



Legislation Text

File #: 64252, Version: 1

Fiscal Note

The proposed lease amendment has no fiscal impact on the City. No City appropriation is required.

Title

Authorizing the City's execution of a First Amendment to Lease between the City of Madison and 123 East Doty Street Corporation and/or their successors and assigns for the continued use of a portion of the City-owned property located at 223 S. Pinckney Street with temporary staircase improvements. (4th A.D.)

Body

WHEREAS, the City of Madison ("Lessor") and 123 East Doty Street Corporation ("Lessee") are parties to a Lease dated February 21, 1990, and recorded on June 25, 1990 in the office of the Dane County Register of Deeds as Document No. 2207055, subsequently assigned by an Assignment of Lease dated June 30, 1994 (together, the "Lease"); and

WHEREAS, the Lease pertains to the Lessee's use of a portion of the Lessor's property located at 223 S. Pinckney Street, formerly improved with the Doty Street Parking Ramp, now known as the former Government East Parking Ramp, which is legally described as follows ("Property"):

Lot 3, Certified Survey Map No. 14577, recorded in the office of the Dane County Register of Deeds in Volume 101, Pages 1-6 of Certified Survey Maps, City of Madison, Dane County, Wisconsin.

WHEREAS, the Lessee owns the property located at 123 E. Doty Street, legally described on attached Exhibit A ("Abutting Property"); and

WHEREAS, the Lease allows the Lessee to use and occupy a portion of Property, Parcel A as described under the Lease, for the purposes of maintaining an existing fire exit from the second floor of the building situated on the Abutting Property; and

WHEREAS, the Government East Parking Ramp was demolished in 2020-2021 and the access over Parcel A no longer exists; and

WHEREAS, as part of the demolition of the parking ramp, Lessor agrees to construct a temporary staircase connecting the fire exit stair on the Abutting Property to the E. Doty Street sidewalk, subject to certain conditions; and

WHEREAS, the Lessee understands that maintenance of the fire exit stair will be at their sole cost and responsibility during the temporary use.

NOW, THEREFORE, BE IT RESOLVED the Lessee and the Lessor agree to a First Amendment to Lease, subject to the following terms and conditions:

1. For the purposes of this Amendment, the leased area, "Parcel A", shall be renamed the "Leased Premises" and shall be described as follows:

The Northeast 6 feet of the Northwest 22 feet, and the Northeast 18 feet of the Northwest 6 feet of Lot 3, Certified Survey Map No. 14577, recorded in the office of the Dane County Register of Deeds in Volume 101, Pages 1-6 of Certified Survey Maps, City of Madison, Dane County,

Wisconsin.

Further, the description of "Parcel A" in the Lease shall be deleted.

2. Numbered Paragraphs 1, 2 and 5 of the Lease shall be deleted in their entirety and replaced with the following:

1. Leased Premises. The Lessor agrees to construct, at its sole cost, a stairway and concrete pad on the Leased Premises as depicted on attached Exhibit B. Construction of the stairway and concrete pad shall be completed in a timely manner following the execution of this Amendment. The Lessee may use and occupy the Leased Premises, including the stairway and concrete pad contained therein, for the purposes of maintaining the existing fire exit from the second floor of the building on the Abutting Property to the surface level of E. Doty Street, as depicted on attached Exhibit B.

3. The "Term" provision set forth in numbered Paragraph 3 of the Lease is hereby amended to include the following:

The month-to-month status of the Lease may continue on a temporary basis, and shall expire the earliest of the following: 1) that either exists a physical, legal, secondary access point for pedestrian ingress and egress located entirely within the Abutting Property; 2) the Leased Premises is required for the redevelopment of Lot 3, Certified Survey Map 14577 (the "Redevelopment"); or, 3) April 30, 2022. This expiration may be extended beyond these occurrences on an additional month-to-month basis only upon the mutual agreement of the Parties. The Leased Premises shall be deemed to be required for Redevelopment under this Paragraph when the final building plans are approved and the building permit is issued to the developer for Lot 2 of the Property, as shown on the above-described certified survey map.

4. The "Maintenance" provision set forth in numbered Paragraph 7 of the Lease is hereby amended to include the following:

The Lessee is responsible for all maintenance of the improvements in the Leased Premises, including the clearing of ice and snow, and shall be solely responsible for all costs of said maintenance.

5. The "Financial Responsibility" provision set forth in numbered Paragraph 8 of the Lease shall be deleted in its entirety and replaced with the following:

8. Insurance and Indemnification.

- a. Insurance. The Lessee shall furnish a Certificate of Insurance providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage and minimum limits of one million dollars (\$1,000,000) per occurrence. The City of Madison's Risk Manager reserves the right to require higher limits and other coverage terms and conditions at the City's discretion. The Lessee shall keep required insurance in full force and effect throughout the duration of the Lease.

- b. Indemnification. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City of Madison, 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 Lessee or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City of Madison, its officers, officials, agents, or employees.

6. Numbered Paragraph 11 of the Lease shall be deleted in its entirety.
7. The "Parties to said Lease" provision set forth in numbered Paragraph 17 of the Lease shall be deleted in its entirety and replaced with the following:

The terms of this Lease shall be binding upon the Lessee and Lessor, including any and all heirs, successors and assigns of the Lessee and Lessor.

8. Numbered Paragraph 20 of the Lease shall be deleted in its entirety.
9. The "Non-Discrimination" provision set forth in numbered Paragraph 21 of the Lease shall be deleted in its entirety and replaced with the following:

In the performance of the services under this Lease, the Lessee agrees not to discriminate 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, gender identity, 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, sexual orientation, gender identity or national origin.

10. Paragraph 22 shall be added to the Lease to include clarification on notices:

22. 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. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Lease.

For the City:

City of Madison, Engineering Division
210 Martin Luther King, Jr. Blvd., Room 115
Madison, WI 53703
rphillips@cityofmadison.com

For the Owner:

123 East Doty Street Corporation
Attn: Eliot G. Butler
123 E. Doty Street
Madison, WI 53703-5122
eliot.butler@greatdanepub.com

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, shall designate any other mailing address or email address in substitution of the

addresses shown above to which notices shall be given.

11. Counterparts; Electronic Delivery. This Amendment and any document executed in connection herewith, or under the Lease, may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Amendment may be exchanged between the Lessor and Lessee by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Amendment may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Amendment may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Amendment, fully executed, shall be as valid as an original.
12. All other provisions of the Lease remain unchanged and in full force and effect.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City's Common Council hereby authorizes the City's execution, as Lessor, of the First Amendment to Lease, and any other documents to complete the agreement contemplated herein, on a form approved by the City Attorney's office.