

Correspondence/Memorandum

DATE: August 14, 2014

TO: Public Works and Transportation Committee

FROM: Sara Kwitek, Dane County Acquisition and Planning Specialist, Land & Water Resources Department.

SUBJECT: Temporary Limited Easement to the City of Madison for the replacement of the City's water tower on County property located at 1202 Northport Drive, Madison.

A copy of the easement referenced above and the associated exhibits are attached to this memo for consideration by the Public Works & Transportation Committee.

This easement grants temporary use of a portion of the County's property known as Lake View Hill Park and the Human Services Northport Office throughout the period of the City's Project for construction access and staging purposes. This easement will be located adjacent to the existing perpetual easement that the County granted to the City for the operation of the City-owned water tower and related facilities and buildings. The temporary limited easement will automatically expire upon the earlier of: (a) completion of construction activities associated with the City's Project, including the restoration activities or (b) November 1, 2016; unless mutually extended by the parties.

The City has agreed to construct new parking areas to compensate for the 24 parking spaces that will be lost for the duration of the construction project. The City has agreed to pay for all of the design and construction costs for a temporary parking area located near the former Nurses' Dorm. In addition, the City has agreed to pay for all of the design costs and 60% of the construction costs for the reconfiguration of a permanent parking area west of the main office building. A portion of the upper lot will be removed and added to the park, resulting in a zero net gain of permanent parking.

Land and Water Resources staff have engaged Mary Kasparek of Corporation Counsel in reviewing the easement language.

**TEMPORARY LIMITED
EASEMENT AGREEMENT**

This Temporary Limited Easement Agreement (the "Agreement"), dated as of _____, 2014, is 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 describe in attached Exhibit A (the "County's Property"); and

WHEREAS, the County and the City are parties to that certain Easement, dated November 18, 1997, and recorded November 21, 1997, with the Dane County Register of Deeds as Document No. 2909070, as amended by Amendment to Easement dated June 18, 2001, and recorded June 26, 2001 with the Dane County Register of Deeds as Document No. 3339293 (collectively, the "Easement"); and

WHEREAS, the Easement provides the City with a perpetual, exclusive easement over a portion of the County's Property, such area being defined in the Easement as the "Tower Easement Area," for the operation of the City-owned water tower (the "Existing Water Tower") and related facilities and buildings; and

WHEREAS, the Easement also provides the City with a perpetual non-exclusive easement over a portion of the County's Property, such area being defined in the Easement as the "Ingress/Egress Easement Area," for purposes of pedestrian and vehicular ingress and egress to and from the Tower Easement Area; and

WHEREAS, the Tower Easement Area and the Ingress/Egress Easement Area are described in attached Exhibit B and depicted in attached Exhibit C; and

WHEREAS, Paragraph 3 of the Easement provides that "...The City shall be permitted to grant licenses to a maximum of four (4) telecommunication companies for the construction, operation, maintenance, repair, replacement and removal of telecommunications equipment and improvements on the Tower and Tower Easement Area..."; and

WHEREAS, the City has granted licenses to three (3) telecommunication companies (the "Cell Carriers") and also has City-owned radio and telemetry equipment on the Existing Water Tower and within the Tower Easement Area; and

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)

WHEREAS, during 2014 through 2016 the City will be engaged in a project (the “City’s Project”) involving the demolition of the Existing Water Tower and the construction of a new tower in its place (the “New Water Tower”); and

WHEREAS, during the winter of 2014/2015, the County will be engaged in a project (the “County’s Demo Project”) involving the demolition of the former nurses’ dormitory building located on the County’s Property, as depicted on Exhibit D, as well as construction activities associated with the implementation of a stormwater management plan (the “County’s SW Project”); and

WHEREAS, during the City’s Project, the City is requiring that all telecommunication and radio equipment be removed from the Existing Water Tower and relocated onto a temporary monopole (the “Temporary Monopole”). In addition, the City will be permanently relocating its communications equipment building (the “City’s Equipment Building”) to a new site within the Tower Easement Area; and

WHEREAS, the City requires the temporary use of a portion of the County’s Property located adjacent to the Tower Easement Area throughout the period of the City’s Project for construction access and staging purposes; and

WHEREAS, the County agrees to allow such temporary use, provided the City’s Project activities are coordinated with the County’s Demo Project and the County’s SW Project. A tentative timeline for all such projects is attached as Exhibit E.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties 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 temporary limited easement (“TLE”) for access and construction purposes upon, over and across that portion of the County’s Property depicted in attached Exhibit C (the “TLE Area”).
2. Term. This Agreement shall commence on the full date of execution of this Agreement by the parties and shall automatically expire upon the earlier of: (a) completion of construction activities associated with the City’s Project, including the restoration activities described in Paragraph 7; or (b) November 1, 2016; unless mutually extended by the parties.
3. Construction.
 - a. The City’s Project shall not commence without the prior written approval by the Dane County Land and Water Resources Department Director of applicable plans and specifications for the following: Temporary Monopole, New Water Tower, City’s Equipment Building (relocated), erosion control and stormwater management, new underground water pipeline, landscaping, tree removal, “New Parking Area” described in Paragraph 4, temporary and restored walking path, and other associated facilities and features. The approved plans and specifications for the foregoing items are hereinafter collectively referred to as the “Approved Plans.”

- b. All work shall be done and completed in a good and professional manner in accordance with the Approved Plans and shall be performed in such a manner as to in no way endanger the use of the County's Property. In all cases, the City and its authorized agents, contractors and licensees (collectively, the "Authorized Parties") shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.
4. Temporary and Permanent Parking Areas.
- a. The City and the County have agreed to the layout for temporary and permanent parking on the County's Property, as depicted in attached Exhibit D.
 - b. Subject to the cost-sharing provision in Subparagraph 4.c.iii. below, the City shall be responsible for the construction of the permanent parking and sidewalk improvements within the area denoted in Exhibit D as the "West Parking Area." The City shall also be responsible for the construction of a temporary gravel parking lot within the area denoted in Exhibit D as the "Temporary Parking Area." Construction of said improvements shall be in accordance with plans and specifications approved by the County, with the work performed by a contractor selected by the City.
 - c. Design and Construction Costs:
 - i. The City shall be responsible for all costs relating to the design of the West Parking Area and Temporary Parking Area, including costs incurred by the County to date in the amount of \$2,136.00.
 - ii. The City shall be responsible for all construction costs relating to the Temporary Parking Area.
 - iii. The City and the County agree to share in the cost of the West Parking Area on a 60/40 basis. The County shall reimburse the City for 40% of the construction costs for the West Parking Area within thirty (30) days of the County's receipt of a detailed, itemized bill and paid receipt for said work.
 - d. The County shall be responsible for operating and maintaining the West Parking Area and Temporary Parking Area, including snow removal and minor repairs unrelated to construction activities.
 - e. The City shall require its contractor to indemnify, defend and hold harmless both the County and the City and their 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 County or the City or their 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 contractor's and/or its subcontractor's acts or omissions in the performance of its construction contract with the City, whether caused by or contributed to by the negligence of the City or the County, their officers, officials, agents, or employees.

- f. Prior to the completion of the City's Project, the City shall remove all gravel from the "Temporary Parking Area" and shall restore such area to its condition as of the execution of this easement.
5. Use and Restrictions and Conditions on Use.
- a. The Authorized Parties may perform the following activities within the TLE Area: Place, operate and move cranes, construction vehicles, construction equipment, personnel and materials within and over the TLE Area in connection with the construction and removal of the Temporary Monopole, the demolition of the Existing Water Tower, the relocation of the City's Equipment Building, the installation of new underground water pipeline, and the construction of the New Water Tower. In addition, the TLE Area may be used for the siting of a job trailer and for small material storage
- b. No trees or plantings shall be removed from the TLE Area or otherwise disturbed unless specifically denoted in the Approved Plans.
- c. No buildings or structures of any kind shall be constructed or placed within the TLE Area, with the exception of a job trailer as provided under Paragraph 5.a.
- d. The Authorized Parties shall be permitted to place temporary signs and/or barricades along the southerly limit of the TLE Area to prohibit the parking of vehicles by employees and invitees of the County. Notwithstanding the foregoing, no more than five (5) parking stalls in the Northeast Parking Area shall be restricted until such time that the parking improvements in the West Parking Area have been completed by the City in accordance with the provisions of Paragraph 4.
- e. The Authorized Parties will use their best efforts to avoid operating vehicles within the turf areas of the TLE Area, and will instead use the existing and temporary service road denoted in the Approved Plans.
- f. The wooden "Lakeview Park" sign and the 3-sided informational kiosk denoted in the Approved Plans shall be removed by the City prior to commencement of any work by the City or the Cell Carriers and shall be reinstalled by the City in a timely manner following removal of the temporary construction fencing. The County shall be responsible for storing the sign and kiosk during construction activities.
- g. Upon the expiration of this Agreement, the City shall convey to the County the shed located in the southerly portion of the Tower Easement Area, as denoted in the Approved Plans (the "Shed"). Conveyance of the Shed shall be by a Bill of Sale and shall be at no cost to the County. Prior to conveyance, the City shall abandon all piping and electrical facilities in the basement of the shed, shall fill the basement area with sand, and shall remove the hatch and patch with concrete. Effective as of the date of conveyance, the County shall assume responsibility for all future maintenance and repairs to the Shed.
- h. Prior to the completion of the City's Project, the City shall sawcut and remove asphalt from the area of the "Northeast Parking Area," as designated in Exhibit D, and shall restore such area by grading, adding topsoil and seeding with grass.

6. Access.

- a. The Authorized Parties shall use the Ingress/Egress Easement Area as the primary route for vehicular access to and from the TLE Area.
- b. The Authorized Parties may use the main driveway to the County's Property off of Northport Drive (the "Main Driveway") for vehicular ingress to the TLE Area and the Tower Easement Area, but only on a limited basis as may be necessary for certain deliveries of construction equipment and materials. The City shall notify the County via e-mail a minimum of five (5) business days in advance in each instance of the need to use the Main Driveway for delivery purposes and shall limit such deliveries to the periods of 5:00 p.m. – 7:00 p.m. on Mondays thru Saturdays, and 10:00 a.m. – 7:00 p.m. on Sundays. In addition, the Authorized Parties may use the Main Driveway for egress during the foregoing periods, without advance notice required, provided that any vehicles exceeding 12,000 pounds shall be empty of load.
- c. As part of the City's Project, the condition of the Main Driveway shall be evaluated both before commencement of the City's Project and following completion of the City's Project. Such evaluation shall be performed by a qualified engineer acceptable to both parties and shall be submitted to both parties in written form (the "Driveway Condition Report"). The City agrees to reimburse the County 50% of the cost of repairs or reconstruction of the Main Driveway determined necessary due to damage or degradation resulting from the City's Project as quantified in the Driveway Condition Report. Reimbursement shall be paid to the County within thirty (30) days of the City's receipt of a detailed, itemized bill for the work.

7. Restoration.

- a. Upon completion of the construction of the New Water Tower, the City will notify the Cell Carriers and shall give them no more than sixty (60) days to remove their equipment from the Temporary Monopole and to install such equipment on the New Water Tower. As soon as possible after the completion of the equipment move by the Cell Carriers, or as soon thereafter as the weather reasonably permits, the City shall perform the following restoration activities:
 - i. Remove all equipment and materials from the TLE Area; and
 - ii. Restore the TLE Area to the condition specified in the Approved Plans.

8. 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.

9. 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.

10. 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.
11. 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 Municipal Building
 215 Martin Luther King, Jr., Room 312
 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.

13. 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.
14. 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.
15. Acts and Omissions. Each party shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of their respective agents or employees acting within the scope of their employment, in accordance with Wis. Stats. Secs. 893.80 and 895.46(1). The obligations of the parties under this paragraph shall survive the termination of this Agreement.

Dated this _____ day of _____, 2014.

COUNTY OF DANE

By: _____
Joseph T. Parisi, County Executive

By: _____
Scott McDonell, County Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, the above named Joseph T. Parisi, County Executive 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: _____

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, 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: _____

CITY OF MADISON

By: _____
Paul R. Soglin, Mayor

By: _____
Maribeth L. Witzel-Behl, City Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, the above named Paul R. Soglin, Mayor of the City of Madison, 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
My Commission: _____

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, the above named Maribeth L. Witzel-Behl, City Clerk of the City of Madison, 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
My Commission: _____

Execution of this Temporary Limited Easement by the City of Madison is authorized by City of Madison Common Council Substitute Resolution Enactment No. RES-14-00617 File ID No. 34816, adopted August 5, 2014.

Drafted by the City of Madison Office of Real Estate Services

Project No. 10409

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

Tower Easement Area

A part of Lot 9 of Hanover Plat, a plat of record; being a part of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section Twenty-five (25), Township Eight (8) North, Range Nine (9) East, City of Madison, Dane County, Wisconsin, containing 23,256 square feet (0.534 acres) of land and being described by:

Commencing at the South Quarter (S 1/4) Corner of said Section 25; thence N01°05'16"E, 1,858.21 feet along the East line of the Southwest Quarter (SW 1/4) of said Section 25; thence N88°54'44"W, 42.33 feet to the **point of beginning**; thence S05°14'12"W, 230.82 feet; thence N88°09'26"W, 85.65 feet; thence N03°40'41"W, 221.27 feet; thence N87°01'11"E, 121.03 feet to the **point of beginning**; being subject to any and all easements and restrictions of record.

Ingress/Egress Easement Area

A 12 foot wide Ingress/Egress Easement being a part of Lot Nine (9) of Hanover Plat; a part of Lots Fifteen (15) and Sixteen (16), Block Two (2), and a part of vacated Esch Lane (recorded as Drewry Lane) lying North of Lake View Avenue, Lake View Heights, a plat of record; all being a part of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) and the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section Twenty-five (25), Township Eight (8) North, Range Nine (9) East, City of Madison, Dane County, Wisconsin, containing 6,171 square feet (0.142 acres) of land and being 6 feet either side of and parallel to a line described by:

Commencing at the South Quarter (S 1/4) Corner of said Section 25; thence N01°05'16"E, 1,380.93 feet along the East line of the Southwest Quarter (SW 1/4) of said Section 25 to the Southwest Corner of Lot 15, Block 2, of said Lake View Heights; thence S89°44'03"E, 215.67 feet (recorded as N89°09"E, 216.04 feet) along the South line of said Lot 15 and the East extension thereof to the Centerline of vacated Esch Lane; thence S01°11'57"W (recorded as S00°07"W), 20.63 feet along said Centerline to a point in the North line of Lake View Avenue extended West; thence S89°18'04"E (recorded as N89°37"E), 10.00 feet along said North line to the **point of beginning**; thence N01°11'57"E, 30.71 feet; thence N89°44'03"W, 16.15 feet; thence N34°04'04"W, 91.22 feet; thence N51°43'15"W, 89.38 feet; thence N72°55'51"W, 95.12 feet; thence N36°48'06"W, 114.81 feet; thence N00°18'58"E, 55.32 feet; thence N89°41'02"W, 15.51 feet; thence N00°18'58"E, 6.00 feet to the **point of termination**.

EXHIBIT C

Easement Area

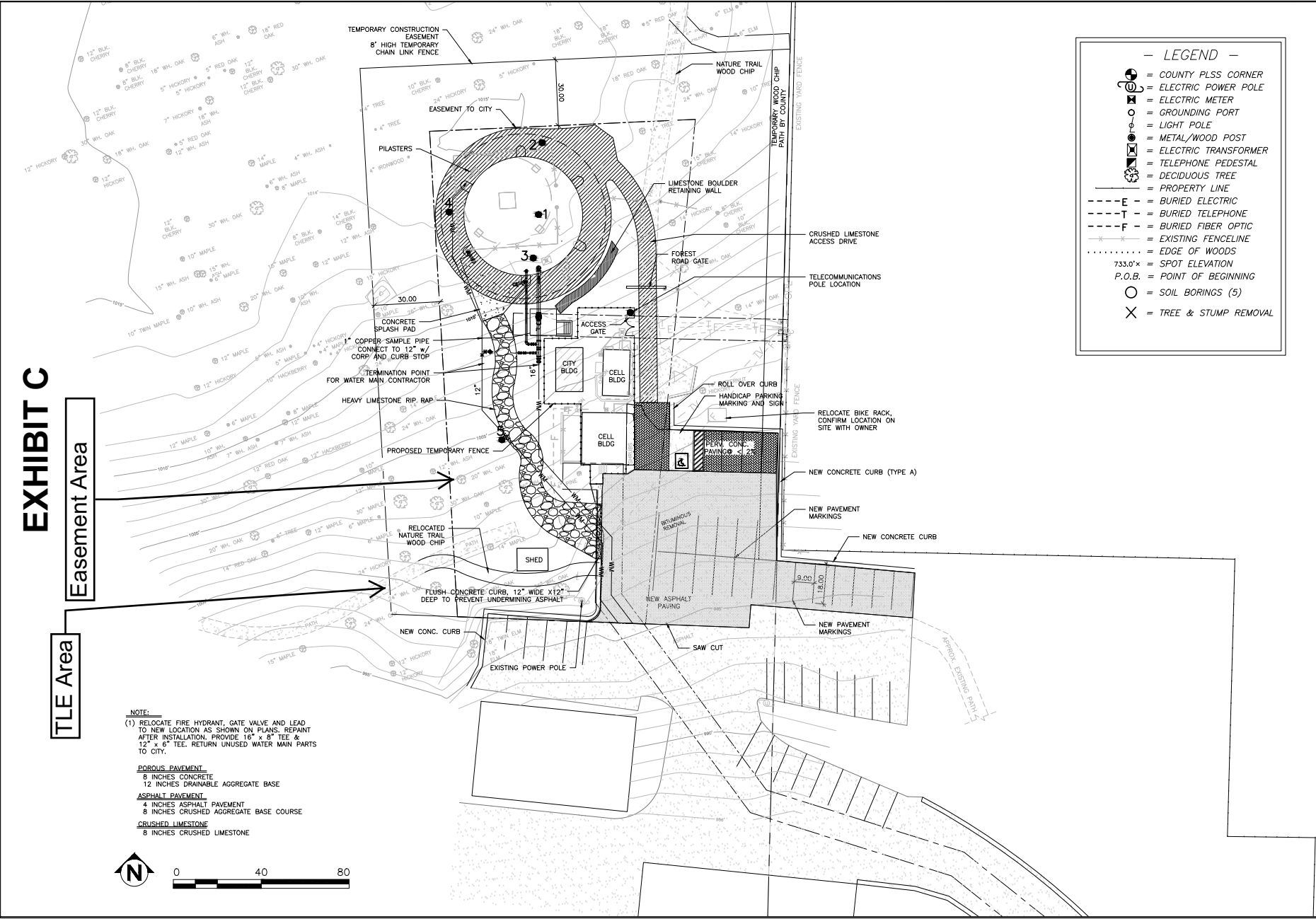
TLE Area

NOTE:
 (1) RELOCATE FIRE HYDRANT, GATE VALVE AND LEAD TO NEW LOCATION AS SHOWN ON PLANS. REPAINT AFTER INSTALLATION. PROVIDE 16" x 8" TEE & 12" x 6" TEE. RETURN UNUSED WATER MAIN PARTS TO CITY.

POROUS PAVEMENT
 8 INCHES CONCRETE
 12 INCHES DRAINABLE AGGREGATE BASE

ASPHALT PAVEMENT
 4 INCHES ASPHALT PAVEMENT
 8 INCHES CRUSHED AGGREGATE BASE COURSE

CRUSHED LIMESTONE
 8 INCHES CRUSHED LIMESTONE



— LEGEND —

- = COUNTY PLSS CORNER
- = ELECTRIC POWER POLE
- = ELECTRIC METER
- = GROUNDING PORT
- = LIGHT POLE
- = METAL/WOOD POST
- = ELECTRIC TRANSFORMER
- = TELEPHONE PEDESTAL
- = DECIDUOUS TREE
- = PROPERTY LINE
- = BURIED ELECTRIC
- = BURIED TELEPHONE
- = BURIED FIBER OPTIC
- = EXISTING FENCELINE
- = EDGE OF WOODS
- = SPOT ELEVATION
- = POINT OF BEGINNING
- = SOIL BORINGS (5)
- = TREE & STUMP REMOVAL

**LAYVIEW RESERVOIR
 REPLACE/REPAIR PROJECT
 MADISON, WISCONSIN**

MARK	DATE	DESCRIPTION

SER FILE NO. MADWU 126154
 ISSUE DATE: 07-26-14
 DESIGNED BY: JON STRAND
 DRAWN BY: SID LARSON
 Short Elliott Hendrickson, Inc. © (SEH)
 © 2014 Short Elliott Hendrickson, Inc.

SHEET TITLE
SITE PLAN

SHEET
C2



PARKING LOT SUMMARY	
WEST PARKING	8 PARKING STALLS LOST (APPROXIMATE) 20 PARKING STALLS GAINED
NORTHEAST PARKING	9 PARKING STALLS LOST 6 PARKING STALLS REMAIN
EAST TEMPORARY PARKING	12 PARKING STALLS GAINED

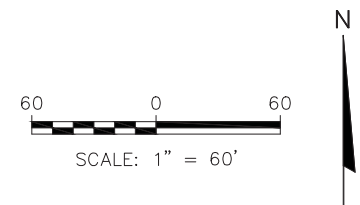


EXHIBIT D

PROJECT NO.	25214082.00	DRAWN BY:	ZB/KP
DRAWN:	07/18/14	CHECKED BY:	BP
REVISED:	07/31/14	APPROVED BY:	

ENGINEER
SCS ENGINEERS
 2830 DAIRY DRIVE MADISON, WI 53718-6751
 PHONE: (608) 224-2830

CLIENT
 DANE COUNTY PUBLIC WORKS
 2302 FISH HATCHERY ROAD
 MADISON, WI 53713
 608-267-0119

SITE
 DANE COUNTY DEPARTMENT OF
 HUMAN SERVICES SITE

PARKING OPTION #2

FIGURE
 2

I:\25214082\Drawings-General\DRAWING OPTIONS.dwg, 7/31/2014 1:53:15 PM

EXHIBIT E
Tentative Project Timeline

Period	Active Party	Activity
Sept. – Oct. 2014	City	Tree removal
	City	Construction of West Parking Area and Temporary Parking Area
	City	Installation of temporary construction fencing and erosion control facilities
	City	Construction of temporary park trail
	City (cell companies)	Erection of Temporary Monopole
	City (cell companies)	Relocation of City's radio equipment and other cell equipment from existing tank to Temporary Monopole
	City	Minor electrical modifications to existing pump station to sustain service
	City	Relocation of City's radio equipment building
	City	Excavation for crane pad for New Water Tower construction
	City	Demolition of Existing Water Tower
Oct. 1 – Nov. 30, 2014	City	Pipeline construction from New Water Tower to booster pump station (activity covered by Doc. No. 2909070, as amended)
Nov. 1, 2014 – Jan. 15, 2015	City	Construction of New Water Tower foundation (optional timeframe – weather dependent)
Jan. 16 – Apr. 1, 2015	County	County's Demo Project County's SW Project No activity anticipated under City's Project
2015 - Schedule to be coordinated with County's stormwater drainage work	City	Installation of new pipeline from Northport Drive to booster pump station (activity covered by Doc. No. 1249251)
Apr. 1 – Nov. 30, 2015	City	Construction of New Water Tower (and optional timeframe for foundation work – weather dependent)
2015 – Schedule to be determined	City	Modification and updating of existing booster pump station (activity covered by Doc. No. 1249251)
Dec. 1, 2015 – Apr. 30, 2016		No activity anticipated under City's Project
May 1 – July 31, 2016	City	Painting of New Water Tower
Aug. 1 – Sept. 30, 2016	City (cell companies)	Relocation of City's radio equipment and cell equipment to New Water Tower, removal of Temporary Monopole and fencing, and site restoration
Oct. 2016	City	Removal of asphalt within Northeast Parking Area and restoration of said area. Removal of gravel from Temporary Parking Area and restoration of said area. Complete remaining landscaping and restoration activities.
Nov. 1, 2016		Project completion