideration pursuant to the terms of the Agreement.
3. The City shall have the right to use the "TLE Area" depicted in attached Exhibit A for access and construction purposes.
4. The Project shall not commence without the prior written approval by the County and City of Madison Plan Commission of applicable plans and specifications depicting the following: Temporary Monopole, New Water Tower, City's Equipment Building (relocated), erosion control and stormwater management for Lake View Hill County Park as related to this project, landscaping, tree removal, any replacement parking, temporary and restored walking path, and other associated facilities and features. The approved plans and specifications for the foregoing items are hereinafter collectively referred to as the "Approved Plans."
5. All work shall be done and completed in a good and professional manner in accordance with the Approved Plans and shall be performed in such a manner as to in no way endanger the use of the County's Property. In all cases, the City and its authorized agents, contractors and licensees (collectively, the "Authorized Parties") shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.
6. The Authorized Parties shall use the Ingress/Egress Easement Area as the primary route for vehicular access to and from the TLE Area.
7. The Authorized Parties may use the main driveway to the County's Property off of Northport Drive (the "Main Driveway") for vehicular ingress to the TLE Area and the Tower Easement Area, but only on a limited basis as may be necessary for certain deliveries of construction equipment and materials. The City shall notify the County via e-mail a minimum of five (5) business days in advance in each instance of the need to use the Main Driveway for delivery purposes and shall limit such deliveries to the periods of 5:00 p.m. - 8:00 p.m. Monday thru Friday and 8:00 a.m. - 8:00 p.m. Saturday and Sunday.
8. As part of the Project, the condition of the Main Driveway shall be evaluated both before commencement of the Project and following completion of the Project. Such evaluation shall be performed by a qualified engineer acceptable to both parties and shall be submitted to both parties in written form (the "Driveway Condition Report"). The City agrees to reimburse the County 50% of the cost of repairs or reconstruction of the Main Driveway determined necessary due to damage or degradation resulting from the Project as quantified in the Driveway Condition Report. Reimbursement shall be paid to the County within thirty (30) days of the City's receipt of a detailed, itemized bill for the work.
9. Upon completion of the construction of the New Water Tower, or as soon thereafter as the weather reasonably permits, the City will promptly remove all equipment and materials from the TLE Area and restore the TLE Area in accordance with the Approved Plans.
10. Each party shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of their respective agents or employees acting within the scope of their employment, in accordance with Wis. Stats. Secs. 893.80 and 895.46(1).

BE IT FURTHER RESOLVED that the Office of Real Estate Services is authorized to negotiate with the County regarding the construction of replacement parking stalls on the County's property to offset for the loss of parking during the Project. Such replacement parking stalls shall be contingent upon approval by the City's

Plan Commission.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver, accept and record any and all documents and take such actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.