



Legislation Text

File #: 50099, **Version:** 1

The proposed resolution authorizes a Consent to Occupy Easement to permit athletic field improvements within the existent public sanitary sewer and public water main easements located at 2999 and 3201 Anderson Street. No City appropriation is required.

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Dane County and Madison College to allow athletic field improvements within a public sanitary sewer easement and a public water main easement located on a portion of the property at 2999 and 3201 Anderson Street.

WHEREAS, Dane County (the "County"), as owner, and Madison Area Technical College ("Madison College"), as lessee, of the property located at 2999 and 3201 Anderson Street (the "Property"), wish to construct and maintain infrastructure serving the existing athletic fields on the Property, including grade changes to and reconstruction of the infield, and the installation of a water irrigation system (collectively, the "Field Improvements"); and

WHEREAS, the City of Madison (the "City") retained a public sanitary sewer easement and a public water main easement via that certain Quit Claim Deed, recorded as Document No. 1416749 (collectively, the "Easements"), over a portion of the Property; and

WHEREAS, the County and Madison College desire to obtain a Consent to Occupy Easement from the City for the Field Improvements to be constructed within the area of the Easements, as legally described on attached Exhibit A and depicted on attached Exhibit B (the "Occupancy Area"); and

WHEREAS, the City's Engineering Division staff have reviewed the site plans for the Field Improvements and have approved the installation and maintenance of the Field Improvements by Dane County and Madison College 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 Madison College, subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant Dane County and Madison College; their successors and assigns, permission to occupy the Occupancy Area for the purpose of allowing the Field Improvements to be constructed and maintained within the Occupancy Area in this Consent to Occupy Easement (the "Consent").
2. Construction and Maintenance.
 - a. Madison College shall be responsible for all costs of construction and maintenance of the Field Improvements in compliance with applicable codes and ordinances.
 - b. Madison College shall construct the Field Improvements in accordance with plans and specifications approved by the City Engineer.
 - c. 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.

- d. Madison College agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating services. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted while Madison College is occupying the Occupancy Area.
3. Use. The County and Madison College 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 Easements.
4. Type of Grant. The granting of the Consent does not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the Easements. The granting of the Consent shall be deemed to be permissive and shall preclude the County and Madison College from any claim of adverse possession against the City by virtue of any encroachment on or into the Easements and by virtue of the granting of the Consent.
5. Compensation for Damages. All parties understand and agree that the Field Improvements may be removed by the City without replacement or compensation to the County or Madison College if such removal is required by the City for access to the City's facilities in the Occupancy Area.
6. Indemnification. Each party shall be responsible for the consequences of its own acts, errors or omissions relating to or arising out of this Consent, 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. 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 vacation of the facilities within the Easements by the City; (b) the removal of the Field Improvements; or (c) the agreement to terminate by the parties or their successors or assigns. In the event of termination, the County and Madison College 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.