



Legislation Text

File #: 46836, **Version:** 1

Fiscal Note

The acquisition cost for the Ped/Bike Path Easement is \$150,000, payable as follows: (a) \$100,000 payable within 30 days of resolution adoption; and (b) \$50,000 payable within 30 days following start of construction of the John Nolen Drive ped/bike path bridge. As further consideration for the Ped/Bike Path Easement, there shall be no consideration payable to the City by 149 East Wilson, LLC for the Access Easement. Funding for the project is available within the Bikeways Program within the Engineering-Bicycle/Pedestrian projects 2017 appropriation.

Title

Accepting a Permanent Easement for Public Transportation Purposes from 149 East Wilson, LLC across property located at 151 East Wilson Street and, in exchange, authorizing the Mayor and City Clerk to execute an Access Easement Agreement with 149 East Wilson, LLC across the City-owned rail corridor located behind 151 East Wilson Street.

Body

WHEREAS, Resolution File ID 45696, Enactment No. RES-17-00049, adopted by the Common Council of the City of Madison on January 17, 2017, authorized an intergovernmental agreement ("IGA") with the Wisconsin Department of Transportation ("WISDOT") providing for the City's acquisition of property rights within the State-owned railroad right-of-way (the "Rail Corridor Parcel") behind 151 East Wilson Street in exchange for the City's grant to WISDOT of certain property rights within a portion of 202 S. Baldwin Street and the Cannonball Bike Path Corridor; and

WHEREAS, the IGA has been executed by WISDOT and the City, and the City has received a Quit Claim Deed from WISDOT for the Rail Corridor Parcel; and

WHEREAS, the intent of the City's acquisition of the Rail Corridor Parcel is to facilitate private access to the rear of 151 East Wilson Street (the "151 Property"), which is currently being redeveloped, and to allow for a future planned bridge ("Bridge") over the John Nolen Drive rail corridor and roadway, which will allow the general public access to Law Park and the Lake Monona shoreline; and

WHEREAS, the City has negotiated with the owner of the 151 Property (149 East Wilson, LLC - the "Owner") for an exchange of easements as follows: (1) the Owner shall grant to the City an easement for transportation purposes allowing for a pedestrian/bicycle path to be constructed over the roof deck of the subterranean parking structure being constructed by the Owner on the 151 Property, extending from East Wilson Street to the future Bridge; and (2) the City shall grant to the Owner an access easement allowing for private access over the Rail Corridor Parcel and adjacent City-owned lands to the rear of the 151 Property; and

WHEREAS, the terms of the easements have been negotiated between the Owner, the City Engineer and Office of Real Estate Services staff; and

WHEREAS, the form of the easements has been approved by the City Attorney, and the City Engineer has reviewed the easements and recommends their grant and acceptance.

NOW, THEREFORE, BE IT RESOLVED that the City of Madison is hereby authorized to accept from 149 East Wilson, LLC (the "Owner"), a Permanent Easement for Public Transportation Purposes ("Ped/Bike Path Easement"), on the following key terms and conditions:

1. Grant of Ped/Bike Path Easement. The Owner shall grant to the City a Permanent Easement for Public Transportation Purposes ("Ped/Bike Path Easement") over land more particularly described in attached Exhibit A and depicted on attached Exhibit B (the "Ped/Bike Path Easement Area").
2. Compensation. The City agrees to pay to the Owner the amount of \$150,000.00 as consideration for the Ped/Bike Path Easement. Such amount shall be payable in two (2) installments as follows: (a) \$100,000.00 shall be payable within thirty (30) days following the acceptance of the Ped/Bike Path Easement by the City's Common Council; and (b) \$50,000.00 shall be payable within thirty (30) days following the Bridge start of work date," as defined in Paragraph 3 below.
3. Use. Effective on the date the City starts construction of the Bridge, which date (the "Bridge Start Work Date") shall be memorialized by a "start work letter" issued by the City or the City's agent to its contractor, the Ped/Bike Path Easement Area shall be open for use by the general public for transportation purposes, including, but not limited to, the use by individuals on foot, bicycles, motorized wheelchairs and similar non-motorized conveyances, vender carts and vehicles, motorized vehicles operated by the City or the City's agents for administrative, public fire safety, and maintenance purposes, and other methods of transportation typical of bike and pedestrian paths in the City, as may be approved and allowed by the City. The Ped/Bike Path Easement Area shall also be open for use by the City for Path maintenance purposes as contained herein and for construction, maintenance and repair purposes associated with the Bridge and associated ramp, along with the operation thereof. Use of the Ped/Bike Path Easement Area shall be subject to the rights of use and occupancy set forth in those various agreements referenced in Exhibit A (the "Existing Uses").
4. Construction. The Owner shall be responsible for the initial construction of the non-structural concrete surface of the Path (the "Path Surface Improvement"), the concrete deck under the Path Surface Improvement, and the structure under said concrete deck, all in accordance with plans and specifications approved by the City of Madison Engineer and Madison Fire Department. The City shall have the right to install devices within the Ped/Bike Path Easement Area necessary to prevent vehicular access by the general public in the event that such access becomes problematic, as determined by the City and as approved by the Madison Fire Department and the Owner.
5. Maintenance and Repair.
 - a. Prior to the Bridge Start Work Date, the City shall not own any part of the improvements within the Ped/Bike Path Easement Area or be responsible for any maintenance or repairs therefore.
 - b. Prior to the Bridge Start Work Date, the Owner shall install three (3) light pole bases and associated electrical conduit in the Ped/Bike Path Easement Area in accordance with plans and specifications approved by the City, the location of which shall be subject to the City's prior written approval. Following the Bridge Start Work Date, the City shall be responsible for the installation, maintenance and repair of a lighting system utilizing such bases and conduit, which shall connect to the City's public street lighting system.
 - c. Effective on the Bridge Start Work Date, the City shall be responsible for the maintenance and repair of the Path Surface Improvement, light poles and bases and Bridge Connection Detail, as well as the insulation layer overlaying the membrane of the concrete deck of the Path. The City's responsibility for maintenance and repair shall only pertain to the Path Surface Improvement, light poles and bases, the Bridge Connection Detail and the insulation layer and shall specifically not pertain to the concrete deck, any membrane (or similar water barrier) overlaying the concrete deck, the structural steel within that deck, vaults, vault covers, support columns, walls, stairways, lights and light poles not connected to the City lighting system, or any other structural or non-structural improvement within the Ped/Bike Path Easement Area.

6. Storm Drainage Facilities.

- a. In designing the Path and its adjoining building, the Owner shall comply with the City's storm water requirements. The Owner shall be solely responsible for the maintenance and repair of the storm water drainage facilities and for all storm water utility charges associated with the Ped/Bike Path Easement Area.
- b. Effective on the Bridge Start Work Date, the City shall be responsible for 50% of the costs of maintaining and repairing the storm water drainage facilities directly related to and mostly serving the Path. Except for emergency repairs, the City shall be given one (1) year notice prior to any required maintenance or repair expenditure. All expenditures for which the City will be responsible shall be subject to the City's prior written approval prior to such work being performed. The City's approval shall not be unreasonably withheld, conditioned or delayed.

7. Reservation of Use by Grantor. The Owner reserves the right to use and occupy the Ped/Bike Path Easement Area in a manner consistent with the rights conveyed in the Easement, provided that, except as set forth in the Existing Uses listed in Exhibit A, such use and occupancy shall not interfere with or disturb the general public's use of the Ped/Bike Path Easement Area or the City's operation, maintenance, repair, replacement and/or modification of the Path improvements located therein. The Existing Uses shall have priority in all respects over the uses granted to the City in the Easement. The Owner shall be entitled to directly access the Ped/Bike Path Easement Area for transportation purposes from the Owner's adjoining building so that the Owner, its employees, agents and invitees, may use the Ped/Bike Path Easement Area in the same manner as the general public in Paragraph 3. No buildings or structures of any kind shall be built over the Ped/Bike Path Easement Area without the prior written approval of the City.

8. Permission to Attach to Building. The Owner hereby grants to the City the right to connect the Bridge to the southeast wall of the Owner's building on the 151 Property. The City's connection shall not structurally support the Bridge, but shall permit the required connecting appurtenances to make the connection of the Bridge and Path to be in conformance with any applicable law, ordinance, code or regulation for the design and maintenance of a bicycle and pedestrian pathway.

9. Liability. Each party shall be responsible for 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 the Easement. 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. This paragraph shall survive the termination or expiration of the Ped/Bike Path Easement.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute an Access Easement Agreement with the Owner (i.e., 149 East Wilson, LLC), on the following key terms and conditions:

1. Grant of Access Easement. The City shall grant to the Owner a perpetual access easement ("Access Easement") for ingress and egress across: (a) the Rail Corridor Parcel, and (b) the existing easement area located behind and benefitting the properties at 155-123 Wilson Street (the "Existing Easement Area"). The Rail Corridor Parcel and Existing Easement Area are hereinafter collectively referred to as the "Access Easement Area." The Access Easement Area is described in attached Exhibit C and

depicted on attached Exhibit D.

2. Compensation. As further consideration for the grant of the Ped/Bike Path Easement by the Owner, as discussed above, there shall be no consideration payable to the City for the Access Easement.
3. Use of Access Easement Area.
 - a. The purpose of the Access Easement is to allow for motor vehicle loading and unloading and vehicular and pedestrian ingress and egress between South Hancock Street and the 151 Property, specifically including ingress and egress between South Hancock Street and the parking garage or facility to be located on the 151 Property.
 - b. The Owner shall agree to pay appropriate compensation to the adjacent owners of 155-123 East Wilson Street for the cost of improvements made by said owners within the Existing Easement Area.
 - c. As a condition of the Access Easement, the Owner shall construct and maintain a permanent physical barrier, at least six (6) feet high, where the Rail Corridor Parcel abuts the railroad right-of-way (at least 33 feet from the centerline of the existing railroad track).
 - d. As a condition of the Access Easement, the City shall retain the right to construct and maintain free-standing support columns for the Bridge (the "Support Columns"). The Support Columns shall in no way be attached to the Owner's building and shall be sited so as not to obstruct vehicular ingress and egress across the Rail Corridor Parcel to the underground parking structure on the 151 Property; however, they may reduce the width of the loading area located west of the parking structure entrance. The parties agree to cooperate and coordinate in the development of plans for the Bridge and the siting of the Support Columns.
4. Construction and Maintenance. The Owner shall be solely responsible for construction, maintenance and repair of the access drive improvements within the Rail Corridor Parcel.
5. Indemnification. The Owner shall be liable to and 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 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 the Owner or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Access Easement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the Access Easement.
6. Insurance. The Owner shall carry commercial general liability insurance covering as insured the Owner and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. 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 Access Easement. As evidence of this coverage, the Owner 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 Owner shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Access Easement is in effect, the Owner shall provide a renewal certificate to the City for approval.

7. Hazardous Substances; Indemnification. The Owner shall represent and warrant that its use of the Access Easement Area will not generate any hazardous substance, and it will not store or dispose on the Access Easement Area nor transport to or over the Access Easement Area any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Owner further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance caused by Owner, its employees, agents, contractors, subcontractors or invitees, and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of the Access Easement.

BE IT STILL FURTHER RESOLVED, that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.