



Legislation Text

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Fiscal Note

Rent for the year 2007 is \$4,839.60 and for the year 2008 is \$25,239.35. Effective in 2009 rent will increase annually by 3%. Rent proceeds shall be deposited into the General Fund Revenue Account No. GN01-78220.

Title

Authorizing the Mayor and City Clerk to execute a lease with Collegiate Gothic Associates Limited Partnership, 740 Regent Street Associates, 700 Regent Street Associates, and City Station Associates Limited Partnership, collectively, of City-owned property held for future transportation purposes.

Body

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

WHEREAS, Collegiate Gothic Associates Limited Partnership, 740 Regent Street Associates, 700 Regent Street Associates, and City Station Associates Limited Partnership (collectively, the "Lessees") are the owners of certain properties located at 700-780 Regent Street and 660 West Washington Avenue which are adjacent to the City Parcel; and

WHEREAS, the City and the Lessees were parties to certain prior leases (the "Prior Leases") whereby the Lessees each 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"), each of the Prior Leases was terminated by the City effective as of December 31, 2004; and

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

WHEREAS, the Lessees desire to collectively lease that portion of the City Parcel not needed for the operation of the Path; and

WHEREAS, the terms of a lease have been negotiated between the Lessees and the Real Estate Section.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease ("Lease") with Collegiate Gothic Associates Limited Partnership, 740 Regent Street Associates, 700 Regent Street Associates, and City Station Associates Limited Partnership (collectively the "Lessees" and individually, a "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 Lessees that portion of the City Parcel identified on attached Exhibit B (the "Leased Premises"). The Leased Premises are improved with asphalt pavement. The Lessees have inspected and accept the Leased Premises in an "as-is" condition.
2. Term. The Lease shall be for a term of ten (10) years, subject to early termination pursuant to its terms. The effective date of the Lease shall be September 1, 2007 (the "Effective Date") and the Lease shall expire on August 31, 2017. The Lease will automatically continue for successive terms of one (1) year each, unless terminated in accordance with the terms of the Lease. As used herein, the term "Lease Year" shall mean a full one-year period.
3. Rent.
 - a. For the period from the Effective Date through the end of Lease Year one (1), the Lessees shall pay the City an annual rent equal to \$4,839.60. As a condition of the first year's rent, the Lessees shall improve the Leased Premises as a parking lot in accordance with the plan attached as Exhibit C.

- b. Annual rent payable to the City during Lease Year 2 shall be \$25,320.53 and shall increase thereafter by three percent (3%) per year, compounded annually. The rent adjustment shall continue throughout any renewal period(s) following the initial ten (10) year term of the Lease.

4. Use. The Lessees shall use the Leased Premises for the construction, maintenance and operation of a parking lot ("Parking Lot"), including a dumpster enclosure ("Dumpster Enclosure"), which use shall be ancillary to their various business operations at the "Abutting Properties" described in Exhibit A. The Leased Premises shall be used exclusively by the Lessees and the employees, customers and vendors of the Lessees' business operations at the Abutting Properties. Except as provided in Paragraph 7, the Leased Premises shall not be used for parking by the general public, with general public defined as all persons other than the Lessees and the employees, customers and vendors of the Lessees' business operations at the Abutting Properties.

5. Special Conditions.

- a. The Lessees shall construct the Parking Lot in accordance with plans and specifications approved by the City and the Parking Lot plan attached as Exhibit C. Construction of the Parking Lot shall commence on or before November 1, 2007, unless otherwise agreed to by the parties and shall be completed not later than three (3) months following the commencement of construction.
- b. In the event that the Lessees fail to complete construction by the due date or fail to meet approved specifications, or the construction or improvements fail to meet all applicable federal, state or local laws, statutes, regulations and ordinances, the City reserves the right to require that the construction or improvements be removed and that the Leased Premises be restored to the same condition as existed prior to the date that the Lessees first occupied the Leased Premises under the Prior Leases, at the sole expense of the Lessees.
- c. The Lessee's contractor ("Contractor") shall be liable to and shall 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.
- d. 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 naming 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 be endorsed for 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 and naming the City as an additional insured, 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 Parking Lot.

- e. No buildings or other structures shall be erected upon the Leased Premises.
- f. The Lessees shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.

- g. Upon the expiration or termination of the Lease, the Lessees, at the Lessees' cost, shall remove from the Leased Premises the Dumpster Enclosure and Parking Lot improvements. The Lessees shall also restore the Leased Premises to a condition equivalent to that which existed prior to the date that the Lessees first occupied the Leased Premises. 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. The expiration or termination of the Lease shall not become effective until removal and restoration has been accomplished to the satisfaction of the City, however, during such removal and restoration period the Lessees' right to use the Leased Premises shall be limited to removal and restoration activities and shall not include parking or use of the Dumpster Enclosure. In the event the Lessees fail to accomplish said removal and restoration, the City may cause the removal and restoration to be accomplished at the Lessees' expense and with no liability or cost to the City. The City may waive or alter this removal requirement if, at its sole discretion, it so chooses.
- h. The Lessees shall supervise, regulate and maintain the Leased Premises to permit parking only in parking stalls that have been approved by the City. The Lessees shall prohibit and prevent parking by anyone on any unimproved area of the Leased Premises.
6. Assignment. A 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 particular Lessee's 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 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 the Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of a Lessee's rights, title and interests in and to the 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.
7. Subletting. The Lessees shall not sublet the Leased Premises, or any portion thereof, except as follows:
- a. The Lessees may rent the parking spaces on the Leased Premises to tenants of the Abutting Properties; and
- b. The Lessees may sublet the Leased Premises to (i) the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison for use as parking during UW sporting and special events at the Kohl Center; and (ii) members of the general public for use as parking during other events held at the Kohl Center and the UW Southeast Recreational Facility, such as high school commencement ceremonies and events sponsored by the Wisconsin Interscholastic Athletics Association (WIAA).
8. Maintenance. The Lessees shall 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, striping, snow and ice removal, removal of garbage and debris, landscape upkeep and parking enforcement. No exterior storage of materials, equipment or vehicles is permitted on the Leased Premises except the temporary and orderly placement of items in conjunction with maintenance or repair activities.
9. Taxes and Assessments. To the extent not otherwise exempt, the Lessees shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
10. Utilities. The Lessees shall be solely responsible for and promptly pay all charges for water, electricity, storm water, and any other utility used upon or furnished to the Leased Premises.
11. Indemnification and Insurance. The Lessees shall be liable to and hereby 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 and 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 Lessees and/or their 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. Additionally, each 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.

12. Termination.

a. The City shall have the right to terminate the Lease by giving the Lessees 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.

b. The Lessees shall have the right, at their sole option, to terminate the Lease by giving the City a minimum of one hundred eighty (180) days written notice of termination.

13. Hold Harmless. The Lessees agree to hold the City harmless for any loss of parking, loss of access, damages resulting from the loss of the Dumpster Enclosure, or for noncompliance with City zoning regulations that may result from the expiration or termination of the Lease.

14. Joint and Several Liability. The Lessees shall be jointly and severally liable for all terms and conditions, including payments, of the Lease.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.