Legislation Details (With Text)

File #:	36155	**Version:** 3	**Name:**	4114 Kipp Lease - 3rd Amendment	
Type:	Resolution		**Status:**	Passed	
File created:	11/11/2014		**In control:**	BOARD OF ESTIMATES (ended 4/2017)	
On agenda:	5/5/2015		**Final action:**	5/5/2015	
Enactment date:	5/7/2015		**Enactment #:**	RES-15-00400	

Title: SECOND SUBSTITUTE Authorizing a third amendment to the lease between the City of Madison and Madison-Kipp Corporation for lands located within the East Rail Transportation Corridor.

Sponsors: Marsha A. Rummel

Indexes:

Code sections:

Attachments: 1. Version 2 Master14-Apr-2015-11-47-31.pdf, 2. Version 1 Master12-Jan-2015-02-02-20.pdf, 3. 4114 3rd Amendment Exhibit A.pdf, 4. 4114 3rd Amendment Exhibit B Map.pdf, 5. 4114 3rd Amendment Exhibit C.pdf, 6. 4114 3rd Amendment Exhibit E.pdf, 7. Kipp Map.pdf

Date	Ver.	Action By	Action	Result
5/5/2015	3	COMMON COUNCIL	Adopt	Pass
4/27/2015	3	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
1/12/2015	1	BOARD OF ESTIMATES	Refer	
1/12/2015	2	BOARD OF ESTIMATES (ended 4/2017)	Refer	Pass
12/15/2014	1	COMMITTEE ON THE ENVIRONMENT (ended 6/2020)	Return to Lead with the Recommendation for Approval	Pass
12/3/2014	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
11/19/2014	1	BOARD OF PUBLIC WORKS	Refer	Pass
11/19/2014	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/18/2014	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/18/2014	1	COMMON COUNCIL	Referred	Pass
11/11/2014	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The current annual rental rate is $6,914.04. The annual rental rate shall increase by $900 effective 1/1/2015 due to the expansion of the Leased Premises. However, pursuant to Resolution Enactment No. RES-09-00243, File ID 13485, adopted 3/17/2009, MKC is entitled to a rent credit of $55,000, such amount being the agreed upon cost of the perimeter fence recently installed by MKC. The application of such rent credit, effective as of 1/1/14, results in a suspension of MKC's rent payments until 2021 at which time the annual rate shall be approximately $8,503.00, subject to a 3% annual escalator thereafter.

Title

SECOND SUBSTITUTE Authorizing a third amendment to the lease between the City of Madison and Madison-Kipp Corporation for lands located within the East Rail Transportation Corridor.

Body

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The City of Madison and Madison-Kipp Corporation ("MKC") are parties to a lease dated May 18, 2000, as amended by First Amendment to Lease dated July 23, 2009, and by Second Amendment to Lease dated March 25, 2010 (collectively, the "Lease"). The Lease allows MKC to utilize a portion of the City-owned East Rail Corridor for the construction, maintenance and operation of a parking lot and drive aisle (the "Parking Improvements"), which use is ancillary to MKC's business operations at 201 Waubesa Street (the "Abutting Property"). The original term of the Lease was for ten (10) years and MKC exercised its first renewal option for the ten (10)-year period running from January 1, 2008 through December 31, 2017 (the "First Renewal Period"). MKC has a second ten (10)-year renewal option remaining under the Lease.

MKC has made modifications to its parking lot and is constructing an accessory building for materials storage and a groundwater treatment system. As a condition of the City's review and approval of the site plan for these improvements, the City is requiring that MKC lease and maintain the existing bio-retention basin constructed by the City, which is located within portions of the East Rail Corridor and unimproved Waubesa Court adjacent to the Abutting Property (the "Biobasin").

Further, the parties recently discovered that the Biobasin and the soil beneath the Parking Improvements are contaminated with polychlorinated biphenyls ("PCBs"). The State of Wisconsin Department of Natural Resources ("DNR") determined that the Abutting Property is the source of the contamination and that MKC is the responsible party for such contamination. MKC has remediated the contamination within the Biobasin to a level acceptable to the DNR. The DNR, the City and MKC have agreed that the Parking Improvements shall serve as an environmental cap throughout the remainder of the Lease term and any further renewals or extensions thereof, and that upon the expiration or termination of the Lease MKC shall remove the Parking Improvements and remediate the contaminated soil to a DNR-approved standard.

The City and MKC desire to amend the Lease in order to: (1) expand the boundary of the "Leased Premises" to include the area of the Biobasin; (2) memorialize the requirements concerning the environmental cap; (3) extend by (6) years the term of the current First Renewal Period and adjust the dates of the Second Renewal Period accordingly; and (4) confirm the amount of the rent credit allowed MKC under the Lease for its installation of a sound deadening wooden fence at the Property.

NOW, THEREFORE, BE IT RESOLVED that the Common Council authorizes the execution of a third amendment to the Lease between the City of Madison and Madison-Kipp Corporation, amending the Lease as follows:

1. The description of the Leased Premises shall be expanded to include the area of the Biobasin. The Leased Premises shall be comprised of two (2) areas: (1) "Area A," containing 12,262 square feet and encompassing the area of the Parking Improvements; and (2) "Area B," containing 7,466 square feet and comprising the area of the Biobasin. The Leased Premises are described in attached Exhibit A and identified in attached Exhibit B.

2. Effective January 1, 2015, the annual rental rate shall increase by the amount of $900 per year due to the expansion of the Leased Premises to include the area of the Biobasin.

3. The current First Renewal Period shall be extended by six (6) years such that said term shall run to December 31, 2023, and the term of the Second Renewal Period shall be adjusted to run for the (10)-year period from January 1, 2024 through December 31, 2033.

4. As authorized by the First Amendment to Lease, the Lessee is entitled to a rent credit effective as of January 1, 2014 in the amount of $55,000, said amount being the agreed upon cost of the sound-deadening wooden fence installed by MKC along MKC's northerly and easterly perimeter property line.

5. The "Use" provision of the Lease shall be amended to provide as follows:

"The Lessee shall use the Leased Premises for the construction, maintenance and operation of a paved parking lot and drive aisle (collectively, the "Parking Improvements") and a bio-retention basin (the "Biobasin"), which uses shall be ancillary to the Lessee's business operation at 201 Waubesa Street, Madison, Wisconsin (the "Abutting Property"). The Abutting Property is identified in Exhibit B and described in Exhibit C, which exhibits are attached and made a part of this Lease.

The Lessee agrees that the Parking Improvements within Area A of the Leased Premises shall function as an environmental cap for the existing PCB-contaminated soils. Such environmental cap has been approved by the Wisconsin Department of Natural Resources (WDNR) pursuant to the closure requirements established in Wisconsin Administrative Code NR 726."

6. The "Removal and Restoration" provision of the Lease shall be amended to provide as follows:

"Unless otherwise agreed to by the City and DNR, upon the expiration or termination of this Lease pursuant to Paragraph 16, the Lessee, at the Lessee's sole cost and expense, shall remove from Area A of the Leased Premises all improvements located thereon, including but not limited to, all asphalt, pavement and sub base. In addition, the Lessee shall be required to remediate the soil contamination within Area A to such standard specified by the DNR. The Lessee shall then restore Area A to original grade; and shall add topsoil, install Class 1 Urban erosion matting and seed Area A with grass in accordance with the City's Standard Specifications for Public Works Construction (see: www.cityofmadison.com/business/pw/). If the Lessee fails to perform any or all of these removal, remediation or restoration requirements to the satisfaction of the City Engineer, the City may perform such activities for the Lessee, and the cost thereof shall be charged against the Abutting Property as a special charge under Madison General Ordinances Sec. 4.09(13) and Wis. Stat. Sec. 66.0627. As a condition of this Third Amendment to Lease, the Lessee consents to the imposition of these special charges against the Abutting Property."

7. The "Maintenance" provision of the Lease shall be revised to read as follows:

"Maintenance.

a. Area A - Parking Improvements. The Lessee shall, at its own expense, keep and maintain Area A of 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, general repairs, removal of garbage and debris, snow removal, landscape upkeep, and parking enforcement. In addition, Lessee shall be responsible for maintaining the Parking Improvements on Area A in a condition that satisfies the DNR requirements regarding the use of the Parking Improvements as an environmental cap.

b. Area B - Biobasin.

i. The Lessee shall be responsible for all inspections, cleaning and any other maintenance of the Biobasin and shall maintain records of same, all in accordance with Chapter 37 of the Madison General Ordinances.

ii. The Lessee shall have televised inspections performed of all piping located within the Abutting Property or the Leased Premises that discharges into the Biobasin. The Lessee shall provide the City a copy of the video condition report and allow the City to review the video in person. The video condition report is only required to document connections to the storm sewer piping. The Lessee shall then document what areas of the property drain to each connection pipe. This investigation can be done with dye testing, TV, or smoke via a plan pre-approved by City Engineering. Upon completion of the investigation, the City and Lessee shall meet to review results and propose any system changes, if

needed. Following the City's review of the video condition report and video as provided for above, the City may, in its sole discretion, require that the Lessee perform subsequent televised inspection of any unverified piping. All inspections shall be at the Lessee's sole cost and expense.

iii. Visual Inspection of the Biobasin shall be performed at least once each year by a licensed professional engineer, and a "Stormwater Management Annual Maintenance Certification" (form attached as Exhibit E) shall be submitted annually to the City Engineer. The Lessee may request that the City Engineer accept date stamped photographic documentation of the Biobasin in lieu of the foregoing certification form.

iv. The City shall, in consultation with Lessee, conduct periodic sampling of the Biobasin for new environmental contamination.

If the annual environmental sampling indicates new PCB comtamination to the Biobasin, the Lessee shall remediate the contamination according to local, State, and federal standards. The Lessee shall also determine the source of the contamination and take action to ensure that further contamination does not occur. New contamination shall be defined as shallow soil sample results above the DNR residential direct contact standard (RCL) for PCBs.

v. Maintenance shall be required when system shows standing water beyond 72 hours of a rain event. Cleaning shall consist of removal of sediment, two (2) foot undercut, undercut replacement with material consisting of 30% compost and 70% sand and restoration in kind. Restoration of plant material shall be by plugging, not seeding alone.

vi. Any alterations to the Biobasin shall be approved by the City Engineer.

vii. If the Lessee fails to maintain the Biobasin as required in Paragraph 7.b.v., then the City shall have the right, after providing the Lessee with written notice of the maintenance issue ("Maintenance Notice") and thirty (30) days to comply with the City's maintenance request, to enter upon the Leased Premises in order to conduct the maintenance specified in the Maintenance Notice. The City will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with the Lessee's use of the Abutting Property. All costs and expenses incurred by the City in conducting such maintenance may be charged to the Lessee by placing the amount on the tax roll for the Abutting Property as a special charge in accordance with Section 66.0627, Wis. Stats. and Section 4.09 of the Madison General Ordinances."

viii. The Lessee shall submit to the City Engineer each year an annual update to the Lessee's Storm Water Pollution Prevention Plan (SWPPP), which shall include the area of the Biobasin.

8. The "Non-Discrimination" clause in the Lease shall be revised to read as follows:

"Non-Discrimination. In the performance of the services under this Lease, the Lessee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin."

BE IT FURTHER RESOLVED that all other terms and conditions of the Lease shall remain unchanged and in full force and effect.

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