



Legislation Text

File #: 44582, **Version:** 1

Fiscal Note

The proposed resolution has no fiscal impact.

Title

Authorizing the execution of a lease with Grand Arbor Reserve, LLC allowing for the installation of a private fountain system within the Storm Water Utility parcel located at 10350 Rustling Birch Road.

Body

WHEREAS, Grand Arbor Reserve, LLC (the "Owner") is the owner of property located at 10202 Rustling Birch Road, City of Madison (the "Abutting Property"); and

WHEREAS, the Abutting Property is adjacent to the City-owned parcel located at 10350 Rustling Birch Road, City of Madison (the "City's Property"); and

WHEREAS, the City's Property was dedicated in the plat of Birchwood Point for public stormwater management and storm sewer purposes; and

WHEREAS, the Owner desires to lease a portion of the City's Property for the purpose of maintaining and operating a fountain within the wet detention basin located thereon, which use shall be ancillary to the Owner's residential development on the Abutting Property.

WHEREAS, City of Madison Engineering Division staff have reviewed and approve of the lease arrangement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease (the "Lease") with Grand Arbor Reserve, LLC (the "Lessee"), subject to the following terms and conditions:

1. The Lessee's "Abutting Property" is described in attached Exhibit A. The "Leased Premises" are located on the City's Property described in attached Exhibit B and are depicted on attached Exhibit C.
2. The term of the Lease shall be (5) years, subject to early termination pursuant to the terms of the Lease. The Lease will renew automatically for successive one (1) year terms under the same terms and conditions contained in the Lease, unless terminated earlier in accordance with the terms of the Lease. Notwithstanding the foregoing, the Lease shall be automatically renewed for no more than twenty (20) successive one (1) year terms.
3. The Lessee shall pay to the City annual rent of One Dollar (\$1.00).
4. The Leased Premises shall be used by the Lessee solely for the purpose of the installation and operation of a water fountain/pump system (the "Fountain System") and for no other purpose whatsoever without the prior written consent of the City, which consent the City may withhold in its sole discretion. The Fountain System shall be comprised of a floating pump motor, fountain nozzle, anchor ropes, and power supply line, all as shown on Exhibit C.
5. The Lessee shall not assign the Lease or sublet the Leased Premises, or any portion thereof, without the prior written consent of the City, which consent the City may withhold in its sole discretion.
6. The Lessee's responsibilities for installation, maintenance, inspection and repair shall be as follows:

- a. The Lessee shall obtain from the City Engineer a Permit to Excavate in the Right of Way for the initial construction of the Fountain System.
- b. Installation of the Fountain System's electrical system shall be performed by a master electrician.
- c. The Lessee shall be responsible for all costs to operate, maintain, repair, replace, and remove the Fountain System, as well as any costs necessary to restore the Leased Premises to the condition it was in prior to the Lessee's use.
- d. The Lessee shall operate and maintain the Fountain System in a safe manner, including, but not limited to, the seasonal installation and removal of the floating pump motor.
- e. The Lessee shall have annual inspections of the Fountain System performed by a master electrician to confirm that the Fountain System is operating safely and as designed. A copy of the inspection report shall be provided to the City Engineer each year.
- f. If the annual inspection indicates repairs are needed to the Fountain System, the Lessee shall immediately turn off power to the Fountain System and order repairs to be made.
- g. No storage of materials, equipment or vehicles is permitted on the Leased Premises, except the temporary and orderly placement of items in conjunction with Fountain System installation, removal, maintenance, inspection or repair activities.
- h. If the Lessee fails to perform any maintenance, repair or inspection activities as required by the Lease within a reasonable time period, the City shall have the right to perform such work and charge the cost thereof either as a direct charge to the Lessee or as a special assessment levied upon the Lessee's Abutting Property.
 - i. No signs shall be permitted.
7. The City of Madison Storm Water Utility shall be responsible for all water, sewer, stormwater and any other utility charges billed to the Leased Premises.
8. No chemical agent, insecticide, or other additive may be used by the Lessee without the express written approval of the City of Madison Engineer. Any chemical agent, insecticide, or other additive approved for use by the City must meet or exceed all federal, State, and local laws, regulations guidelines, and limitations (including prohibitions) for its use.
9. The Lessee may request that the City allow changes to or improvements to the Fountain System and shall be permitted to make such changes provided the changes are approved in writing by the City Engineer. The Lessee shall obtain all necessary permits and approvals prior to commencing such work.
10. The City shall have the right to construct or reconstruct any improvement in the City's Property and to construct in such a way that differs from the initial construction. Further, the City may upon written notice to the Lessee order that all or part of the Fountain System be removed within thirty (30) days. If the Lessee fails to perform such removal work within the requisite time period, the City shall have the right to perform such work and charge the costs of such work either as a direct charge to the Lessee or as a special assessment levied upon the Lessee's Abutting Property.
11. The City shall have the right to order the Lessee to promptly remove or replace any part of the Fountain System that is a safety hazard. The Lessee shall make repairs as soon as it becomes aware of them or within seven (7) days when ordered in writing by the City Engineer to do so.
12. Either party shall have the right to terminate the Lease by giving thirty (30) days written notice to the

other party.

13. Upon the expiration or termination of the Lease for any cause, the Lessee, at the Lessee's cost, shall remove the entirety of the Fountain System from the Leased Premises. Removal shall be accomplished within thirty (30) days of expiration or termination of the Lease, except as may be adjusted by the City to allow for winter conditions. The expiration or termination of the Lease shall not become effective until removal of the Fountain System has been accomplished to the satisfaction of the City; however, during such removal period the Lessee's right to use the Leased Premises shall be limited to removal activities and shall not include the operation of the Fountain System. If the Lessee fails to remove any part of the Fountain System, the City shall have the right to perform such work and charge the costs of such work either as a direct charge to the Lessee or as a special assessment levied upon the Lessee's Abutting Property.

14. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its 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 City or its 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 acts or omissions of the Lessee or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. Furthermore, the City shall not be held responsible for any damage or loss to the Fountain Equipment, whether the damage is caused by the City, its employees, contractors or others.

15. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Lease is in effect, Lessee shall provide a renewal certificate to the City for approval.

16. The Lessee shall represent and warrant that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

17. The City or its representatives shall have the right to enter upon the Leased Premises at any reasonable time for the following purposes:

- a. To make any inspection it may deem expedient to the proper enforcement of any term or condition of the Lease or in the exercise of its police powers.
- b. For the purpose of performing work related to any public improvement.

18. The Lessee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises, or any portion thereof.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.