



Legislation Text

File #: 52652, Version: 1

Fiscal Note

The proposed resolution authorizes execution of a second amendment to the Lease with 910 Mayer LLC (the "Lessor"), to house the Metro Transit's north transfer facility and park and ride lot for 10 years, starting on October 5, 2018 and ending on October 4, 2028, unless otherwise terminated earlier or renewed. Within ten days of executing this Second Amendment to the Lease, the City ("Lessee") agrees to pay the Lessor \$45,927, which represents the annual rent payment for the Lease Year ending October 4, 2019. Lessee shall pay Lessor the Annual Rent Payments as noted on attached Exhibit A, on or before October 5th of each Lease Year during the Term. The annual rent payment required after execution of the amendment is included in Metro's 2018 Adopted Operating Budget and subsequent annual rent payments will continue to be included in Metro's future operating budgets subject to Common Council approval.

Title

Authorizing the execution of a second amendment to the lease between the City (the "Lessee") and 910 Mayer LLC (the "Lessor") with respect to leasing land for Metro Transit's north transfer facility and park and ride lot.

Body

WHEREAS, the Lessee and the Lessor are parties to that certain lease, dated October 15, 1997 and recorded on November 7, 1997, with the Dane County Register of Deeds as Document No. 2904822; amended by the First Amendment to Lease on October 4, 2003 and recorded with the Dane County Register of Deeds as Document No. 3868193 on January 30, 2004; amended by an Affidavit of Correction on February 18, 2004 and recorded with Dane County Register of Deeds as Document No. 3881345 on March 8, 2004 (collectively the "Lease"); and

WHEREAS, the parties desire to amend the Lease to reflect the exercise of the renewal option described in Paragraph 7 of the Lease with the following additional terms.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a second amendment to the Lease with 910 Mayer LLC (the "Lessor"), to house the Metro Transit's north transfer facility and park and ride lot subject to substantially the following terms and conditions:

1. The following sentence will be added to the end of Paragraph A. 1:

The Leased Premises includes 4086 square feet on Outlot 2 of Burke Assessors Plat No. 1, which is now known as 1910 Roth Street (parcel number 081031304041).

2. Paragraph A.3. is deleted in its entirety and replaced with the following:

3. Lessor and Lessee wish to enter into this Lease for use of the Premises for a period ending midnight October 4, 2028.

3. Paragraph B.5 is deleted in its entirety and replaced with the following:

5. Term. The term of the Lease shall be for ten (10) years. The term shall commence on October 5, 2018 (the "Commencement Date") and shall end at 12:00 midnight on October 4, 2028, unless otherwise terminated earlier hereunder or renewed under Paragraph 7. The term "Lease Year" shall mean a full one (1) fiscal year period. The First Lease year shall begin on the Commencement Date.

4. Paragraph B.6 is deleted in its entirety and replaced with the following paragraphs:

6. Within ten days of executing this Second Amendment to the Lease, Lessee agrees to pay Lessor the amount of Forty Five Thousand and Nine Hundred Twenty Seven Dollars (\$45,927), which represents the annual rent payment for the Lease Year ending October 4, 2019. Lessee shall pay Lessor the Annual Rent Payments as noted on attached Exhibit A, on or before October 5th of each Lease Year during the Term.

Payment shall be made payable to 910 Mayer LLC or to such other entity as Lessor may designate in writing.

5. Paragraph B.7 is deleted in its entirety and replaced with the following paragraphs:

7. **Renewal.** If, at the end of the Initial Lease Term or Option Term 1 if applicable, the Lessee is not in default under the terms and conditions of this Lease, then the Lessee shall have three (3) successive options to extend this Lease for additional terms of five (5) years each (individually "Option Term 1" , "Option Term 2" and "Option Term 3"; together the "Option Terms"), under the same terms and conditions provided in the Lease Term, except that the Annual Rent Payment during the Option Terms shall be as set forth in Exhibit A.

If the Lessee desires to renew this Lease, Lessee must give notice in writing to the Lessor a minimum of one hundred eighty (180) days prior to the expiration of the Initial Lease Term or then exercised Option Term. All notices under this paragraph shall be given as specified in Paragraph 34 of this Lease.

6. Paragraph B.18 is deleted in its entirety and replaced with the following:

18. Insurance by City. 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 property (real and personal) located at the Premises. In addition, the City shall carry commercial general liability coverage with an aggregate limit of \$5,000,000, and will provide Lessor with evidence of coverage. Upon request, the City will provide evidence of such coverage.

7. Paragraph B.19 is deleted in its entirety and replaced with the following:

19. Insurance by Lessor. Beginning on the Lease Commencement Date and continuing throughout the term of the Lease, the Lessor shall carry commercial general liability insurance covering as named insured the Lessor, with a minimum limit of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement. As evidence of this coverage, the Lessor shall furnish the City with a certificate of insurance.

8. Paragraph B.20 is deleted in its entirety and replaced with the following:

20. Indemnification. 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 Agreement. 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. Paragraph B.21 is deleted in its entirety.

10. Paragraph B.34 is deleted in its entirety and replaced with the following paragraphs:

34. Notices. All notices to be given under the terms of this Lease shall be in writing, signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the Lessor: 910 Mayer, LLC
 15 Reservoir Road
 White Plains, NY 10605
 Attention: Marc Esrig
 Vice President of Real Estate

For the City: City of Madison
 Economic Development Divison
 Office of Real Estate Services
 Attn: Manager
 P.O. Box 2983
 Madison, WI 53701-2983

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address shown above to which notice shall be given.

11. The following Paragraph B.45 is added to the Lease:

45. Right of First Offer to Purchase. In the event that Lessor desires to sell the Premises and/or 1910 Roth Street ("Roth") (that is owned by Lessor), Lessor shall first offer to sell the Premises and/or Roth to Lessee by delivering a written offer ("Offer"), which Offer shall specify the terms of sale including the following:

1. A minimum due diligence period of sixty (60) days ("Due Diligence Period").
2. Closing to occur within fifteen (15) days of the end of the Due Diligence Period.
3. Warranty deed.
4. City is not responsible for any brokerage fees relating to any sale.

If Lessee elects to accept the Offer subject to the above-terms, it must deliver written acceptance of the Offer within sixty (60) days after Lessee's receipt of the Offer ("Acceptance Date"). Lessee's failure to deliver to Lessor such written acceptance of the Offer by the Acceptance Date shall be deemed a rejection of the Offer and Lessee shall have no further right of first offer for the Premises and/or Roth.

- (i) This Right of First Offer shall be binding upon Lessor and any successors, assigns or transferees of Lessor.

This Right of First Offer is personal to Lessee and may not be assigned or transferred by Lessee.

12. The following Paragraph B.46 shall be added to the Lease:

46. Right of First Offer to Lease Roth:

In the event that Lessor desires to lease Roth, Lessor shall first tender to Lessee a written offer ("**Lease Offer**"), which shall specify the following lease terms upon which the Lessor will be marketing Roth to the public:

1. Term of lease and any extension options ("**Term**");
2. Rent during the Term. The rent paid under the tendered Lease Offer shall be over and above the rent paid under the terms of the existing Lease except that no rent shall be paid on the 4086 square feet of the Roth parcel that is currently being leased by the City pursuant to the Lease. In addition, no rent shall be paid for nine (9) months after Lessee's written acceptance of Lease Offer to Lessor (as defined) below so it can improve the site with a parking lot at Lessee's sole expense;
3. Additional rent relating to real estate taxes and utilities;
4. Concessions including free rent or improvement allowances;

If Lessee elects to accept the Lease Offer subject to the above-provisions, it must deliver written acceptance of the Lease Offer within sixty (60) days after Lessee's receipt of the Lease Offer ("**Acceptance Date**"). Lessee's failure to deliver to Lessor such written acceptance of the Lease Offer by the Acceptance Date shall be deemed a rejection of the Lease Offer, and Lessee shall have no further right of first offer to lease Roth, unless Lessor cannot lease Roth to the public upon the terms stated in the Lease Offer. Further, any material changes negotiated between Lessor and a third party, including but not limited to Term or Rent, shall require that Lessor resubmit the Lease Offer upon the new terms.

This Right of First Lease Offer shall be binding upon Lessor and any successors, assigns or transferees of Lessor.

This Right of First Lease Offer is personal to Lessee and may not be assigned or transferred by Lessee.

13. All other provisions of the Lease remain in full force and effect.

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.