



Legislation Text

File #: 57228, **Version:** 2

Fiscal Note

Annual rent payable for the first lease year shall be in the amount of ~~\$6,456.60~~ \$8,925.00 and shall be deposited into the General Fund (Acct. No. GN01-78220). Rent shall be subject to a 3% annual increase.

Title

SUBSTITUTE Authorizing the Mayor and City Clerk to execute a lease with MDI Regent Madison Hotel, LLC allowing for the use of a portion of the City-owned transportation corridor parcel located at 650 West Washington Avenue for private open space, walkway, storm sewer and landscaping purposes. (8th A.D.)

Body

WHEREAS, the City owns a fifty-foot wide strip of land, addressed as 650 West Washington Avenue and more particularly described on attached Exhibit A and depicted on Exhibit C (the "City's Property"), which property was dedicated to the City for future street highway and parkway purposes in 1989 by the plat of West Madison Depot and is currently partially improved as a multi-use pedestrian and bicycle path; and

WHEREAS, on August 20, 2007, the City entered into a 10-year lease (the "Original Lease") with the four property owners adjacent to the City's Property, which lease allows the adjacent property owners to use a portion of the City's Property for private parking purposes and

WHEREAS, one of the properties adjacent to the City's Property, the property located at 780 Regent Street, has been subdivided by Certified Survey Map No. 15202, recorded in Vol. 108 of Certified Survey Maps, Pages 84-89, Doc. No. 5509703, with the northern parcel more particularly described on attached Exhibit B and depicted on attached Exhibit C (the "Abutting Property") and now owned by MDI Regent Madison Hotel, LLC ("MDI"); and

WHEREAS, MDI plans to redevelop the Abutting Property and desires to use the adjacent portion of the City's Property for the purpose of constructing, operating and maintaining private open space, walkway, storm sewer and landscaping, which use shall be ancillary to the hotel business operations at the Abutting Property; and

WHEREAS, MDI is currently an additional lessee under the Original Lease pursuant to that certain Partial Assignment of Lease dated August 2, 2019, and recorded with the Dane County Register of Deeds as Document No. 5510680 (the "Partial Assignment"); and

WHEREAS, MDI and the other lessees of the Original Lease are in agreement with altering the use of the City's Property as provided for under the terms of the Original Lease, replacing the Original Lease with two new leases: one to allow MDI to exclusively lease the portion of the City's Property adjacent to the Abutting Property; and a second replacement lease allowing the other property owners to re-lease the rest of the original leased premises to continue the parking lease arrangement; and

WHEREAS, the Original Lease will be terminated contemporaneously with such new leases; and

WHEREAS, City of Madison Engineering Division staff, the City Attorney's Office, and the Risk Manager have all reviewed and approve of the new lease arrangement.

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

1. With respect to the Lessee's interest in the Original Lease, the Original Lease shall automatically terminate effective as of midnight of the day immediately preceding the "Effective Date" of the Lease.
2. The Lessee's Abutting Property and the City's Property are described on attached Exhibits A and B, respectively, and along with the Leased Premises are depicted on attached Exhibits C and D. The Leased Premises is improved with asphalt pavement and consists of approximately ~~6,330~~ 8,750 sq. ft.
3. The Lease shall be for a term of ten (10) years. The Lease will automatically continue for successive terms of one (1) year each, unless otherwise terminated in accordance with the provisions of the Lease.
4. Annual rent payable to the City during Lease Year 1 shall be ~~\$6,456.60~~ \$8,925.00. Beginning on the first anniversary of the Effective Date of the Lease and on each anniversary date thereafter, including any renewal period(s), the annual rent shall increase by three percent (3%) per year compounded annually.
5. The Lessee shall use the Leased Premises for the construction, maintenance and operation of private open space, walkway, storm sewer and landscaping (collectively, the "Lessee Improvements"), which use shall be ancillary to the business operations at the Abutting Property. The Leased Premises shall be used by the Lessee and the employees, tenants and invitees of the Abutting Property.
6. The Lessee's contractor ("Contractor") shall be liable to and agree to indemnify, defend and hold harmless the City of Madison, 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 contractors and/or any subcontractor's negligent acts, errors or omissions, in the performance of the Lease.

The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated:

- (1) Commercial General Liability. Covering as insured the Contractor and including the City as an additional insured, with no less than the following limits of liability: Bodily injury, death and property damage in an amount not less than \$1,000,000 per occurrence. This policy shall also include contractual liability in the same amount. The subcontractor shall maintain a similar policy covering as insured each subcontractor.
- (2) Automobile Liability. Covering as insured the Contractor, with no less than the following limits of liability: \$1,000,000 combined single limits for bodily injury, and property damage. Subcontractors shall maintain a similar policy covering as insured each subcontractor.
- (3) Worker's Compensation. Securing compensation for the benefit of the employees of the Contractor and the employees of each subcontractor, as required by Wisconsin Worker's Compensation Law.

Such coverages shall remain in effect until completion of construction of the Lessee Improvements. As evidence of the above listed coverages, a certificate of insurance, copy of relevant additional insured endorsement(s), and a cover letter identifying the Lease shall be forwarded to the City at the address specified in Paragraph 26 prior to the beginning of work.

7. 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 interest in the Lease and the Lessee 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 Abutting Property to the same purchaser or transferee of the Lease and the Lessee 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 the 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 the 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 the Lease shall be considered as having assumed and become bound by all of the Lessee's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as the Lessee or prior transferee.

8. The Lessee shall, at its own expense, keep and maintain the Leased Premises in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, repaving, repairs, storm sewer maintenance and repair, snow and ice removal, removal of garbage and debris, and landscape upkeep. No exterior storage of materials or equipment is permitted on the Leased Premises except the temporary and orderly placement of items in conjunction with construction, maintenance or repair activities.
9. The Lessee shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
10. The Lessee shall be solely responsible for and promptly pay all charges for water, electricity, sewer, storm water, and any other utility used upon or furnished to the Leased Premises. The obligation of the Lessee 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 the Lease.
11. The City shall have the right to terminate the Lease upon 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 public purposes. The Lessee shall have the right, at its sole option, to terminate the Lease by giving the City a minimum of thirty (30) days written notice of termination.
12. 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, members, 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. This paragraph shall survive termination and assignment or transfer of the Lease.
13. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and including the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$2,000,000 minimum per occurrence. This policy shall also include 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. If requested by the City Risk Manager, the Lessee shall provide copies of additional insured endorsements. If a claim is made against the City that is covered by the insurance required by this Paragraph, Lessee shall, upon request by the City Risk Manager, provide a copy of the

applicable policy. If the coverage required above expires while the Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.

14. 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 caused by the Lessee, or its officers, officials, members, employees, agents, assigns, guests, invitees, sublessees, or contractors/subcontractors, 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.
15. 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 termination of the Lease. By executing the Lease, the Lessee shall acknowledge that a termination of the Lease will have no adverse impact on the viability or use of the Abutting Property.
16. 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.

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.