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# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

| File Number | Title  | Status                                   |
|-------------|--|--|
| R-2006-0064 | Resolution   | In Committee                             |
|             | Resolution Authorizing the Lease of a Portion of the Municipal Yard Site by the Wisconsin Department of Natural Resources. |  |
|             | Introduced: 3/7/2006   | Controlling Body: Public Works Committee |

## COMMITTEE RECOMMENDATION ADOPT

| ACTION DATE:  | MOVER | SECONDER |            | AYE | NO | PRESENT | EXCUSED |
|---------------|-------|----------|------------|-----|----|---------|---------|
| <u>3-7-06</u> |       |          | Barczak    |     |    |         |         |
|               |       |          | Czaplewski |     |    |         |         |
|               |       |          | Dobrowski  | ✓   |    |         |         |
|               |       |          | Kopplin    | ✓   |    |         |         |
|               |       |          | Lajsic     |     |    |         |         |
|               |       |          | Narlock    | ✓   |    |         |         |
|               |       |          | Reinke     |     |    |         |         |
|               | ✓     |          | Sengstock  | ✓   |    |         |         |
|               |       | ✓        | Vitale     | ✓   |    |         |         |
|               |       |          | Weigel     |     |    |         |         |
|               |       |          | TOTAL      | 5   | -  |         |         |

## SIGNATURE OF COMMITTEE MEMBER

Paul J. Kopplin  
 Chair Vice-Chair Member

## COMMON COUNCIL ACTION adopt

| ACTION DATE:  | MOVER | SECONDER |                   | AYE | NO | PRESENT | EXCUSED |
|---------------|-------|----------|-------------------|-----|----|---------|---------|
| <u>3/7/06</u> |       | ✓        | Barczak           | ✓   |    |         |         |
|               |       |          | Czaplewski        | ✓   |    |         |         |
|               |       |          | Dobrowski         | ✓   |    |         |         |
|               |       |          | Kopplin           | ✓   |    |         |         |
|               |       |          | Lajsic            | ✓   |    |         |         |
|               | ✓     |          | Narlock           | ✓   |    |         |         |
|               |       |          | Reinke <u>exc</u> |     |    |         | ✓       |
|               |       |          | Sengstock         | ✓   |    |         |         |
|               |       |          | Vitale            | ✓   |    |         |         |
|               |       |          | Weigel            | ✓   |    |         |         |
|               |       |          | TOTAL             | 9   | -  |         | 1       |



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2006-0064**

**Final Action:**

**MAR 07 2006**

Resolution Authorizing the Lease of a Portion of the Municipal Yard Site by the Wisconsin Department of Natural Resources.

WHEREAS, the Wisconsin Department of Natural Resources, under the auspices of the Department of Homeland Security and USEPA, operate several sites that continually monitor for chemical and biological agents through a program entitled "Biowatch"; and,

WHEREAS, in order to determine the source of a potential contaminant, the direction and speed of airborne contamination and its potential effects on citizens, the USEPA has required all Biowatch sites be equipped with wind direction and wind speed sensors; and,

WHEREAS, the DNR wishes to lease a parcel of land approximately 6' x 10' in the northeast corner of the Public Works' Municipal Yard site to install such a WS/WD tower and associated equipment; and,

WHEREAS, a proposed Lease has been drafted for the construction, operation and maintenance of such a facility, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the construction of the WS/WD tower by the Wisconsin Department of Natural Resources be approved and that the Director of Public Works be authorized to enter into the attached Lease.

municipal yard site lease.res

**ADOPTED**

March 7, 2006

Paul M. Ziehler

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

**APPROVED**

March 9, 2006

Jeannette Bell

Jeannette Bell, Mayor

## LEASE

This Lease is made this 6 of April, 2006, by and between the City of West Allis, a Wisconsin Municipal Corporation, hereinafter the "City" and the Wisconsin Department of Natural Resources, hereinafter "DNR".

### A. RECITALS

1. The City is the owner of the property at 6300 W. McGeoch Ave. known as the West Allis Municipal Yard, and specifically that portion of the Municipal Yard, which is the former Janka Millwork site now attached to and part of the Municipal Yard Complex.
2. The DNR under the auspices of the Department of Homeland Security and USEPA operate several sites that continually monitor for chemical and biological agents. This program is entitled "Biowatch".
3. In order to determine the source of a potential contaminant, the direction and speed of airborne contamination and its potential effects on citizens, the USEPA has requested all Biowatch sites be equipped with wind speed and wind direction sensors.
4. The DNR wishes to lease a parcel of land approximately 6' X 10' at the northeast corner of the former Janka building. The space will be used to install a 30' tall WS/WD tower and associated equipment for the Biowatch program.

**NOW, THEREFORE**, the City and the DNR agree that the City shall lease to the DNR the above-described property for use as a Biowatch WS/WD tower site upon the following terms and conditions:

### B. RENT

The DNR shall lease the subject property from the City for the amount of One Dollar (\$1.00) per year.

### C. TERM

This Lease shall commence on the date hereof and shall continue for five (5) years. The DNR shall have the right to renew the Lease for an additional term of five (5) years on the same terms and conditions. The City shall have the right to reject the renewal option if there has been a material breach of the terms and conditions of the Lease.

### D. CONSTRUCTION

1. The DNR shall be solely responsible for the cost of construction of the WS/WD tower and all equipment and infrastructure associated with the tower.
2. The cost of construction shall include, but not be limited to, site layout, architectural drawings, grading and landscaping, surveys, excavation, fill, concrete and all other costs associated with construction. It shall also include the cost to install security fencing, bollards or any other structures around the site necessary to protect the equipment from vandalism and/or from accidental vehicle contact.
3. The DNR shall submit a site improvement plan for approval by the Director of Public Works prior to the start of construction.

**E. MAINTENANCE AND REPAIR**

The DNR shall be solely responsible for the maintenance and repair of the tower, associated equipment, and security and/or protective structures installed as part of the Lease. The failure to maintain said site and equipment shall result in termination of the lease agreement, if, upon due notice by the City that certain maintenance and/or repairs are necessary, said maintenance and/or repairs are not completed within a 30 day period or a period reasonably set by the City to accomplish said maintenance and/or repairs.

**F. DAMAGE TO EQUIPMENT**

The City is not responsible for any damage, whether intentionally caused, through accident, faulty materials, etc. that may occur to the tower or associated equipment where such damage is not caused by or attributable to the City.

**G. LIABILITY AND INSURANCE**

1. To the extent provided by law, The DNR shall indemnify, hold harmless and defend the City, its officers agents and employees from any and all liability arising out of or in conjunction with this lease where such liability is found upon or grows out of the errors, omissions or negligent acts of the DNR, its contractors, agents or employees.
2. The Wisconsin Department of Natural Resources is protected by the State of Wisconsin Self-Funded Liability and Property Programs. Section 20.505 (2) (k), Wisconsin Statutes, provides funds to pay liability and property claims. The DNR shall provide a Certificate of Protection in lieu of an Insurance policy to the City of West Allis Director of Public Works, as evidence of protection for applicable liability claims brought against the state, its officers or employees and damage to property for which the state may be responsible.

**H. NOTICE**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail to the following addresses:

If to City: Director of Public Works  
6300 West McGeoch Avenue  
West Allis, WI 53219

If to DNR: Art Pinkert  
WDNR  
2300 N. Dr. Martin Luther King Jr. Drive  
Milwaukee, WI 53212

**I. FIXTURES/IMPROVEMENTS**

1. All fixtures and improvements installed by the DNR shall be maintained by the DNR during the term of the Lease in a state of reasonable repair.

2. The City of West Allis may request access to the tower structure for the purpose of attaching communication equipment. The City shall provide a detailed description to the DNR of all equipment proposed for installation. The DNR shall determine the impact of such equipment upon the integrity of the tower and/or the associated WD/WS equipment. The DNR shall provide the City with a written response to the City's request either allowing the request or providing an explanation for rejecting the request.

**J. NONASSIGNABILITY**

This Lease may not be assigned by the DNR to any other person or entity without the written consent of the City.

**K. TERMINATION**

1. Upon termination of this lease for any reason, the DNR shall restore, at its cost, the site to its original condition. All work associated with the restoration of the site must be pre-approved by the Director of Public Works.
2. This Lease may be terminated by the City, with 30 days notice, upon default in the terms and conditions to be kept and observed by the DNR, upon determination by the City that the subject property is required for other municipal purpose or upon such condition as otherwise provided herein.

**L. ENTIRE AGREEMENT**

This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors or assigns in interest.

**M. NON-DISCRIMINATION**

The DNR, in performing under this Lease, shall not discriminate against any worker, employee or any member of the public, because of race, creed, color, religion, age, marital or veteran status, sex, national origin, disability or any other legally protected status.

**N. MISCELLANEOUS**

1. All of the representations, agreements and obligations of the City are set forth herein, and no modification, waiver or amendment of the provisions of this Lease shall be binding upon the City unless in writing and signed by the City or by a duly authorized agent.
2. No waiver of any default of the DNR hereunder shall be implied from any failure by the City to take any action on account of such default, whether or not such default persists or is repeated, and no express waiver shall affect any default other than the default specified in such waiver and then only for the time and to the extent therein stated.
3. Each provision herein shall be binding upon and inure to the benefit of the City and the DNR and their respective successors and assigns.
4. All amendments attached to this Lease and signed by the City and the DNR are made a part hereof and are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed as of the date first written above.

**CITY OF WEST ALLIS,**

By: Michael Pertmer  
 Michael Pertmer  
 Director of Public Works

State of Wisconsin )  
 ) ss  
 Milwaukee County )

Personally came before me this 14th day of March, 2006, Michael Pertmer, to me known to be the Director of Public Works of the City of West Allis, a municipal corporation, and the person who executed the foregoing instrument and acknowledge the same.

MaryGeraldHubmann  
 Notary Public, State of Wisconsin  
 My Commission Expires: 7-00-5, 2006

**Wisconsin Department of Natural Resources**

By: Gloria L. McDutcheon  
 Southeast Region Director

By: \_\_\_\_\_

State of Wisconsin )  
 ) ss  
 Milwaukee County )

Personally came before me this 6 day of April, 2006, Gloria L. McDutcheon, to me known to be and the persons who executed the foregoing instrument and acknowledge the same.

Christine G. Fitch  
 Notary Public, State of Wisconsin  
 My Commission Expires: 9-23-2007