File #: 36327, **Version:** 1

Fiscal Note
No appropriation is required.

Title
Accepting a Permanent Limited Easement for Public Storm Sewer purposes and authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Christopher D. Carpenter to permit certain private improvements within the proposed public storm sewer easement, for the property located at 5006 Lake Mendota Drive.

Body
WHEREAS, the City of Madison (the "City") has an existing storm sewer facility (the "Facility"), located along and adjacent to the easterly property line of Lot 2 , Block 1, Spring Park, City of Madison, Dane County Wisconsin; and

WHEREAS, during the City's review of a conditional use permit to construct a new garage on the property located at 5006 Lake Mendota Drive, owned by Christopher D. Carpenter (the "Owner"), it was discovered that there is no record of a recorded easement for the City's Facility, as located adjacent to the Owner's property; and

WHEREAS, during said City's review of said conditional use permit, it was also discovered that there is an existing retaining wall and portion of a garage, along with a proposed stone sidewalk (the "Private Improvements") that would encroach into the City's proposed public storm sewer easement area, as legally described below and depicted on the attached Exhibit A; and

WHEREAS, as a condition of approval of the Owner's conditional use permit, the City requested that the owner grant a Permanent Limited Easement for Public Storm Sewer Purposes, as no cost to the City; and to obtain a Consent to Occupy Easement from the City to legally permit the Owner's Private Improvements within the proposed easement area, as legally described below and depicted on attached Exhibit A; and

WHEREAS, the Engineering Division has reviewed and approves the acceptance of the Permanent Limited Easement for Public Storm Sewer Purposes and the granting of a Consent to Occupy Easement for the Owner's Private Improvements that would encroach into the proposed easement area, as legally described below and depicted on the attached Exhibit A, under the terms and conditions specified therein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to accept a Permanent Limited Easement for Public Storm Sewer purposes (the "Sewer Easement"), and execute a Consent to Occupy Easement ("Consent Easement"), subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant the property Owner, its successors and assigns, permission to occupy the Sewer Easement area for the limited purposes to include existing retaining wall and portion of a garage, along with a proposed stone sidewalk, as legally described below and depicted on attached Exhibit A (collectively, the "Permitted Improvements"), all in accordance with the site plan which has been approved by the City Engineering Division.

2. Construction and Maintenance.

a. Owner shall be responsible for all costs of the maintenance of the Permitted Improvements in compliance with applicable codes and ordinances.

b. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes to, additions to or alterations of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.

3. Use. Owner shall use and occupy the Consent Easement in a manner consistent with the rights herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the Sewer Easement.

4. Compensation for Damages. Both parties understand and agree that the Permitted Improvements may be removed by the City without replacement or compensation to Owner.

5. Indemnification. Owner 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 officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting there from, 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 Owner and/or its agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Consent Easement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.

6. Termination. This Consent Easement shall automatically terminate upon the earliest of the following to occur: (a) the release of the Sewer Easement by the City; (b) the removal of the Permitted Improvements by Owner; or (c) the agreement to terminate by the parties hereto, or their successors or assigns. In the event of termination, the Owner shall remove the Permitted Improvements at Owner's expense and execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted hereby.

Legal Description of Permanent Limited Easement for Public Storm Sewer Purposes and Consent to Occupy Easement area:

Located in part of Lot 2, Block 1, Spring Park, recorded as Document No. 193377, Dane County Registry, in the City of Madison, Dane County, Wisconsin being more particularly described as follows:

Beginning at the southeast corner of said Lot 2 thence N 79°31'02" W along the northerly right of way of Lake Mendota Drive, 3.21 feet; thence N 01°36'04" E, 213.35 feet, more or less, to the ordinary high water mark of Lake Mendota; thence S 63°52'05" E, along said ordinary high water mark, 1.81 feet, to the northeast corner of said Lot 2; thence S 01°11'26" W, along east line of said Lot 2, 213.10 feet, more or less, to the said southeast corner of Lot 2 and the point of beginning.

Said easement contains 513 sq.ft., more or less.

powered by Legistar™