



Legislation Text

File #: 57227, Version: 1

Fiscal Note

The proposed resolution authorizes execution of a lease for the continued use of City-owned property for parking purposes. Annual rent payable for the first lease year shall be approximately \$32,400 and deposited into the General Fund. Rent shall be subject to a three percent annual increase.

Title

Authorizing the Mayor and City Clerk to execute a lease with Collegiate Gothic Associates Limited Partnership et al. allowing for the continued use of a portion of the City-owned transportation corridor parcel located at 650 West Washington Avenue for parking purposes. (8th A.D.)

Body

WHEREAS, the City owns a fifty-foot wide strip of land, addressed as 650 West Washington Avenue and more particularly described on attached Exhibit A and depicted on Exhibit C (the "City's Property"), which property was dedicated to the City for future street highway and parkway purposes in 1989 by the plat of West Madison Depot and is currently partially improved as a multi-use pedestrian and bicycle path; and

WHEREAS, on August 20, 2007, the City entered into a 10-year lease (the "Original Lease") with the owners of four contiguous properties adjacent to the City's Property, as follows: 780 Regent Street (Owner: Collegiate Gothic Associates Limited Partnership), 740 Regent Street (owner: 740 Regent Street Associates), 700 Regent Street (owner: 700 Regent Street Associates), and 660 West Washington Avenue (owner: City Station Associates Limited Partnership); and

WHEREAS, such properties are hereinafter collectively referred to as the "Original Benefitting Properties" and the owners are hereinafter collectively referred to as the "Original Lessees;" and

WHEREAS, the Original Lease allows the Original Lessees to use a portion of the City's Property (the "Original Leased Premises") for private parking purposes, which use is ancillary to the various business operations at their respective Original Benefitting Properties; and

WHEREAS, one of the Original Benefitting Properties - the property located at 780 Regent Street - has been subdivided by Certified Survey Map No. 15202 recorded in Vol. 108 of Certified Survey Maps, Pages 84-89, Doc. No. 5509703, and ownership of Lot 2 of said Certified Survey Map (the "MDI Property") has been transferred to an unrelated third party: MDI Regent Madison Hotel, LLC ("MDI"); and

WHEREAS, MDI is currently an additional lessee under the Original Lease pursuant to that certain Partial Assignment of Lease dated August 2, 2019, and recorded with the Dane County Register of Deeds as Document No. 5510680 (the "Partial Assignment"); and

WHEREAS, MDI plans to redevelop the MDI Property and desires to use the adjacent portion of the City's Property for the purpose of constructing, operating and maintaining private open space, walkway, storm sewer and landscaping, which use shall be ancillary to the hotel business operations at the MDI Property; and

WHEREAS, the Original Lessees and MDI are all in agreement with replacing the Original Lease with two new leases: one to allow MDI to exclusively lease the portion of the City's Property adjacent to the MDI Property (the "MDI Lease"); and a Lease allowing the Original Lessees to re-lease the rest of the Original Leased

Premises to continue with the parking arrangement contemplated by the Original Lease; and

WHEREAS, the Original Lease will be terminated contemporaneously with such new leases; and

WHEREAS, City of Madison Engineering Division staff, the City Attorney's Office, and the Risk Manager have all reviewed and approve of the new lease arrangement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease (the "Lease") with Collegiate Gothic Associates Limited Partnership; 740 Regent Street Associates; 700 Regent Street Associates; and City Station Associates Limited Partnership (individually, a "Lessee" and collectively, the "Lessees"), subject to the following terms and conditions:

1. With respect to the Lessees' interest in the Original Lease, the Original Lease shall automatically terminate effective as of midnight of the day immediately preceding the "Effective Date" of the Lease.
2. The "City's Property" and the Lessees' "Benefitting Properties" are described on attached Exhibits A and B, respectively, and along with the Leased Premises are depicted on attached Exhibit C. The Leased Premises is improved with asphalt pavement and consists of approximately 31,772 sq. ft. The actual square footage shall be confirmed via a site plan to be provided by the Lessees.
3. The Lease shall be for a term of ten (10) years. The Lease will automatically continue for successive terms of one (1) year each, unless otherwise terminated in accordance with the provisions of the Lease.
4. Annual rent payable to the City during Lease Year 1 shall be \$1.02 per square foot. Beginning on the first anniversary of the Effective Date of the Lease and on each anniversary date thereafter, including any renewal period(s), the annual rent shall increase by three percent (3%) per year compounded annually.
5. The Lessees shall use the Leased Premises for the maintenance and operation of the existing parking lot (the "Parking Lot Improvements"), including a dumpster enclosure ("Dumpster Enclosure"), which use shall be ancillary to their various business operations at the Benefitting Properties, located at 780 Regent Street, 740 Regent Street, 700 Regent Street and 660 West Washington Avenue, Madison, Wisconsin. The Leased Premises shall be used exclusively by the Lessees and the employees, tenants and invitees of the Lessees' business operations at the Benefitting Properties. Except as provided in Paragraph 6, the Leased Premises shall not be used for parking by the general public, with general public defined as all persons other than the Lessees and the employees, customers and vendors of the Lessees' business operations at the Benefitting Properties.
6. The Lessees shall not sublet the Leased Premises, or any portion thereof, except as follows:
 - a. The Lessees may rent the parking spaces on the Leased Premises to tenants of the Benefitting Properties; and
 - b. The Lessees may sublet the Leased Premises to (i) the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison for use as parking during UW sporting and special events at the Kohl Center; and (ii) members of the general public for use as parking during other events held at the Kohl Center and the UW Southeast Recreational Facility, such as high school commencement ceremonies and events sponsored by the Wisconsin Interscholastic Athletics Association (WIAA).
7. A Lessee shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant or convey its interests in the Lease and the improvements located on the Leased Premises (which actions are collectively referred to herein as "Transfers"), but only if

such Transfer is made simultaneously with the Transfer of the particular Lessee's Benefitting Property to the same purchaser or transferee of the Lease and the improvements located on the Leased Premises. Furthermore, foreclosure of any such mortgage, pledge or encumbrance shall also be a Transfer permitted hereunder, subject to the restriction that the leasehold interest shall not be severed from the ownership of the Benefitting Property. All such Transfers shall be subject to all of the terms of the Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of a Lessee's right, title and interest in and to the Lease shall be considered as having assumed and become bound by all of such Lessee's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as such Lessee or prior transferee.

8. The Lessees shall, at their own expense, keep and maintain the Leased Premises in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, repaving, repairs, storm sewer maintenance and repair, snow and ice removal, removal of garbage and debris, and landscape upkeep. No exterior storage of materials or equipment is permitted on the Leased Premises except the temporary and orderly placement of items in conjunction with construction, maintenance or repair activities.
9. The Lessees shall supervise, regulate and maintain the Leased Premises to permit parking only on striped parking stalls included in the Parking Lot Improvements.
10. To the extent not otherwise exempt, the Lessees shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
11. The Lessees shall be solely responsible for and promptly pay all charges for water, electricity, sewer, storm water, and any other utility used upon or furnished to the Leased Premises.
12. The City shall have the right to terminate the Lease upon a minimum of one hundred eighty (180) days written notice, in the event the Leased Premises in the sole discretion of the governing body of the City are desired for public purposes. The Lessees shall have the right, at their sole option, to terminate the Lease by giving the City a minimum of thirty (30) days written notice of termination.
13. The Lessees shall be liable to and 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 Lessees or their officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the Lease.
14. Each Lessee shall carry commercial general liability insurance covering as insured such Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 minimum per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. 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 the Lease. As evidence of this coverage, each Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, each Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above for any of the Lessees expires while the Lease is in effect, such Lessee shall provide a renewal certificate to the

City for approval.

15. The Lessees represent and warrant that their use of the Leased Premises will not generate any hazardous substance, and they 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 Lessees 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.
16. The Lessees agree to waive any loss of access and to hold the City harmless for any damages resulting from loss of access or noncompliance with City zoning regulations or otherwise that may result from the termination of the Lease.
17. The Lessees agree to hold the City harmless for any loss of parking or for noncompliance with City zoning regulations that may result from the expiration or termination of the Lease.
18. The Lessees agree to hold the City harmless for any damages resulting from the loss of the Dumpster Enclosure or noncompliance with City zoning regulations or otherwise that may result from the expiration or termination of the Lease.
19. The Lessees 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.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.