

**PERMANENT LIMITED EASEMENT FOR PUBLIC
PEDESTRIAN AND BIKE TRAIL PURPOSES and
TEMPORARY LIMITED EASEMENT FOR
CONSTRUCTION ACCESS, AND GRADING AND
SLOPING PURPOSES**

The **County of Dane** (“County”), a Wisconsin municipal corporation, being the owner of the property located at 7701 McKee Road in the City of Madison, legally described below (the “County’s Property”), for the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby acknowledged, does grant, set over and convey to the **City of Madison** (“City”), a Wisconsin municipal corporation, a permanent limited easement for public pedestrian and bike trail purposes (the "PLE") including, but not limited to, the right of ingress and egress; the right to construct, operate, maintain, repair, inspect, replace and modify the public pedestrian and bike trail improvements; and the right to perform all work incidental thereto upon and across that portion of the County’s Property; and a temporary limited easement for construction access, and sloping and grading purposes (the “TLE”), upon, over and across a parcel of land described below and depicted in Exhibit A (“Easement Area”), said Exhibit A attached and made a part of this PLE/TLE. The Easement Area is legally described as follows.

The permanent and temporary limited easement areas are denoted as Parcel 6 of Transportation Project Plat (TPP) 5992-09-30-4.02 & 4.03, recorded as Document No.s 5263733 and 5263734 and filed in Volume 60-062B of Transportation Project Plats, Pages 332-335, City of Madison, Dane County, Wisconsin (as depicted on attached Exhibit A).

WITNESSETH:

WHEREAS, the County is the owner of real property, located at 7701 McKee Road, described as follows:

Part of the Northwest ¼ of Section 11, Township 06 North, Range 08 East, City of Madison, Dane County, Wisconsin; and

WHEREAS, the City, in cooperation with the County, is reconstructing CTH PD / McKee Road along and adjacent to the County’s Property located at 7701 McKee Road in association with said Transportation Project Plat 5992-09-30; and

WHEREAS, as part of said reconstruction of CTH PD / McKee Road, a new bridge structure and multi-purpose trail will be constructed along and over CTH PD / McKee Road, to serve the Ice Age Junction Trail that is located on the County’s Property, and the existing driveway serving the County’s parking lot area will also be reconstructed; and

RETURN TO: City of Madison
EDD – Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No: 251-0608-112-0198-2

WHEREAS, in order to facilitate construction of said bridge structure and multi-purpose trail, and driveway reconstruction, a PLE and TLE are required over the County's Property; and

WHEREAS, the County has agreed to convey, for the consideration identified herein, a PLE for construction and maintenance of a public pedestrian and bike trail, and a TLE for construction access, and sloping and grading for construction of the said bridge structure, multi-purpose trail, and driveway.

NOW, THEREFORE, the County hereby grants a non-exclusive Permanent Limited Easement for planning, construction and maintenance of a public pedestrian and bike trail, and a Temporary Limited Easement for planning and construction access, and for grading and sloping purposes to the City subject to the following conditions:

The PLE is subject to the following conditions:

- 1) Construction. The work of initial construction of the public pedestrian and bike trail will be performed by the City, its employees and contractors in accordance with the terms of Engineering Project No. 10245. In constructing and maintaining the public pedestrian and bike trail, the City shall:
 - a) Complete construction and restoration of the site within 12 months after initiated.
 - b) Be responsible for identifying the location of any existing utility lines located within the PLE area and for any and all damages, costs or liabilities that result from any damages to these lines caused by the City or its contractors.
 - c) Use clean equipment to perform the work and the restoration in order to minimize the introduction of invasive species.
 - d) Following the completion of work, City, at its sole expense, shall restore the surface of the land to its original habitat conditions or to a condition equal to or better than existed prior to the commencement of the work. County's and City's management of the PLE area shall be consistent with the County's master/land use plan.
 - e) Work with County's project manager to ensure an acceptable type and quality of materials, seed and vegetation are used for site restoration.
 - f) Maintain the PLE area in a decent, sanitary and safe condition. City shall make every effort possible to accommodate public park users and protect them from any hazards during any construction or maintenance process. Work sites shall be adequately marked, barricaded and lighted.
 - g) Make no permanent grade changes (additional overburden or excavation cuts) within the PLE area following installation of City's facilities without first obtaining written approval of County.

- 2) Reservation of Recreational and other Uses by County. This PLE is non-exclusive. No negative impacts shall affect the recreational use of the Easement Area upon the installation of facilities or upon completion of activities allowed by this easement. The County reserves the right for itself, contractors, invitees, licensees, guests, and permittees to use and occupy the PLE Area in a manner consistent with the rights herein conveyed, provided that such use and occupancy shall not interfere with or disturb the City's operation, maintenance, repair, replacement and/or modification of the trail facilities located therein. The County shall have the right to lease or convey other easements to one or more person(s), companies or other entity(ies); provided that any subsequent use, lease or conveyance shall not interfere with City's rights.
- 3) Landscaping by County. Plantings and landscaping within the PLE Area shall not obstruct routine maintenance by the City. In the event of repair or reconstruction, plantings and landscaping may be removed by the City without replacement or compensation to the County. The County shall not change the grade of the PLE Area without the prior written approval of the City of Madison Engineering Division.
- 4) Site Improvements. No above-ground improvements will be allowed in the PLE Area by the County.
- 5) Liability. Each party shall be responsible 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 Agreement. 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 this agreement.
- 6) Title. Title to the PLE shall automatically revert to and revest in County without reentry upon the abandonment of the use of the same for City facility purposes or upon non-use of the same for a period of two years.
- 7) Nothing contained in this instrument shall be construed to make County and City, or their successors and assigns, partners or joint venturers of each other or to render either party liable for the debts or obligations of the other party, except as expressly provided herein.
- 8) In the event that either party shall default in the performance of any obligation hereunder, the non-defaulting party may cause such default to be cured at the expense of the defaulting party, after giving reasonable written notice of such default, which sum the defaulting party shall pay within thirty (30) days after demand. In addition to the right to collect any and all such sums, the non-defaulting party may seek to enjoin such default in a court of competent jurisdiction. Any party required to resort to litigation to successfully enforce its rights

hereunder shall recover the cost and expenses of such litigation, including reasonable attorney's fees, from the other party.

- 9) Compliance. The County and the City shall comply with all applicable laws with respect to this PLE, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
- 10) Amendment. This PLE may not be amended, modified, terminated, or released without the written consent of all the parties hereto, or their respective successors-in-interest.
- 11) Binding Effect. The rights and PLE granted herein shall be deemed to be covenants running with the land and shall inure to the benefit of the City, its successors and assigns, and shall be binding upon the County, its successors and assigns.
- 12) Applicable Law. This PLE shall be construed in accordance with the laws of the State of Wisconsin.
- 13) Severability. If any term or provision of this PLE 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 PLE and the same shall continue to be effective to the fullest extent permitted by law.
- 14) Public Record. This PLE will be recorded at the office of the Dane County Register of Deeds.

TOGETHER WITH a non-exclusive Temporary Limited Easement ("TLE") over the property legally described herein and depicted on attached Exhibit A ("TLE Area"), subject to the following conditions:

- 1) All terms and conditions set forth in Paragraphs 1-16 above, shall also apply to this TLE.
- 2) The purpose of this TLE is to allow the City to perform sloping and grading on lands located adjacent to the right-of-way of McKee Road in association with the construction of trail and driveway facilities along the subject property, pursuant to City of Madison Engineering Project No. 10245.
- 3) The City's use of the TLE Area shall be for construction, sloping and grading purposes including, but not limited to, the right of ingress and egress, the right to operate necessary equipment thereon, and the right to preserve, protect, remove or plant thereon any vegetation that the City may deem desirable to prevent erosion of the soil.
- 4) Construction shall be performed and completed in a good and workmanlike manner and shall not interfere with or endanger the use of the abutting land owned by the County.
- 5) This TLE shall terminate upon completion of the construction described in City of

Madison Engineering Project No. 10245 but no later than one year after ground disturbance or two years from the date of the execution of this TLE, whichever is earlier.

Any person named in this Permanent and Temporary Limited Easement may make an appeal from the amount of compensation within six months after the date of recording of this Permanent and Temporary Limited Easement as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the Permanent and Temporary Limited Easement shall be treated as the award, and the date the Permanent and Temporary Limited Easement is recorded shall be treated as the date of taking and the date of evaluation.

Dated this ____ day of _____, 2016

COUNTY OF DANE

By: _____
Scott McDonell, County Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2016, the above named Scott McDonell, County Clerk of the County of Dane, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(print or type name of notary)
My Commission: _____

Acceptance of this Temporary Limited Easement is authorized by Resolution Enactment No. RES-16-00552, File ID No. 43513, adopted July 19, 2016, by the Common Council of the City of Madison.

Drafted by the City of Madison Office of Real Estate Services
City Engineering Project No. 10245 Real Estate Project No. 10861/11046