



Legislation Details (With Text)

File #: 16-1480 **Version:** 1 **Name:** An ordinance amending ordinance 6psf-k and authorizing a first amended restated lease agreement between the City of Newark (tenant) and 52 Amsterdam Newark, limited liability company (landlord) for the leasing of the premises commonly known as 52-90 Amste

Type: Ordinance **Status:** Adopted

File created: 9/20/2016 **In control:** Engineering

On agenda: 9/21/2016 **Final action:** 10/5/2016

Title: AN ORDINANCE AMENDING ORDINANCE 6PSF-K ADOPTED ON AUGUST 3, 2016 AND AUTHORIZING A FIRST AMENDED RESTATED LEASE AGREEMENT BETWEEN THE CITY OF NEWARK (TENANT) AND 52 AMSTERDAM NEWARK, LIMITED LIABILITY COMPANY (LANDLORD) FOR THE LEASING OF THE PREMISES COMMONLY KNOWN AS 52-90 AMSTERDAM STREET, BLOCK 2085, LOT 1, CONSISTING OF AN APPROXIMATE SQUARE FOOTAGE NOT TO EXCEED 350,000, PURSUANT TO N.J.S.A. 40A:12-5, FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE DATE OF COMMENCEMENT, AS DEFINED IN THE LEASE AGREEMENT, TO CORRECT TYPOGRAPHICAL ERRORS AND FURTHER CLARIFY CERTAIN TERMS AND CONDITIONS NECESSARY FOR LANDLORD TO OBTAIN FINANCING FOR THE PROJECT INCLUDING, BUT NOT LIMITED TO, REMOVING TENANT’S RIGHT TO TERMINATE WITHOUT CAUSE, FURTHER EXPLAINING TENANT’S RIGHT TO TERMINATE LEASE IF SUFFICIENT FUNDS ARE NOT ANNUALLY AVAILABLE AND APPROPRIATED, ADDING LANGUAGE THAT PERMITS THE TENANT TO PURCHASE THE PROPERTY AT ANY TIME DURING THE TERM, MODIFYING LANGUAGE REGARDING LANDLORD AND TENANT DEFAULTS, AMENDING LANGUAGE PERTAINING TO LANDLORD’S WARRANTY OF WORK, AND CLARIFY TENANT’S PERMITTED USE OF THE PROPERTY.
Sponsors: Amador/ Gonzalez

Sponsors: Augusto Amador, Carlos M. Gonzalez

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
10/5/2016	1	Municipal Council	Close on Public Hearing and Adopt	Pass
9/21/2016	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

AN ORDINANCE AMENDING ORDINANCE 6PSF-K ADOPTED ON AUGUST 3, 2016 AND AUTHORIZING A FIRST AMENDED RESTATED LEASE AGREEMENT BETWEEN THE CITY OF NEWARK (TENANT) AND 52 AMSTERDAM NEWARK, LIMITED LIABILITY COMPANY (LANDLORD) FOR THE LEASING OF THE PREMISES COMMONLY KNOWN AS 52-90 AMSTERDAM STREET, BLOCK 2085, LOT 1, CONSISTING OF AN APPROXIMATE SQUARE FOOTAGE NOT TO EXCEED 350,000, PURSUANT TO N.J.S.A. 40A:12-5, FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE DATE OF COMMENCEMENT, AS DEFINED IN THE LEASE AGREEMENT, TO CORRECT TYPOGRAPHICAL ERRORS AND FURTHER CLARIFY CERTAIN TERMS AND CONDITIONS NECESSARY FOR LANDLORD TO OBTAIN FINANCING FOR THE PROJECT INCLUDING, BUT NOT LIMITED TO, REMOVING TENANT’S RIGHT TO TERMINATE WITHOUT CAUSE, FURTHER EXPLAINING TENANT’S RIGHT TO TERMINATE LEASE IF SUFFICIENT FUNDS ARE NOT ANNUALLY AVAILABLE AND APPROPRIATED, ADDING

LANGUAGE THAT PERMITS THE TENANT TO PURCHASE THE PROPERTY AT ANY TIME DURING THE TERM, MODIFYING LANGUAGE REGARDING LANDLORD AND TENANT DEFAULTS, AMENDING LANGUAGE PERTAINING TO LANDLORD'S WARRANTY OF WORK, AND CLARIFY TENANT'S PERMITTED USE OF THE PROPERTY.

Sponsors: Amador/ Gonzalez

WHEREAS, on August 3, 2016 the Municipal Council adopted Ordinance 6PSF-K authorizing a lease agreement on behalf of the City of Newark (Tenant) with 52 Amsterdam Newark, Limited Liability Company, 30 Shady Brook Court, Watchung, New Jersey 07069, (Landlord), pursuant to N.J.S.A. 40A:12-5, to lease the Property located at 52-90 Amsterdam Street, Newark, New Jersey, Block 2085, Lot 1, consisting of an approximate square footage not to exceed 350,000, to serve as the City of Newark's Fleet Operation and Vehicle Repair/Storage Center for automotive motors storage, service, repair and heavy repair (the "Lease Agreement"); and

WHEREAS, the parties desire to amend the Lease Agreement to correct typographical errors and clarify certain terms and conditions necessary for landlord to obtain financing for the project, which were finalized after the original lease agreement was approved by the Municipal Council including, but not limited to, removing Tenant's right to terminate lease without cause, further explaining Tenant's right to terminate lease if sufficient funds are not annually available and appropriated, adding language that permits the Tenant to purchase the property at any time during the term, modifying language regarding Landlord and Tenant Defaults, amending language pertaining to Landlord's warranty of work, and clarifying tenant's permitted use of the property; and

WHEREAS, all of the amending terms and conditions are set forth in the First Amended Restated Lease Agreement attached hereto are made a part of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1. The Mayor and/or his designees, the Director of the Department of Engineering and the Business Administrator, are hereby authorized to enter into a First Amended Restated Lease Agreement, in the form attached hereto and made part hereof, between the City of Newark (Tenant) with 52 Amsterdam Newark, Limited Liability Company, 30 Shady Brook Court, Watchung, New Jersey 07069, (Landlord), pursuant to N.J.S.A. 40A:12-5, to lease the Property located at 52-90 Amsterdam Street, Newark, New Jersey, Block 2085, Lot 1, consisting of an approximate square footage not to exceed 350,000, for a period of twenty-five (25) years, to serve as the City of Newark's Fleet Operation and Vehicle Repair/Storage Center for automotive motors storage, service, repair and heavy repair.

Section 2. The Amendments to the original Lease Agreement are being done to correct typographical errors and clarify certain terms and conditions necessary for landlord to obtain financing for the project, which were finalized after the original lease agreement was approved by Municipal Council including, but not limited to, removing Tenant's right to terminate lease without cause, further explaining Tenant's right to terminate lease if sufficient funds are not annually available and appropriated, adding language that permits the Tenant to purchase the property at any time during the term, modifying language regarding Landlord and Tenant Defaults, amending language pertaining to Landlord's warranty of work, and clarifying tenant's permitted use of the property.

Section 3. The Mayor and/or his designees, the Director of the Department of Engineering and the Business Administrator, are hereby authorized to enter into and execute a Work Agreement

and a Rent Commencement Agreement, in substantially the forms attached to the First Amended Restated Lease Agreement as Exhibits C & D, subject to approval of the Corporation Counsel.

Section 4. The term of this First Amended Restated Lease Agreement shall be for the period of twenty-five (25) years from date of commencement of the lease, as defined therein, with an option to renew for one (1) additional five (5) year period, and an option to purchase at any time during the term of the lease.

Section 5. If the final fully completed buildings to be leased by the City exceed 350,000 square feet, then the First Amended Restated Lease Agreement authorized herein must be amended accordingly, subject to the approval of the Municipal Council.

Section 6. There shall be no advance payment on this First Amended Restated Lease Agreement.

Section 7. Any prior ordinances or parts thereof inconsistent herewith are hereby repealed.

Section 8. A copy of the First Amended Restated Lease Agreement, preliminary plans and architectural drawings for construction are attached hereto and made a part hereof.

Section 9. This is a multi-year lease and pursuant to N.J.A.C. 5:30-5.5(d)(2) is subject to the availability and appropriation annually of sufficient funds as required to meet the extended obligation of the agreement.

Section 10. A Certification of Funds is not required at this time as the lease does not commence until Landlord completes construction, a final Certificate of Occupancy is issued to the Landlord, and the Landlord delivers possession of the leased property to the City of Newark. Funds for the lease shall be provided from the City of Newark prior to the commencement of the lease. A copy of the Certification of Funds, when issued, shall be filed in the Office of the City Clerk.

Section 11. This First Amended Restated Lease Agreement is in compliance with the prerequisite for leasing private space, set forth in the City of Newark Municipal Code 2:4-16, as suitable space under the control of the City of Newark is not available.

Section 12. A copy of the First Amended Restated Lease Agreement and this Ordinance approving the same shall be filed in the Office of the City Clerk by the Director of the Department of Engineering.

Section 13. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

Passage of this Ordinance amends Ordinance 6PSF-K adopted August 3, 2016, and authorizes the Mayor and/or his designees, the Director of the Department of Engineering and the Business Administrator, to enter into a First Amended Restated Lease Agreement, between the City of Newark (Tenant) with 52 Amsterdam Newark, Limited Liability Company, 30 Shady Brook Court, Watchung, New Jersey 07069, (Landlord), pursuant to N.J.S.A. 40A:12-5, to lease the Property located at 52-90 Amsterdam Street, Newark, New Jersey, Block 2085, Lot 1, consisting of an approximate square

footage not to exceed 350,000, for a term of twenty-five (25) years with one additional five (5) year option to renew and an option to purchase any time during the term, to serve as the City of Newark's Fleet Operation and Vehicle Repair/Storage Center for automotive motors storage, service, repair and heavy repair, to correct typographical errors and clarify certain terms and conditions necessary for landlord to obtain financing for the project.