

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4583

Authorizing the CDA to execute a land use agreement with B-Cycle LLC for a bicycle-sharing facility station at The Village on Park.

Presented November 9, 2023

Referred _____

Reported Back _____

Adopted _____

Placed on File _____

Moved By _____

Seconded By _____

Yeas _____ Nays _____ Absent _____

Rules Suspended _____

Legistar File Number 80695

WHEREAS, the Community Development Authority of the City of Madison ("CDA") is the owner of The Village on Park, located at 2300 South Park Street (the "Property") ; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, as part of the Property's redevelopment, City Engineering is working with B-Cycle LLC, commonly known as Madison B-Cycle, on locations for bicycle-sharing facilities at the Property; and

WHEREAS, B-Cycle LLC has a City-Sponsored Bicycle-Sharing Program Operating Agreement with the City of Madison (the "City") that was approved by the Common Council on November 17, 2020 as File # 6232 (the "Operating Agreement"). Per the City Attorney's office, any B-Cycle bicycle-sharing facility station and bicycles (collectively the "Facility") at the Property would be subject to the terms of the Operating Agreement; and

WHEREAS, the parties agree to enter into a land use agreement per the below terms and the other applicable terms in the Operating Agreement for a Facility at the Property.

NOW, THEREFORE, BE IT RESOLVED that the CDA hereby authorizes the execution of a land use agreement ("Agreement") with B-Cycle LLC ("Tenant") to lease the Premises at The Village on Park materially, though not exclusively, per the following terms and conditions on a form approved by the City Attorney:

1. Premises. See the attached Exhibit A for the location of a Facility. The parties may agree to add additional Facility locations on the Property, which shall be documented in an Amendment to this Agreement.
2. Use. For the Tenant's operation of Madison B-Cycle bicycle-sharing program.
3. Term. Per the Operating Agreement, this Agreement shall expire on December 31, 2030, unless earlier terminated or amended in writing as provided for therein or by the CDA.
4. Renewal Option. There is one ten (10) year renewal option per the Operating Agreement (the "Renewal Option") to extend the Term from January 1, 2031 through December 31, 2041 (the "Renewal Term"). The Tenant needs to provide written notice to the City no earlier than July 1, 2030 and no later than December 31, 2030 to exercise the Renewal Option. If the Renewal Option is exercised then the Term of this Agreement will be extended as well.

The Renewal Term shall be on the same terms and conditions of the Operating Agreement, unless otherwise agreed to in writing by the parties.

5. Insurance. The Tenant shall be required to furnish a certificate of insurance, on a form provided by the CDA, evidencing existence of the required insurance listed in Section 9.b (1) through (6) of the Operating Agreement, with the CDA and City being named as an additional insured. Tenant agrees to provide a copy of the certificate of insurance before the Agreement is executed by the CDA, and agrees to keep the required insurance in full force and effect throughout the Term of the Agreement.
6. Indemnification. The Tenant shall be liable to and hereby agrees to indemnify, defend and hold harmless the CDA and 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 CDA and 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 Tenant's acts or omissions in the performance of the Agreement or Operating Agreement, whether caused by or contributed to by the negligence of the CDA or City, and its officers, officials, agents, or its employees
7. Operations and Damage. The Tenant is responsible for the installation, use, maintenance, or presence of the bicycle-sharing Facility on the Property. The CDA is not responsible for any damage to the Tenant's Facility, and Tenant accepts all risks relating thereto, including but not limited to the risks of winter operations- such as any damage that may occur to the Tenant's Facility from snow removal activity at the Property.
8. Ordinance and Policy Compliance. Tenant agrees to abide by all ordinances and policies of the City in the operation of Madison B-Cycle, as they may be amended from time-to-time.
9. Termination/Removal of Facilities. The Tenant shall agree to remove the bicycle-sharing Facilities in the Premises upon ten (10) days written notice by the CDA. Additionally, the Tenant or the Tenant's heirs or assigns shall be entitled to no damages for removal of the bicycle-sharing Facility, and if the Tenant shall not remove the same upon due notice, it shall be removed at the Tenant's expense.
10. Restoration. After the Facility is removed, the Tenant shall agree to restore the Premises or other disturbed CDA land to its original condition. The CDA may charge the Tenant for its costs associated with restoring the CDA Property to its original condition if the Tenant fails to do so.
11. Signs. The Tenant agrees and acknowledges that all signs on the bicycle-sharing Facility equipment, including the bicycles, are subject to applicable City, state and federal law, and are specifically subject to the terms of the Operating Agreement. .
12. Waiver. In accepting the Agreement, the Tenant agrees to waive any and all right to contest in any manner the validity of Sec. 10.33, MGO or Wis. Stat. § 66.0425, or the amount of Rent charged by the CDA.
13. Annual Rent. Tenant shall pay an annual rent for each bicycle-sharing Facility location the greater of fifty (\$50) dollars per square foot or \$250. The Premise's total square foot area equals 160 square feet; therefore the annual rent is two hundred and fifty dollars (\$250) (the Rent"). Tenant shall pay the Rent to the CDA within ten days of executing the Agreement. Thereafter, the Rent shall be due annually twelve months after the effective date of the Agreement, which is the latest date that it is signed by the CDA.
14. Default. Except where specifically provided for in the Operating Agreement or the Agreement, in the event Tenant shall default in any of the covenants, agreements, commitments, or conditions

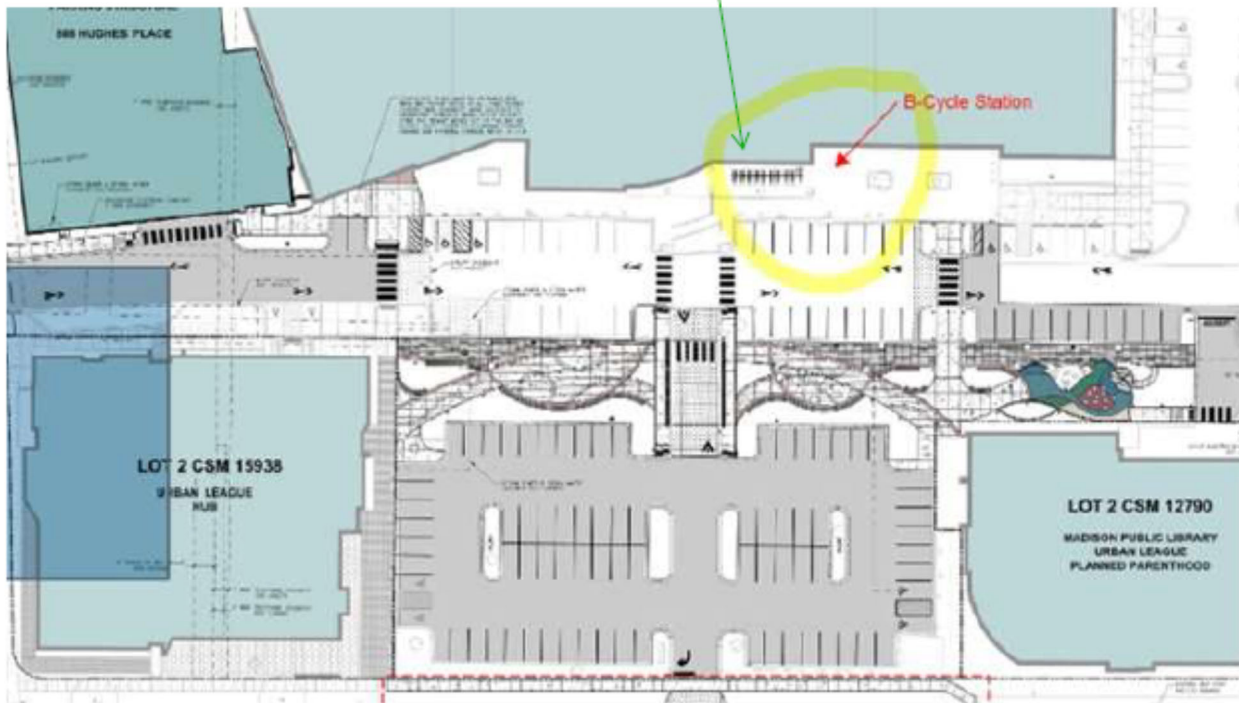
therein contained, or if any of the conditions set forth below in Subsection 10 (b) of the Operating Agreement shall occur, and any such default shall continue unremedied for a period of fifteen (15) business days after written notice thereof to Tenant, the CDA and City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against , including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate the Agreement or the Operating Agreement and all rights of Tenant thereunder.

BE IT RESOLVED that the Chair and Deputy Director of the CDA are hereby authorized to execute, deliver and record the Agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution in a land use agreement form approved by the City Attorney.

EXHIBIT A

The Premises

LOCATION OF THE PREMISES ON THE PROPERTY



THE PREMISES



