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Office of the Comptroller

October 26, 2007

Members of the Public Works Committee
200 East Wells Street, Room 205
Milwaukee, WI 53202

RE: 4th & Highland Parking Structure Lease Agreement

Dear Committee Members:

The resolution before the Committee authorizes DPW to enter into Agreement for the long-term lease of parking spaces in the City-owned structure on the corner of 4th Street and Highland Boulevard. The Agreement is with 4th and Highland LLC (Developer), which intends to develop a \$206 million mixed-use development on two vacant parcels. The development will include two hotels, condominiums, parking and street-level retail space. Developer requires parking, in addition to that which is to be developed, to proceed with the project. The term of the Agreement is 25 years, with options to extend the Agreement for a 15 year term and an additional 10 year term. The number of spaces and rates under the proposed parking Lease are as follows:

	Monthly Day Unreserved	Rates	24 Hour Reserved	Rates	24 Hour Hotel	Rates
11/1/2007 - 1/31/2008	75	\$55	-	\$140	-	Market
2/1/2008 - 2/28/2009	110	\$55	75	\$140	-	Market
3/1/2009 - 3/31/2010	72	\$75	75	\$140	80	Market
4/1/2010 - 3/31/2012	394	\$75	-	City Rate	50	Market
4/1/2012 and Foregoing	394	City Rate	-	City Rate	50	Market

The rate structure established in the Lease Agreement provides a subsidy to Developer as the lease term rates are below the rates the city sets annually for “monthly day unreserved” spaces and “24 hour reserved” spaces. The City set rate for “monthly day unreserved” spaces is \$75 in 2008 and is scheduled to increase by \$5 in each subsequent year. The City set rate for “24 hour reserved” spaces is \$140 in 2008 and is scheduled to increase by \$5 in each subsequent year. The subsidized lease term rates roughly coincide with Developer’s construction period and first two years of operations. The City set rates and the rates established in the Lease Agreement are identical beginning in April 2012.

Despite the lower lease term rates for “monthly day unreserved” and “24 hour reserved” spaces between 2007 and 2012, it is likely that the structure will increase revenue under the Lease Agreement due higher utilization of the structure. DPW projections indicate an increase of \$200,000 to \$400,000 annually. Also of note, the rates for the “24 hour hotel” spaces are based upon the average market rate charged for parking by limited and full service hotel operators in the downtown, so there is no apparent subsidy associated with the “24 hour hotel” spaces. As these spaces provide hotel patrons with “in and out” privileges, market rate for full service hotels in downtown are approximately 65% above the City set rate for “24 hour reserved” spaces.

Based on discussions with DPW staff, the Developer pays for all spaces "provided for" in the Agreement for the "monthly day unreserved" spaces and the "24 hour reserved" spaces. In contrast, it is intended that Developer only pay for spaces actually used for the "24 hour hotel" spaces. This distinction should be clearly stated in the Lease terms. As this is the mutual intent of the DPW and Developer, we recommend that such intent be reviewed by the City Attorney to assure that the language in the proposed Agreement is consistent with this intent. DPW staff has indicated that this language has been included in the most recent draft lease agreement, but our office has not reviewed this language. Also, should demand for the 24 hour hotel spaces fall well below that which is dedicated to the Developer, the Agreement as proposed provides no incentive for the Developer to return any of the unused spaces to the City. However, DPW asserts that nothing precludes the City from utilizing the spaces for special event or transient parkers.

The Lease Agreement constitutes a private use of a public asset. As such Federal tax laws require that current outstanding tax exempt debt for this structure be refunded at taxable rates. In addition, over the life of this Agreement, future City of Milwaukee debt issued for the structure will be at higher taxable rates. The combined present value cost of converting remaining City debt for this structure to taxable rates and the higher cost of future City borrowing for capital maintenance of this structure during the term of the Agreement could total up to \$646,000. While this cost will be paid gradually over the next 25 years, under the terms of the proposed Agreement, the City of Milwaukee will absorb this cost.

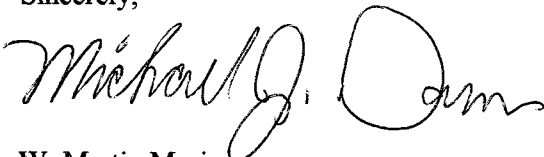
Overall, the proposed Lease Agreement will result in greater utilization of a City owned asset. The Lease Agreement provides Developer with a certain degree of flexibility to modify the type and number of parking spaces parking spaces pending a 30 day notice and consent by the City. In addition, despite the long term nature of the Agreement (25 years), the City is protected to some degree in that there must be mutual consent of both parties to extend the Lease term an additional 15 and 10 years. Furthermore, the Lease Agreement provides other terms which safeguard the City including a requirement that Developer present a certification of occupancy prior to the commencement of the Lease Agreement.

Given its proposed competitive rates, the additional revenue to the Parking Fund and subsequent development that will be triggered by the Lease, we find the proposed Lease Agreement acceptable assuming the City is willing to bear the cost of the subsidies disclosed above. As mentioned, we would also encourage careful review of contract language to make clear that the Developer will:

- pay for all spaces provided for in the Agreement for the "monthly day unreserved" spaces and the "24 hour reserved" spaces and
- pay for only spaces used for the "24 hour hotel" spaces.

Please contact me should you have any questions concerning this letter.

Sincerely,



W. Martin Morics
Comptroller

Cc Jeffrey Mantes
Richard Marcoux
Dorinda Floyd

CDK/MJD/10-26-07