



**RODNEY F. KNIGHT**  
Airport Counsel

Date: November 14, 2017

To: Public Works and Transportation Committee

From: Rodney Knight  
Airport Counsel

Subject: Consent to Occupy Easements  
Grantor: City of Madison  
Location: Airport/Madison College

The Consent to Occupy Easements provided under cover of this memo involves County owned land adjacent to the Airport that has been leased to Madison College. The easement areas involved are on the south side of Anderson Street, in the newly constructed Goodman Sports Complex across from Madison College's Protective Services Building. Pursuant to the Consent to Occupy Easements, the City of Madison is permitting Madison College to encroach on the City's water main easement and sanitary sewer easement with baseball field improvements (see, Exhibits B and C, attached to the Consent to Occupy Easements). All costs of construction, repair, and maintenance of the ball field improvements in compliance with the terms of Consent to Occupy Easements will be borne by Madison College. Dane County's approval of the Consent to Occupy Easements is required because it is the owner and lessor of the land involved. Airport staff has determined that execution of this non-consideration consent document is in the best interest of Dane County.

## CONSENT TO OCCUPY EASEMENTS

**RE:** *Water Main Easement "1" and Sanitary Sewer Easement "1" per Document No. 1416749 recorded on December 19, 1974, in the Dane County Register of Deeds Office, in the City of Madison, Dane County, Wisconsin.*

This Consent to Occupy Easements is made and entered into by the **City of Madison**, a Wisconsin municipal corporation (the "City"), to and for the benefit of: (a) the **County of Dane**, a Wisconsin quasi-municipal corporation (the "County"), owner of the parcels of land located at 2999 and 3201 Anderson Street, Madison, Wisconsin (collectively, the "Property"); and (b) **Madison Area Technical College**, a Wisconsin technical college district ("Madison College"), lessee of the Property.

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

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Tax Parcel Nos.: 251-0810-321-0604-0  
251-0810-322-0099-1

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### RECITALS

- A. Pursuant to the above-captioned Document No. 1416749, the City holds easements referenced therein as Water Main Easement "1" and Sanitary Sewer Easement "1" (collectively, the "Utility Easements"), both located on the Property as shown on Exhibit B attached hereto.
- B. Madison College wishes to construct and maintain infrastructure relating to the existing athletic fields, including a water irrigation system, together with grade changes and reconstruction of the infield (collectively, the "Field Improvements"), which will encroach upon the Utility Easements.
- C. The County approves of Madison College's construction and maintenance of the Field Improvements on the Property.
- D. The County and Madison College desire to obtain the consent of the City for the encroachment of the Field Improvements upon the Utility Easements.
- E. The City is willing to grant a Consent to Occupy Easements over a portion of the Utility Easements (the "Occupancy Area"), as described on attached Exhibit A and depicted on attached Exhibit B, in order to permit the construction and maintenance of the Field Improvements thereon, as shown on attached Exhibit C.

## CONSENT

NOW, THEREFORE, the City hereby grants to and for the benefit of the County and Madison College this Consent to Occupy Easements (the "Consent"), subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant the County and Madison College, their successors and assigns, permission to occupy the Occupancy Area for the purpose of allowing the Field Improvements to be constructed and maintained within the Occupancy Area.
2. Construction and Maintenance.
  - a. Madison College shall be responsible for all costs of construction and maintenance of the Field Improvements in compliance with applicable codes and ordinances.
  - b. Madison College shall construct the Field Improvements in accordance with plans and specifications approved by the City Engineer.
  - c. With the exception of routine maintenance and repairs and normal utilization of the Field Improvements, no changes to, additions to or alterations of the Field Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
  - d. Madison College agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted while Madison College is occupying the Occupancy Area.
3. Use. The County and Madison College shall use and occupy the Occupancy Area in a manner consistent with the rights herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the Utility Easements.
4. Type of Grant. The granting of this Consent does not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the Utility Easements. The granting of this Consent shall be deemed to be permissive and shall preclude the County and Madison College from any claim of adverse possession against the City by virtue of any encroachment on or into the Utility Easements and by virtue of the granting of this Consent.
5. Compensation for Damages. All parties understand and agree that the Field Improvements may be removed by the City without replacement or compensation to the County or Madison College if such removal is required by the City for access to the City's facilities in the Occupancy Area.
6. Indemnification. Each party shall be responsible for the consequences of its own acts, errors or omissions related to or arising out of this Consent, and for such 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. 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 any 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.

7. Termination. This Consent shall automatically terminate upon the earliest of the following to occur: (a) the vacation of the Utility Easements by the City; (b) the removal of the Field Improvements; or (c) the agreement to terminate by the parties hereto, or their successors or assigns. In the event of termination, the County and Madison College shall execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted hereby.

IN WITNESS WHEREOF the City, the County, and Madison College, by their authorized representatives, have executed this Consent below.

**[Signatures on Following 3 Pages]**

**CITY OF MADISON**

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, 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 \_\_\_\_\_, 2017, the above-named Maribeth L. Witzel-Behl, City Clerk 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: \_\_\_\_\_

**COUNTY OF DANE**

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, 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: \_\_\_\_\_

**[ SPACE INTENTIONALLY LEFT BLANK ]**

**MADISON AREA TECHNICAL COLLEGE**

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print or type name)

\_\_\_\_\_  
(print or type title)

State of Wisconsin    )  
                                  )ss.  
County of Dane        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, the above named \_\_\_\_\_(name), \_\_\_\_\_(title), of Madison Area Technological College, 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 Consent to Occupy Easements by the City of Madison is authorized by Resolution Enactment No. RES-17-\_\_\_\_\_, File ID No. \_\_\_\_\_, adopted \_\_\_\_\_ 2017, by the Common Council of the City of Madison.

Drafted by the City of Madison Office of Real Estate Services

Real Estate Project No. 11448  
Engineering Project No. B000394

## EXHIBIT A

### Legal Description of Occupancy Area

That certain area of land located over portions of Water Main Easement "1" and Sanitary Sewer Easement "1" of Document No. 1416749, recorded on December 19, 1974 in the Dane County Register of Deeds Office, being a part of the Southeast Quarter of the Northwest Quarter and part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 08 North, Range 10 East, City of Madison, Dane County, Wisconsin, more particularly described as follows:

Commencing at the North Quarter Corner of said Section 32; Thence South 00 degrees 34 minutes 03 seconds West along the East line of the Northwest Quarter of said Section 32, a distance of 1,175.08 feet to the North line of aforesaid Sanitary Sewer Easement "1", also being the Point of Beginning; thence South 88 degrees 07 minutes 22 seconds East along said North line, 241.12 feet; thence South 01 degrees 21 minutes 57 seconds West, 30.51 feet to the South line of aforesaid Water Main Easement "1"; thence North 88 degrees 38 minutes 03 seconds West along said South line, 419.64 feet; thence North 01 degrees 21 minutes 57 seconds East, 34.25 feet to the North line of said Sanitary Sewer Easement "1"; thence South 88 degrees 07 minutes 22 seconds East along said North line, 178.54 feet back to the Point of Beginning.

Said Occupancy Area covers 13,588 square feet or 0.312 acres, more or less.

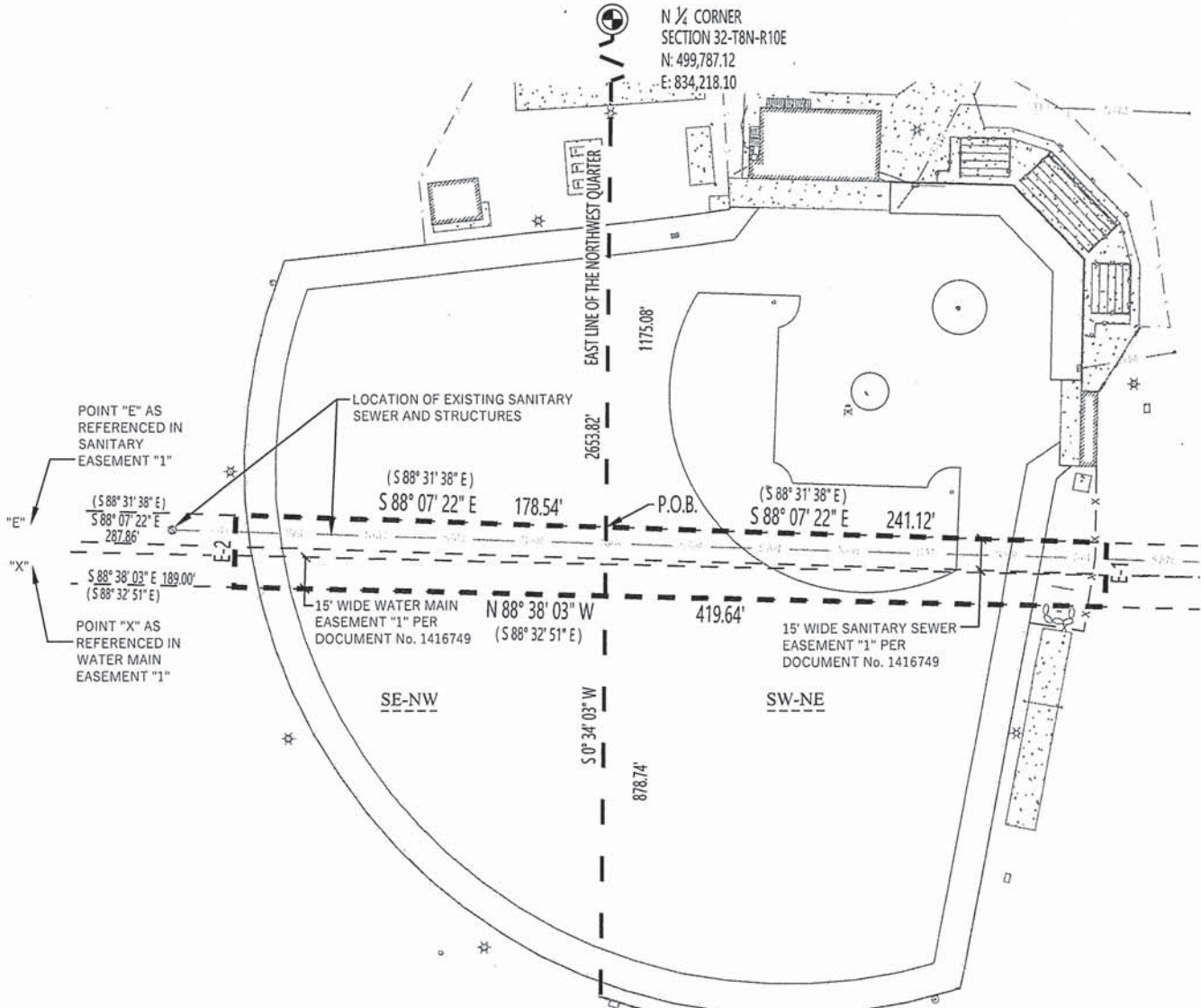
The above described Occupancy Area is intending to describe that area of Sanitary Sewer Easement "1" lying easterly of point "E" as referenced in said Document No. 1416749 and the area of Water Main Easement "1" lying easterly of point "X" as referenced in said Document No. 1416749, as currently occupied by the Madison College Baseball Field.



# Exhibit B

## CONSENT TO OCCUPY EXHIBIT

LOCATED OVER PORTIONS OF SANITARY SEWER EASEMENT "1" AND WATER MAIN EASEMENT "1" PER DOCUMENT NO. 1416749, BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWN 8 NORTH, RANGE 10 EAST, LOCATED IN THE CITY OF MADISON, DANE COUNTY, WISCONSIN.



### LEGEND

- - - SECTION LINE
- - - OCCUPATION OF EASEMENT LINE

LINE TABLE		
LINE #	BEARING	DISTANCE
E-1	S 01° 21' 57" W	30.51'
E-2	N 01° 21' 57" E	34.25'

### NOTES:

- BEARINGS FOR THIS MAP ARE REFERENCE TO THE WISCONSIN COUNTY COORDINATE SYSTEM, DANE COUNTY (WCCS DANE). THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 32-T8N-R10E BEARS S 0 34' 03" W

File: H:\2017\170425\_Madison College - Baseball Field.dwg\170425\_Conse...to\_Occupy\_Easement.dwg Layout: exhibit\_User: jlw Plotted: Sep 27, 2017 - 1:55pm

	PREPARED BY: 312 EAST MAIN STREET MOUNT HOREB, WI 53572 <a href="http://www.wyserengineering.com">www.wyserengineering.com</a>	PREPARED FOR: MADISON COLLEGE 3550 ANDERSON STREET MADISON, WI 53704	SURVEYED BY: DRAWN BY: AJW/JWS APPROVED BY: JWS	PROJECT NO: 170425 SHEET NO: 1 of 1
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