City of Madison

Legislation Details (With Text)

File #:	28958	**Version:**	1	**Name:**	10076 Lease - 2304-08 Atwood Ave.
Type:	Resolution			**Status:**	Passed
File created:	1/29/2013			**In control:**	BOARD OF ESTIMATES (ended 4/2017)
On agenda:	3/19/2013			**Final action:**	3/19/2013
Enactment date:	3/20/2013			**Enactment #:**	RES-13-00176

Title: Authorizing the Mayor and City Clerk to execute a Lease with Deacon Housing, LLC for a portion of the City's East Rail Corridor located adjacent to 2304-2308 Atwood Avenue.

Sponsors: Marsha A. Rummel

Indexes:

Code sections:

Attachments: 1. 10076 Exhibit A.pdf, 2. 10076 Exhibit B.pdf

Date	Ver.	Action By	Action	Result
3/19/2013	1	COMMON COUNCIL	Adopt	Pass
3/11/2013	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
2/20/2013	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
2/18/2013	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
2/5/2013	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
2/5/2013	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
2/5/2013	1	COMMON COUNCIL	Refer	Pass
1/29/2013	1	Economic Development Division	Referred for Introduction	

Fiscal Note

Annual rent payable for the first lease year shall be in the amount of $697.50 and shall be deposited into the General Fund (Acct. No. GN01-78220). Rent shall be subject to a 3% annual increase beginning on the first anniversary date of the lease.

Title

Authorizing the Mayor and City Clerk to execute a Lease with Deacon Housing, LLC for a portion of the City's East Rail Corridor located adjacent to 2304-2308 Atwood Avenue.

Body

WHEREAS, Deacon Housing, LLC is the new owner of property located at 2304-2308 Atwood Avenue (the "Abutting Property"); and

WHEREAS, portions of the existing building and parking lot located on the Abutting Property encroach into the City's East Rail Corridor; and

WHEREAS, Deacon Housing, LLC desires to enter into a lease with the City for the areas of such encroachments; and

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

Deacon Housing, LLC and approved by City Engineering staff.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a Lease with Deacon Housing, LCC ("Lessee") on the following terms and conditions:

1. The City shall lease to the Lessee those portions of the East Rail Corridor identified as "Area 1" and "Area 2" on attached Exhibit A (collectively, the "Leased Premises"), which areas are contiguous to the Lessee's Property located at 2304-2308 Atwood Avenue (the "Abutting Property").

2. Area 1 of the Leased Premises consists of approximately 150 sq. ft. and shall be used by the Lessee for the following purposes: (a) pedestrian ingress and egress to and from the Lessee's building located on the Abutting Property (the "Subject Building"), as identified on Exhibit A; (b) staging purposes when performing maintenance and repairs to the Subject Building; and (c) to accommodate the existing encroachments of the Subject Building into the East Rail Corridor, as such encroachments are depicted on attached Exhibit B. Area 2 of the Leased Premises is improved with asphalt pavement, consists of approximately 625 sq. ft. and shall be used for the maintenance and operation of a parking lot ("Parking Lot"), which use shall be ancillary to the Abutting Property.

3. The Lessee shall accept the Leased Premises in an "as-is" condition, subject to the condition that the City shall remove the approximately 40-inch diameter Silver Maple tree and the approximately 24-inch diameter Boxelder tree located on the Leased Premises behind the Subject Building.

4. No encroachments, other than those described herein and shown on Exhibit B, nor construction, other than construction related to the use of Area 2 of the Leased Premises for parking, shall be permitted without the prior written consent of the City, which consent the City may withhold in its sole discretion.

5. The Leased Premises shall be used exclusively by the Lessee and the employees, tenants and invitees of the Abutting Property. 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 employees, tenants and invitees of the Abutting Property.

6. The primary term of the lease shall be ten (10) years, subject to earlier termination by the parties. The lease will automatically renew for successive terms of one (1) year each, unless terminated by either party.

7. The Lessee shall pay to the City an annual rent equal to ten percent (10%) of the square foot value of the Abutting Property, as last fixed by the City Assessor, multiplied by the square footage of the Leased Premises, calculated as follows: 775 sq. ft. x $9.00/sq. ft. x 10% = $697.50. Beginning on the first anniversary of the effective date of the lease and on each anniversary thereafter throughout the term of the lease, the rent shall increase by three percent (3%) per year. This rent adjustment shall continue throughout any renewal period(s) following the initial ten (10) year term of the lease.

8. The Lessee may assign its interest in the lease and the improvements located on the Leased Premises only if such assignment is made simultaneously with the transfer of ownership of the Abutting Property to the same assignee of the lease. Any assignment shall be subject to all of the conditions of the lease.

9. The Lessee shall be liable to and shall agree 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, officers, 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.

10. The Lessee shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, the Lessee shall furnish to the City a certificate of insurance on a form provided by the City.

11. 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.

12. Either party shall have the right, at its sole option, to terminate the lease by giving the other party a minimum of 180-days written notice.

13. No buildings or other structures shall be erected upon the Leased Premises, with the exception that the existing building encroachments, as described in Paragraph 2 and depicted on Exhibit B, shall be permitted.

14. Upon the expiration or termination of the lease, the Lessee, at the Lessee's cost, shall remove from the Leased Premises all parking lot improvements and restore the Leased Premises by grading, adding top soil, and seeding with grass. Removal and restoration shall be accomplished within sixty (60) days of expiration or termination of the lease, except as may be adjusted by the City to allow for winter conditions.

15. 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 by anyone on any unimproved area of the Leased Premises.

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.