



Legislation Text

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Fiscal Note

The proposed resolution authorizes a two-year lease agreement with the option to purchase through the General Land Acquisition Fund. The General Land Acquisition capital program in the Economic Development Division has approximately \$1.3m in available budget authority. No additional City appropriation is required.

Title

SUBSTITUTE Amending the 2020 General Land Acquisition Fund Budget by \$900,000 and aAuthorizing the execution of a two-year Lease Agreement between the City of Madison and Watson Smith LLC for the City's lease of the property located at 4502 Milwaukee Street for temporary shelter purposes, with the option to purchase the property at the end of the two-year lease.

Body

WHEREAS, Watson Smith LLC ("Lessor") is the owner of the property containing 144,200 square feet of land and 36,192 square feet of commercial skilled nursing facility space, located at 4502 Milwaukee Street and legally described on Exhibit A and depicted on Exhibit B, attached hereto ("Property"); and

WHEREAS, the City of Madison ("City") desires to lease the Property for the creation of a possible temporary shelter in response to the ongoing COVID-19 pandemic and for future redevelopment, and

WHEREAS, the Mayor directed City Real Estate staff to pursue the lease of properties suitable for these uses; and

WHEREAS, the City's lease of the Property will also provide the City with the opportunity to acquire the Property in the future, as described in the terms and conditions contained within this resolution; and

WHEREAS, the Seller agrees, by virtue of an executed Lease Agreement ("Agreement"), to lease the Property to the City under the terms outlined below, which was negotiated by the City's Office of Real Estate Services.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution of a Lease for the Property subject to the terms and conditions below; and,

BE IT FURTHER RESOLVED, that the source of Funding for the City's lease of the Property shall be the "General Land Acquisition Fund" line item of the Economic Development Division Capital Budget (Project #63060), for a total of General Land Acquisition Budget is amended by \$900,000 over a two-year period to fund the City's lease of the Property, of which \$375,000 is required in 2020 (\$225,000 in lease payments and an additional \$150,000 in utility and holding costs associated with this lease); and

BE IT FURTHER RESOLVED that the City's Common Council hereby authorizes an Option for the purchase of the Property, subject to future action by the Common Council during the Option period to authorize a source of funding for the purchase; and,

BE IT FURTHER RESOLVED that the terms and conditions of the Lease and Option to purchase are as follows:

1. Property. Lessor hereby grants the City a lease of the Property consisting of approximately fifty-five (55) separate rooms, laundry facilities, kitchen, offices, dining room, conference space, staff lounge, showers, restrooms, and all other amenities and facilities within the Property, along with all appurtenant real

property, subject to the terms and conditions set forth in this Lease.

2. Furniture, Fixtures, and Personal Property. The City shall also have the right to use Lessor's furniture, fixtures, and personal property that exist within the Property, as may be located and documented by Lessor as part of an inspection in the Property on the "Commencement Date" (as defined in Section 3 below) of this Lease (collectively "Lessor's Personal Property"), which shall be returned to Lessor on the termination or expiration of this Lease if the Property is not sold pursuant to Section 15 below, or which, if applicable, shall be included in the sale of the Property pursuant to Section 14 below. Throughout the term of this Lease and any renewals, the City shall take good care of the Property and Lessor's Personal Property.
3. Term. This Lease shall be for an initial term of approximately twenty-four (24) months, beginning as of the date on which Lessor acquires title to the Property ("Commencement Date"), and expiring at 11:59 p.m. on the date (the "Expiration Date") that is the last day of the twenty-fourth (24th) full calendar month following the Commencement Date, subject to extension pursuant to Section 14 below.
4. Renewal. This Lease may be extended upon mutual agreement by both parties.
5. Termination.
 - a. The Lessor may terminate this Lease with thirty (30) days written notice if the City is in default of any of the terms or conditions of this Lease, including but not limited to the timely payment of rent, and does not correct the default within thirty (30) days of receiving written notice. In the event of a default under this Lease which requires more than the payment of money to cure and which cannot, because of the nature of such default, be cured within said thirty (30) days, then the City shall be deemed to be complying with such notice if promptly upon receipt of such notice the City immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.
 - b. The City may terminate this Lease with thirty (30) days written notice to the Lessor if the Lessor is in default of any term or condition of this Lease and has not corrected said default prior to the expiration of said thirty (30) day period. In the event of a default which cannot, because of the nature of such default, be cured within said thirty (30) days, the Lessor shall be deemed to be complying with such notice if promptly upon receipt of such notice the Lessor immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.
 - c. This Lease may be terminated by mutual consent of the Lessor and the City
6. Use. The City shall use the Property for the housing of individuals or families in need of medical isolation, or are otherwise in need of housing due to homelessness, or for other reasons suitable for the Property. The Use may require the City to contract with third party entities to manage the Property.
7. Rent. The City shall pay Rent to Lessor of Twenty-Five Thousand Dollars (\$25,000.00) per month, due in advance and without offset, demand or prior notice, on the Commencement Date and on the first day of each calendar month thereafter during the term of this Lease as a guaranteed payment for use of the Property regardless of actual use. In addition to the foregoing Rent, the City shall pay as additional rent, all expenses of the Property incurred during the term of this Lease, excepting insurance costs incurred

by the Lessor, it being the intention of the parties that the Rent under this Lease shall be “net, net, net” of expenses of the Property. If the City fails to pay any Rent or additional rent when due, such unpaid amounts shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date due until paid in full.

8. Security Deposit. A Security Deposit of one month’s rent shall be paid by the City to Lessor. Said Security Deposit is due prior to the City taking occupancy of the Property. Unless otherwise agreed by the parties, the Security Deposit shall be either refunded at the end of the term of this Lease, less any costs that are incurred by Lessor to repair the Property in accordance with state law.
9. Access. The City shall have access to the Property at all times during the term of this Lease following the Commencement Date. The Lessor or its representatives shall have the right to enter upon the Leased Premises at any reasonable time to make any inspection it may deem expedient to the proper enforcement of any term or condition of this Lease. Except in an emergency, the Lessor shall give the City 72 hour notice prior entering the Leased Premises.

Notwithstanding the foregoing, in the event the City is using the Property for medical isolation, the Lessor and its employees, contractors, and agents (collectively “Authorized Personnel”) shall also at all times have access to the Property, subject to approval by the City. Authorized Personnel shall not bring other individuals onto the Property or into the Property during the term of this Lease following the Commencement Date.

10. No Alterations. The City may not make any permanent alterations, installations, additions, or improvements in or to the Property without the prior written consent of Lessor, which consent may be withheld or conditioned in Lessor’s sole and absolute discretion.
11. City’s Responsibilities.
 - a. The City accepts the Property in “as-is” condition.
 - b. The City shall be responsible for insuring all City-owned personal property placed in the Property, and shall also maintain the following insurance coverages:
 - i. Commercial general liability insurance covering as insured the City and naming Lessor and its officers, officials, agents and employees as additional insureds, with a minimum limit of \$3,000,000 per occurrence and in the aggregate. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide Lessor thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Lease.
 - ii. Workers’ Compensation insurance as required by the State of Wisconsin. The City shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit.
 - iii. Property insurance in the amount of \$4,710,383 for the real property, and \$515,000 for the personal property. These amounts are subject to change based on an appraisal or adjustment by the City’s insurance provider.
 - iv. As evidence of the above coverages, the City shall furnish Lessor with a certificate of insurance on a standard form approved by the City, and, if requested by Lessor, the

also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Lease is in effect, the City shall provide a renewal certificate to Lessor for approval.

- c. The City shall be responsible for the cost to maintain and repair any damage caused by the City to the Property and Lessor's Personal Property during the Term of the Lease, normal wear and tear excepted. The repair obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Lease.
- d. The City shall not cause or permit any hazardous substance to be used, stored, generated or disposed of on or in the Property or Lessor's Personal Property by the City, the City's agents, employees, contractors or invitees, without first obtaining Lessor's written consent. The City shall be responsible for all medical waste disposal, and, in the event the Property is used for medical isolation, the City shall clean the Property in a manner complying with guidance from the Center for Disease Control and Prevention, and Public Health for Madison and Dane County. If the City needs to hire a contractor to perform this work, then it shall do so at its own expense. The obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Lease.
- e. City shall not cause any liens to be filed against the Property and shall cause any liens filed to be removed within thirty (30) days of expiration or termination of this Lease, which obligation shall survive any cancellation, expiration, or termination, for any reason, of this Lease.
- f. The City shall be responsible for the costs of utility services to the Property, including, but not limited to, electricity, gas, water and sewer services.
- g. The City, at its sole expense, shall provide services to the Property, including, but not limited to, telephone, cable television, and internet service for the City's use.
- h. The City shall pay all expenses of the Property, including operating and maintenance expenses not otherwise detailed in this Lease, as and when due, and property taxes with respect to the term of this Lease, which payments shall be made in a manner directed by Lessor.
- i. All property of any kind belonging to the City or the employees, agents or invitees of the City shall be there at the sole risk of the City or the City's employees, agents or invitees and in no event shall Lessor be liable for any damage to or loss, theft, or misappropriation of personal property or equipment sustained by the City, whether or not it is insured, except if such loss is caused by the negligence of Lessor or, its employees, officers, directors, or agents.

12. Lessor's Responsibilities.

- a. Emergency Contact. Lessor shall provide an emergency contact person that can be reached from 8 am - 8 pm, and can be responsive after hours within a reasonable time, for emergency issues related to plumbing, electrical, access, or other circumstances that affects the City's ability to use the Property in the manner described herein. The costs of any services provided to the City shall be an expense of the Property payable as additional rent by the City as provided in Section 7.
- b. The Lessor shall, at the Lessor's sole cost, be responsible for any damage resulting from the negligence of the Lessor or its officers, officials, members, agents, employees, assigns, guests, invitees, or subcontractors. Notwithstanding the foregoing, the City shall be responsible for the cost of insuring its contents and for the cost of damage to the City's contents in the Leased

Premises which would be covered by properly maintained insurance, and for the cost of repairs/replacements to the Building or Leased Premises or Common Areas caused by the sole negligence of the City or its employees.

- c. Lessor shall carry commercial general liability insurance covering Lessor as named insured with a minimum limit of \$1,000,000 per occurrence. As evidence of this coverage, the Lessor shall furnish the City with a certificate of insurance on a form approved by the City. If the coverage required above expires while this Lease is in effect, Lessor shall provide a renewal certificate to the City for approval.

13. Security. The City shall be responsible for security at the Property.

14. Option to Purchase. The City shall have the option to purchase the Property together with Lessor's Personal Property (the "Option to Purchase"), exercisable by written notice to Lessor given not less than one hundred eighty (180) days prior to the Expiration Date (the "Option Exercise Deadline"). If the City exercises the Option to Purchase, the City and Owner shall each commission their own appraisal of the Property and Owner's Personal Property, each of which appraisals shall be performed by an independent and duly licensed real estate appraiser based in the Madison, Wisconsin area experienced in determining market rent for comparable properties, and shall be completed and delivered to the other party not less than forty-five (45) days following the City's notice of exercise of the Option to Purchase. These two appraisals shall then be averaged together to determine the final selling price, less any Security Deposit applied to the sale of the Property and Owner's Personal Property. If the party's two appraisals are more than 15% apart, the City and Lessor shall agree upon a third appraiser to conduct an appraisal of the Property. The cost of said third appraisal shall be split evenly between the City and Lessor. In the event a third appraisal is necessary, the value arrived at by said third appraiser shall be the final selling price for the Property. However, the City shall not be bound to purchase the Property and may terminate the purchase at that time.

The Option to Purchase shall expire if not exercised by the Option to Purchase Deadline. If the closing of the purchase of the Property and Lessor's Personal Property ("Closing") has not occurred by the Expiration Date, the Expiration Date shall be automatically extended to the date (the "Extended Expiration Date") that is twelve (12) months after the Expiration Date, but the Closing shall occur as soon as practicable, and the Lease shall expire upon Closing. If Closing has not occurred by the Extended Expiration Date, the Option to Purchase shall terminate on the Extended Expiration Date. Lessor shall credit the City \$240,000 of Rent paid pursuant to this Lease to the purchase price negotiated pursuant to this Option to Purchase.

15. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the City's rights in the Property shall cease, and the City shall immediately remove all of its personal property from the Property and surrender the Property and Lessor's Personal Property to Lessor in a condition equivalent to that which existed prior to the date that the City first occupied the Property, reasonable wear and tear excepted.

16. Definition of City and Lessor. The terms "City" and "Lessor" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Lease shall bind the parties mutually, their successors and assigns.

17. Notices. All notices to be given under the terms of this Lease shall be signed by the person sending the same, may be delivered by email to an officer or duly authorized representative of the other party, or may be sent by United States Postal Service or a nationally recognized overnight carrier, to the address of the parties specified below:

For Lessor: Watson Smith LLC

For the City: City of Madison

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

18. Assignment. The City shall not assign this Lease or the license and privileges hereunder. Any attempted assignment or delegation shall be void. The City may sublease the Property pursuant to Section 6.
19. Indemnification. Each party (the "Indemnifying Party") agrees to defend the other party, its affiliates and each of their respective officers, directors, and employees (each an "Indemnified Party") from and against any action, claim, suit, demand, investigation or other proceeding brought by a third party (a "Claim") to the extent such Claim results from the Indemnifying Party's breach of this Lease or the negligence, willful misconduct, fraud or violation of law on the part of the Indemnifying Party, its officers, directors, or employees in connection with this Lease. The Indemnifying Party will indemnify and hold harmless the Indemnified Party from any liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and costs of defense) incurred by or levied against such Indemnified Party as a result of such Claim. This paragraph shall survive the termination of the Term of this Lease. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law with respect to any Claim.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.