



Legislation Text

File #: 55924, **Version:** 1

Fiscal Note

No additional City appropriation required for the granting of a Private Sanitary Easement to Meriter Hospital, Inc. across a portion of property located at 7997 Raymond Road.

Title

Authorizing the City of Madison to grant a Private Sanitary Sewer Easement to Meriter Hospital, Inc. across a portion of property located at 7997 Raymond Road, commonly known as City Engineer Stormwater Utility 533. (7th A.D.)

Body

WHEREAS, Meriter Hospital, Inc. (“Meriter”) is the owner of the properties located at 8001 Raymond Road and 3102 Meriter Way (together, the “Hospital Property”); and

WHEREAS, Meriter conveyed property located at 7997 Raymond Road (“7997 Raymond”), adjacent to the Hospital Property, to the City to use for storm water utility purposes, by that certain Warranty Deed recorded as Document No. 3882923 on March 11, 2004; and

WHEREAS, circa 2003, Meriter installed an 8-inch sanitary sewer across a portion of 7997 Raymond to serve the Hospital Property, but neglected to reserve an easement for said sewer facility when 7997 Raymond was conveyed to the City in 2004; and

WHEREAS, Meriter is currently seeking approval from the City for a Conditional Use to construct an addition to the building on the Hospital Property, with said application being conditionally approved by the Plan Commission at their meeting on October 15, 2018 ; and

WHEREAS, a condition of approval for the Condition Use application is the execution of a private sanitary sewer easement by the City for the benefit of Meriter, to set forth certain rights and responsibilities pertaining to the existing sanitary sewer.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the City to grant a Private Sanitary Sewer Easement to Meriter (“Grantee”) across a portion of the property located at 7997 Raymond Road in the City of Madison, said easement being legally described on attached Exhibit A and depicted on attached Exhibit B (“Easement Area”), subject to the following conditions:

1. Use. The Grantee’s use of the Easement Area shall be limited to the right to maintain, operate and/or remove the existing private underground sanitary sewer facilities, including, without limitation, sewer access structures (“SAS”), and piping (collectively, the “Facilities”), together with the right of ingress and egress across the Easement Area for the purpose of access to and use of the Facilities.
2. Restrictions on Use. Notwithstanding the provisions of Paragraph 1, the Grantee’s use of this Easement shall be restricted as follows:
 - a. No above-ground facilities will be allowed in the Easement Area by the Grantee, with the exception of SAS covers, without prior written approval of the City.
 - b. The Grantee shall not use the Easement Area for any other purpose other than those stated above.

3. Repair and Maintenance.

- a. With the exception of routine maintenance and repairs and normal utilization of the Facilities, no changes to or alterations of the Facilities shall be permitted without the prior written approval of applicable plans and specifications by the City.
- b. The work of repair and maintenance shall be done and completed in a good and professional manner at the sole expense of the Grantee and shall be performed in such a manner as in no way to interfere with or endanger the use of the Easement Area. 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 activity.
- c. No trees or plantings shall be removed from the Easement Area or otherwise disturbed without the prior written approval of the City.
- d. Following any the maintenance of the Facilities, and subsequent grading of the Easement Area (as soon thereafter as weather reasonably permits), the Grantee will promptly restore the Easement Area in a manner that is reasonably satisfactory to the City.
- e. Following any maintenance of the Facilities and subsequent grading of the Easement Area, no grade change to the Easement Area shall be made by either party without the prior written approval of the other party.

4. Reasonable Use and Occupation by City. The City reserves the right of reasonable use and occupation of the Easement Area, provided that such use and occupancy shall not interfere with or disturb the operation, maintenance, repair, replacement and/or modification of the Facilities. If any reasonable use and occupation of the Easement Area by the City shall necessitate the Grantee to remove or relocate the Facilities or any part thereof, the Grantee shall perform such work at such time as the City may approve and without any cost to the City.

5. Term. This Easement shall continue for so long as the Facilities are in use, and in the event and to the extent that the Facilities shall be removed or abandoned then this Easement shall terminate and the Grantee will execute and deliver to the City such document(s) as may be requested for the purpose of further evidencing the termination of the rights granted hereby.

6. Notice of Entry. Except for emergencies, routine maintenance and repairs, and normal utilization of the Facilities, the Grantee shall give the City at least thirty (30) days written notice before entering upon the Easement Area for construction purposes or for the purpose of performing significant alteration to or removal of the Facilities.

7. Termination. In the event the Grantee defaults in the performance of any term or condition of this Easement 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 this Easement 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.

8. Restoration of Easement Area. Upon the termination of this Easement for any cause, the Grantee shall

remove the Facilities and all appurtenances and shall promptly restore the Easement Area in a manner that is reasonably satisfactory to the City.

9. Indemnification. The Grantee 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 officers, officials, agents, and 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 Grantee's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.
10. Authorized Agent. The City's Storm Water Engineer or the Engineer's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Easement, with authority to administer this Easement lawfully on behalf of the City.
11. Notices. All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City: Economic Development Division
Office of Real Estate Services
Attn: Manager
PO Box 2983
Madison WI 53701-2983

For Grantee: Meriter Hospital, Inc.
c/o Treasury Services Department
202 S. Park Street
Madison, WI 53715

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

12. Compliance. The City and the Grantee shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
13. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.
14. Binding Effect. This Easement shall inure to the benefit of the Grantee and shall be binding upon the City, and their respective successors and assigns.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor and Clerk are authorized to sign any other document required to facilitate the easement contemplated herein.