



STAFF REPORT

DATE: March 7, 2017
CONSENT
ITEM #: 12

AGENDA ITEM: Brookfield Lease Amendment

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

In September 2014, the City entered into a lease agreement for the office space in the Brookfield building where the administration and finance departments are located. A copy of that lease is attached for reference.

ISSUE BEFORE COUNCIL:

Should the Brookfield lease be amended?

PROPOSAL:

A copy of the proposed lease amendment is included in your packet. It deletes the Right of First Refusal and in exchange extends the lease by one year with no increase in the rate and allows for the option of an additional year extension at a 2% increase.

A lease extension is beneficial for the city in that the city hall facility needs will likely not be addressed by September 30, 2019. The one to two year extension will provide the city with adequate time to research and evaluate the options presented in the space needs study and construct the needed space. An RFP for a space needs study is out at this time and it is anticipated the final report will not be completed until late summer 2017.

FISCAL IMPACT:

The annual lease amount in the fifth year of the current contract is \$33,223. That same amount would be extended for year six. If the City exercises the option for the seventh year, the annual rent amount would be \$33,887.46.

OPTIONS:

- 1) Approve the lease amendment
- 2) Do not approve the lease amendment

RECOMMENDATION:

If removed from the consent agenda:

“Motion to adopt the amendment of the Brookfield Lease.”

ATTACHMENTS:

- Current Brookfield Lease
- Proposed Amendment to Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 2nd day of September, 2014, by and between Lake Elmo Associates, L.L.P. (hereafter called "Landlord") and the City of Lake Elmo (hereinafter called "Tenant"),

WITNESSES, that the Landlord, in consideration of the rents and covenants hereinafter mentioned, does hereby lease to the said Tenant, and the said Tenant does hereby hire and take from the Landlord the following-described real estate (hereinafter called "Premises") situated in the City of Lake Elmo, County of Washington and State of Minnesota, to-wit:

That certain rental space in a building owned by Landlord and located on the southwest corner of the first floor of Lot One (1), Block Two (2), BROOKMAN ADDITION, which rental space totals 2461 square feet; the post office address of said building is 3880 Laverne Avenue North, Lake Elmo, Minnesota 55042.

TO HAVE AND TO HOLD the Premises for a term of five (5) years, beginning October 1, 2014 and continuing to and including the 30th day of September, 2019, on the following terms and conditions:

1. Rent. Tenant shall pay to Landlord, during the term of this Lease, rent for the first and second year in the sum of \$29,532.00 per year; said rent shall be paid in equal monthly installments of \$2,461.00 each, to be paid on the first day of each month.

Tenant shall pay to Landlord, rent for the third and fourth year in the sum of \$31,993.00 per year; said rent shall be paid in equal monthly installments of \$2,666.00 each, to be paid on the first day of each month.

Tenant shall pay to Landlord, rent for the fifth year in the sum of \$33,223.00 per year; said rent shall be paid in equal monthly installments of \$2,769.00 each, to be paid on the first day of each month.

Tenant shall, also, pay as additional rent, in the year 2016 and thereafter, during the term or any extension thereof, Tenant's pro rata share of any increase in:

- a) real estate taxes on said building over and above taxes payable in the year 2016;
- b) utility costs over and above the total utility costs for the entire building payable in the year 2016. "Utility costs" as used herein shall mean the costs of heating, air-conditioning, water service, sewer service, electric power service and trash-removal.

The additional rent to be paid by Tenant shall be based on the ratio of the total floor area of the Tenant's Premises to the total rentable floor area of the building.

The tenant shall pay any such additional rent to Landlord, monthly in advance by paying an amount equal to one-twelfth (1/12) of Tenant's share of any such increase in real estate taxes and utility costs, as estimated by Landlord. Adjustments shall be made, if necessary, at the end of each calendar year based on actual costs.

2. Use of Premises. Unless otherwise agreed by the Landlord, in writing (which consent the Landlord shall not unreasonably withhold) the Tenant shall use the Premises only for purposes incidental to Tenant's business which is a City Office but, in any case, not for any purpose which may be hazardous on account of fire or other risk. The premises shall be used in accordance with all ordinances, rules, regulations or orders of any public authority having jurisdiction over the Premises.

3. Indemnification. The Tenant will indemnify and hold Landlord harmless as against any and all liability or claims by or in behalf of any person, firm, association, corporation or governmental authority arising from or incidental to the Tenant's use of said premises. The Tenant at its expense shall maintain in full force and effect, with Landlord named as additional insured, public liability insurance coverage with respect to the Premises in a minimum aggregate amount satisfactory to Landlord and shall deposit with Landlord evidence of such insurance.

4. Utilities. Landlord without additional charge, shall provide and maintain adequate mechanical apparatus to furnish satisfactory heating, air-conditioning, water service, sewer service, and electrical power service to the Premises and Landlord shall pay for all heating, air-conditioning, water service or sewer service, electric power service and trash-removal costs attributable to Tenant's occupancy of the Premises (except as provided in this paragraph 4 at no cost to Tenant except the rent and additional rent provided above in paragraph 1. Provided, however, that if any Tenant shall conduct any activity or use any equipment in Tenant's Premises which would require utilities such as gas, water, or electric power in an amount significantly greater than might reasonably be expected for general office use, then such Tenant shall be required to pay an amount equal to any increase in utility costs to Landlord over and above normal costs. If Landlord determines that the volume of Tenant's refuse is substantially greater than the average volume of other tenants, Tenant shall pay as additional rent a reasonable charge for the additional cost of refuse removal attributable to Tenant's greater volume.

5. Operation and Maintenance of Common Area. For the purpose of this Lease, the term "Common Area" shall be defined as all that portion of the real estate in which the Premises are located including hallways, stairs, atria, landscaped areas, parking facilities and other improvements excepting that area which is presently leased to tenants or is proposed to be leased to tenants.

Landlord agrees to manage, operate and maintain during the term of this lease and any renewal thereof all sidewalks, parking lots and driveways, landscaping, and lighting facilities with the Common Area, to a normal and reasonable standard for a professional office building. The manner in which such Common Area and facilities shall be maintained and the expenditures therefore shall be at the sole discretion of Landlord, who shall have the right to adopt and promulgate reasonable rules and regulations, from time-to-time, including the right to restrict tenant and tenant's employees from parking areas reserved for customers of the various tenants.

Landlord has made no representation as to identity, type, size or number of other tenancies in the building, and Landlord reserves the unrestricted right to change the building perimeters, driveways, office sizes, identity and type of other tenancies provided, however, there shall always be reasonable access to tenant's Premises.

Landlord hereby grants to Tenant, its employees, agents, customers and invitees, the non-exclusive right for and during the term of this Lease and any renewal thereof to use Common Area from time-to-time constituted, such use to be in common with Landlord and all tenants of Landlord from time-to-time, its and their employees, agents, customers and invitees, except when the same are being repaired. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their employees, agents, customers and invitees, to use any part of the Common Area.

6. Assignment or Sublease. The Tenant shall not assign or sublease the whole or any part of the Premises without prior written permission of the Landlord, which permission will not unreasonably be withheld.

7. Repairs and Improvements. The Tenant shall be responsible for all repair and improvements to the interior of the Premises. During the time of this Lease and any renewal thereof, Tenant agrees to keep the interior of the premise in as good a state of repair as the same now is, except for reasonable use and wearing thereof.

Tenant shall replace any glass broken by Tenant.

Tenant shall make such leasehold improvements and install such fixtures and equipment as may be necessary for the operation of Tenant's business, all of which shall be made to Premises at Tenant's own cost and expense.

At any time after the installation of Tenant's original leasehold improvements, Tenant may, after written approval of Landlord, make such alterations, additional improvements and repairs to the Premises, and install such additional fixtures and equipment as may be necessary for the operation of Tenant's business, all of which shall also be made at Tenant's own cost and expense.

On the expiration of this Lease, or sooner termination thereof, improvements or alterations made shall become a part of the premises and shall belong to the Landlord without compensation to the Tenant, except that Tenant shall before the termination date remove any improvements or alterations which had not been consented to by the Landlord, if so requested by the Landlord. The Tenant may remove all or any part of the furniture and business equipment placed in, on or about the Premises by Tenant and upon removal, the Tenant shall at Tenant's expense repair and restore the Premises in as good, clean, sanitary and safe condition as they are now, ordinary use and reasonable wear and tear excepted.

8. Signs and Displays. Tenant shall not place any signs or displays in windows, on the exterior or interior Common Area of the building or any other place which would be visible from outside the building or the Common Area without specific written consent of the Landlord. It is understood, however, that Landlord shall permit at least one identification sign to be placed outside of the building and at least one identification sign inside the building but such signs shall be designed according to reasonable standards established by the Landlord for the purpose of maintaining a harmonious and aesthetically pleasing exterior for the building.

9. Inspection. The Landlord reserves the right to enter the Premises at all reasonable times to view them, or to show them to a mortgagee or to a purchaser, or to make repairs, alterations or improvements, all with prior Tenant approval which shall not be unreasonably withheld.

10. Hold harmless. Tenant shall not be liable to Landlord, nor shall Landlord be liable to Tenant for any expense or damage resulting from a peril which can be insured against under the Minnesota standard form office insurance policy, with extended coverage endorsement added, anything contained in this lease to the contrary notwithstanding.

11. Condemnation. If the whole or any part of the Premises shall be condemned by any public authority or any corporation in condemnation proceedings then, at the option of the Tenant, to be exercised in writing within sixty (60) days of the date of condemnation, this Lease shall cease upon the date that title passes to the condemnor and, if the option is exercised, the Tenant shall not be liable for payment of rent beyond that date.

12. Destruction of Premises. In the event the Premises shall be destroyed or so injured by fire, the elements, or any other cause, so as to be partially or wholly untenable, then at the option of the Tenant, the term of this Lease shall cease and the liability of the Tenant for further rent shall cease as of the date of the damage. If the Tenant shall, however, elect to continue the Lease, the Landlord shall restore the Premises to a tenantable condition substantially as before the destruction if such restoration is reasonably practical, and rent shall abate on that portion of the Premises which is untenable until it is restored to a tenantable condition.

13. Default by Tenant. In case of default by the Tenant in the payment of any rent or in performance of any of the agreements and covenants herein contained, the Landlord may, at its option, and after ten (10) days written notice to Tenant during which time Tenant shall have the right to remove such default, terminate this Lease Agreement, re-enter and take possession of the Premises (without working a forfeiture of the rent to be paid by the Lessee for the remainder of the term of the Lease) and exercise any and all other rights and remedies provided Landlord by law. No waiver of a breach of any of the covenants or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same covenants or conditions.

14. Peaceable Possession. The Landlord covenants that the Tenant on paying the rents required by Tenant and upon performing the agreements and covenants required of Tenants, shall and may peacefully and quietly have, hold and enjoy the Premises for the term aforesaid.

15. Parking. Landlord agrees to provide reserved parking spaces as may reasonably be required for Tenant's business use but not to exceed five (5) spaces. The location of such reserved spaces shall be determined by the Landlord.

16. Notices. Any notices, payment or demand, permitted or required to be given or made pursuant to this Lease shall be delivered personally or mailed by Registered or Certified United States mail to the addresses hereinafter set forth. Such notices, demand, or payment shall be deemed timely given or made when delivered personally or when deposited in the United States mail in accordance with the above. The addresses of the parties are as follows:

If to Landlords: Lake Elmo Associates, L.L.P.
 3880 Laverne Avenue North
 Lake Elmo, MN 55042

If to Tenant: City of Lake Elmo
 3880 Laverne Avenue North
 Lake Elmo, MN 55042

17. Binding Effect. The terms and conditions of this Lease shall extend, apply to and firmly bind the heirs, executors, administrators, successors and assigns of the respective parties.

18. Renewal. Tenant shall give Landlord, prior to the expiration of the term of this lease, one hundred eighty (180) days notice, in writing of its desire to renew the Lease terms.

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement ("Amendment") is made this ____ day of ____, 2017, by and between Lake Elmo Associates, L.L.P., a Minnesota limited liability partnership ("Landlord") and the City of Lake Elmo, a Minnesota municipal corporation ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as of September 2, 2014 (the "Lease") providing for the rental by Tenant of 2461 square feet of office space on the first floor of the southwest corner of a building owned by Landlord located at: 3880 Laverne Avenue North, Lake Elmo, Minnesota, legally described as follows:

Lot 1, Block 2, Brookman Addition, County of Washington, State of Minnesota.

(the "Premises"); and

WHEREAS, Landlord and Tenant wish to amend the Lease as follows; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, the Landlord and the Tenant hereby agree as follows:

1. Amendment to the Third Recital of the Lease. The Third Recital of the Lease is amended as follows:

TO HAVE AND TO HOLD the Premises for a term of six years, beginning October 1, 2014 and continuing to and including the 30th day of September, 2020, on the following terms and conditions:

2. Amendment to the Third Paragraph of Paragraph 1 of the Lease. The third paragraph of Paragraph 1 of the Lease is amended as follows:

Tenant shall pay to Landlord, rent for the fifth and sixth years in the sum of \$33,223.00 per year; said rent shall be paid in equal monthly installments of \$2,769.00 each, to be paid on the first day of each month.

3. Amendment to Paragraph 18 of the Lease. Paragraph 18 of the Lease is amended as follows:

18. Renewal. Tenant shall have the option to renew this Lease for an additional one year term (commencing on October 1, 2020 and ending on September 30, 2021). Tenant shall give Landlord 180 days' notice prior to the expiration of the term of this Lease that it intends to renew the Lease for the additional one year term. If Tenant exercises its option to renew the Lease, all terms of this Lease shall remain the same unless otherwise agreed to in writing by Tenant and Landlord, with the exception that the parties agree that the rent for the renewal term shall increase two percent to \$33,887.46 per year; and rent shall be paid in equal monthly installments of \$2,823.96, to be paid on the first day of each month.

4. Amendment to Paragraph 19 of the Lease. Item (c) of Paragraph 19 of the Lease is removed in its entirety.

5. Miscellaneous. Except as specifically provided herein, the terms and conditions of the Lease are confirmed and continue in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment to Lease Agreement as of the date written above.

Landlord

LAKE ELMO ASSOCIATES, L.L.P.

Tenant

CITY OF LAKE ELMO

By: _____

Its: _____

By: _____

Mike Pearson

Its: Mayor

By: _____

Julie Johnson

Its: City Clerk