



Legislation Text

File #: 34432, **Version:** 1

Fiscal Note

The easement fee of \$2,950 shall be deposited into Account No. GN01-78231.

Title

Authorizing the execution of a Temporary Limited Easement Agreement for Construction and Restoration Purposes with Atwood Courtyard, LLC for an easement within a portion of the unimproved bicycle and pedestrian path located at 109 South First Street.

Body

WHEREAS, the City is the owner of the parcel located at 109 South First Street, which parcel is reserved for future pedestrian and bicycle path purposes; and

WHEREAS, Atwood Courtyard, LLC is the owner of the adjacent property located at 1924 Atwood Avenue (the "Grantee's Parcel"); and

WHEREAS, in connection with the Atwood Courtyard apartment project, the Grantee has requested a temporary easement over the City's parcel to allow for construction access and construction and restoration activities in connection with said project; and

WHEREAS, a Temporary Limited Easement Agreement for Construction and Restoration Purposes has been negotiated between the Office of Real Estate Services and the Grantee; and

WHEREAS, the City Attorney's Office and the City Engineering Division 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 Temporary Limited Easement Agreement for Construction and Restoration Purposes (the "Easement Agreement") with Atwood Courtyard, LLC (the "Grantee"), allowing for the Grantee's use of the City-owned property at 109 South First Street, on the following general terms and conditions:

1. The Grantee shall have the right to use the "TLE Area," as described and depicted in attached Exhibits A and B, for the following purposes: the staging of construction materials and equipment, the operation of necessary vehicles and equipment thereon, ingress and egress across the TLE Area for access to the "Grantee's Property" via South Second Street, and excavation and restoration activities, which activities are all associated with the construction of the Atwood Courtyard apartment building on the "Grantee's Property" at 1924 Atwood Avenue, as described and depicted in attached Exhibits A and B. The uses described herein shall be extended to the Grantee's contractor(s).
2. The Easement Agreement shall expire upon completion of construction activities associated with the Grantee's building and the restoration of the TLE Area under Paragraph 5 below, or on July 11, 2015, whichever occurs first, unless mutually extended by the parties.
3. The Grantee shall pay to the City an easement fee of \$2,950.
4. The City shall have the right of reasonable use and occupation of the TLE Area, provided that such use and occupancy shall not interfere with or disturb the Grantee's use of the TLE Area.

5. Within thirty (30) days of the completion of construction activities associated with the Building or the expiration or termination of the Easement Agreement for any cause, the Grantee shall remove all construction materials and equipment from the TLE Area; shall remove all pavement and sub base within the TLE Area; shall restore the TLE Area to original grade; and shall add topsoil, install Class 1 Urban erosion matting and seed the TLE Area with grass in accordance with the City's Standard Specifications for Public Works Construction (see: www.cityofmadison.com/business/pw/ <<http://www.cityofmadison.com/business/pw/>>). If the Grantee fails to perform this obligation to the satisfaction of the City Engineer, the City may perform the restoration of the TLE Area for the Grantee, which amount shall be charged against the Grantee's Property as a special charge under Madison General Ordinances Sec. 4.09(13) and Wis. Stat. Sec. 66.0627. As a condition of accepting the easement, the Grantee consents to the imposition of these special charges against the Grantee's Property.

6. The Grantee shall be liable to and shall 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 officials, officers, 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 the Grantee and/or its officials, officers, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of the Easement Agreement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.

7. The Grantee shall carry commercial general liability insurance covering as insured the Grantee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 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 during the term of the Easement Agreement. As evidence of this coverage, the Grantee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, the Grantee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Easement Agreement is in effect, the Grantee shall provide a renewal certificate to the City for approval.

8. In the event the Grantee defaults in the performance of any term or condition of the Easement Agreement 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 the Easement Agreement 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.

9. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activities.