



Legislation Text

File #: 42877, **Version:** 1

Fiscal Note

The proposed resolution executes a lease agreement between the City of Madison and Dennis Acker for farming purposes on City of Madison property located in the Town of Middleton. In 2016, the anticipated income from the lease agreement is \$5,993.

Title

Authorizing the Mayor and City Clerk to execute a lease for farming purposes with Dennis Acker for 45.34 acres of land located on Meadow Road in the Town of Middleton.

Body

WHEREAS, in 2015 the City of Madison acquired two contiguous parcels of land on Meadow Road in the Town of Middleton (the "Meadow Road Property") for purposes of transferring Wisconsin DNR Stewardship Grant land use restrictions related to the redevelopment of the Garver Feed Mill property; and

WHEREAS, prior to the City's purchase, the Meadow Road Property was leased by Dennis Acker for farming purposes; and

WHEREAS, the City of Madison Office of Real Estate Services was recently contacted by Dennis Acker, who is interested in continuing to farm the Meadow Road Property; and

WHEREAS, the City's future plans for the Meadow Road Property include the expansion of Hill Creek Park and the construction of a public stormwater retention basin and public streets. Also, a portion of the Meadow Road Property will be sold for private development; and

WHEREAS, based on the City's timeline for development, City Engineering and Parks Division staff support leasing the Meadow Road Property for farming purposes during 2016, and allowing for one-year renewals thereafter upon agreement of the parties; and

WHEREAS, the terms of a Lease have been negotiated between Dennis Acker and the Office of Real Estate Services; and

WHEREAS, City Engineering and Parks Division staff have reviewed the lease terms and recommend entering into the lease with Dennis Acker.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease with Dennis Acker (the "Lessee") allowing for the use of 45.34 tillable acres of land for farming purposes, subject to the following terms and conditions:

1. The "Leased Premises" are more particularly described on attached Exhibit A and depicted in attached Exhibit B. As indicated in Exhibit B, the Leased Premises are comprised of four farming areas ("Lease Area 1," "Lease Area 2," "Lease Area 3," and "Lease Area 4").
2. The term of the Lease shall commence as of January 1, 2016 and expire on December 31, 2016.
3. The Lessee shall pay annual rent of \$5,993.00, payable in two (2) equal installments due on or before June 1, 2016 and December 31, 2016, respectively. Rent is calculated as follows:

<u>Lease Area</u>	<u>Crop Use</u>	<u>Rent per Tillable Acre</u>	<u>Tillable Acreage</u>	<u>Rent</u>
1	Soybean	\$175.00		7.34
	\$1,284.50			
2	Soybean	\$175.00		20.65
	\$3,613.75			
3	Soybean	\$150.00		7.30
	\$1,095.00			
4	Seed Grasses	\$0.00		10.05
	<u>\$0.00</u>			
	TOTAL			
45.34	\$5,993.00 (rounded)			

4. The Lease may be renewed for subsequent one (1) year terms upon agreement of the parties as to the terms of the renewal. If the Lessee desires to renew the Lease, the Lessee must give notice in writing to the City a minimum of thirty (30) days prior to the expiration of the initial term or any renewal term, by the mailing of a notice by certified mail, return receipt requested, or by personal delivery to the Office of Real Estate Services at the address specified in the Lease. Following receipt of such notice, the City may indicate by written notice to the Lessee its approval or denial of the Lessee’s request for renewal. If the City does not assent to a renewal notice within thirty (30) days after receipt of such notice, renewal shall be deemed denied and in no event shall the City be responsible for reimbursement of any costs expended by the Lessee in anticipation of a Lease renewal (e.g., seed, fertilizer, etc.).

5. Lease Areas 1, 2 and 3 shall be restricted to the farming of those crops listed in Paragraph 3 above. The Lessee’s use of Lease Area 4 shall be restricted to the planting and mowing of seed grasses. All such activities shall be conducted in accordance with usual and recognized farming practices of Dane County, Wisconsin.

6. The Lessee shall not apply atrazine or any herbicide that lists atrazine as an active ingredient on the Leased Premises.

7. The Lessee shall not hunt upon the Leased Premises and shall ensure that the Leased Premises are not used for hunting purposes.

8. The Lessee shall be responsible for all utilities furnished to the Leased Premises, including water and storm water charges. With regard to storm water charges, the City’s current billing rate for pervious areas is \$.00017 per square foot. In accordance with the Rate Adjustment Policy for the City’s Storm Water Utility, in the event the Lessee obtains an approved Conservation Plan for the Leased Premises from the Dane County Land Conservation Department, the Lessee shall be entitled to a reduction in the storm water billable area to five (5) acres. Such Conservation Plan shall be in compliance with State standards for basic erosion control, prevention and control of gulley erosion, and shall employ practices such as “no till” and grassed waterways.

9. 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.

10. During the initial term of the Lease or any subsequent renewal, the City may elect to sell off a portion of the Leased Premises. In the event of any such sale, the City shall partially assign the Lease to such new owner and the new owner shall be required to accept and abide by the terms of the Lease. In the event any development of the Leased Premises by the City or new owner occurs prior to the Lessee’s harvesting of crops, the Lessee shall be entitled to a Rent credit (“Credit”) equal to the costs incurred for seed and fertilizer during the current year for such acreage unavailable for harvesting. Such Credit shall be determined based on paid receipts and other appropriate documentation to be provided by the Lessee to the City or the new owner,

depending on the property involved. Notwithstanding the foregoing, the Credit shall not exceed the amount of Rent payable during such year.

11. 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, 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.

12. The Lessee shall carry farm general liability insurance covering as the named insured the Lessee and naming the City, its officers, officials, agents and as additional insureds, with a minimum limit of \$500,000 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, the 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.

13. 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 shall further agree 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.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.