



Legislation Text

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Fiscal Note

Metro's adopted 2017 operating budget provides for the anticipated rental costs of the proposed lease at 1245 E. Washington Avenue. The budgeted amount encompasses the cost increase for the expanded administrative space in the East wing of the facility at an annualized budgeted rent amount of \$248,258, which considers the partial year occupancy and variable rate structure encompassed in the first year as outlined in the lease agreement. Subsequent Metro operating budgets will reflect the fixed annualized increases in rent costs as specified in this lease agreement.

Title

Authorizing the execution of a lease between the City and Washington Gilman Limited Partnership and Mullins Family, LLC (collectively, the "Lessor") to provide administrative office space for Metro Transit at 1245 E. Washington Avenue.

Body

WHEREAS, Washington Gilman, L.P. and Mullins Family, LLC (the "Lessor") is the owner of the building located at 1245 East Washington Avenue (the "Building"); and

WHEREAS, Metro Transit ("Metro") currently leases the entire west wing of the second floor in the Building per the lease dated August 1, 2008, and Suites 212 and 214 in the east wing of the second floor of the Building per the lease dated February 1, 2016. Both leases are collectively known as (the "Existing Leases"); and

WHEREAS, both of the Existing Leases expire on December 31, 2016; and

WHEREAS, the City desires to enter into a new lease with the Lessor to expand into the entire east wing of the second floor and continue to occupy the west wing (the "Leased Premises"). In connection with this expansion, the Leased Premises needs remodeling which will be described below; and

WHEREAS, the City and the Lessor have negotiated terms and conditions for a new lease, as set forth below.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease (the "Lease") with Washington Gilman Limited Partnership and Mullins Family, LLC (collectively, the "Lessor"), for office space within a building located at 1245 East Washington Avenue (the "Building") to house the Metro Transit's ("Metro") administrative offices, in-house advertising program and paratransit program, subject to substantially the following terms and conditions:

- 1. Leased Premises.** From January 1, 2017 through April 30, 2017 the "Leased Premises" shall consist of the area described in the Existing Leases, which equates to 10,803 square feet ("s.f."). Commencing on May 1, 2017 the "Leased Premises" shall consist of the entire east wing and west wing of the second floor of the Building totaling 15,325 net rentable s.f. as depicted on the attached Exhibit A.
- 2. Term.** This Lease shall be for a term of fifteen (15) years (the "Initial Lease Term"), subject to early termination pursuant to the terms of this Lease. The Initial Lease Term shall commence on January 1, 2017 (the "Commencement Date") and expire on December 31, 2031.
- 3. Gross Lease.** This Lease shall be a gross lease. For purposes of this Lease, the term "Gross Lease" means that the Lessor shall pay all real estate taxes, special assessments, fire and extended coverage

insurance, maintenance costs, janitorial expenses, all utility expenses including electricity, heat, water and sewer and all other costs pursuant to terms and conditions of this Lease for the Leased Premises, Common Areas and the Property.

4. Rent. For the first four months of the Initial Term, the Gross Rent shall be based on 10,803 square feet of space per the Existing Lease. The "Gross Rent" shall be payable at the rate of \$16.30 per square foot per year. This equates to \$14,674.08 per month during the first four months of the Initial Term. Thereafter construction will commence on the Lessor's Work as defined in Paragraph 10 below.

During the construction period for the Lessor's Work, the Gross Rent shall be calculated on the area the City is occupying. For instance, construction will commence in the east wing; therefore the City shall pay Gross Rent on the west wing area of 9597 s.f. times the \$16.30 per s.f. per annum rate divided by 12 or \$13,035.93 per month. When Lessor's Work is completed in the east wing, the City shall relocate to the east wing while construction is being done in the west wing. The monthly Gross Rent for the east wing during its occupancy, which is 5728 s.f. shall be \$7,780.53. While the work is being done on the west wing, the City can use the second floor lobby/hall and reception desk (617 s.f.) and pay a pro rata rent of \$16.30 per s.f. per annum for this area or \$838.09 per month. The Gross Rent during the construction phase of the Lessor's Work will be pro-rated on a daily basis by the occupied area.

After Lessor's Work is completed the Gross Rent shall be based on 15,325 s.f. times the applicable Gross Rent per the Rental Period. The Gross Rent shall be payable in equal monthly installments, and is due on the first day of each calendar month, as set forth by the Rent Table. Gross Rent shall escalate at 3% per annum in calendar years two through ten and 3.5% per annum in calendar years eleven through 15 as set forth in the Rent Table. In the event the City exercises its renewal options defined below in Paragraph 5, then the Gross Rent shall continue to escalate at 3.5% per annum as described in the Rent Table.

Additional Rent is due to the Lessor in connection with the Lessor's Work described in Paragraph 10 below. The monthly additional rent is Two Thousand Nine Hundred and Four dollars and 92/100 (\$2,904.92) (the "Additional Rent"). The Additional Rent shall commence when the Lessor's Work as described in Paragraph 10 is completed and a certificate of occupancy is issued for the Leased Premises, and will expire on upon the one hundred eightieth (180th) consecutive monthly payment thereof. On December 1, 2031 the City shall pay the Lessor the remaining Additional Rent balance due, which equates to: Five Hundred and Twenty Two Thousand and Eight Hundred Eighty Five and one cent (\$522,885.01) less the number of Additional Rent payments made by City to Lessor during the Initial Lease Term.

The Additional Rent is not subject to the above-referenced annual rent escalators during the Initial Term or the Option Terms described in Paragraph 5 below. Additional Rent may be prepaid without penalty at any time. Should the City terminate this Lease for any reason prior to December 31, 2031, then the City shall reimburse the Lessor for the unamortized cost of the Lessor's Financed Amount ("LFA"), which has an original principal amount of Three Hundred Forty Four Thousand Two Hundred Forty Three dollars (\$344,243). Said LFA shall be amortized over 15 years based on an interest rate of six percent (6%) per annum for purposes of such amortization.

5. Option to Renew. If, at the end of the Initial Lease Term, the City is not in default under the terms and conditions of this Lease, then the City shall have two (2) successive options to extend this Lease for additional terms of five (5) years each (individually "Option Term 1" and "Option Term 2"; together the "Option Terms"), under the same terms and conditions provided in the Initial Lease Term, except that Gross Rent during the Option Terms shall be as set forth in the Rent Table.

At least fourteen (14) months prior to the expiration of the Initial Lease Term or Option Term 1, if

applicable, the Lessor shall advise the City in writing of the impending expiration of the Lease and of the City's right to renew the Lease in accordance with the terms of this paragraph. If the City desires to renew this Lease, the City must give notice in writing to the Lessor a minimum of twelve (12) months prior to the expiration of the Initial Lease Term or Option Term 1.

If City exercises Option Term 2, then Lessor will provide the City with an allowance of up to One Hundred Thirty Five Thousand Dollars (\$135,000) for the City's painting and carpeting of the Leased Premises. The City will notify Lessor in writing of the timing of the work and colors of the paint/carpet after City exercises Option Term 2.

6. Use. The City shall occupy and use the Leased Premises for general office operations pertaining to the administration of bus and other transportation services. During the Term of the Lease, including any extensions or renewals thereof, Metro shall have the exclusive use of Lessor's systems furniture located in the east wing of the Second Floor of the Building as of the Commencement Date ("Lessor Property").
7. Common Areas. The Lessor grants to the City and the City's employees, agents, customers, invitees, vendors, licensees, and contractors the right to use, in common with all others to whom the Lessor has or may hereinafter grant rights to use the same, the "Common Areas" located on the Property. The term "Common Areas" is defined as the parking lot area, sidewalks, driveways, reception area, elevator, interior hallways, restrooms, stairwells, and all other areas or improvements which may be provided by the Lessor for the common use or benefit of the occupants of the Building and their invitees. The Lessor, at its expense, shall also keep and maintain the Common Areas in good condition and repair. Maintenance and management services provided by the Lessor for the Common Areas shall include cleaning, repairs and replacements, maintenance, lighting, insurance, parking lot striping, landscaping, snow and ice removal, payment of all real estate taxes, assessments, and special assessments relating to the Property, and the provision of water, sewer, and other applicable utility services to the Property.
8. Parking. The City shall be entitled to the use of forty three (43) parking stalls located on the Property on a non-exclusive basis. The Lessor shall maintain a ratio of parking stalls to office space on the Property that will provide forty three (43) non-exclusive parking stalls for the City's use. Parking shall be in common with the other occupants of the Building.
9. Assignment and Subletting. The City shall not assign, mortgage, pledge, sell, or in any manner transfer this Lease or any estate or interest hereunder and shall not sublet the Leased Premises or any part or parts thereof, without the prior written approval of the Lessor. Notwithstanding the foregoing, the City may assign this Lease or sublet the Leased Premises without the Lessor's consent to another governmental agency or entity or to another similar service agency. Any profit (monetary or in kind) from a sublet or assignment shall be shared evenly between the City and the Lessor.
10. Construction Work.
 - a. The Lessor shall complete the improvements comprising "Lessor's Work" on a turnkey basis. The Lessor shall pay for all costs for Lessor's Work. Lessor's Financed Amount is a guaranteed maximum cost to City, unless it is due to a written change order requested by the City. Any costs associated with change orders requested by the City to the Lessor to the Mark A. Henrichs-Architect base plans dated April 29, 2016 (as revised on June 17, 2016, July 11, 2016, and July 25, 2016) shall accrue to the City. The improvements comprising the Lessor's Work shall be the property of the Lessor. Lessor shall start construction on April 1, 2017 or as soon as reasonably possible thereafter and stage Lessor's Work.
 - b. Lessor will provide City with an allowance of up to One Hundred Thousand Dollars (\$100,000) for

the City's painting and carpeting of the Leased Premises in the tenth (10th) year of the Initial Lease Term. The City will notify Lessor in writing of the timing of the work and colors of the paint/carpet.

11. Installation and Operation of Telecommunications Equipment.

- a. The City acknowledges that the Lessor has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Building and to telecommunications service providers.
- b. The City shall have the right to install a wireless fiber optic intranet, internet, and communications network (also known as "Wi-Fi") within the Leased Premises for the use of the City and its employees and clients/customers (the "Network"), under the following terms and conditions:
 - (1) The City shall not solicit, suffer or permit other tenants or occupants of the Building to use the Network or any other communications service, including without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Leased Premises.
 - (2) The City agrees that the City's communications equipment and the communications equipment of the City's service providers and contractors located in the Leased Premises or installed in the Building to service the Leased Premises including, without limitation, any antennas, switches or other equipment (collectively, "City's Communications Equipment") shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party in the Building including, without limitation, the Lessor and other tenants or occupants of the Building.
 - (3) In the event any communication equipment located on the Property, other than the City's Communication Equipment, causes the inability to effectively use the City's Communications Equipment, the City shall so notify the Lessor and the Lessor shall take all measures reasonably necessary to correct and eliminate the interference. Such measures by the Lessor to correct and eliminate the interference may include adjustments or other work on the City's Communication Equipment, so long as such adjustments do not materially diminish the City's use of such equipment. If the interference cannot be eliminated within five business (5) days after the Lessor has received notice of the interference, the Lessor shall cause the operation of such interfering equipment to immediately cease and such interfering equipment shall not resume operation until the cause of interference has been eliminated. If the interference is not eliminated within ten (10) days following notice of interference by the City to the Lessor, the City shall have the option to terminate this Lease upon thirty (30) days notice to the Lessor. Any rent that has been prepaid for the period following the termination date shall be prorated on a per diem basis and refunded to the City.

12. Utilities, Maintenance and Repairs.

- a. Lessor's Responsibilities.
 - (1) The Lessor shall pay all operating and maintenance expenses relating to the Leased Premises including, but not limited to, lighting, electricity, heating, air conditioning, water, sewer service, janitorial and administration.
 - (2) The Lessor, at its cost, shall keep the foundations; roof; sewer system; concrete floors; structural portions of the walls, windows; and all other structural members, both interior and

exterior, of the Leased Premises, in good order, condition and repair, and shall make any repairs/replacements and do such painting of the exterior as may be required, shall keep and maintain the interior of the Leased Premises in good order and condition, including all partitions, doors, door locks, door closers, door operating devices, glass, floor coverings, fixtures (including bulbs and ballasts), heating, air conditioning, plumbing and electrical equipment and appurtenances owned by the Lessor, and shall do such periodic maintenance of the Leased Premises, including such periodic cleaning of the interior of the Leased Premises, as may be required.

- (3) The term "repairs" shall include replacements or renewals when necessary and all such "repairs" shall be equal in quality and class to the original work. Notwithstanding the foregoing, the City shall be responsible for the cost and expenses of repairs/replacements required by reason of acts or omissions of the City, the City's employees, agents, invitees, vendors, licensees or contractors. The City shall give the Lessor written notice of the necessity for repairs/replacements coming to the attention of the City, following which the Lessor shall have a reasonable time to undertake and complete such repairs. For the purposes of so maintaining the Leased Premises, the Lessor reserves the right, upon a minimum of 24 hours notice and at times reasonable for the City, to enter and inspect the Leased Premises and to make any necessary repairs thereto, or at any time in the event of an emergency.
- (4) The Lessor shall provide, at its expense, janitorial services for the Leased Premises.

b. City's Responsibilities.

- (1) The Lessor shall allow the City to install independent and dedicated telephone and data/computer communication services and security cameras in the Leased Premises at locations to be agreed upon by the parties. The City shall pay for the installation, use, maintenance and repair of all such installations.
- (2) The City shall furnish carpet guard chair mats beneath each desk in all carpeted areas of the Leased Premises. In the event the City does not use such chair mats, the City shall pay a monthly charge of \$25.00 per missing chair mat to compensate the Lessor for the extra wear and tear of the carpeting over the life of the Lease. Such additional charge shall be included with the City's monthly rent payment.

13. Taxes and Assessments. The Lessor shall be responsible for all property taxes, assessments and special assessments that accrue to the Leased Premises. The City shall be responsible for any personal property taxes levied against its personal property located in the Leased Premises.

14. Insurance.

a. Insurance by the Lessor.

- (1) The Lessor shall obtain prior to the occupancy of the Leased Premises by the City and shall maintain through the expiration or termination of this Lease, the following insurance coverages: A policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the Lessor insuring the Property, including the Leased Premises and all appurtenances thereto (excluding the City's inventory, trade fixtures, furniture, furnishings, equipment and personal property) for the full insurable replacement value thereof, with such a deductible not to exceed \$25,000.00.

(2) The Lessor shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability as may be amended, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 combined single limits per occurrence.

b. Insurance by the City.

(1) The City shall maintain, at its sole cost, throughout the Initial Lease Term and any extension thereof personal property insurance in an amount to cover any and all loss or damage to the City's personal property located within the Leased Premises.

(2) The City shall maintain throughout the Initial Lease Term, including any extensions or renewals thereof, commercial general liability insurance, including contractual liability, with no less than the following limits of liability: bodily injury, death and property damage of \$1,000,000 combined single limits per occurrence.

15. Termination.

a. The Lessor may terminate this Lease with a minimum of 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 a minimum of 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. In the event of any default under the terms of this Lease by either party, and in lieu of terminating this Lease as herein provided, the Lessor or the City may immediately or at any time thereafter, after having given the other party the requisite notice to correct the same and the time for such correction having elapsed (or without notice in case of an emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), cure such breach for the account and at the expense of the other party. If the Lessor or the City at any time, by reason of such default, is compelled to or elects to correct such default, the reasonable sum paid or incurred by such party to correct such default shall, if paid or incurred by the Lessor, be deemed to be additional Gross Rent hereunder and shall be due to the Lessor on the first day of the month following payment of such respective sum, and, if paid or incurred by the City, shall be deducted from the City's next payment(s) of rent. The Option Terms herein given to the parties are intended for their protection and its existence shall not release the parties from the obligation to perform the terms and covenants herein provided to be performed by the respective parties or deprive either party of any legal rights which may arise by reason of any default.

16. Signs. There are currently two free standing monument signs on the Property situated along East Washington Avenue: one that is northwest of the main entrance to the Building (“Northwest Monument”); and another that is northeast of the main entrance to the Building (“Northeast Monument”). Metro has a sign on the Northwest Monument. Lessor has agreed to allow Metro to use the Northwest Monument during the Initial Lease Term and Option Terms if applicable. The existing sign may not be changed or altered by either Metro or the City without Lessor’s prior written consent.

17. Rules and Regulations. The City agrees to observe and comply with, and the City agrees that its agents and all persons visiting in the Leased Premises will be requested to observe and comply with, all rules and regulations which the Lessor may reasonably deem necessary for the reputation, safety, care and cleanliness of the Building, Property and Common Areas and the comfort, quiet and convenience of other occupants of the Building, which rules and regulations shall be deemed terms and conditions of this Lease.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute the Lease and all additional documents on forms that are approved by the City Attorney’s office that may be required to complete this transaction.