

EASEMENT AGREEMENT AND RELEASE

Re: Public Water Main and Booster Pump
Station Facilities

This Easement Agreement and Release is made and entered into this ____ day of _____, 2017, by and between the **County of Dane** (the “County”), a Wisconsin municipal corporation, and the **City of Madison**, a Wisconsin municipal corporation (the “City”).

WITNESSETH:

WHEREAS, the County is the owner of the property located at 1202 Northport Drive in the City of Madison, legally described in attached Exhibit A (the “County’s Property”); and

WHEREAS, the County and the City are parties to that certain Permanent Easement for Water Main Purposes and a Booster Pump Station, dated August 8, 1969, and recorded with the Dane County Register of Deeds on September 2, 1969 as Document No. 1249251 (the “1969 Easement”); and

WHEREAS, the 1969 Easement provides the City with a perpetual easement over a portion of the County’s Property for the operation of a booster pump station and water main facilities (the “Existing Facilities”); and

WHEREAS, in 2017 the City will be installing new water main facilities (the “New Facilities”) over the County’s Property, including a new water main line extending from the booster pump station to Northport Drive, following an alignment similar to that of the Existing Facilities; and

WHEREAS, the installation of the New Facilities will be performed by the City pursuant to the City’s Lakeview Reservoir Pipeline Improvements Project, Phase 2, Madison Water Utility W.O. 1-1460-46, Contract 7452, MUNIS 10439 (the “2017 Project”); and

WHEREAS, the New Facilities will require additional and expanded easement areas over the County’s Property; and

WHEREAS, the County and the City desire to enter into a new easement agreement for the Existing Facilities and the New Facilities and also desire to release the 1969 Easement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt whereof is hereby acknowledged, the County and the City

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

Tax Parcel No.: 251-0809-253-0099-1 (part of)

agree as follows:

1. Grant of Easement. The County hereby grants and conveys to the City, and the City hereby accepts from the County, a permanent limited easement for the Existing Facilities and New Facilities including, but not limited to, the right of ingress and egress; the right to excavate, install, operate, maintain, repair, replace and modify the Existing Facilities and New Facilities, and the right to perform all work incidental thereto in certain portions of the County's Property more particularly described in attached Exhibit B and depicted on attached Exhibit C (the "Easement Areas").
2. Construction, Restoration, Repair and Maintenance.
 - a. Initial Construction of New Facilities.
 - (1) Construction of the New Facilities shall be performed in accordance with plans and specifications approved by the County (the "Approved Plans").
 - (2) After completion of the work, or as soon thereafter as the weather reasonably permits, the City, at its expense, shall promptly restore the area affected by the work in accordance with the Approved Plans and in a manner satisfactory to the County.
 - (3) Following the installation of the New Facilities and final grading of the Easement Areas, no grade change shall be made to the Easement Areas without the written consent of the City of Madison Water Utility's General Manager.
 - (4) The City intends to locate a hydrant at Station 19+55.1, as depicted in the Approved Plans. The parties agree to renegotiate this hydrant location in the event it is determined that existing utilities conflict with this proposed hydrant location.
 - (5) The City initially intended to site a hydrant in the vicinity of Station 14+00, but eliminated such hydrant from the Approved Plans at the request of the County. The City will be requesting a variance from the Wisconsin Department of Natural Resources (DNR) to allow the hydrant spacing in the vicinity of Station 14+00 to exceed DNR requirements. In the event the DNR does not grant such a variance, the County agrees that the City may site a hydrant at said location after all.
 - (6) The City's contract for the 2017 Project shall include the requirement that the contractor file with the City prior to the time of execution of the contract a Payment and Performance Bond in the full amount of the contract price as security for the payment of all persons supplying labor, services, and materials for the execution of the work and the faithful performance of the contract. The bond shall remain in effect for a period of one year after the date of Certificate of Substantial Completion. The surety furnishing this bond shall have a sound financial standing, a record of service satisfactory to the City, and shall be authorized to do business in the State of Wisconsin.
 - b. General Conditions.
 - (1) The work of construction, repair and maintenance by the City shall be done and

completed in a good and professional manner at the sole expense of the City. The work shall be performed in a manner to not interfere with or endanger the use of the Easement Areas. In all cases, the City shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.

- (2) That portion of the Existing Facilities comprised of the water main extending from the booster pump station to Northport Drive and from the booster pump station to the west dead end of Lake View Avenue shall be abandoned in place by the City.
- (3) The County shall have no obligation to maintain, repair or replace the Existing Facilities or the New Facilities.
- (4) The County shall have no obligation to grant the City a route of access to the Existing Facilities or New Facilities outside the limits of the Easement Areas.

3. Reservation of Use by County.

- a. The County reserves the right to use and occupy the Easement Areas in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Existing Facilities or New Facilities.
- b. No buildings or structures, unrelated to the Existing Facilities and the New Facilities, shall be constructed in the Easement Areas without the written consent of the City of Madison Water Utility's General Manager.

4. Landscaping by County. Plantings and landscaping within the Easement Areas 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.

5. Release of 1969 Easement. The County and the City hereby release the 1969 Easement.

6. Binding Effect. The rights and easement granted herein shall be deemed to be covenants running with the land and shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

7. Severability. If any term or provision of this Agreement 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 Agreement and the same shall continue to be effective to the fullest extent permitted by law.

8. Applicable Law. The City and the County shall comply with all applicable laws with respect to this Agreement, including, but not limited to, any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety.

9. Notices. All notices to be given under the terms of this Agreement 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: City of Madison
EDD – Office of Real Estate Services
Attention: Manager
P.O. Box 2983
Madison, WI 53701-2983

For the County: County of Dane
Land and Water Resources Department
Attention: Real Estate Coordinator
5201 Fen Oak Court, Room 208
Madison, WI 53718

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.

10. Law Applied. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.
11. Entire Agreement. No alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless in writing and signed by both parties.
12. 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.
13. Public Record. This Easement shall be recorded at the office of the Dane County Register of Deeds.

TOGETHER WITH a Temporary Limited Easement (“TLE”) over that certain property described in Exhibit B (the “TLE Areas”), subject to the following conditions:

1. The purpose of this TLE is to allow the City to perform sloping and grading on lands located outside of the Easement Areas in association with the construction of the New Facilities pursuant to the 2017 Project.
2. The City’s use of the TLE Areas shall be for construction 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, all in accordance with the Approved Plans.

3. 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.
4. The City will promptly restore the TLE Areas after completion of the construction, grading and sloping of the Easement Areas (or as soon thereafter as weather reasonable permits) in accordance with the Approved Plans and in a manner satisfactory to the County.
5. The County reserves the right to use and occupy the TLE Areas in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the construction, grading and/or sloping of the TLE Areas.
6. This TLE shall automatically terminate upon December 1, 2017, unless mutually extended by the parties.

IN WITNESS WHEREOF, the parties have entered into this Easement Agreement and Release as of the date first set forth above.

COUNTY OF DANE
a Wisconsin municipal corporation

By: _____
Scott McDonell, County Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, 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: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

CITY OF MADISON
a Wisconsin municipal corporation

By: _____
Paul R. Soglin, Mayor

By: _____
Maribeth Witzel-Behl, City Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, the above named Paul R. Soglin, Mayor of the City of Madison, and 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: _____

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, the above named Maribeth Witzel-Behl, City Clerk of the City of Madison, and acting in said capacity and known to 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: _____

This Easement Agreement for Public Water Main and Booster Pump Station Purposes is authorized by City of Madison Common Council Resolution Enactment No. RES-17-_____, File ID No. - _____, adopted _____, 2017.

Drafted by the City of Madison Office of Real Estate Services

Project No. 11272

EXHIBIT A

The County's Property

Lot 1, Certified Survey Map No. 12189, as recorded in the Dane County Register of Deeds in Volume 75, Page 171 of Certified Survey Maps, City of Madison, Dane County, Wisconsin.

EXHIBIT B

EASEMENT AREAS

Easement Area 1

A part of Lot 1, Dane County Certified Survey Map No. 12189, recorded in Volume 75 of Certified Survey maps on Pages 171 through 175 as Document No. 4328930 in the Office of the Dane County Register of Deeds, being located in the Northwest 1/4 of the Southeast 1/4, and in the Northeast 1/4 of the Southwest 1/4, of Section 25, Township 8 North, Range 9 East, in the City of Madison, Dane County, Wisconsin, described in particular as:

Commencing at South 1/4 corner of said Section 25; Thence North 1°28'58" East along the North and South 1/4 line of said Section 25, 1591.09 feet to the point of beginning; Thence North 90°00'00" West, 24.10 feet to the easterly boundary of the Permanent Water Main easement as described in the SECOND AMENDMENT TO EASEMENT recorded in Document No. 5095946 in said Office of the Register of Deeds; Thence North 36°27'23" West along said Easterly boundary, 24.95 feet; Thence North 53°40'48" East, 8.33 feet; Thence North 90°00'00" East, 90.60 feet; North 0°00'00" East, 17.00 feet; North 90°00'00" East, 20.00 feet; South 0°00'00" East, 17.00 feet; Thence North 90°00'00" East, 70.71 feet; Thence North 44°55'31" East, 18.84 feet; Thence North 00°14'02" East, 18.14 feet; Thence North 22°59'47" East, 13.58 feet to the South line of Lot 3, Kenwood Estates subdivision, and the Southerly boundary of that Permanent Limited Easement as depicted on that Relocation Order authorized by City of Madison Resolution RES-14-00374; Thence South 89°11'42" East along said Southerly boundary, 27.00 feet; Thence South 22°59'47" West, 18.75 feet; Thence South 01°14'02" West, 23.38 feet; Thence South 44°55'31" West, 39.50 feet; Thence North 90°00'00" West, 159.46 feet to the point of beginning.

The above described parcel of land contains 6657 square feet.

Together with a temporary construction easement as depicted on attached Exhibit Map.

Easement Area 2

A part of Lot 1, Dane County Certified Survey Map No. 12189, recorded in Volume 75 of Certified Survey maps on Pages 171 through 175 as Document No. 4328930 in the Office of the Dane County Register of Deeds, being located in the Northwest 1/4 of the Southeast 1/4, and in the Northeast 1/4 of the Southwest 1/4, of Section 25, Township 8 North, Range 9 East, in the City of Madison, Dane County, Wisconsin, described in particular as:

Commencing at South 1/4 corner of said Section 25; Thence North 1°28'58" East along the North and South 1/4 line of said Section 25, 476.28 feet to the Northerly right-of-way line of Northport Drive and the point of beginning; Thence North 65°34'21" West along said Northerly right-of-way line, 43.44 feet; Thence North 1°28'58" East parallel with said North and South 1/4

line, 918.05 feet; Thence South 89°18'02" East, 140.26 feet to the boundary of that Water Main and Booster Pump Easement described in Document 3339293 as recorded in said Office; Thence North 0°41'58" East along said boundary, 30.00 feet; Thence South 89°18'02" East along said boundary, 40.00 feet; Thence South 0°41'58" West along said boundary, 30.00 feet; Thence South 89°18'02" East, 107.89 feet to the West line of Lot 9, Block 4, Lake View Heights subdivision; Thence South 1°34'32" West along said West line, 50.67 feet to the North right-of-way line of Lake View Avenue; Thence North 88°55'26" West along said North right-of-way line, 30.00 feet to East line of the West ½ of vacated Esch Lane lying East of and adjacent to the Northerly 20.4 feet of Lot 14, Block 2, of said Lake View Heights subdivision; Thence North 1°34'32" East along said East line of vacated the West ½ of Esch Lane, 20.47 feet to the North line of said Lot 14; Thence North 89°18'02" West along said North line of Lot 14, 218.10 feet to the West line of said Lot 14; Thence South 1°28'58" West along said West line of Lot 14, the West line of Lot 13, Block 2 of said Lake View Heights subdivision, and said North and South 1/4 line, 905.53 feet to the point of beginning.

The above described parcel of land contains 46332 square feet.

Together with a temporary construction easement as depicted on attached Exhibit Map.