



Legislation Text

File #: 34292, **Version:** 1

Fiscal Note

The easement fee of \$23,664 shall be deposited into Account No. CL60-78231-810398.

Title

Authorizing the execution of a Private Storm Sewer Easement Agreement with J.H. Findorff & Sons, Inc. for an easement within Brittingham Park, located at 622 North Shore Drive.

Body

WHEREAS, the City has an ownership interest in the property located at 622 North Shore Drive, being a portion of Brittingham Park (the "City's Property"); and

WHEREAS, J.H. Findorff & Sons, Inc. ("Findorff") is the owner of the adjacent property located at 300 South Bedford Street (the "Findorff Parcel"); and

WHEREAS, in connection with the Findorff Yards Project, Findorff has requested that the City grant Findorff a permanent private storm sewer easement over a portion of the City's Property; and

WHEREAS, a Private Storm Sewer Easement Agreement has been negotiated between the Office of Real Estate Services and Findorff; and

WHEREAS, the City Attorney's Office and the Parks and City Engineering Divisions have reviewed and approve of the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to enter into a Private Storm Sewer Easement Agreement (the "Agreement") with J.H. Findorff & Sons, Inc. on the following general terms and conditions:

1.) Findorff shall have the right to use the "Storm Sewer Easement Area," as described in attached Exhibit A and depicted in attached Exhibit B, for construction, installation, maintenance, operation, replacement and/or removal of private underground storm sewer piping (the "Facilities"), together with the right of ingress and egress across the Storm Sewer Easement Area for the purpose of access to the Facilities for such purposes. No above-ground facilities will be allowed in the Storm Sewer Easement Area without the prior written approval of the City's Park Superintendent. Findorff shall not use the Storm Sewer Easement Area for open storage of or permanent parking of vehicles or equipment of any kind.

2.) Findorff shall pay to the City the amount of \$23,664.00 (the "Easement Fee") as consideration for the Storm Sewer Easement.

3.) Construction, Repair and Maintenance:

a.) Initial construction of the Facilities shall not commence without the prior written approval of applicable plans and specifications by the City's Park Superintendent. The work of construction, repair and maintenance shall be done and completed in a good and professional manner at the sole expense of Findorff and shall be performed in such a manner as in no way to endanger the use of the City's Property.

b.) Following the installation of the Facilities and final grading of the Storm Sewer Easement Area (or as soon thereafter as weather reasonably permits), Findorff will promptly restore the Storm Sewer Easement Area in a manner satisfactory to the City's Park Superintendent.

4.) The City reserves the right of reasonable use and occupation of the Storm Sewer 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 Facilities. Specifically, the City reserves the rights to the following with respect to the Storm Sewer

Easement Area:

- a.) Public access for pedestrian travel within and across Brittingham Park.
- b.) The right to install, operate, maintain, repair, replace and remove "Public or Private Improvements," such as public utilities, private utilities (e.g., private fiber optic), and a public pedestrian/bicycle path or sidewalk, including the right to issue any and all necessary excavation permits, encroachment agreements, licenses and leases therefor.
- c.) Except in the instance of emergency repairs, the City shall give at least ten (10) days notice in writing to Findorff before a party enters upon the Storm Sewer Easement Area for purposes of work involving any Public or Private Improvements.
- d.) The City shall repair, or cause to be repaired, any damage caused to the Storm Sewer Easement Area as a result of the use of the Storm Sewer Easement Area by or on behalf of the City.
- 5.) The City shall have the right to terminate the Agreement by giving Findorff a minimum of 180 days written notice of termination in the event the Storm Sewer Easement Area, at the sole discretion of the Common Council of the City of Madison, is desired for any public use or purpose. In the event of termination under this paragraph, the City shall use its best efforts to provide Findorff with a satisfactory alternate easement location on the City's Property. In the event termination under this paragraph occurs during the first ten (10) years of the Storm Sewer Easement term and the City is unable to provide Findorff with a satisfactory alternate easement location, the Purchase Price shall be prorated on a per diem basis for such ten (10)-year period and the City shall refund to Findorff that portion of the Purchase Price allocable for the period from the date of termination to the end of the ten (10) year period.
- 6.) Findorff shall be liable to and agree 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 Findorff or its contractors or subcontractors in the performance of Findorff's obligations under the Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees; provided, however, that to the extent that any such negligent or willful acts of the City are attributable to third-party contractors of the City, nothing shall prevent Findorff from asserting claims against such third-party contractors.

EXHIBIT A

Storm Sewer Easement Area:

Being part of Lots 4-7, Block 28, Original Plat of Madison, located in the NW1/4 of the SE1/4 of Section 23, T7N, R9E, City of Madison, Dane County, Wisconsin to-wit:

Commencing at the most Southerly corner of Lot 2, Certified Survey Map No. 12051; thence along the Southeasterly line of said Lot 2 Northeasterly along a curve to the left which has a radius of 155.00 feet and a chord which bears N41°56'00"E, 99.51 feet; thence N31°20'28"E, 40.00 feet along said Southeasterly line; thence N43°51'01"W, 7.42 feet along said Southeasterly line ; thence N32°59'38"E, 25.63 feet along said Southeasterly line to the point of beginning; thence continuing N32°59'38"E, 15.07 feet along said Southeasterly line ; thence S62°41'40"E, 44.07 feet; thence N28°17'10"E, 164.65 feet; thence S61°42'50"E, 15.00 feet; thence S28°17'10"W, 179.40 feet; thence N62°41'40"W, 60.31 feet to the point of beginning. Containing 3,363 square feet.

The location of the Storm Sewer Easement Area is depicted on attached Exhibit B.