



## Legislation Text

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**File #:** 46550, **Version:** 1

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### **Fiscal Note**

No fiscal or budgetary impact.

### **Title**

Authorizing the execution of an Easement Agreement and Release with the County of Dane pertaining to the City's Lakeview Reservoir Pipeline Improvements Project, Phase 2.

### **Body**

WHEREAS, the County is the owner of the property located at 1202 Northport Drive in the City of Madison, legally described in attached Exhibit A (the "County's Property"); and

WHEREAS, the County and the City are parties to that certain Permanent Easement for Water Main Purposes and a Booster Pump Station, dated August 8, 1969, and recorded with the Dane County Register of Deeds on September 2, 1969 as Document No. 1294251 (the "1969 Easement"); and

WHEREAS, the 1969 Easement provides the City with a perpetual easement over a portion of the County's Property for the operation of a booster pump station and water main facilities (the "Existing Facilities"); and

WHEREAS, in 2017 the City will be installing new water main facilities (the "New Facilities") over the County's Property, including a new water main line extending from the booster pump station to Northport Drive, following an alignment similar to that of the Existing Facilities; and

WHEREAS, the installation of the New Facilities will be performed by the City pursuant to the City's Lakeview Reservoir Pipeline Improvements Project, Phase 2, Madison Water Utility W.O. 1-1460-46, Contract 7452, MUNIS 10439 (the "2017 Project"); and

WHEREAS, the New Facilities will require additional and expanded easement areas over the County's Property; and

WHEREAS, the County and the City desire to enter into a new easement agreement for the Existing Facilities and the New Facilities, and the parties also desire to release the 1969 Easement.

WHEREAS, the Office of Real Estate Services has drafted an Easement Agreement and Release (the "Agreement"), and staff from the Water Utility and the County of Dane have reviewed the Agreement 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 an Easement Agreement and Release (the "Agreement") with the County of Dane (the "County"), at no cost to the City, on the following general terms and conditions:

1. Under the Agreement, the County shall grant to the City a permanent limited easement for the Existing Facilities and New Facilities including, but not limited to, the right of ingress and egress; the right to excavate, install, operate, maintain, repair, replace and modify the Existing Facilities and New Facilities, and the right to perform all work incidental thereto in certain portions of the County's Property more particularly described in attached Exhibit B and depicted on attached Exhibit C (the "Easement Areas").
2. Construction of the New Facilities shall be performed by the City in accordance with plans and

specifications approved by the County (the "Approved Plans").

3. Following the installation of the New Facilities and final grading of the Easement Areas, no grade change shall be made to the Easement Areas without the written consent of the City of Madison Water Utility's General Manager.
4. That portion of the Existing Facilities comprised of the water main extending from the booster pump station to Northport Drive and from the booster pump station to the west dead end of Lake View Avenue shall be abandoned in place by the City.
5. The County shall reserve the right to use and occupy the Easement Areas in a manner consistent with the rights conveyed in the Agreement, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Existing Facilities or New Facilities.
6. No buildings or structures, unrelated to the Existing Facilities and the New Facilities, shall be constructed in the Easement Areas without the written consent of the City of Madison Water Utility's General Manager.
7. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of the Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of the Agreement.
8. The County and the City agree to release the 1969 Easement.
9. Under the Agreement, the County shall also grant to the City a Temporary Limited Easement ("TLE") for construction purposes, which will allow the City to perform sloping and grading on lands located outside of the Easement Areas as denoted in Exhibit C (the "TLE Areas").
10. The County shall reserve the right to use and occupy the TLE Areas in a manner consistent with the rights conveyed in the Agreement, provided that such use and occupancy shall not interfere with or disturb the construction, grading and/or sloping of the TLE Areas.
11. The TLE shall terminate upon the completion of the construction described in the 2017 Project.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign any and all documents that may be required to complete this transaction.