



Legislation Text

File #: 46660, **Version:** 1

Fiscal Note

No fiscal or budgetary impact.

Title

Authorizing the execution of a Lease between the City of Madison and 727 Lorillard LLC for the installation and maintenance of a boundary fence along the WisDOT railroad corridor and North Shore Drive, at 727 Lorillard Court.

Body

WHEREAS, 727 Lorillard LLC (the "Lessor") is the owner of certain real property located at 727 Lorillard Court (the "Lessor's Property"); and

WHEREAS, the City of Madison (the "Lessee") is the owner of an adjacent property know as Brittingham Park, located at 201 Proudfit Street (the "Lessee's Property"); and

WHEREAS, the Lessor's Property and the Lessee's Property are both located along and adjacent to the former Union Pacific Railroad rail corridor (the "Corridor"), now owned by the State of Wisconsin Department of Transportation ("WisDOT"); and

WHEREAS, as part of a petition by the Lessee to install a bicycle/pedestrian crossing of the Corridor along North Shore Drive, WisDOT has required that the Lessee install and maintain a boundary fence between the Lessor's and Lessee's Property and said Corridor to help prevent pedestrians from crossing the active WisDOT rail line; and

WHEREAS, in order to provide an adequate space for the Lessee to install said boundary fence from the Lessor's Property to said bicycle/pedestrian crossing, the Lessor has agreed to provide a lease to the Lessee, at no cost to the Lessee, for an area along and adjacent to the Corridor and the Lessor's Property.

NOW, THEREFORE, it is mutually agreed as follows:

1. Lessor shall lease to the Lessee certain land area located on the Lessor's Property (the "Leased Premises") for the construction, maintenance and operation of a boundary fence adjacent to the WisDOT Corridor. The Leased Premises are described and depicted on attached Exhibits A and B, respectively.
2. Term. The Lease shall be for a term of ten (10) years. The Lease shall commence as of February 1, 2017 (the "Effective Date") and expire on January 31, 2027. The term "Lease Year" shall mean a full one (1) year period. The first Lease Year shall begin on the Effective Date. Each succeeding Lease Year shall begin on the anniversary of the Effective Date.
3. Renewal. The Lease shall have two (2) successive extension periods of 10 years each; Lessee shall give written notice six (6) months prior to exercising an extension option.
4. Rent. Annual rent shall be one dollar and other valuable consideration.
5. Conditions of Premises.

- a. The Premises will be accepted by the Lessee in its "as is" condition upon the commencement of the term of the Lease.
 - b. The boundary fence improvements and construction done by the Lessee must be approved by the Lessor, and shall be performed by the Lessee at the Lessee's expense. The Lessee's boundary fence improvements shall comply with all applicable federal, state and local laws, statutes, regulations and ordinances and shall be done in a workmanlike manner.
6. Use. The Leased Premises will be used for a boundary fence, the design of which is subject to the Lessor's approval, which shall not be unreasonably withheld. No signage is permitted on the fence without the Lessor's approval.
7. Special Conditions.
- a. No buildings or other structures shall be erected upon the Leased Premises.
 - b. The Lessee shall in no way encumber, or allow to be encumbered, the Lessor's title to the Leased Premises.
 - c. The Lessee shall be responsible for cleaning and maintaining the Leased Premises, and the boundary fence and any area adjacent to said fence which may be affected by the said fence. The Lessor will grant the Lessee a non-exclusive license for reasonable access to the Leased Premises from the Lessor's adjacent property for maintenance purposes.
 - d. The Lessor will have the right to terminate the Lease if the Lessee does not obtain necessary approvals to erect the boundary fence.
 - e. Upon the expiration or termination of this Lease, pursuant to Paragraph 10, the Lessee, at the Lessee's cost, shall remove from the Leased Premises the improvements installed by the Lessee. The Lessee shall also restore the Leased Premises to a condition equivalent to that which existed prior to the date that the Lessee first occupied the Leased Premises. Removal and restoration shall be accomplished within sixty (60) days of expiration or termination of this Lease, except as may be adjusted by the City to allow for winter conditions. The expiration or termination of this Lease shall not become effective until removal and restoration has been accomplished to the satisfaction of the Lessor; however, during such removal and restoration period the Lessee's right to use the Leased Premises shall be limited to removal and restoration activities. In the event the Lessee fails to accomplish said removal and restoration, the Lessor may cause the removal and restoration to be accomplished at the Lessee's expense and with no liability or cost to the Lessor. The Lessor may waive or alter this removal requirement at its sole discretion.
8. Liability. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Lease. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. 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. This paragraph shall survive the termination or expiration of this agreement.
9. Compliance. The Lessee shall observe and promptly and effectively comply with all applicable statutes,

rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises. The Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same.

10. Termination.

a. The Lessor shall have the right, at its sole option, to declare this Lease void, terminate the same, reenter and take possession of the Leased Premises under the following conditions:

- (1) By giving the Lessee a minimum of thirty (30) days' written notice of termination in the event the Lessee defaults in the performance of any term or condition of this Lease.

The termination shall not be effective, if within such thirty (30) day period, the event giving rise to the Lessee's right to terminate ceases to exist. In the event of a breach of a term, covenant or condition of 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 Lessee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Lessee 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. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the Lessor.

- (2) If the whole or any part of the Leased Premises shall be taken by Federal, State, county, city, or other authority for public use, or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of the Leased Premises, or any part thereof, the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages therefore except that the rent shall be adjusted as of the date of such termination of this Lease.

b. The Lessee shall have the right, at its sole option, to terminate this Lease by giving the Lessor a minimum of one hundred eighty (180) days written notice of termination and by complying with Paragraph 7(e).