



Legislation Text

File #: 40260, **Version:** 1

Fiscal Note

This Land Use Agreement requires the City to pay a monthly fee of \$45 while the Property is unoccupied by a tenant or future purchaser. Funds for the agreement are available within Metro's operating budget.

Title

Authorizing a Land Use Agreement between Spirit SPE Portfolio 2006-1, LLC, and the City (the "Grantee") to allow for the continued use of its land to maintain and access an existing public bus stop zone.

Body

Spirit SPE Portfolio 2006-1, LLC, (the "Grantor") is the owner of real property located at 2602 Shopko Drive, Madison, Wisconsin (the "Property"), which was previously owned/occupied by Shopko. The Office of Real Estate Services received verbal approval from Shopko to place a bus stop zone on the Property. The terms of this verbal agreement were being discussed just prior to the sale of the Property to the Grantor, but were never documented. The Grantor agreed to allow Metro Transit Utility (the "Metro") to continue to occupy and use a portion of the Property to access and maintain a bus stop zone and appurtenant signage thereon.

WHEREAS, a certain portion of the Property has been improved with a paved access drive (the "Access Drive"); and

WHEREAS, Metro operates its transit service to the Property and currently maintains a public bus stop zone and appurtenant signage (the "Bus Stop Area") upon a portion of said Property; and

WHEREAS, the Grantee desires to formally establish, by the Agreement, the right to use the Access Drive and Bus Stop Area (collectively, the "Premises") for the operation of the Metro's transit service and operation of the Bus Stop Area.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby approves a Land Use Agreement (the "Agreement") with the City of Madison (the "Grantee") and Spirit SPE Portfolio 2006-1, LLC, (the "Grantor") and authorizes the Mayor and City Clerk to execute a Land Use Agreement on the following terms and conditions:

1. Premises. The Grantor hereby grants the Grantee the non-exclusive right to occupy and use the Premises pursuant to the provisions in the Agreement.
2. Term. The Agreement shall commence as of the Effective Date, and shall continue until terminated pursuant to either Paragraph 8 or Paragraph 9 of the Agreement.
3. Fee. The Grantee shall pay Forty-Five dollars (\$45) per month while the Property is unoccupied by a tenant or future purchaser (the "New Owner"), payable on the first day of each calendar month during the term of this Agreement. No fee shall be payable by the Grantee while the Property is occupied by a tenant or in the event of an assignment of this Agreement to a New Owner.
4. Grantee's Responsibilities.
 - a. The Grantee accepts the Premises in "as-is" condition, without any representation or warranty of Grantor whatsoever. The Grantee shall, at its sole cost and expense, be responsible for the, maintenance and repair of the Bus Stop Area.

- b. The Grantee shall maintain the Bus Stop Area in a clean and attractive manner. Maintenance responsibilities shall include, but not be limited to the keeping the signage and pole painted.
- c. All property belonging to the Grantee shall be there at the risk of the Grantee, and the Grantor shall not be liable for damage thereto. Grantee agrees to be responsible for all losses, damages, injuries, death, suits, actions and claims, including reasonable attorney's fees and costs, arising out of Grantee's negligent use of the Premises during the term of this Agreement, subject to Wis. Stat. sec. 893.80. Grantee will promptly notify Grantor of all such claims made. Grantee's obligations under this item 5.e) shall continue beyond the termination of this Agreement for any claims occurring during the term of this Agreement.

5. Grantor's Responsibilities.

- a. The Grantor shall supply and be responsible for the costs of electric services to the Premises.
- b. The Grantor shall be responsible for all repair and maintenance of the Access Drive including, paving, repaving, marking, and ice and snow removal. The Grantor shall also provide lighting to the Bus Stop Area by ensuring that the nearby front wall pack lights and lighting near the front entrance are operable during the evening hours from one hour before sunset until 10:00 p.m. for security purposes.

6. Insurance.

- a. Insurance by Grantee. The Grantee shall be responsible for insuring all of the Grantee's personal property placed on the Premises and shall maintain commercial general liability insurance coverage in an amount not less than \$1,000,000 in the aggregate for its activities when those activities pertain to the performance of this Agreement.
- b. Insurance by Grantor. The Grantor shall maintain adequate liability insurance for the Property throughout the Term, and any extensions of this Agreement. The Grantor shall maintain sufficient property insurance coverage to protect the Grantor. The Grantor shall waive any claim or claims against the Grantee, its employees, officers, officials and agents for loss or damage to the Property (except for loss or damage arising from the sole negligence or intentional acts of the Grantee, its employees, officers, officials, and agents), and will secure a waiver of subrogation clause in its property insurance policy to waive all rights against the Grantee for loss or damage to the extent covered by such insurance.

7. Default. In the event of the Grantee's default hereunder and the Grantee's failure to cure the same within ten (10) days after the Grantor gives the Grantee written notice thereof, the Grantor, in addition to all other rights and remedies accorded by law or in this Agreement, shall have the right to immediately terminate this Agreement.

8. Termination. The Grantor and the Grantee shall each have the right to terminate this Agreement, at its sole discretion, upon providing ninety (90) days written notice (the "Notice Period") to the other party. Termination of this Agreement shall be effective upon the end of the Notice Period.

9. Assignment by Grantor. The Grantor may assign this Agreement to a New Owner of the Property in the event the Property is sold. The Grantor shall provide thirty (30) days prior written notice to the Grantee of any pending sale or transfer of the Property.

10. Assignment by Grantee. The Grantee shall not assign this Agreement, or any portion thereof, without the prior written consent of the Grantor, which consent the Grantor may withhold in its sole discretion. Any

attempted assignment by Grantee of this Agreement without Grantor's consent shall be null and void.

11. Removal and Disposal of Personal Property. Upon any termination of this Agreement, the Grantee shall remove the Bus Stop Area from the Premises at its sole cost and expense within two (2) weeks following the Expiration Date.

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