



Legislation Text

File #: 25931, **Version:** 1

Fiscal Note

No expenditure required. To offset the interruption to the use of the leased premises by Kayser Ford, Inc., the lease term will be extended by a period equal to the term of the City's construction period.

Title

Authorizing the Mayor and City Clerk to execute an amendment to the lease with Kayser Ford, Inc. allowing for the City's temporary use of premises leased by Kayser Ford, Inc. within the Cannonball Bike Path corridor, formerly a part of the Union Pacific Railroad corridor.

Body

WHEREAS, the City of Madison (as successor-in-interest to the Union Pacific Railroad Company), as the lessor, and Kayser Ford, Inc., as the lessee, are parties to a lease dated November 1, 2000 pertaining to Kayser Ford, Inc.'s use of approximately 10,000 square feet of land (the "Premises") located within the former Union Pacific Railroad corridor, n/k/a the Cannonball Bike Path corridor; and

WHEREAS, the Premises are depicted on attached Exhibit A and are used by Kayser Ford, Inc. for the storage and parking of vehicles in connection with its business operations at 2303 West Beltline Highway; and

WHEREAS, during 2012 and 2013, the City will be constructing certain public water main and public bike path improvements within the Cannonball Bike Path corridor and will require the use of all or portions of the Premises during the construction period; and

WHEREAS, the City and Kayser Ford, Inc. have agreed to extend the term of the Lease to offset the period of time when the Premises may not be available for use due to the City's construction activities; and

WHEREAS, the terms of an amendment to the Lease have been negotiated between the Office of Real Estate Services and Kayser Ford, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an amendment to that certain lease dated November 1, 2000, between the City of Madison, as the "Lessor," and Kayser Ford, Inc., as the "Lessee," pertaining to "Premises" located within the Cannonball Bike Path corridor, as follows:

1. The Lessor shall have the right to use and occupy the Premises for public water main and public bike path construction purposes during the period running from July 1, 2012 through December 31, 2013 (the "Construction Period"). The Lessor will make a good faith effort to allow and facilitate use of the Premises by the Lessee at times and locations that do not interfere with the Lessor's construction activities.

2. During the Construction Period, the Lessor shall provide the Lessee with a minimum of seven (7) days' written notice to vacate the Premises (or a specified portion of the Premises) to allow for the Lessor's construction activities. After the receipt of any such notice, the Lessee shall remove all vehicles and any other items of personal property from the Premises (or specified portion of the Premises) prior to the expiration of such seven (7) day period. This shall include permanent removal of all of the Lessee's property that is located within the Cannonball Bike Path corridor but outside of the limits of the Premises.

3. Following each instance of use of the Premises by the Lessor, the Lessor shall provide the Lessee with e-mail notification advising the Lessee as to when it may resume use of the Premises for the storage and

parking of vehicles.

4. Following the Lessor's completion of construction of the public water main improvements within the Premises, the Lessor shall temporarily restore hard surfaces within the Premises to usable condition until such time that all public construction within the Premises is completed. Once all public construction within the Premises is completed, the Lessor shall restore the Premises to the surface condition existing prior to such work being performed.

5. The term of the Lease is extended for a period of 18 months, such that the new expiration date shall be May 1, 2022.

6. The provision in the Lease regarding locating utility services is updated to read as follows:

DIGGERS HOTLINE. The Lessee is responsible for locating all underground utility services within the Premises prior to any excavation or construction activities associated with repair or removal of the paved parking area by the Lessee or its contractors. In all instances the Lessee shall contact Diggers Hotline prior to commencing any such work. Notwithstanding compliance by the Lessee with this Section, the release and indemnity provisions of Section 12 of the Lease shall apply fully to any damage or destruction of any utility system.

7. The Notice provision of the Lease is updated to read as follows:

NOTICES. All notices to be given under the terms of this Lease shall be 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:
City of Madison
Economic Development Division
Office of Real Estate Services
Attn: Manager
215 Martin Luther King, Jr. Blvd., Room 312
P. O. Box 2983
Madison, WI 53701-2983

For the Lessee:
Kayser Ford, Inc.
2303 West Beltline Highway
Madison, WI 53713
E-Mail: s.baxter@kayseronline.com

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

8. The Assignment provision of the Lease is updated to read as follows:

ASSIGNMENT OF LEASE. It is understood that the Lessee is the owner of 2303 West Beltline Highway, Madison, Wisconsin (the "Abutting Property"), and that the Lessee's interest in this Lease is appurtenant to the Lessee's ownership of the Abutting Property.

It is further understood that this leasehold interest shall not be severed from the ownership of Abutting Property. Accordingly, the Lessee shall at any time, upon notice to the Lessor, be permitted to sell, assign,

transfer, sublease, mortgage, pledge, encumber, grant and convey its interests in this Lease and the improvements located on the Premises (which actions are collectively referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Abutting Property to the same purchaser or transferee of this Lease and the improvements located on the Premises. Furthermore, foreclosure of any such mortgage, pledge or encumbrance shall also be a Transfer permitted hereunder, subject to the restriction that this leasehold interest shall not be severed from the ownership of the Abutting Property. All such Transfers shall be subject to all of the terms of this Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of the Lessee's right, title and interest in and to this Lease shall be considered as having assumed and become bound by all of the Lessee's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as the Lessee or prior transferee.

9. The following provision is inserted into the Lease:

INSURANCE. The Lessee shall 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 of Madison's Risk Manager: bodily injury, death and property damage of \$1,000,000.00 per occurrence. The policy or policies shall name the Lessor as an additional insured. As evidence of this coverage, the Lessee shall furnish to the Lessor a certificate of insurance on a form provided by the Lessor.

10. The following provision is inserted into the Lease:

NON-DISCRIMINATION IN EMPLOYMENT. In the performance of the services under this Lease, the Lessee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex or national origin.

11. The First Amendment to Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the parties.

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

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.