



## Legislation Text

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**File #:** 34297, **Version:** 1

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### **Fiscal Note**

The easement fee of \$67,320 shall be deposited into Account No. CL60-78231-810398.

### **Title**

Authorizing the execution of a Private Access 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"), which property was acquired by the City of Madison in 1908 subject to restrictive covenants that the land be used for park and pleasure drive purposes; 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 access easement and a temporary private access easement over certain portions of the City's Property; and

WHEREAS, Findorff has established that it has been assigned the original grantor's rights in the City's Property, and has agreed to release the restrictive covenant over the City's Property to allow the granting of these easements; and

WHEREAS, a Private Access 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 Private Access Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to enter into a Private Access 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 "Access Easement Area," as described in attached Exhibit A and depicted in attached Exhibit B, for pedestrian and vehicular ingress and egress to and from the Findorff Parcel and the public street known as North Shore Drive, together with the following rights: (a) the right to construct a paved driveway (the "Driveway"); (b) to maintain, pave, repave, mark and plow the Driveway at all times; (c) to mow grass or otherwise maintain any landscaping within the Access Easement Area; and (d) to perform all other work incidental thereto. No above-grade improvements will be allowed in the Access Easement Area without the prior written approval of the City's Park Superintendent. Findorff shall not use the Access 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 \$67,320.00 (the "Easement Fee") as consideration for the Access Easement and the "TLE" hereinafter described. In the event that Findorff and the City agree to Findorff's construction of a public sidewalk across the City's Property, the agreed-upon cost of such sidewalk improvement shall be a credit against the Purchase Price of the Access Easement.

3.) Initial construction of the Driveway 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.

4.) The City shall also grant to Findorff a temporary private access easement ("TLE") over that portion of the City's

Property described in attached Exhibit A and depicted in attached Exhibit C (the "TLE Area"), subject to the following conditions:

a.) Findorff's use of the TLE Area shall be for the right of ingress and egress via the existing temporary driveway, and the right to operate necessary equipment thereon. The TLE shall not be used for open storage of or permanent parking of vehicles or equipment of any kind.

b.) Findorff will promptly restore the TLE Area after completion of the Driveway construction and grading activities (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the City. Restoration shall include, but not be limited to the following: (i) removal of the temporary driveway and associated curb cut and apron and installation of new curb and gutter at such location; and (ii) restoration of all disturbed areas with grass seed and/or sod in a manner satisfactory to the City's Park Superintendent.

c.) The TLE shall terminate upon the earlier of: (a) completion of construction of the Driveway, or (b) June 30, 2015; unless mutually extended by the parties in writing.

5.) The City reserves the right of reasonable use and occupation of the Access Easement Area and TLE Area, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Driveway. Specifically, the City reserves the rights to the following with respect to the Access Easement Area and TLE 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.

6.) The City shall have the right to terminate the Agreement, effective at any time after one hundred (100) years from the date of the Agreement by giving Findorff a minimum of two (2) years written notice of termination in the event the Access Easement Area, at the sole discretion of the Common Council of the City of Madison, is desired for any public use or purpose.

7.) Findorff shall carry commercial general liability insurance covering Findorff as insured and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$3,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy. As evidence of this coverage, Findorff shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Findorff shall also provide copies of additional insured endorsements or policy.

8.) 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

### Access Easement Area:

Being a part of Lot 4, 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, 1.54 feet along said Southeasterly line to the point of beginning; thence continuing N32°59'38"E, 30.62 feet along said Southeasterly line; thence S62°41'40"E, 52.28 feet; thence S89°32'02"E, 11.69 feet to the back of curb of North Shore Drive; thence S26°56'13"W, 40.52 feet along said back of curb; thence N36°10'04"W, 11.73 feet; thence N63°10'36"W, 55.51 feet to the point of beginning. Containing 1,998 square feet.

TLE Area:

Being a part of Lots 2 and 3, 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 N47°35'16"E, 70.06 feet to the point of beginning; thence continuing along said Southeast line Northeasterly along a curve to the left which has a radius of 155.00 feet and a chord which bears N29°36'13"E, 26.65 feet; thence S60°12'38"E, 52.31 feet; thence N83°50'49"E, 11.62 feet; thence S26°38'37"W, 42.19 feet; thence N32°58'22"W, 11.65 feet; thence N56°39'31"W, 53.69 feet to the point of beginning. Containing 1,845 square feet.

The locations of the Access Easement Area and TLE Area are depicted on attached Exhibits B and C.