



Legislation Text

File #: 38532, Version: 2

Fiscal Note

Initial annual total rent, for the two leases, in year one (1) of \$28,777.00, will be deposited into the General Fund, Munis Charge Code 110020. Rent for the period through the last day of lease year five (5) shall be equal to 5% of the market value of the Leased Premises, based on the per square foot land value of the Owner's Property as last fixed by the City Assessor. Effective the first day of lease year six (6) and continuing on each anniversary thereafter throughout the Lease term and any renewal thereof, the annual rent shall be adjusted to reflect any change in the Consumer Price Index.

Title

SUBSTITUTE Authorizing the Mayor and City Clerk to execute Subterranean and Air Space Leases with 25 West Main Parking LLC, the owner of properties located at 25 West Main Street, 115 South Carroll Street and 126 South Carroll Street, to accommodate existing and proposed encroachments of certain subterranean and building features into the West Main Street, South Carroll Street and Doty Street public rights-of-way; and authorizing the Mayor and City Clerk to execute Notices of Termination pertaining to the existing Tunnel License and Encroachment Agreement pertaining to said properties.

Body

WHEREAS, 25 West Main Parking LLC (the "Owner") owns certain properties located at 25 West Main Street, 115 South Carroll Street, and 126 South Carroll Street (collectively, the "Owner's Properties"); and

WHEREAS, the Owner's Properties will be improved with a multi-story office building and an apartment building (individually, the "Building"); and

WHEREAS, the City and the Owner, as successor-in-interest to Anchor Savings & Loan Association, are parties to a certain unrecorded License for Pedestrian Tunnel, dated February 27, 1963 (the "Tunnel License"), which pertains to a subterranean pedestrian tunnel within the South Carroll Street public right of way connecting the Owner's Properties and

WHEREAS, the City and the Owner, as successor-in-interest to AnchorBank, S.S.B., are parties to a certain Encroachment Agreement, dated May 15, 1997, and recorded with the Dane County Register of Deeds on May 15, 1997 as Document No. 2853769 (the "Encroachment Agreement"), which pertains to the encroachment into the West Main Street and South Carroll Street public rights-of-way of the canopy/balcony and subterranean building area of the Owner's building at 25 West Main Street; and

WHEREAS, in connection with its recent purchase of the Owner's Properties, the Owner has requested that the City consolidate the Tunnel License and the Encroachment Agreement, as well as additional proposed building encroachments into two leases with a 50-year terms, one lease for 25 West Main Street and 115 South Carroll Street (Lease #1), and one lease for 126 South Carroll Street (Lease #2), as shown on Exhibit C; and

WHEREAS, the Owner and the City's Office of Real Estate Services have agreed to terminate the Tunnel License and Encroachment Agreement and have negotiated the terms and conditions of a Subterranean and Air Space Lease and agreed to enter into such leases in accordance with Wisconsin Statutes Section 66.0915 (4).

WHEREAS, the City Attorney's office has reviewed and approved the Subterranean and Air Space Leases as to form.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute two separate Subterranean and Air Space Leases ("Leases") with the Owner, 25 West Main Parking, LLC, (the "Lessee") i.e., one lease for 25 West Main Street and 115 South Carroll Street (Lease #1), and one lease for 126 South Carroll Street (Lease #2), to accommodate proposed and existing encroachments of certain subterranean features and Building features, including but not limited to, a pedestrian tunnel, subterranean Building areas, projecting bays, glass curtain walls and a grease trap (collectively, the "Encroaching Features") into portions of the West Main Street, South Carroll Street and West Doty Street public rights-of-way, subject to the following terms and conditions:

1. The "Leased Premises" shall consist of 2,221 square feet of subterranean space and 3,106 square feet of air space for Lease #1, and 182 square feet of subterranean space and 246.4 square feet of air space for Lease #2, as described below and depicted on Exhibit B. The Leased Premises are contiguous to or connected with the Owner's Properties.
2. The initial term of each Lease shall be for a period of 50 years. The Owner shall have the option to renew each Lease for an additional term of 49 years.
3. Rent payable for the first five (5) years of the initial period of each lease term shall be equal to five percent (5%) of the market value of the Leased Premises, based on the per square foot land value of the Owner's Property as last fixed by the City Assessor as described on Exhibit A.
4. Commencing in year six (6) of each lease and on each anniversary thereafter throughout the Lease term and any renewal term thereof, the annual rent shall be adjusted to reflect any change in the Consumer Price Index ("CPI").
5. The Owner shall be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interests in each Lease and the improvements located on the Leased Premises (which actions are collectively referred to herein as "Transfers"), but only if such Transfers are made simultaneously with the Transfer of the Owner's Properties to the same purchaser or transferee of the Leases and the improvements located on the Leased Premises.
6. No further construction, modification, improvement, alteration, or remodeling of the Leased Premises shall be undertaken without prior written approval of the City's Office of Real Estate Services, and any plans for any of the same are subject to written approval of the City's Office of Real Estate Services. In all cases, the Owner is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction activity.
7. The City shall have no responsibility or liability for any maintenance of the Leased Premises or improvements in the Leased Premises and the City shall have no responsibility or liability for any damage to the Leased Premises, improvements, facilities or contents, caused by moisture or water in any manner, and the Owner shall hold the City harmless therefrom.
8. Upon the expiration or termination of the Leases, the Lessee, at its sole cost, shall remove the improvements from the Leased Premises, including removal of the Tunnel consistent with MGO 10.31 (4). The City may waive or alter this removal requirement at its sole discretion.
9. The Lessee shall be required to 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 \$3,000,000 per occurrence.
10. The Lessee shall be liable to and shall 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 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 acts or omissions of the Owner or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

11. The Lessee shall represent and warrant that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Owner shall further agree to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.
12. The City shall have the right to terminate the Leases upon thirty (30) days written notice in the event of the Lessee's default.
13. If the City's Common Council determines that the public interest requires that the Encroaching Features Building be removed so that a street, road, alley or public place may be restored to its original condition, the City may condemn the Owner's interest in the Encroaching Features Building by proceeding under Ch. 32, Wis. Stats., and upon such taking, all rights of the Lessee hereunder shall immediately cease and terminate. After payment of any damages in the condemnation proceedings, the City may remove all Encroaching Features Building or other structures from the Leased Premises and restore the buildings adjoining the Leased Premises to their original condition.
14. The Lessee shall have the right, at its sole option, to terminate the Lease upon 180 days written notice.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute Notices of Termination pertaining to the Tunnel License and the Encroachment Agreement.

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are authorized to execute any other documents necessary to accomplish these Lease agreements.

Description of the Owner's Property

The Main Street Abutting Property:

All of Lot 1 and the Southwest 59 feet of Lot 2, Block 84, Original Plat, City of Madison, Dane County, Wisconsin

Parcel No.: 251/0709-242-0607-6

and;

All of Lots 9 and 10, Except the Northeast 7 feet of Lot 9, Block 84, Original Plat, City of Madison, Dane County, Wisconsin

Parcel No.: 251/0709-242-0616-7

The Carroll Street Abutting Property:

Parcel of Lots 2 & 3, Block 72, Original Plat, City of Madison, Dane County, Wisconsin

Parcel No. 251/0709-242-0902-0