



Legislation Text

File #: 57840, **Version:** 1

Fiscal Note

No additional City appropriation required for execution of the proposed Private Storm Water Easement. A \$1,000 easement fee will be deposited into the General Fund (account no. 110010-47145-00000).

Title

Authorizing the City's execution of a Private Storm Water Easement for the benefit of Tyler D. Leeper and Katherine D. Holt across a portion of a City-owned parcel located at 826 West Shore Drive for the installation of a private storm water sewer lateral. (13th AD)

Body

BE IT FURTHER RESOLVED that the Easement shall be on substantially the following terms and conditions:

1. Construction, Repair and Maintenance.
 - a. The work of construction, repair and maintenance of the Facilities by the Grantee shall be done and completed in a good and professional manner at the sole expense and responsibility of the Grantee and shall be performed in such a manner as to not cause damage to the City's Property adjacent to the Easement Areas.
 - b. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required prior to any construction, repair or maintenance activity.
 - c. The Grantee shall be responsible for restoration of the Easement Areas. All areas affected by the work of the Grantee shall be promptly restored and/or repaired to original grade and vegetation or surface condition, including repair or replacement of pavement or concrete, by and at the expense of the Grantee after completion of said work (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the City.
 - d. During and after construction, repair, and/or maintenance of the Facilities and subsequent grading of the Easement Areas, no grade change to the Easement Areas shall be made without the prior written approval by the City.
 - e. With the exception of routine maintenance and repairs and normal utilization of the Facilities, no changes to or alterations of the Facilities shall be permitted without the prior written approval of applicable plans and specifications by the City.
2. Reservation of Use by City. The City reserves the right to use and occupy the Easement Areas in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Facilities. If any reasonable use and occupation of the Easement Areas by the City shall necessitate the Grantee to remove or relocate the Facilities or any part thereof, the Grantee shall perform such work at such time as the City may approve and without any cost to the City.
3. Indemnification. The Grantee shall be liable to and hereby 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, and 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 Grantee's acts or omissions in the performance of this Easement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

4. Termination. In the event the Grantee defaults in the performance of any term or condition of this Easement and fails to remedy such default within thirty (30) days after written notice from the City, the City shall have the right, at its sole option, to declare this Easement void and terminate the same. Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Grantee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Grantee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.
5. Authorized Agent. The City's Storm Water Engineer or the Engineer's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Easement, with authority to administer this Easement lawfully on behalf of the City.
6. Notices. All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:
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| For the City: | Economic Development Division
Office of Real Estate Services
Attn: Manager
PO Box 2983
Madison WI 53701-2983 |
| For Grantee: | Tyler D. Leeper and Katherine D. Holt
822 West Shore Drive
Madison, WI 53715 |
- Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.
7. Compliance. The City and the Grantee shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
8. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.
9. Amendment. This Easement may not be amended, modified, terminated, or released without the written consent of the City and the Grantee, or their respective successors-in-interest.
10. Binding Effect. This Easement shall inure to the benefit of the Grantee in perpetuity and shall be binding upon the City, and their respective successors and assigns.
11. Applicable Law. This Easement shall be construed in accordance with the laws of the State of Wisconsin.
12. Public Record. This Easement shall be recorded at the Office of the Dane County Register of Deeds.