



Legislation Text

File #: 86165, **Version:** 1

Fiscal Note

The proposed resolution authorizes the execution of the third amendment to the lease and the termination agreement for the leased land holding Metro Transit's former North Transfer Point and park and ride lot. The third amendment to the lease requires the City to pay the prorated portion of the Year 7 Annual Rent Payment within 10 days of execution of the amendment: \$17,504. Once the terms of the amendment to the lease are reached, the lease will be terminated.

Funds for the prorated Year 7 Annual Rent Payment are available in the Economic Development Division's 2024 Operating Budget. The year-end appropriation resolution (Leg file 86200) transfers funds from the Division's Salary major (available via salary savings) to the Purchased Services major to cover the cost.

Title

Authorizing the execution of a Third Amendment to Lease and Termination Agreement between the City (the "Lessee") and 910 Mayer LLC (the "Lessor") with respect to the leased land for Metro Transit's north transfer facility and park and ride lot. (District 12).

Body

WHEREAS, the City 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; as further amended by Second Amendment to Lease dated October 3, 2018, and recorded October 24, 2018 with the Dane County Register of Deeds as Document No. 5450135 (collectively, the "Lease"); and

WHEREAS, the leased Premises is located on the real property in the City of Madison, Dane County, Wisconsin as set forth in the legal description in the attached Exhibit A to the Lease (the "Property"); and

WHEREAS, the lease term expires on October 4, 2028, although the City may terminate the Lease at any time by giving a minimum of 120 days written notice of termination; and

WHEREAS, the City has paid Rent through Fiscal Lease Year 6 that ends on October 4, 2024, but has not paid Rent through Fiscal Year 7, which was due on October 5, 2024; and

WHEREAS, per paragraph B.45 of the Lease, the Lessor delivered an Offer to purchase the Property to the City on September 24, 2024; and

WHEREAS, the City declined the Offer to purchase, subject to the terms listed in this resolution and Common Council approval; and

WHEREAS, the parties desire to amend the Lease to reflect the termination terms described herein.

WHEREAS, for good and valuable mutual consideration by the parties, the delivery and receipt of which is hereby acknowledged by and between the parties, the Lessor and the Lessee agree to amend and thereafter terminate the Lease (the "Agreement") as follows:

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

Lessor and Lessee wish to enter into this Lease for use of the Premises for a period ending midnight of the Termination Effective Date as defined in Paragraph B.12.

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

The term of the Lease shall be for seven (7) years. The term shall commence on October 5, 2018 (the "Commencement Date") and shall end at 12:00 midnight on Termination Effective Date. The term "Lease Year" shall mean a full one (1) fiscal year period. The First Lease year shall begin on the Commencement Date.

3. The Annual Rent table in Paragraph B.6 is deleted in its entirety and replaced with the following:

Within 10 days of executing this Third Amendment to Lease and Termination Agreement, Lessee agrees to pay the Lessor the amount of Seventeen Thousand Five Hundred and Four 00/100 Dollars (\$17,504), which represents the prorated portion of the Year 7 Annual Rent Payment and corresponds with the Lessee's 120-day termination period provided for under Section 12.b.

The Lessor agrees that the rest of the Annual Rent Payment for Fiscal Lease Year 7 is hereby waived in consideration of the Lessee rejecting the Offer and terminating the Lease.

4. Paragraph B.7 is deleted in its entirety.

5. Paragraph B.12.b is deleted in its entirety and replaced with the following:

The Lessee and the Lessor hereby agree to terminate the Lease with such termination being effective as of the later to occur of (the "Termination Effective Date"): (i) the last date the Agreement is signed by the Lessee; and (ii) the date that the Lessee pays Lessor the amount of 120 days of Rent or Seventeen Thousand Five Hundred and Four 00/100 Dollars (\$17,504.00) (the "Year 7 Prorated Rent").

6. The Lessee is surrendering the Premises in accordance with paragraphs B.23 and B.24 of the Lease, and paragraph B.24 shall not survive the termination of the Lease; and

7. The parties' desires to memorialize the Agreement for the public record; and

8. The Agreement may be executed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on the Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Lease Agreement 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 the Agreement 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 the Agreement, fully executed, shall be as valid as an original.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute the Agreement with OM Land, LLC., substantially, though not exclusively, on the terms and conditions detailed in this resolution.

BE IT FURTHER RESOLVED that the City's Common Council hereby authorizes the Mayor and City Clerk to execute, deliver and record the Agreement and take any further action required to accomplish the purpose of this resolution in a form approved by the City Attorney.