

Correspondence/Memorandum

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**DATE:** August 14, 2014

**TO:** Public Works and Transportation Committee

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

**SUBJECT:** Second Amendment to Easement to the City of Madison for the operation of the City-owned water tower on County property located at 1202 Northport Drive, Madison.

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

This Second Amendment to Easement allows the City of Madison to locate a new water main as part of the City's water tower replacement project that is proposed to commence in Sept./Oct. 2014. The amendment grants the City a permanent easement over, across and within the new water main easement area for the right of installation, maintenance, repair and replacement of public underground water main facilities. The amendment also conveys to the City a temporary limited easement for construction and grading purposes for the installation of the new water main facilities. Installation of the first section of the water main is anticipated to occur in Oct./Nov. 2014.

The City agrees to provide the County with a minimum of five (5) days written notice of restricted access to Lakeview Avenue and will use its best efforts to minimize the period when access is restricted. The City also agrees that there will be no disruption to or interference with the planned temporary parking area depicted during the hours of 7:00 a.m.–5:30 p.m., Monday through Friday.

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

**SECOND AMENDMENT TO EASEMENT**

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This Second Amendment to Easement is made as of \_\_\_\_\_, 2014, by and between the **County of Dane** (the “County”), a Wisconsin municipal corporation, and the **City of Madison** (the “City”), a Wisconsin municipal corporation.

**WITNESSETH:**

WHEREAS, the County is the owner of certain property located at 1202 Northport Drive, Madison, Wisconsin, as legally described in attached Exhibit A; 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 between the parties 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-owned property defined as the “Tower Easement Area” for the operation of the City-owned water tower (“Tower”), booster pump station, water main facilities and telecommunications shelter located thereon; and

WHEREAS, the Easement also provides the City with a perpetual non-exclusive easement over a portion of the County-owned property defined 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 more particularly described in attached Exhibit B; and

WHEREAS, in connection with the City’s demolition of the existing Tower and construction of a new tower (the “New Tower”) in its place, the City will be installing a new water main from the New Tower to the City’s booster pump station located on the County’s property pursuant to that certain Permanent Easement for Water Main and Booster Pump Station recorded as Doc. No. 1249251 (the “Booster Pump Station Easement”); and

WHEREAS, the City and the County desire to amend the Easement to allow the City to locate such new water main from the southeasterly limit of the Tower Easement Area to the northerly limit of the Booster

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

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Tax Parcel No.: 251-0809-253-0099-1

Pump Station Easement, within an easement area that follows the centerline of the Ingress/Egress Easement Area.

NOW, THEREFORE, the County and the City agree to amend the Easement as follows:

1. The following is hereby inserted as Paragraph 11 of the Easement:

11. Grant of Water Main Easement.

- a. Permanent Water Main Easement. The County hereby grants and conveys to the City, and the City hereby accepts from the County, a permanent easement over, across and within the “Water Main Easement Area,” as described in attached Exhibit C and depicted in attached Exhibit E, for the right of installation, maintenance, repair and replacement of public underground water main facilities (the “Water Main Facilities”), subject to the following terms and conditions:
  - i. 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 County’s Property. 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.
  - ii. 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 to the original grade and surface condition, including repair or replacement of pavement and concrete, in a manner satisfactory to the County.
  - iii. Following the installation of the Water Main Facilities and final grading of the Water Main Easement Area, no grade change shall be made to the Water Main Easement Area without the written consent of the City of Madison Water Utility’s General Manager.
- b. Temporary Construction Easement. The County hereby also grants and conveys to the City a temporary limited easement for construction and grading purposes (the “TLE”) over that portion of the County’s Property described in attached Exhibit D and depicted in attached Exhibit E (the “TLE Area”), subject to the following conditions:
  - i. The City’s use of the TLE Area shall be for activities involving the installation of the Water Main Facilities, including, but not limited to, grading and the operation of equipment thereon.

- ii. During the period of installation of the Water Main Facilities, it may be necessary for the City to restrict vehicular ingress and egress to and from Lakeview Avenue. The City will provide the County with a minimum of five (5) days written notice of restricted access to Lakeview Avenue and will use its best efforts to minimize the period when access is restricted.
- iii. The City agrees that there will be no disruption to or interference with the planned "Temporary Parking" area depicted in Exhibit E, during the hours of 7:00 a.m.–5:30 p.m., Monday through Friday.
- iv. The County reserves the right to use and occupy the TLE Area in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the construction and/or grading activities of the City within the TLE Area.
- v. The City will promptly restore the TLE Area upon completion of the installation of the Water Main Facilities (or as soon thereafter as weather reasonably permits), including repair or replacement of pavement and concrete, in a manner satisfactory to the County.
- vi. The TLE shall terminate on August 31, 2015, unless mutually extended by the parties in writing.

2. All other provisions of the Easement remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Second Amendment to Easement as of the date first set forth above.

**[ SEE NEXT 2 PAGES FOR SIGNATURES ]**

**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. Paris, 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 Second Amendment to Easement by the City of Madison is authorized by City of Madison Common Council Resolution Enactment No. RES-14-00558, File ID No. 34573, adopted July 15, 2014.

## **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 N01E05'16"E, 1,858.21 feet along the East line of the Southwest Quarter (SW 1/4) of said Section 25; thence N88E54'44"W, 42.33 feet to the **point of beginning**; thence S05E14'12"W, 230.82 feet; thence N88E09'26"W, 85.65 feet; thence N03E40'41"W, 221.27 feet; thence N87E01'11"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 N01E05'16"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 S89E44'03"E, 215.67 feet (recorded as N89E09"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 S01E11'57"W (recorded as S00E07"W), 20.63 feet along said Centerline to a point in the North line of Lake View Avenue extended West; thence S89E18'04"E (recorded as N89E37"E), 10.00 feet along said North line to the **point of beginning**; thence N01E11'57"E, 30.71 feet; thence N89E44'03"W, 16.15 feet; thence N34E04'04"W, 91.22 feet; thence N51E43'15"W, 89.38 feet; thence N72E55'51"W, 95.12 feet; thence N36E48'06"W, 114.81 feet; thence N00E18'58"E, 55.32 feet; thence N89E41'02"W, 15.51 feet; thence N00E18'58"E, 6.00 feet to the **point of termination**.

## EXHIBIT C

### Water Main Easement Area

A twenty foot wide strip of land running from that Permanent Easement For Water Main Purposes And A Booster Station described in Document No. 1249251, recorded on September 2, 1969 in the Office of the Dane County Register of Deeds to the Tower Easement Area in that Easement recorded on November 21, 1997 as Document 2909070 in said Office of the Dane County Register of Deeds, and amended in that Amendment To Easement recorded June 26, 2001 as Document 3339293 in said Office, said twenty foot wide strip of land being a part of Lot 1 of Dane County Certified Survey Map No. 12189, recorded as Document 4328930 in Volume 75 of Certified Survey Maps on Pages 171 through 175, and 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, the centerline of which, hereinafter referred to as the easement centerline, is described as follows:

Commencing at the South 1/4 corner of said Section 25; Thence North 01°28'58" East along the North and South 1/4 line of said Section 25, 1401.84 feet to the North boundary of said Permanent Easement For Water Main Purposes And A Booster Station, said boundary being 20 feet North of, as measured normally to, and parallel with the South line of Lot 15, Block 2, Lake View Heights subdivision; Thence South 89°18'02" East along said North boundary, 81.26 feet to the Point of Beginning of said easement centerline; Thence along said easement centerline, North 00°00'00" West, 23.01 feet; Thence continuing along said easement centerline, North 45°08'13" East, 18.05 feet; Thence continuing along said easement centerline, North 05°45'51" East, 75.40 feet to the centerline of the 12 foot wide Ingress/Egress Easement Area, hereinafter referred to as the ingress/egress centerline, as described in said Easement recorded as Document 2909070, and in said Amendment To Easement recorded as Document 3339293; Thence along said ingress/egress centerline, North 51°22'32" West, 15.18 feet; Thence continuing along said ingress/egress centerline, North 72°35'08" West, 95.12 feet; Thence continuing along said ingress/egress centerline, North 36°27'23" West, 100.89 feet to the South boundary of said Tower Easement Area and the Point of Termination of said easement centerline.

The above described strip of land contains 6562 square feet, or 0.151 acres, more or less, and includes all of those lands lying between two lines parallel with and 10 feet from, as measured normally to, the above described easement centerline, said lines being extended to, or terminated at, said North boundary of the Permanent Easement For Water Main Purposes And A Booster Station, and the South and East boundaries of said Tower Easement Area, said strip of land being bounded at its South end by said North boundary, and at its North end by said South and East boundaries.

See map attached as Exhibit E.

## EXHIBIT D

### TLE Area

A thirty foot wide strip of land, exclusive of that Water Main Easement Area described in Exhibit C, running from that Permanent Easement For Water Main Purposes And A Booster Station described in Document No. 1249251, recorded on September 2, 1969 in the Office of the Dane County Register of Deeds to the Tower Easement Area in that Easement recorded on November 21, 1997 as Document 2909070 in said Office of the Dane County Register of Deeds, and amended in that Amendment To Easement recorded June 26, 2001 as Document 3339293 in said Office, said thirty foot wide strip of land being a part of Lot 1 of Dane County Certified Survey Map No. 12189, recorded as Document 4328930 in Volume 75 of Certified Survey Maps on Pages 171 through 175, and 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, the centerline of which, hereinafter referred to as the easement centerline, is described as follows:

Commencing at the South 1/4 corner of said Section 25; Thence North 01°28'58" East along the North and South 1/4 line of said Section 25, 1401.84 feet to the North boundary of said Permanent Easement For Water Main Purposes And A Booster Station, said boundary being 20 feet North of, as measured normally to, and parallel with the South line of Lot 15, Block 2, Lake View Heights subdivision; Thence South 89°18'02" East along said North boundary, 81.26 feet to the Point of Beginning of said easement centerline; Thence along said easement centerline, North 00°00'00" West, 23.01 feet; Thence continuing along said easement centerline, North 45°08'13" East, 18.05 feet; Thence continuing along said easement centerline, North 05°45'51" East, 75.40 feet to the centerline of the 12 foot wide Ingress/Egress Easement Area, hereinafter referred to as the ingress/egress centerline, as described in said Easement recorded as Document 2909070, and in said Amendment To Easement recorded as Document 3339293; Thence along said ingress/egress centerline, North 51°22'32" West, 15.18 feet; Thence continuing along said ingress/egress centerline, North 72°35'08" West, 95.12 feet; Thence continuing along said ingress/egress centerline, North 36°27'23" West, 100.89 feet to the South boundary of said Tower Easement Area and the Point of Termination of said easement centerline.

The above described parcel of land contains 3331 square feet, or 0.076 acres, more or less, and includes all of those lands lying between two lines parallel with and 15 feet from, as measured normally to, the above described easement centerline, said lines being extended to, or terminated at, said North boundary of the Permanent Easement For Water Main Purposes And A Booster Station, and the South and East boundaries of said Tower Easement Area, said strip of land being bounded at its South end by said North boundary, and at its North end by said South and East boundaries.

Except therefrom that twenty foot wide strip of land in the Water Main Easement Area described in Exhibit C.

See map attached as Exhibit E.

# EXHIBIT MAP

# EXHIBIT E

