



Legislation Text

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**Fiscal Note**

Rent for the first lease year (i.e., June 1, 2015 through May 31, 2016) of \$1,000 shall be deposited into Munis charge code 63026. Effective June 1, 2016, rent will increase annually by 3%.

**Title**

Authorizing the Mayor and City Clerk to execute a lease with Madison Mutual Housing Association, Inc. of City-owned property held for future transportation purposes.

**Body**

WHEREAS, the City is the owner of the parcel of land located between West Main Street and West Doty Street that was formerly railroad right-of-way and was acquired by the City for transportation purposes (the "City Parcel"); and

WHEREAS, Madison Mutual Housing Association, Inc. (the "Lessee") is the owner of certain property located at 641 West Main Street (the "Abutting Property") which is adjacent to the City Parcel; and

WHEREAS, the City and the Lessee were parties to a certain prior lease (the "Prior Lease") whereby the Lessee leased a portion of the City Parcel from the City; and

WHEREAS, due to the City's need to utilize a portion of the City Parcel for the construction and operation of a public pedestrian and bicycle path (the "Path"), the Prior Lease was terminated by the City effective as of December 31, 2004; and

WHEREAS, the City completed construction of the Path in 2005 over a portion of the City Parcel; and

WHEREAS, the Lessee has remained in occupancy of the leased area as a month-to-month holdover tenant; and

WHEREAS, the Lessee desires to continue to occupy and use the leased area and the terms of a new lease have been negotiated between the Lessee and City of Madison Office of Real Estate Services staff.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease ("Lease") with Madison Mutual Housing Association, Inc. (the "Lessee") allowing for the use of a portion of the "City Parcel," which is described in attached Exhibit A subject to the following terms and conditions:

1. **Leased Premises.** The City shall lease to the Lessee that portion of the City Parcel identified on the attached Exhibit (the "Leased Premises"). The Leased Premises are improved with asphalt pavement. The Lessee has inspected and accepts the Leased Premises in an "as-is" condition.
2. **Term.** The Lease shall be for a term of ten (10) years ("Initial Lease Term"), subject to early termination pursuant to terms of the Lease. The effective date of the Lease shall be June 1, 2015 ("Effective Date") and the Lease shall expire on May 31, 2025. The term "Lease Year" shall mean a full one (1) year period. The first Lease Year shall begin on the Effective Date. Each succeeding Lease Year shall begin on the anniversary of the Effective Date.
3. **Rent.** The Lessee shall pay to the City an annual rent payment of One Thousand Dollars (\$1,000). The initial annual rent payment shall be due upon execution of the Lease and subsequent rent payments

shall be due on or before each anniversary of the Effective Date. The annual rent payment shall increase by three percent (3%) per year compounded annually effective as of each anniversary of the Effective Date.

4. Renewal. The Lease may be renewed upon the agreement of the Lessee and the City for one five (5)-year term, unless terminated in accordance with Paragraph 21 of the Lease. The Lessee shall provide the City written notice of its request to renew the Lease no later than six (6) months prior to the expiration of the Initial Lease Term. The City shall provide its approval or denial of such renewal request within thirty (30) days of receipt of said request, which approval or denial shall be at the City's sole discretion.
5. Use and Restrictions on Use of Leased Premises. Throughout the term of the Lease and any extension thereof, the Leased Premises shall be used only for driveways, placement of a storage shed and dumpsters at locations approved by the City, resident and visitor parking, and landscaping purposes. Parking and landscaping shall conform to the requirements of Sections 10.08, 28.141 and 28.142 of the Madison General Ordinances. The leasing or renting of parking spaces shall be restricted to tenants of the Abutting Property.
6. No buildings or other structures shall be erected upon the Leased Premises.
7. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.
8. The Lessee shall supervise, regulate and maintain the Leased Premises to permit parking only in parking stalls that have been approved by the City. The Lessee shall prohibit and prevent parking on any unimproved area of the Leased Premises.
9. The Lessee shall not sublet the Leased Premises, or any portion thereof, without the prior written consent of the City, except to rent parking spaces on the Leased Premises to the tenants of the Abutting Property.
10. The Lessee is the owner of the Abutting Property and the Lessee's interest in the Lease is appurtenant to the Lessee's ownership of the Abutting Property. This leasehold interest shall not be severed from the ownership of the Abutting Property. Accordingly, the Lessee shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interests in the Lease and the improvements located on the Leased Premises (which actions are collectively referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Lessee's Abutting Property to the same purchaser or transferee of this Lease and the improvements located on the Leased Premises. Furthermore, foreclosure of any such mortgage, pledge or encumbrance shall also be a Transfer permitted hereunder, subject to the restriction that this leasehold interest shall not be severed from the ownership of the Abutting Property. All such Transfers shall be subject to all of the terms of this Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of the Lessee's right, title and interest in and to this Lease shall be considered as having assumed and become bound by all of such Lessee's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as such Lessee or prior transferee.
11. The Lessee, at the Lessee's expense, shall be responsible for all maintenance of the Leased Premises, including, but not limited to any required paving, repaving, repairs, striping, removal of garbage and debris, general upkeep, and parking enforcement. It shall be the Lessee's responsibility to supply and pay for the landscaping maintenance, snow and ice removal and lawn mowing including the street terrace. The Lessee shall not cause or allow snow removal activities to result in snow being

placed or stored on the Path.

12. To the extent not otherwise exempt, the Lessee shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
13. The Lessee shall pay all charges for water, electricity, storm water, and any other utility used upon or furnished to the Leased Premises. The Lessee's obligation to pay for such utilities shall commence as of the date on which possession of the Leased Premises is delivered to the Lessee, without regard to the formal Effective Date of this Lease.
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 this Lease. Negligence on the part of the City does not relieve the Lessee of its obligations under this paragraph, except for the sole negligence or willful misconduct of the City.
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 this 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 this Lease is in effect, Lessee shall provide a renewal certificate to the City for approval.
16. The Lessee represents and warrants 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 shall have the right to terminate the Lease effective upon the expiration of the initial ten (10) year term or effective upon the expiration of any subsequent lease year, by giving the Lessee a minimum of one hundred eighty (180) days prior written notice.
18. The City shall have the right, at its sole option, to declare the Lease void, terminate the same, reenter

and take possession of the Leased Premises by giving the Lessee a minimum of one hundred eighty (180) days written notice, in the event the Leased Premises in the sole discretion of the governing body of the City are desired for transportation purposes. Transportation purposes include, without limitation because of enumeration, public alleys, streets, highways, bike paths, sidewalks, and facilities for the development, improvement and use of public mass transportation systems. In the event of termination under this Subparagraph, any rent that has been prepaid for the period following the date of the Lessee's vacation of the Leased Premises shall be prorated on a per diem basis and refunded to the Lessee.

19. The Lessee shall have the right, at its sole option, to terminate the Lease by giving the City a minimum of one hundred eighty (180) days written notice of termination.
20. The Lessee agrees to waive any loss of access and to hold the City harmless for any damages resulting from loss of access or noncompliance with City zoning regulations or otherwise that may result from the expiration or termination of this Lease. The Lessee further agrees to hold the City harmless for any loss of parking or for noncompliance with City zoning regulations that may result from the expiration or termination of this Lease.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are 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.