



Legislation Text

File #: 42673, **Version:** 1

Fiscal Note

The proposed resolution authorizes execution of a Consent to Occupy Easement for Dane County and MATC for athletic field improvements within a public sanitary sewer and water main easement at 3201 Anderson Street. With this resolution, MATC will pay a \$500 administrative fee to the City for occupation of City property (deposited to Munis charge code 63029).

Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Dane County and MATC to permit athletic field improvements within a public sanitary sewer and water main easement at 3201 Anderson Street.

Body

WHEREAS, the City of Madison (the "City") is the holder of a public sanitary sewer and water main easement, recorded as part of Document No. 1416749 (the "City Easement"), over a property owned by Dane County (the "Owner") and where Madison Area Technical College ("MATC") is the lessee, of a property located at 3201 Anderson Street, legally described on attached Exhibit A; and

WHEREAS, the County and MATC wish to construct and maintain a new athletic field and related infrastructure, including synthetic field turf, concrete slab, storm water management facilities, private storm sewer facilities and existing geothermal piping serving MATC buildings located at 12701 Pearson Street and 1705 Hoffman Street (the "Field Improvements"), which will and currently encroach into the City Easement as shown on Exhibit B (the "Occupancy Area"); and

WHEREAS, the County and MATC desire to obtain the Consent to Occupy Easement from the City for said Field Improvements within the City Easement for the proposed athletic field use as permitted by the City; and

WHEREAS, City Engineering Division staff have reviewed the site plans for the Field Improvements and are willing to permit the installation and maintenance of the Field Improvements by Dane County and MATC within the Occupancy Area, under the terms and conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Consent to Occupy Easement for the benefit of Dane County and MATC, subject to the following terms and conditions:

1. Grant of Permission. The City will grant Dane County as the Owner and MATC as the lessee; their successors and assigns, permission to occupy the Occupancy Area for the purpose of allowing the Owner's and MATC's installation and maintenance of the Field Improvements including synthetic field turf, concrete slab, storm water management facilities and private storm sewer facilities and existing geothermal piping, as legally described on attached Exhibit A and depicted on the attached Exhibit B, all in accordance with the site plan (LNDSR-2016-00015).
2. Construction and Maintenance.
 - a. The Owner and MATC shall be responsible for all costs of the maintenance, repair and replacement of the Field Improvements. All such work shall be performed in compliance with applicable codes and ordinances.

- b. With the exception of routine maintenance and repairs and normal utilization of the Field Improvements, no changes to, additions to or alterations of the Field Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. The Owner and MATC shall use and occupy the Occupancy Area in a manner consistent with the rights conveyed in the Consent, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the City Easement.
4. Type of Grant. The granting of the Consent shall not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the City Easement. The granting of the Consent shall be deemed to be permissive and shall preclude the Owner and MATC from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easement and by virtue of the granting of the Consent.
5. Compensation for Damages. The Field Improvements may be disturbed or removed by the City without replacement or compensation to the Owner and MATC.
6. Indemnification. Each party shall be responsible for the consequences of its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Consent. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law.
7. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the release of the City Easement by the City; (b) the removal of the Field Improvements by the Owner and or MATC; or (c) the agreement to terminate by the parties or their successors or assigns. In the event of termination, the Owner and MATC shall execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted in the Consent.