



Legislation Text

File #: 57998, **Version:** 1

Fiscal Note

The proposed resolution authorizes execution of a lease for the use of City-owned property for an existing private driveway, boundary fence, and yard area. Annual rent payable for 2019 shall be \$50.00 and shall be deposited into the General Fund. Annual rent for 2020 shall be \$100.00. Rent in 2021-2025 shall be \$105.00, and every five years thereafter subject to a five percent increase.

Title

Authorizing the Mayor and City Clerk to execute a lease with Jonathan Darrel Braden allowing for the use of the City-owned transportation corridor parcel located at 176 South Fair Oaks Street for an existing private driveway, boundary fence, and yard area. (6th A.D.)

Body

WHEREAS, the City is the owner of the parcel of land addressed as 176 South Fair Oaks Avenue ("City's Property"), which property is part of the City's East Rail Corridor; and

WHEREAS, Jonathan Darrel Braden is the owner of abutting property located at 156 Dixon Street ("Abutting Property"); and

WHEREAS, the sole reasonable vehicular access to the Abutting Property's existing garage requires a private driveway that encroaches into the City's Property; and

WHEREAS, from March 8, 1991, to June 15, 2014, the Abutting Property benefitted from a lease ("Prior Lease") with the City for the area where the existing driveway, a related existing boundary fence, and a small yard area encroach into the City's Property; and

WHEREAS, in 2014 it was necessary for the City to terminate the Prior Lease due to an Engineering construction project within the East Rail Corridor involving the City's Property; and

WHEREAS, following completion of the project, Mr. Braden resumed using a portion of the City's Property for private driveway, boundary fence, and yard purposes and, therefore, a new lease is required; and

WHEREAS, the terms of a Lease have been negotiated between the Office of Real Estate Services and Mr. Braden; and

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 Jonathan Darrel Braden (the "Lessee"), subject to the following terms and conditions:

1. 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 partially improved with asphalt pavement and consists of approximately 825 sq. ft.
2. The term of the Lease shall be ten (10) years, commencing as of January 1, 2016 (the "Effective Date") and expiring on December 31, 2025. The Lease will automatically continue for successive terms of one (1) year each, unless otherwise terminated in accordance with the provisions of the Lease.

3. Annual rent payable to the City shall be as follows:

- Lease Year 1-3: \$0.00
- Lease Year 4: \$50.00
- Lease Year 5: \$100.00
- Lease Year 6-10: \$105.00

In the event of any renewal terms, beginning with Lease Year 11 annual rent shall increase by five percent (5%) every five (5) years.

4. The Lessee shall use the Leased Premises for the use and maintenance of the existing driveway, boundary fence, and yard area (the "Improvements"). The Leased Premises shall be used exclusively by the Lessee and the Lessee's guests. The Leased Premises shall not be used for parking by the general public, with general public defined as all persons other than the Lessee and the Lessee's guests. In no event may the Lessee obstruct the public sidewalk area depicted on Exhibit D.
5. The Lessee shall be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interest 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 Abutting Property to the same purchaser or transferee of the 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 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.
6. 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.
7. The City shall have the right to terminate the Lease upon 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.
8. 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.
9. 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.
10. 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 minimum per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. The 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, the Lessee shall provide a renewal certificate to the City for approval.

11. 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.
12. 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.