



Legislation Text

File #: 63063, **Version:** 1

Fiscal Note

The proposed resolution amends the 2021 Adopted Capital Budget to create a Temporary Family Shelter project in the Community Development Division's budget. Funding in this project will be used to acquire the former Karmenta Center nursing home to temporarily serve a family shelter. As proposed, the project will be funded with \$3.0 million in GO Borrowing. The project budget includes initial lease and holding costs (\$250,000) and funding to purchase the property (\$2.75 million).

The property will be operated under an agreement with the Salvation Army. The estimated annual operating costs for the facility is approximately \$930,000. Six months of this funding has been awarded through the Emergency Solutions Grant (ESG). It is anticipated the remaining six months will continue to be funded through a future ESG grant award. The City's General Fund does not contribute to the operating costs for this facility.

Following its temporary use as a family shelter, it is anticipated the property could be used for redevelopment, possibly including affordable housing.

Title

Amending the City's 2021 Adopted Capital Budget by appropriating \$3.0 million in GO Borrowing within the Community Development Budget for a Temporary Family Shelter project; and, authorizing the execution of a six-month Lease Agreement between the City of Madison and Watson Smith LLC for the City's lease of the property located at 4502 Milwaukee Street (the "Property") with the option to purchase the property prior to the end of that lease, and authorizing the City to enter into a sub-lease of the Property with the Salvation Army for the purpose of supporting the provision of temporary family shelter services.

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 temporary family shelter 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, the 2021 Adopted Capital Budget is amended to create a Temporary Family Shelter project funded by \$3.0 million in new GO Borrowing that will be used to fund the City's lease and

acquisition of the Property, of which \$250,000 is required in 2020 (\$150,000 for lease payments and \$100,000 for utility payments and carrying costs); and

BE IT FURTHER RESOLVED that the City's Common Council hereby authorizes the exercise of the Option for the purchase of the Property, 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 generally shown on the attached personal property list, which shall be returned to Lessor on the termination or expiration of this Lease if the Property is not sold pursuant to Section 14 below, or which, if applicable, shall be included in the sale of the Property pursuant to Section 13 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 six (6) months, beginning on the date of execution of this lease but no later than December 31, 2020 ("Commencement Date"), and expiring at 11:59 p.m. on the date (the "Expiration Date") that is the last day of the sixth (6th) full calendar month following the Commencement Date, subject to extension pursuant to Section 4 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 housing due to experiencing homelessness. The Use may require the City to contract with third party entities to manage the Property, or to sublease the Property at the discretion of the City.
7. Rent. The City shall pay Rent to Lessor of One Hundred Fifty Thousand Dollars (\$150,000.00), due in advance on the Commencement Date and prior to the City taking occupancy of the Property. In addition to the foregoing Rent,

effective as of Commencement Date, 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. 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.
9. 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.
10. 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, 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. 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 if the City determines they are needed, 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 all 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.

11. 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.

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

13. Option to Purchase. The City shall have the option to purchase the Property together with Lessor's Personal Property for \$2,750,000 (the "Option to Purchase"), exercisable by written notice to Lessor within forty five (45) days of Commencement Date (the "Option Exercise Deadline"). 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 February 1, 2021, the Option to Purchase shall become null and void unless a later closing date can be mutually agreed upon by both parties.

14. 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.

15. Assignment. The City shall not assign, transfer or encumber this Lease and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without prior written consent of the Lessor. Said consent shall not be unreasonably withheld by the Lessor.

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.