



Legislation Text

File #: 63717, **Version:** 1

Fiscal Note

No City appropriation required.

Title

Authorizing the City's execution of a Private Drive Access Easement for the benefit of the buyer of the City owned Lots 27 and 28 in the Center of Industry and Commerce across a portion of the adjacent City-owned parcel Lot 3 of CSM 14573 for the installation of a private drive. (17th AD)

Body

WHEREAS, The Common Council adopted a resolution (RES-13-00460) on June 18, 2013 which authorized the execution of an Agreement to Terminate the 'Agreement to Purchase and Undertake Development of the Northeast Industrial Property' ("Purchase and Development Agreement") which was executed between the City of Madison ("City") and The Center for Industry & Commerce, LLC ("LLC") for the development of a mixed-use industrial park; and,

WHEREAS, the City assumed ownership of the remaining vacant properties located within The Center for Industry & Commerce, LLC ("CIC") at that time; and,

WHEREAS, the City has since been selling vacant property within CIC for light industrial and business uses; and,

WHEREAS, the City entered into a purchase and sale agreement with Weldcorp Mfg, LLC ("Weldcorp") to acquire Lots 27 and 28 in CIC plat recorded as Document Number 3708481 ("Grantee's Parcel"), which was approved by resolution (RES-20-00540) on August 4, 2020; and,

WHEREAS, during Weldcorp's due diligence period it determined that it needs access to a private drive on the adjacent City owned Lot 3 of CSM 14573 ("Lot 3") given it needs a wider turn radius to swing the long structural steel beams into its facility for fabrication; and,

WHEREAS, the City is presenting a resolution at the same time as this resolution for the sale of Lot 3 with Greywolf Acquisitions, LLC ("Greywolf"), and Greywolf has approved the below terms of the private drive access easement ("Private Drive Access Easement"); and,

WHEREAS, Lot 3 is subject to a City Utility Easement retained as part of a resolution for the Vacation and Discontinuance of a Public Way, recorded as Document No. 5304795 (the Public Street Easement rights have been released per Document No. 465579) encompassing the public sanitary sewer and storm sewer facilities (the "Public Improvements"). The City's Utility Easement retained being depicted in attached Exhibit A (the "City Utility Easement").

NOW, THEREFORE, BE IT RESOLVED that the Mayor, the City Clerk and City staff are hereby authorized to execute a Private Drive Access Easement ("Easement"), temporary limited easement and assignment of Easement on materially, though not exclusively, the following terms and conditions, on a form approved by the City Attorney.

1. Grant of Easement. The City hereby grants and conveys to Grantee, and Grantee hereby accepts from the City, the Easement for vehicular access purposes upon, over and across the Easement Area per Exhibit A.
2. Use. Grantee's use of the Easement Area shall be limited to the following:

- a. Vehicular ingress and egress via the Private Drive to and from Grantee's Parcel together with the following rights and obligations:
 - i. the right to construct at its cost a City approved paved Private Drive per Paragraph 4;
 - ii. the obligation to maintain, pave, repave, mark and plow the Private Drive at all times per Paragraph 4;
 - iii. the obligation to perform all other work incidental thereto or described in the Agreement.
 - b. Shared access of the Private Drive with the Future Lot 3 Owner; who will have vehicular ingress and egress via the Private Drive to and from Lot 3 CSM 14573.
 - c. Construction of private utilities including private storm sewer laterals and private sanitary sewer lateral connections to the Public Improvements (the "**Private Utilities**") within the Easement Area with the right to maintain said Private Utilities as needed.
3. Restrictions on Use. Notwithstanding the provisions of Paragraph 2, Grantee's and Future Lot 3 Owner's use of the Easement Area shall be restricted as follows:
- a. No above-grade improvements are permitted within the Easement Area, other than those permitted above, without the prior written approval of the City.
 - b. No open storage of any materials, or the permanent parking of vehicles and/or equipment of any kind.
 - c. Neither Grantee, nor its respective agents, employees, guests or invitees shall do anything to interfere with the City's or Future Lot 3 Owner's use of the Private Drive and the Easement Area. No curbs, barriers, fences, dividers or other obstructions shall be constructed or installed by Grantee to prevent, prohibit, impede or discourage use and enjoyment of the Private Drive and the Easement Area; provided, however, Grantee shall have the right to temporarily erect barriers to the minimum extent necessary to fulfill its respective maintenance obligations under Paragraph 4 below. Neither the Future Lot 3 Owner, nor its respective agents, employees, guests, tenants or invitees shall do anything to interfere with the Grantee's use of the Private Drive and the Easement Area. No curbs, barriers, fences, dividers or other obstructions shall be constructed or installed by the Future Lot 3 Owner to prevent, prohibit, impede or discourage use and enjoyment of the Private Drive and the Easement Area; provided, however, Future Lot 3 Owner shall have the right to temporarily erect barriers to the minimum extent necessary for the installation, maintenance and repair of the Private Utilities servicing Lot 3. The parties expressly acknowledge that the restrictions and covenants contained herein shall be enforceable by injunction.
4. Construction, Repair and Maintenance.

I. Initial Construction

The scope of work for the initial construction of the Private Drive shall include the conversion of the existing curb cut/apron entrance on Merchant Street (the “**Existing Entrance**”) that was built by the City to serve the vacated public way, per the recorded Document No. 5304795. The Existing Entrance shall be modified to the City’s standards for a commercial entrance (the “**Existing Entrance Modifications**”) by Grantee at its cost. The City and Grantee will enter into a separate Development Agreement to further outline the details relating to the **Existing Entrance Modifications**.

City hereby also grants and conveys to Grantee a temporary private access easement (the “TLE”) over Lot 3 during the TLE Term, which commences on the day the Agreement is recorded and ends per section iii below, subject to the following conditions:

- i. Grantee use of Lot 3 shall be for the right of ingress and egress to build the Private Drive and Private Utilities and the right to operate necessary equipment thereon. Lot 3 shall not be used for open storage of or permanent parking of vehicles or equipment of any kind.
- ii. Grantee will promptly restore Lot 3 after completion of the Private Drive construction and grading activities (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the City. Restoration shall include removal of all debris and the restoration of all disturbed areas within a manner satisfactory to the City.
- iii. The TLE shall terminate upon the earlier of: (a) completion of construction of the Private Utilities and the Private Drive, or (b) September 30, 2021; unless mutually extended by the parties in writing; said terminate date is the end of the TLE Term.

The initial construction of the Private Drive and Grantee’s Private Utilities shall be done and completed in a good and professional manner at the sole expense of Grantee, and shall be completed on or before September 30, 2021. In all cases, Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.

II. Repair, Maintenance and Replacement-Until City Sells Lot 3

The Grantee shall maintain the Private Drive at all times, including repairing, sweeping and plowing. Any replacement of the subsurface or surface of the Private Drive and any approved private facility shall be performed by Grantee. All of this aforementioned work shall be done and completed in a good and professional manner at the sole expense of Grantee until the City sells Lot 3 to the Future Lot 3 Owner.

III. Repair, Maintenance and Replacement-After City Sells Lot 3 to Future Lot 3 Owner

Grantee shall, at its sole cost and expense, maintain any and all portions of the Easement Area and the Private Drive in good condition and repair (including snow and ice removal); provided, however, that upon commencement of the construction of any improvements upon Lot 3 and at all times thereafter, the Future Lot 3 Owner shall reimburse Grantee for Fifty Percent (50%) of all costs incurred for the repaving, maintenance, repair, replacement and/or reconstruction of the Easement Area and the Private Drive (the "FL3's Share of Costs") as determined to be necessary and approved by both the Grantee and the Future Lot 3 Owner. The parties will coordinate this repair and replacement work and the payment relating thereto, so that no unreasonable interference occurs with respect to the operation on either owner's property. Notwithstanding the foregoing, in the event any portion of the Easement Area, Private Drive and/or Private Utilities is damaged by improper or extraordinary use by a party, the party causing the damage shall repair the same at its sole cost and expense to substantially the same condition as existed prior to such damage.

If the Future Lot 3 Owner fails to pay Grantee for its FL3's Share of Costs outlined in a written notice sent by Grantee within the due date of thirty (30) days of the written notice, such FL3's Share of Costs amount shall bear interest from the date when due until paid at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

5. Reservation of Use by City.

- a. The City reserves the right of reasonable use and occupation of the Easement Area, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Private Drive, or Grantee's Private Utilities or the access rights granted by the Agreement. Specifically, the City reserves the rights to the following with respect to the Easement Area:
 - i. Vehicular travel within and across the Easement Area.
 - ii. The right to install, operate, maintain, repair, replace and remove the Public Improvements.
- b. The City shall use its best efforts to see that any work performed with respect to the Public Improvements within the Private Drive is done in an expeditious manner and in a manner that minimizes the disruption to Grantee's or the Future Lot 3 Owner's rights under the Agreement.
- c. Grantee and the Future Lot 3 Owner agrees to waive any claim due to loss of access and to hold the City harmless for any damages resulting from loss of access, which may occur during periods of construction or maintenance of any City owned or City permitted Public Improvements.
- d. Except in the instance of emergency repairs, the City shall give at least ten (10) days' notice in writing to Grantee and Future Lot 3 Owner before a party enters upon the Easement Area for purposes of work involving any Public Improvements.

IT FINALLY RESOLVED that the Mayor, Clerk and City staff are authorized to perform any and all duties necessary to carry out this transaction including recording the Easement, TLE and future assignment of Easement, or other required documents in a form approved by the City Attorney.